

## Sunbird Consulting Services Pty Ltd

### Supply of Services – Terms and Conditions (B2C)

Sunbird Consulting Services Pty Ltd (ACN 658 990 866) (**Sunbird**) may offer to provide Consultancy Services to the Customer in accordance with the Terms set out below. By ordering Consultancy Services from Sunbird, you agree to comply with and be bound by these Terms. Sunbird may update these Terms from time to time without notice. You may review the most current version of these Terms at any time through the Sunbird website at

<https://www.sunbirdconsulting.com.au/>

## 1 Definitions and interpretation

---

### 1.1 Definitions

In these Terms, unless the context indicates otherwise, the following words have the following meanings:

**Australian Consumer Law** means schedule 2 to the *Competition and Consumer Act 2010* (Cth), as amended from time to time.

**Background IP** means the Intellectual Property of a Party which was in existence prior to the commencement of these Terms or which is subsequently developed by that Party independently of and for purposes unconnected with these Terms.

**Claims** means all demands, claims, proceedings, penalties, fines and liability (whether criminal or civil, in contract, tort or otherwise).

**Commencement Date** means the date specified in the Order Details.

**Completion Date** means the date specified in the Order Details or such other date as the Parties may agree in writing.

**Confidential Information** includes any information marked as confidential and any information received or developed by the Supplier during the term of these Terms, which is not publicly available and relates to processes, equipment and techniques used by the Customer in the course of the Customer's business including all information, data, drawings, specifications, documentation, source or object code, designs, construction, workings, functions, features and performance notes, techniques, concepts not reduced to material form, agreements with third parties, schematics and proposals and intentions, technical data and marketing information such as customer lists, financial information and business plans.

**Consultancy Services** means the consultancy services to be provided by the Supplier to the Customer in accordance with these Terms, as specified in the Order Details.

**Consumer Guarantee** means a guarantee applicable to the supply of goods or services which is incorporated into these Terms pursuant to division 1 part 3-2 of the Australian Consumer Law.

**Contract IP** means Intellectual Property created by the Supplier in the course of performing its obligations under these Terms.

**Corporations Act** means the *Corporations Act 2001* (Cth), as amended from time to time.

**Customer** means the party specified as the Customer in the Order Details.

**Deliverable** means any goods or services to be supplied by the Supplier to the Customer pursuant to these Terms, including as specified in the Order Details.

**Fees** means the amount(s) set out in the Order Details.

**Force Majeure Event** means any occurrence or omission as a direct or indirect result of which the Party relying on it is prevented from or delayed in performing any of its obligations under these Terms and which is beyond the reasonable control of that Party and could not have been prevented or mitigated by reasonable diligence or precautionary measures, including forces of nature, natural disasters, acts of terrorism, riots, revolution, civil commotion, epidemic, industrial action and action or inaction by a government agency but does not include any act or omission of a subcontractor (except to the extent that act or omission is caused by a Force Majeure Event).

**GST Law** means the same as in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**Intellectual Property** includes trademarks, patents, copyrights, processes know-how, registered designs or other like rights or any right to apply for registration of any of the former.

**Losses** means all losses including financial losses, damages, legal costs and other expenses of any nature whatsoever.

**Non-Excludable Guarantee** means a non-excludable guarantee implied by the Australian Consumer Law.

**Order** means a purchase order for the Consultancy Services placed by the Customer under and in accordance with these Terms.

**Order Confirmation** means the written confirmation provided by the Supplier to the Customer in response to a request for an Order detailing the type of Consultancy Services ordered and the expected date the Consultancy Services will be completed by the Supplier and made available to the Customer.

**Order Details** means the following information required for an Order:

- (a) details of the Consultancy Services required;
- (b) details of the Fees;
- (c) the delivery method;
- (d) the name and contact details of the Customer; and
- (e) any other details the Supplier may require from time to time

**Parties** means the Supplier and the Customer, and **Party** means either one of them.

**Personal Information** has the meaning as defined in any applicable Privacy Law.

**Privacy Law** means any legislation or administrative requirement (as amended from time to time) imposing an obligation in relation to the collection, use, disclosure, storage and transmission of Personal Information which is applicable to a party in the performance of its obligations under these Terms, including without limitation any codes, principles or guidelines contained in or arising out of such legislation.

