

TERMS and CONDITIONS FOR DELIVERY OF SERVICES UNDER AN NDIS SERVICE AGREEMENT

1 DELIVERY OF SERVICES:

- 1.1 Delivery of Services is conditional upon funding being confirmed and approved by Flagstaff.
- 1.2 Where indicated in this Agreement, the Service may be subject to additional and/or specific Flagstaff terms and conditions and delivery of Services will be subject to you accepting those additional terms and conditions.
- 1.3 If the Participant changes his or her residential address, the Participant must provide two days' notice in writing to Flagstaff in order for Flagstaff to accommodate delivery of the Services to the new residential address where applicable.
- 1.4 If the Participant moves out of the areas in which Flagstaff provides the Services, Flagstaff reserves the right to terminate this Agreement.

2 NO LIABILITY FOR DELAY:

- 2.1 We will use reasonable efforts to deliver the Services to you by the date, time and place specified by you.
- 2.2 Without limiting this clause, if the delivery of a Service and/or Support is delayed:
 - i. we shall not be liable for late delivery or delay in delivery; and
 - ii. the delay does not give you the right to cancel the scheduled Services or terminate this Service Agreement without consultation and/or mutual agreement.

3 LIMITATION OF LIABILITY

3.1 In this clause:

- a) **ACL** means the Australian Consumer Law under the *Consumer and Competition Act 2010* (Cth) as amended; and
- b) **Loss** includes loss, liability, claim, cost, injury, death, demand, threat, damage, penalty or expense (including legal costs in connection with same on a full indemnity basis).

3.2 Excluded rights

- 3.2.1 All express or implied representations, conditions, statutory guarantees, warranties and provisions (whether based on statute, common law or otherwise), relating to this Service Agreement, that are not contained in it, are excluded to the fullest extent permitted by law.

3.3 Limitations

- 3.3.1 No warranty is given by Flagstaff and it will not be liable for:
 - i. interference with any of the Services for which Flagstaff is not responsible;
 - ii. any damage or Loss caused by you (the Participant) or any third party; or
 - iii. Loss caused by any factors beyond Flagstaff's control.

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Reviewed & Authorised for Use By: Flagstaff Field Services Manager

Version No:

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Last Review Date:

02 August 2022

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August 2023

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3.4 Indirect Loss

3.4.1 Flagstaff will not be liable for any special, indirect, consequential or economic loss or damage or loss of profits (in contract or tort or arising from any other cause of action) suffered by the Participant or any other person resulting from any act or omission by Flagstaff (including breach, termination or non-observance of the terms of this Service Agreement).

3.5 Total Liability

3.5.1 Flagstaff's total liability for breach of this Service Agreement or breach of our duties at law or in equity (however arising) is limited, at our option, to:

- i. the supply of the Services again; or
- ii. the payment of the cost of having the Services supplied again.

4 STATUTORY RIGHTS

4.1 Statutory Rights

4.4.1 Certain statutory guarantees, warranties and rights may apply to your purchase of Services from us as provided by relevant laws but subject to this Service Agreement as applicable and where permitted by relevant laws.

4.2 No Restriction

4.2.1 Nothing in this Service Agreement excludes, restricts or modifies any condition, warranty, statutory guarantee, right or remedy implied or imposed by common law, statute or regulation which cannot be lawfully excluded, restricted or modified.

4.3 Unfair Contract

4.3.1 If section 23 of the ACL applies to any provisions in this Service Agreement, any such provision(s) shall be void to the extent it is unfair within the meaning of section 24 of the ACL.

5 INDEMNITY

5.1 The Participant must indemnify and keep Flagstaff and its employees indemnified in respect of all damages, Losses, costs and expenses (including legal costs) that Flagstaff and its employees may incur or suffer as a result of the Participant's breach or alleged breach of this Service Agreement.

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