

Service Agreement Terms & Conditions

INTRODUCTION

- 1.1 The Parties to this Agreement are:
 - (a) Focus (Focus ACT)
 - (b) the Participant
 - (c) the Representative (if applicable); and
 - (d) the Plan Management Provider(if applicable).
- 1.2 This Agreement is for the provision, by Focus to the Participant, of the Support Services for the Price.
- 1.3 Depending on the type(s) of Support Services Focus is to provide under this Agreement, additional Special Conditions will apply and will be attached and form part of this Agreement.
- 1.4 If the Representative is a public trustee or guardian, additional Special Conditions will also apply and form part of this Agreement.
- 1.5 If there is any conflict or inconsistency between the terms of the terms of this Agreement (i.e. the body of this document) and the Special Conditions that apply, the Special Conditions will prevail and take precedence to the extent of the inconsistency.
- 1.6 If, by agreement between Focus, the Participant and/or the Representative, the Support Services are amended such that the type(s) of Support Services is different to those specified in the agreement, then:
 - (a) Service Agreement will be amended; and
 - (b) the appropriate Special Conditions will be added, removed or replaced;as is appropriate, and Focus, the Participant, Representative and/or Plan Management Provider will initial such change to this Agreement to reflect their acceptance of the change.

Execution and Signing

- If a person (**Signatory**) is signing on behalf of another person or entity, the Signatory represents and warrants that they have all powers, authority and consents necessary to sign this document on behalf of that other person or entity.
- 1.7 By signing this Agreement, the Representative warrants and agrees that they have read and explained this Agreement to the Participant, and have satisfied themselves that the Participant has, to the best of their capacity, a reasonable and sound understanding of the purpose and contents of this Agreement and agrees to its terms.

Term of Agreement

- 1.8 This Agreement will be effective for 12 months from the Commencement Date.

NDIS

- 1.9 This Agreement is made within the context of the National Disability Insurance Scheme (**'NDIS'**), which is a scheme that aims to:
 - (a) support the independence and social and economic participation of people with disability; and
 - (b) enable people with a disability to exercise choice and control in the pursuit of their goals and the planning and delivery of their supports.
- 1.10 This Agreement is made for the purpose of providing Support Services under the Participant's NDIS Plan.

FOCUS' OBJECTIVES AS AN ORGANISATION

- 1.11 Focus seeks to:
 - (a) foster the independence of its Participants and their participation in the community by providing them with accommodation and Support Services, including:
 - (i) housing and accommodation services;
 - (ii) dietetics; and
 - (iii) other general support services;
 - (b) deliver its services in an equitable and sustainable manner whilst attempting to minimise risk to individuals;
 - (c) treat its Participants with courtesy and respect;
 - (d) communicate in an open, frank and timely manner; and
 - (e) act in a manner consistent with all relevant laws, including the National Disability Insurance Scheme Act 2013 and rules, and the Australian Consumer Law.

PARTICIPANT NDIS ELIGIBILITY

The Participant warrants that they:

- (a) Are eligible for funding under the NDIS; and
- (b) Have developed the NDIS Plan in liaison with the National Disability Insurance Agency (**'NDIA'**).

The Participant warrants and agrees that if there is any amendment to their NDIS Plan at any time, they will immediately notify Focus of the amendment, and provide Focus with an updated NDIS Plan.

SERVICES AND PRICE

Focus agrees to provide the Participant with the Support Services.

The Participant must pay Focus the Price for the Support Services.

The Price is GST inclusive unless otherwise specified.

Additional expenses (i.e. things that are not included as part of the Support Services) must be paid by the Participant and are not included in the Price of the Support Services.

This subclause applies if the Participant has chosen to self-manage the funding for the Support Services provided under this Agreement. Following provision of the Support Services, Focus will provide the Participant a tax invoice for those Support Services for the Participant to pay. The Participant must pay the tax invoice within 7 days of the date of that tax invoice in the manner required on the tax invoice.

This subclause applies if the Participant has nominated the Representative to manage the funding for the Support Services provided under this Agreement. Following provision of the Support Services, Focus will provide the Representative with a tax invoice for the Representative to pay. The Representative must pay the invoice within 7 days of the date of that tax invoice in the manner required on the tax invoice.