**Privacy Policy** means the Supplier's privacy policy, as amended from time to time, available on the Supplier's website at [www.sunbirdconsulting.com.au](http://www.sunbirdconsulting.com.au).

**Related Body Corporate** has the meaning given in section 50 of the Corporations Act.

**Special Conditions** means the additional conditions the Customer must comply with as specified in the Order Details, or as otherwise agreed between the Parties in writing.

**Specification** means the details of the Consultancy Services as set out in the specification in the Order Details.

**Supplier** means Sunbird Consulting Services Pty Ltd (ACN 658 990 866) trading as 'Sunbird Aged Care Navigation' and/or 'Sunbird Aged Care Services'.

**Supplier's Personnel** means any person or persons that the Supplier designates to perform the Consultancy Services on the Supplier's behalf, including any director, officer, employee, agent or subcontractor of the Supplier from time to time.

**Termination Date** means the earlier of:

- (a) the date of termination of these Terms by the Customer or the Supplier; and
- (b) the date of expiry of these Terms.

**Terms** means these terms and conditions under which the Supplier may provide Services to the Customer and includes any Special Conditions and/or the Order Details, as the case requires.

## 1.2 Interpretation

In these Terms unless the context otherwise requires:

- (a) words importing any gender include every gender;
- (b) words importing the singular number include the plural number and vice versa;
- (c) words importing persons include firms, companies and corporations and vice versa;
- (d) references to numbered clauses, paragraphs and schedules are references to the relevant clause or paragraph in or schedule to these Terms;
- (e) reference in any schedule to these Terms to numbered paragraphs relate to the numbered paragraphs of that schedule;
- (f) any obligation on any Party not to do or omit to do anything is to include an obligation not to allow that thing to be done or omitted to be done;
- (g) the headings to the clauses and schedules of these Terms are not to affect the interpretation;
- (h) any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or bylaw made under that enactment; and
- (i) the word "including" (and related forms including "includes") means "including without limitation".

## 2 Orders

- (a) All Orders must be submitted to the Supplier via its website or in such other manner as the Supplier may direct in writing from time to time, and must contain the Order Details. The Supplier reserves the right to refuse to process any Order, including any Order which is not valid in its reasonable opinion.
- (b) Orders may only be cancelled or varied by the Customer once they have been submitted with the prior written approval of the Supplier, which may be given, withheld or conditioned in its absolute discretion. The Supplier will not unreasonably withhold its consent if such request is made in writing by the Customer to the Supplier prior to the commencement of the performance of the Services.
- (c) Subject to receiving a valid Order, the Supplier may provide the Customer with an Order Confirmation.

- (d) The Supplier will use reasonable commercial endeavours to make the Consultancy Services available to the Customer in accordance with these Terms and the Order Details.

### **3 Consultancy Services**

---

- (a) The Supplier will provide the Consultancy Services from the Commencement Date on a non-exclusive basis to the Customer in consideration for the Customer paying the Fee to the Supplier, subject to the provisions of these Terms.
- (b) The Supplier and the Customer will agree on the time and place for the performance of the Consultancy Services, subject to the availability of the Supplier's staff and agents from time to time.
- (c) The Supplier will use reasonable commercial endeavours to complete the Consultancy Services including the provision of any Deliverables by the dates specified in the Order Details, or as otherwise agreed by the Parties in writing.
- (d) The Consultancy Services will be performed by the Supplier's Personnel that the Supplier may choose from time to time as most appropriate to carry out the Consultancy Services, including as specified in the Order Details (if any).
- (e) The Consultancy Services are to be performed as agreed by the Parties. The time estimates for the provision of the particular Consultancy Services, and the Fees, are set out in the Order Details, as relevant.

### **4 Location**

---

The Supplier will provide the Consultancy Services in places and locations as the Supplier considers appropriate (in its absolute discretion) having regard to the nature of the requirements of the Customer and in accordance with the specifications in the Order Details (if any) or as agreed in writing by the Parties from time to time.

### **5 Fees**

---

#### **5.1 Payment of Fees**

- (a) In consideration of the provision of the Consultancy Services by the Supplier in accordance with these Terms, the Customer will pay the Supplier the Fees.
- (b) The Customer acknowledges that the Fees are exclusive of any GST that may be charged by the Supplier to the Customer, and therefore, the Supplier will be entitled to add on GST.

#### **5.2 Invoicing**

- (a) The Supplier will provide the Customer with a tax invoice in accordance with the GST Law in relation to Fees payable under this clause 5.
- (b) Payment will be made by the Customer to the Supplier within the period specified in the Order Details. If this is not specified, such amounts shall be payable by the Customer within 7 days after receiving the Supplier's invoice.
- (c) When making a payment, the Customer must quote relevant reference numbers and the invoice number.
- (d) The invoice referred to in clause 5.2(b) must include the following details before payment can be approved and forwarded:
- (i) the monthly period (or part thereof) which the Fee relates to, for the provision of Consultancy Services;
  - (ii) name of individual provided by the Supplier;
  - (iii) description of Consultancy Services provided; and
  - (iv) the ABN of the Supplier.

#### **5.3 Variation of Fees**

The Supplier is entitled to vary the rates during the term of these Terms with written notice to the Customer of not less than 7 days' prior to the change being implemented, in which case such rates will apply to all new engagements on and from the effective date of such change of rates.

#### **5.4 Costs and disbursements**

The Supplier is permitted to charge for all costs and expenses incurred in performing the Consultancy Services, including travelling, accommodation, photocopying, courier services or postage.

#### **5.5 Failure to pay**

If the Customer does not make a payment by the date stated in an invoice or as otherwise provided for in these Terms, the Supplier is entitled to do any or all of the following:

- (a) charge interest on the outstanding amount at the rate of 10% per annum, accruing daily;

- (b) require the Customer to pay, in advance, for any Consultancy Services (or any part of the Consultancy Services) which have not yet been performed; and
- (c) not perform any further Consultancy Services (or any part of the Consultancy Services).

#### **5.6 Disputed invoices**

If the Customer disputes the whole or any portion of the amount claimed in an invoice submitted by the Supplier, the Customer must:

- (a) pay the portion of the amount stated in the invoice which is not in dispute in accordance with the terms of payment set out in these Terms; and
- (b) notify the Supplier in writing (within 5 days of receipt of the invoice) of the reasons for disputing the remainder of the invoice.

### **6 Supplier's Personnel**

---

- (a) If the Customer:
  - (i) makes a notice in writing to the Supplier; and
  - (ii) has reasonable grounds which have been disclosed and discussed with the Supplier, the Customer may require the Supplier to cease to permit a particular person or persons employed by the Supplier or acting as agents of the Supplier to carry out the Consultancy Services.
- (b) If the Customer makes the requirement referred to in clause 6(a), the Supplier must, as soon as it is practicable:
  - (i) cease to provide the service of the particular person or persons in respect of the performance of the Consultancy Services; and
  - (ii) provide the services of an alternative person or persons as may be reasonably acceptable to the Customer.

### **7 Customer's obligations**

---

- (a) During the performance of the Consultancy Services the Customer will:
  - (i) cooperate with the Supplier as the Supplier reasonably requires;
  - (ii) provide the information and documentation that the Supplier reasonably requires; and
  - (iii) access consultations in such manner as the Supplier reasonably requires including by web-conferencing, video-conferencing, telephone calls, emails and other digital means.

### **8 Use of subcontractors**

---

- (a) The Supplier is permitted to use other persons to provide some or all of the Consultancy Services.
- (b) The Supplier is responsible for the work of any of the Supplier's subcontractors.
- (c) Subject to clause 8(d), any work undertaken by any of the Supplier's subcontractors will be undertaken to the same standard as stated in these Terms and the Specification.
- (d) To the extent that the terms of any subcontract stipulate a higher standard for any of the Consultancy Services than the standards set out in these Terms (including as to timing or quality), any Consultancy Services provided by the relevant subcontractor will be governed by the terms and conditions of that subcontractor's subcontract.