This subclause applies if The Participant has nominated the NDIA to manage the funding for the Support Services provided under this Agreement. Following provision of the Support Services, Focus will claim payment from the NDIA. The Participant agrees to promptly take all reasonable steps and give all necessary consents to allow Focus to finalise its claim from the NDIA.

This subclause applies if The Participant has nominated the Plan Management Provider to manage the funding for the Support Services provided under this Agreement. Following provision of the Support Services, Focus will claim payment from the Plan Management Provider. The Participant agrees to promptly take all reasonable steps and give all necessary consents to allow Focus to finalise its claim from the Plan Management Provider. If Focus claims payment from the Plan Management Provider by issuing a tax invoice, the Plan Management Provider must pay the tax invoice within 7 days of the date of that tax invoice in the manner required by that invoice.

If, for any reason, the Participant is not entitled to NDIS funding in respect of and part of the Support Services, but has requested those Support Services, including those described at clauses 0 and/or 0, , then notwithstanding clauses 0, 0, 0 or 0 as applicable, the Participant must pay Focus for those Support Services within 7 days of Focus issuing a tax invoice to the Participant.

FOCUS' RESPONSIBILITIES

1.12 Focus agrees to:

- (a) Work with the Participant and/or Representative to adapt the Support Plan flexibly in order to optimise its effectiveness based on the Participant's changing needs from time to time. The Support Plan may be subject to change at any time through negotiation and mutual agreement between Focus and the Participant or the Representative, or both (as relevant);
- (b) Review the Support Plan with the Participant and/or the Representative at least every 4 weeks during the Trial Period (see clause 0), and at least every 12 weeks thereafter;
- (c) Give the Participant a minimum of 24 hours' notice if Focus has to change a scheduled appointment to provide supports (unless it is not reasonably possible in the circumstances to give that amount of notice);
- (d) Consult the Participant and/or Representative on decisions about how the Support Services are provided;
- (e) Listen to the Participant's and/or Representative's feedback and try to resolve problems in a timely manner; and
- (f) Keep proper records in relation to the Support Services provided to the Participant.

THE PARTICIPANT'S GENERAL RESPONSIBILITIES

1.13 The Participant agrees to:

- (a) Actively participate in their Support Plan;
- (b) Punctually attend appointments with the Support Worker as agreed in their Support Plan;
- (c) Provide Focus with a minimum of 24 hours' notice if the Participant wishes to change a date or time for an appointment;
- (d) Treat the Support Workers with respect;
- (e) Communicate to Focus when issues occur;
- (f) Refrain from engaging in any unsafe behaviour, including but not limited to:
 - (i) Being under the influence of any alcohol or non-medicated drug if it negatively affects a Support Worker or while Support Workers are providing the Support Services;
 - (ii) Acting in a violent or aggressive manner towards another individual;
 - (iii) Wilfully or negligently damaging any property of a Support Worker or any other person.

THE REPRESENTATIVE'S RESPONSIBILITIES

The Representative agrees to:

- (a) Respond to any communication from Focus in regard to the Participant as soon as practicable;
- (b) Take prompt action in the event of a change in the Participant's circumstances that might have an immediate effect on the Participant's health and well-being;
- (c) Ensure the Participant has sufficient funds to remunerate Focus for their Support Services provided; and
- (d) If the Representative manages the Participant's NDIS funding under clause 0 or otherwise, ensure Focus is paid within 7 days of receiving any invoice for Support Services provided.

TRIAL PERIOD

- 1.14 **Note:** This clause 0 does not apply to Existing Participants of Focus.
- 1.15 The Trial Period begins on the Commencement Date, and continues for 12 weeks following that date.
- 1.16 If the Participant:
- (a) fails to attend any appointment described as part of the Support Services; or
 - (b) gives notice to Focus that they wish to cancel or terminate provision of the Support Services;
- then
- (c) Focus may cease providing the Support Services; and
 - (d) the Participant must pay to Focus the Price for all Support Services that otherwise would have been provided within the Trial Period, regardless of whether or not the Participant receives the benefit of those Support services.
- 1.17 Clause 1.16 does not apply:
- (a) Where the relevant appointment has been cancelled by Focus.
 - (b) Where changes to the Support Plan have been made mutually between the Participant and Focus under clause 1.12(a).
 - (c) Where this Agreement has been terminated by Focus under clause 1.27 or 0.