### **9 Disclosure and ownership of Intellectual Property**

---

- (a) The Parties agree that, other than as expressly provided in this clause, nothing in these Terms transfers or grants to any Party any right, title or interest in or to any Intellectual Property in any Background IP. The Supplier grants to the Customer a worldwide, royalty free, perpetual, irrevocable, transferable, non-exclusive licence to use the Background IP to the extent necessary for the Customer to derive full benefit from its acquisition of the Deliverables.
- (b) The Customer acknowledges that ownership of the Contract IP remains vested in the Supplier. The Supplier grants to the Customer a non-exclusive, perpetual, fully paid-up, irrevocable, worldwide licence to use the Contract IP for the sole purpose of enabling the Customer to derive full benefit from its acquisition of the Deliverables.

## 10 Privacy

---

- (a) The Supplier will collect and use the Personal Information of the Customer in accordance with the Privacy Policy. By entering into these Terms, the Customer acknowledges that it has read the Privacy Policy and consents to its terms.
- (b) The Customer is responsible for obtaining all relevant consents from, and providing all relevant notices to, individuals whose Personal Information is provided by the Customer to the Supplier in connection with these Terms so as to ensure that the Supplier's dealings with that information pursuant to these Terms complies with the Supplier's obligations under any applicable Privacy Laws.
- (c) The Customer must indemnify the Supplier against, and must pay the Supplier on demand the amount of, all Losses, liabilities, costs and expenses arising out of its failure to comply with clause 10(b).
- (d) The Customer warrants that it will comply with the Privacy Law and will not (as far as reasonably practicable) knowingly do anything or permit anything to be done which might lead to a breach of the Privacy Law.

## 11 Warranties, liability and indemnities

---

### 11.1 Warranties

- (a) The Supplier warrants that it will use reasonable care and skill in performing the Consultancy Services with regard to the type of Consultancy Services provided by the Supplier.
- (b) If the Supplier performs the Consultancy Services (or any part of the Consultancy Services) negligently or in breach of these Terms in any material respect, then, if requested by the Customer, the Supplier will use best endeavours to re-perform the relevant part of the Consultancy Services, subject to clauses 11.4(a) and 11.4(b) below.
- (c) The Customer's request referred to in clause 11.1(b) must be made as soon as reasonably practicable and in any event within 30 days of the date the Supplier completed performing the relevant Consultancy Services.

### 11.2 Insurances

The Supplier maintains the following insurance:

- (a) worker's compensation insurance as prescribed by law for the Supplier's Personnel; and
- (b) public liability insurance for a minimum of an amount to be agreed for each occurrence as specified in the Order Details.

### 11.3 No warranties in relation to completion

To the maximum extent permitted by law, the Supplier provides no warranty that any result or objective can or will be achieved or attained at all or by a given completion date or any other date, whether stated in these Terms, the Specification or elsewhere.

### 11.4 Liability

- (a) The Deliverables and Consultancy Services (in this clause, the goods and services) supplied under these Terms of the Supplier may come with implied non-excludable guarantees which are regulated by the Australian Consumer Law. The extent of the implied guarantees depend on whether the Customer is a 'consumer' of goods or services within the meaning of that term pursuant to the Australian Consumer Law. Where the Customer is a 'consumer' for the purposes of the Australian Consumer Law, the Supplier is required to provide the following mandatory statement to the Customer: "Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. The Customer is entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. The Customer is also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure."
- (b) If the goods or services supplied by the Supplier to the Customer is supplied to the Customer in the Customer's capacity as a 'consumer' of goods or services within the meaning of that term in the Australian Consumer Law, the Customer will have the benefit of certain non-excludable guarantees in respect of the goods or services and nothing in these Terms excludes or restricts or modifies any guarantee which pursuant to the *Competition and Consumer Act 2010* (Cth) is so conferred. However, if the goods or services are subject to a non-excludable guarantee, implied by the Australian Consumer Law and the goods or services are not ordinarily acquired for personal, domestic or household use or consumption, then pursuant to s 64A of the Australian Consumer Law, the Supplier limits its liability for breach of any such non-excludable guarantee implied by the Australian Consumer Law (other than a guarantee implied by sections 51, 52 or 53 of the Australian Consumer Law) or expressly given by the