CANCELLATION POLICY

- 1.18 **Note:** This clause does not apply to Support Services to be provided during the Trial Period (see clause 0).
- (d) Client does not show up for a scheduled support within a reasonable time, or is not present
 - (e) at the agreed place within a reasonable time when the SW is travelling to deliver the supports; OR
 - (f) Has given less than 2 clear business days' notice for a support that meets both the following conditions:
 - (g) Support is less than 8 hours continuous duration; AND
 - (h) The agreed total price for the support is less than \$1,000; OR
 - (i) Has given less than 5 clear business days' notice for any other support
 - (j) Focus will claim short notice cancellations:
 - (k) From the participants' NDIS funding, and if this is not possible;
 - (l) From the participants' personal funds

GRIEVANCES AND COMPLAINTS

- 1.19 If the Participant has a complaint, the Participant and/or the Representative must first attempt to resolve the concern informally with those involved.
- 1.20 If the Participant is not satisfied with the outcome, they may lodge a formal complaint in writing to Focus.
- 1.21 The chief executive officer of Focus, or a person delegated by the CEO, or other member of the board of directors of Focus (**the Grievance Officer**) will then meet with all concerned to investigate the complaint and prepare a written response. The written response shall include a recommendation as to any steps to be taken by Focus, the Participant or the Representative to resolve and remedy the complaint.
- 1.22 All complaints filed pursuant to clause 1.20 and the written responses of the Grievance Officer pursuant to clause 1.21 will be recorded by Focus in a Grievance Register.
- 1.23 If the Participant or Representative is not satisfied with the outcome of the response described at 1.21 the Participant or Representative may contact the National Disability Insurance Agency by calling 1800 800 110, or visiting www.ndis.gov.au for further information.

INSURANCE

- 1.24 Focus is responsible for its own workers' compensation or income protection insurance, public liability insurance, and professional indemnity insurance that covers all work performed under or in relation to this Agreement.

CONFIDENTIALITY AND PRIVACY

- 1.25 Focus must, and must ensure that the Support Workers will, treat as confidential, Confidential Information of the Participant and/or Representative which comes into its or the Support Workers' possession as result of the provision of Support Services or connected with the performance of this Agreement.

SUSPENSION AND TERMINATION

- 1.26 Subject to clause 0, the Participant and/or Representative may elect to terminate this Agreement at any time with a minimum of 28 days' prior written notice to Focus.
- 1.27 So long as it does not put the Participant at risk of harm, Focus may suspend the Support Services:
- (a) for any reason provided that it gives the Participant reasonable written notice; and
 - (b) immediately without notice if any of the events in clause 0 occur.
- 1.28 Focus may terminate this Agreement having provided a minimum of 28 days' notice in writing to the Participant and/or Representative, if Focus reasonably determines that:
- (a) Focus is not a suitable organisation to deliver the services that are required by the Participant;
 - (b) It is not appropriate for Focus to continue to provide those services to the Participant; or
 - (c) The Participant is no longer eligible for funding under the NDIS.
- Focus may terminate this Agreement with immediate effect, without notice in the event of the Participant and/or Representative:
- (a) committing a serious breach or persistent breaches of this Agreement;
 - (b) Upon an amount owing under this Agreement by the Participant to Focus being overdue for payment by a period of 14 days or more;
 - (c) Putting themselves or another individual at risk of harm; or
 - (d) Committing any act not specified above which at common law would entitle termination of this Agreement.
- 1.29 This Agreement is terminated immediately on the death of the Participant without any liability to the Participant and/or Representative for any Support Services that have not already been provided, even if those Appointments lie during the Trial Period.
- 1.30 In the event of termination of this Agreement under clause 1.27 or 0, Focus will refer the Participant to another agency and notify that agency of the referral.
- 1.31 Termination or suspension of this Agreement does not affect any rights of the Parties that have accrued prior to the termination or suspension (for example, Focus' right to be paid the Price for Support Service provided before the termination or suspension).

EQUIPMENT AND MATERIAL

- 1.32 Focus will provide the Support Worker with any equipment and material necessary for the provision of services to the Participant under this Agreement.
- 1.33 Any equipment or material of Focus used by the Support Worker in providing the Support Services remains the property of Focus.

LIABILITY FOR PROPERTY DAMAGE

- 1.34 The Participant will remain financially liable for any damage that occurs to the property of Focus while the property is in the possession or control of the Participant.
- 1.35 This clause 0 also applies to damage to any residence or accommodation provided by Focus to the Participant under any Occupancy Agreement.

GUARANTEE

- 1.36 In consideration of Focus agreeing to enter into this Agreement the Representative agrees to be bound by the provisions of this clause 0.
- 1.37 The Representative unconditionally and irrevocably guarantees to Focus payment for any Support Services provided to the Participant by Focus under this Agreement.
- 1.38 If The Participant has chosen to use a Plan Management Provider, the Plan Management Provider unconditionally and irrevocably guarantees to Focus payment for any Support Services provided to the Participant by Focus under this Agreement, noting that such guarantee is limited to the funds that are held and managed by the Plan Management Provider for the Participant.
- 1.39 The Representative unconditionally and irrevocably guarantees to Focus payment for any property damage for which the Participant would be liable under clause 0.

RELIANCE ON INFORMATION

- 1.40 Focus may, from time to time, collect information about the Participant or other matters for the purposes of allowing Focus and its Support Workers to properly provide the Support Services.
- 1.41 If Focus receives information from the Participant, the Representative, or a third party at the Participant's or Representative's request, subject to Focus acting reasonably given the nature of the information, or capacity of the person disclosing such information, Focus may rely on that information without making further enquiries.
- 1.42 The Participant and the Representative represent and warrant to Focus that information provided by them, or any third party at their request, is true, complete and accurate.
- 1.43 The Participant and the Representative agree that, to the extent permitted by law, Focus will not have any liability in relation to any Support Services provided by Focus or Support Workers in reliance on information provided by the Participant, the Representative or any third party, including if the information provided is incomplete or inaccurate, provided that Focus acts reasonably in the circumstances.

INFORMATION PROVIDED BY FOCUS

- 1.44 General information provided by Focus or its Support Workers such as on Focus' website, or materials published on fliers or information sheets (i.e. not specific advice to the Participant or a particular person) is provided by Focus or its Support Workers in good faith for general guidance and reference purposes only.
- 1.45 Focus and its Support Workers will not be responsible or liable for any information that is subject to clause 1.44 which is provided in good faith or any omissions or inaccuracies in such information, to the extent permitted by law.
- 1.46 Any opinions expressed in general information provided by Focus or its Support Workers do not necessarily represent the opinion of Focus, or any of its employees, agents, contractors or personnel. For the avoidance of doubt, this clause 0 is not intended to be an attempt by Focus to contract out of vicarious liability for its employees or agents.

DISCLAIMER

- 1.47 To the fullest extent permitted by law, Focus disclaims and excludes all representations and warranties that are not specifically contained in this Agreement.
- 1.48 This Agreement only includes, by implication, representations and warranties which are implied by the operation of the law, and the law prevents Focus from disclaiming or excluding.

LIABILITY

- 1.49 To the fullest extent permitted by law, Focus' liability for any claims the Participant, the Representative, or any person acting on those people's behalf in relation to any Support Services provided by Focus or Support Workers will be limited to (at Focus' discretion):

- (a) In aggregate, the amount of fees paid by or on behalf of the Participant to Focus,
- (b) Providing the relevant Support Services again;
- (c) Providing the Participant with a credit for use in relation to further Support Services; or
- (d) Paying the costs of having someone else provide the relevant Support Services again.

Focus and its Support Workers will not be liable for any consequential loss whatsoever (e.g. loss of income or profit) in relation to any claims regarding the Support Services.

In addition to anything else in this Agreement, Focus and its Support Workers will not be responsible for any cost, damage or liability arising out of a matter out of Focus reasonable control, including for example:

- (e) the Participant or the Representative failing or refusing to follow the advice or directions of the relevant Support Worker; or
- (f) the Participant or the Representative failing to notify Focus or the relevant Support Worker of information or matters which are material to the provision of Support Services which is not readily apparent to Focus or discoverable in the course of providing the Support Services.