Supplier to the Customer, in respect of each of the goods and services, where it is fair and reasonable to do so, at the Supplier's option, to one or more of the following:

- (i) if the breach relates to goods:
  - (A) the replacement of the goods or the supply of equivalent goods;
  - (B) the repair of such goods;
  - (C) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
  - (D) the payment of the cost of having the goods repaired, and
- (ii) if the breach relates to services:
  - (A) the supplying of the services again; or
  - (B) the payment of the cost of having the services supplied again.
- (c) In order for the Customer to claim against the Supplier under a non-excludable guarantee implied by the Australian Consumer Law, or under an express warranty given in respect of the goods or services provided by the Supplier, the Customer must provide written notice to the Supplier with documentary evidence substantiating the claim, for review by the Supplier, and, in respect of the Supplier's website, must continue to use it only in accordance with the provisions of these Terms.
- (d) Upon receipt of a valid claim from the Customer under a Non-Excludable Guarantee implied by the Australian Consumer Law, the Supplier will contact the Customer to arrange a suitable remedy. The Customer may claim reasonable expenses incurred in making a valid claim under such a guarantee by providing documentary evidence of the expenses to the Supplier. The Customer will be responsible for any expenses incurred in relation to an invalid claim. Where the Supplier elects to repair goods the subject of a valid claim, the Customer agrees that the goods may be replaced by refurbished goods of the same type rather than being repaired and refurbished parts may be used to repair goods. The Customer acknowledges that where the goods are repaired and are capable of retaining user-generated data, it is possible that the repair of the goods may result in loss of data.
- (e) Any warranty against defects provided by the Supplier to the Customer in the Customer's capacity as a 'consumer' under the Australian Consumer Law is in addition to the Customer's other rights and remedies under a law in relation to the goods or services to which the warranty relates.
- (f) Where the Customer is not a 'consumer' for the purposes of the Australian Consumer Law, all conditions, warranties, guarantees, rights and remedies implied in these Terms of the Supplier are excluded, to the fullest extent permitted by law.
- (g) The Supplier's liability for failure to comply with a Consumer Guarantee is limited to:
  - (i) in the case of goods supplied to the Customer, the replacement of the goods or the supply of equivalent goods (or the payment of the cost to the Customer of the replacement or supply), or the repair of the goods (or the payment of the cost to the Customer of the repair); and
  - (ii) in the case of services supplied to the Customer, the supply of the services again or the payment of the cost to the Customer of having the services supplied again.

#### **11.5 Exclusion of liability**

Subject at all times to clause 11.4:

- (a) Except in the case of death or personal injury caused by the Supplier's negligence, the liability of the Supplier under or in connection with these Terms whether arising in contract, tort, negligence, breach of statutory duty or otherwise must not exceed the Fees paid by the Customer to the Supplier under these Terms.
- (b) The Supplier is not liable to the Customer in contract, tort, negligence, breach of statutory duty or otherwise for any loss, damage, costs or expenses of any nature whatsoever incurred or suffered by the Customer of an indirect or consequential nature including any economic loss or other loss of turnover, profits, business or goodwill. For the purposes of this sub clause, "consequential loss or damage" means any Loss that does not arise naturally and according to the usual course of things as a result of a breach of these Terms or other event giving rise to such Loss, whether or not such Loss may reasonably be supposed to have been in the contemplation of the Parties at the time they made these Terms.

#### **11.6 No reliance**

Each of the Parties acknowledges that, in entering into these Terms, it does not do so in reliance on any representation, warranty or other provision except as expressly provided in these Terms. Any conditions, warranties or other terms implied by statute or common law are excluded from these Terms to the fullest extent permitted by law.

#### **11.7 Survival of obligations**

The obligations accepted by the Supplier and the Customer under this clause 11 survive termination or expiry of these Terms.