The Participant and the Representative releases Focus and its employees, agents, contractors and personnel from liability arising out of a matter outside of Focus' reasonable control.

GENERAL

- 1.50 This Agreement, together with any schedules, annexures or Special Conditions to it, constitutes the entire agreement between Focus, the Participant, and the Representative. Each Party acknowledges that it has not relied on any other term, representation, warranty or conduct in entering into this Agreement.
- 1.51 No variations to the terms of this Agreement shall be valid unless made in writing and with agreement of Focus, the Participant, and/or the Representative.
- 1.52 This Agreement shall be subject to and governed by the laws and courts of the Commonwealth of Australia and the Australian Capital Territory.
- 1.53 If any part of this Agreement is unenforceable for any reason, it may be severed and removed to maintain the enforceability of the rest of the Agreement.

- 1.54 Clauses 0, 0, 0, 0, 0, 0, 0 and 0 and any other clauses that are expressed to have effect after the termination or expiry of this Agreement survive the termination or expiry of this Agreement.
- 1.55 A waiver by any Party in respect of a breach of a provision of this Agreement by the other Party does not operate as a waiver in respect of any other breach.
- 1.56 The failure of a Party to enforce a provision of this Agreement is not a waiver of the provision.
- 1.57 Focus may assign its rights under this Agreement to a third party by notice in writing to the Participant but must not novate or transfer its obligations to a third party without the consent of the Participant and/or Representative, which consent shall not be unreasonably withheld.

DICTIONARY AND INTERPRETATION

- 1.58 In this Agreement the following terms have the following meanings unless the context indicates otherwise:
- '*Agreement*' means this document, including all annexures and schedules.
 - '*Confidential Information*' means personal and private information of a Participant.
 - '*Dietetic Services*' means Support Services in relation to the assessment and management of the Participant's diet and dietary requirements.
 - '*Existing Participants*' means individuals who are already in receipt of Support Services from Focus prior to the Commencement Date of this Agreement.
 - '*General Support Services*' means other Support Services that are not Housing Services, Dietetics Services, or the provision of accommodation.
 - '*House Rules*' means the document headed as such, which sets out the obligations of the Participant when living in shared accommodation.
 - '*Housing Services*' means Support Services in relation to the Participant's accommodation (such as repairs, maintenance, etc), but not the provision of the accommodation itself.
 - '*Occupancy/Tenancy Agreement*' means an agreement for the provision of accommodation between the Participant and a landlord/lessor.
 - '*Price*' means the price for the Support Services described in the Support Plan.
 - '*Schedule*' means the section of this Agreement headed as such.
 - '*Special Conditions*' means the additional or extra conditions that apply to this Agreement depending on the nature of Support Services, or the identity of the Representative – the applicable Special Conditions will be attached to this Agreement.
 - '*Support Plan*' means the document attached to this document as Annexure A, setting out the Support Services intended to be provided by Focus to the Participant. Subject to change based on the Participant's changing circumstances.
 - '*Support Services*' means those services as described in the Support Plan, or that the parties agree that Focus will provide to the Participant, from time to time.
 - '*Support Worker*' means a person engaged by Focus to carry out the Support Services (including its employees or contractors or persons engaged by its contractors) under this Agreement.
 - '*Trial Period*' means the period encompassing the 12 weeks following the Commencement Date.
- 1.59 In this Agreement, unless the context otherwise indicates:
- (a) a reference to:
 - (i) the singular includes the plural and the plural includes the singular;
 - a gender includes the other genders;
 - a person includes a natural person, a partnership and a body corporate;
 - an Item is to the corresponding numbered item in the Schedule;
 - a party includes the legal personal representatives, successors and assigns of that party; and
 - a clause or paragraph is to a clause or paragraph of this Agreement;
- headings are for convenience only and do not affect the interpretation of this Agreement;
- a term in the Schedule has the same meaning throughout the Agreement;
- where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning; and
- examples or words of inclusion are illustrative only and do not limit the generality of the relevant subject.