## 12 Termination

---

- (a) The Supplier may terminate these Terms for convenience by written notice to the Customer by the notice period specified in the Order Details.
- (b) The Supplier may terminate these Terms or suspend the provision of Consultancy Services under these Terms by notice in writing to the Customer if the Customer:
  - (i) fails to observe any term of these Terms; and
  - (ii) fails to rectify this breach, to the satisfaction of the Supplier, following the expiration of 14 days' notice of the breach being given in writing by the Supplier to the Customer.
- (c) The Supplier may terminate these Terms immediately if the Customer commits a material breach of these Terms which is incapable of rectification.
- (d) Upon termination of these Terms:
  - (i) any Fees, expenses or reimbursements payable by the Customer to the Supplier in respect of any period prior to the Termination Date must be paid by the Customer within 7 days after the Termination Date;
  - (ii) under clause 12(a) the Supplier will refund any Fees paid by the Customer to the Supplier for any Consultancy Services which have not been performed as at such date of termination.

## 13 General

---

### 13.1 Force Majeure

- (a) The Supplier does not have any liability under or may be deemed to be in breach of these Terms for any delays or failures in performance of these Terms which result from a Force Majeure Event.
- (b) If the Supplier is affected by these circumstances, the Supplier must promptly notify the Customer in writing when such circumstances cause a delay or failure in performance and when they cease to do so.
- (c) If such circumstances continue for a continuous period of more than 90 days, the Supplier may terminate these Terms by written notice to the Customer.

### 13.2 Amendment

These Terms may be amended by the Supplier from time to time in its absolute discretion. Any amendment to these terms shall apply to Orders placed after such amendment has been made.

### 13.3 Assignment

- (a) Subject to clauses 8 and 13.3(b), the Supplier may assign, delegate, subcontract, mortgage, charge or otherwise transfer any or all of its rights and obligations under these Terms without the prior written agreement of the other Party.
- (b) The Supplier may assign and transfer all its rights and obligations under these Terms to any person to which it transfers all of its business, provided that the assignee undertakes in writing to the Customer to be bound by the obligations of the assignor under these Terms.

### 13.4 Entire agreement

- (a) These Terms and the Order Details contain the entire agreement between the Parties in respect of the subject matter of them.
- (b) The Parties confirm that they have not entered into this agreement on the basis of any representation that is not expressly incorporated into these Terms.
- (c) These terms and conditions are subject to the Special Conditions set out in the Order Details. To the extent of any inconsistency between them, the Special Conditions shall prevail.

### 13.5 Waiver

- (a) No failure or delay by the Supplier in exercising any right, power or privilege under these Terms will impair the same or operate as a waiver of the same nor may any single or partial exercise of any right, power or privilege preclude any further exercise of the same or the exercise of any other right, power or privilege.
- (b) The rights and remedies provided in these Terms are cumulative and not exclusive of any rights and remedies provided by law.

### 13.6 Agency, partnership

- (a) These Terms will not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in these Terms.
- (b) Neither Party will have, nor represent that it has, any authority to make any commitments on the other Party's behalf.

**13.7 Further assurance**

Each Party to these Terms must, at the request and expense of the other, do all things reasonably necessary to carry out the provisions of these Terms or to make it easier to enforce.

**13.8 Severance**

If any provision of these Terms is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision will, to the extent required, be severed from these Terms and rendered ineffective as far as possible without modifying the remaining provisions of these Terms, and will not in any way affect any other circumstances of or the validity or enforcement of these Terms.

**13.9 Notices**

A notice or other communication connected with these Terms has no legal effect unless it is in writing. In addition to any other method of service provided by law, the notice may be sent by pre-paid post to the address of the addressee as set out in these Terms, or sent by email to the email address of the addressee.

**13.10 Work, health and safety**

The Supplier must comply with all relevant work, health, safety and welfare standards and regulations prescribed by legislation.

**13.11 Law and jurisdiction**

This agreement takes effect, is governed by, and will be construed in accordance with the laws from time to time in force in the State of Queensland. The Parties submit to the non-exclusive jurisdiction of the courts of the State of Queensland.