

AGREEMENT dated this day of 2000

("the Association")

where the association is the Carer Respite Centre, Far North Coast

AND

("the Contractor")

and the contractor is.....

CONTRACT

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THIS AGREEMENT made the _____ day of _____ 2000

PARTIES

_____ of _____ ("the Association")

AND

THE CONTRACTOR DESCRIBED IN THE FIRST SCHEDULE TO THIS AGREEMENT ("the Contractor")

INTRODUCTION

- A. The Association provides respite assistance to carers of people with disability, chronic illness, HIV Aids, dementia or a mental illness.
- B. The Association has requested the Contractor provide such services to carers/clients of the Association.
- C. The Association has agreed to purchase the Contractors services subject to the terms and conditions set forth in this Agreement.

AGREEMENT

1. INTERPRETATION

1.1 Throughout this Agreement unless the context otherwise requires, the terms set out below shall have the following meanings:

"Association Services" or "Services" means the Association's services listed in the Second Schedule under the heading "Services" plus or minus (as the case may be) such additional services as the Association, in its discretion, may from time to time add to or subtract from coverage by this Agreement.

"Association Procedures" or "Procedures" means the Association's procedures listed in the Second Schedule under the heading "Procedures" plus or minus (as the case may be) such additional procedures as the Association, in its discretion, may from time to time add to or subtract from coverage by this Agreement.

"Commencement Date" means the date specified in the First Schedule under the heading "Commencement Date".

"Contractor" means the party named in the First Schedule under the heading "Contractor".

"Carers/Clients" means persons to whom the Association may from time to time provide its services to.

heading "Period of Agreement".

"Principal Shareholder" means the party named in the First Schedule under the heading "Principal Share Holder".

"Shareholder" means the party or parties named in the First Schedule under the heading "Shareholder".

1.2 The use of the term "its" shall include the masculine and the feminine and shall refer to the Contractor's Company, or if the Contractor is an individual or individuals, to that individual or those individuals.

1.3 Words denoting any gender shall include all genders.

2. DURATION OF AGREEMENT

2.1 Subject to subclause 2.2 this Agreement shall commence on the Commencement Date and shall continue for at least the period of Agreement or until terminated by either party in accordance with Clause 5 and Clause 17 whichever is the earlier.

2.2 The Contractor acknowledges that it will be engaged for individual service assignments for clients as notified to the Contractor by the Association and that the Association does not warrant or guarantee the number or regularity of such service assignments. The Association may assign those service assignments to the Contractor as it in its absolute discretion sees fit.

2.3 The Contractor further acknowledges that such specific service assignments can be cancelled by the giving of not less than six (6) hours notice by either the Contractor or the Association, provided that:

(a) in the event that the Association provides less than the six (6) hours notice referred to above for the cancellation of any specific service assignment, then the Association shall, if so requested by the Contractor, pay the Contractor a cancellation fee equivalent to 1 hour's service;

(b) in the event the Contractor fails to provide at least six (6) hours notice that it is unable to provide or fulfil any specific service assignment, then the Association shall be entitled to charge the Contractor a cancellation fee as set out in Schedule 3 and further the Association shall be entitled to deduct such fee from payments due or falling due to the Contractor.

3. PROVISION OF SERVICES

3.1 The Contractor shall, for the term of this Agreement, carry out efficiently and properly all services as set out in the Second Schedule for clients of the Association as and whenever required by the Association so to do. The

Contractor shall comply with the Association's procedures as set out in the Second Schedule in the provision and delivery of services as the Association may require from time to time.

- 3.2 The Contractor shall act in a thoroughly professional and co-operative manner while performing its obligations under this Agreement and shall use its best endeavours at all times to act in a courteous, helpful and co-operative manner toward the clients.

4. COSTS AND EXPENSES IN THE PROVISION OF SERVICES

- 4.1 The Contractor shall, at its own expense in all things, provide itself with all materials, tools and equipment necessary for the purpose of carrying out its obligations under this Agreement and shall be responsible for any other charges and expenses incurred on or in connection with the provision of services under this Agreement.

5. PAYMENT FOR SERVICES

- 5.1 The Association will pay the Contractor, for services provided an amount calculated in accordance with the rates specified in the Third Schedule or as may be varied from time to time by the Association.
- 5.2 The Association will each and every week or as otherwise agreed, pay to the Contractor all monies due to the Contractor for commission calculated as specified above. Payment will be by cheque on presentation of invoice or by such other method as the Association may from time to time determine.
- 5.3 The Association and/ or the Contractor may review the rates payable under this Clause at any time by the giving of seven (7) days notice in writing to the other Party. If the other Party finds the review to be unacceptable it may cancel this contract on the giving of seven (7) days' written notice, and within one (1) month of receiving the Association's notice.

6. TRADE RESTRAINTS DURING AND AFTER TERMINATION

- 6.1 The Contractor shall not at any time:
- (a) prejudice the Association's credibility;
 - (b) in any way disparage the good name of the Association or the Association's services;
 - (c) in any way do any act or any thing that may prejudicially affect the Association;
 - (d) hold itself out or represent itself to be an employee, partner or agent of the Association or as otherwise having any authority to represent or bind the Association, unless authorised by the Association so to do.

7. INSURANCE

7.1 The Contractor shall take out and maintain for the duration of this Agreement with a reputable underwriter or insurance company:

- (a) a comprehensive policy of public liability insurance providing a minimum cover of ten million dollars (\$10,000,000.00) in respect of its operations under this Agreement;
- (b) a comprehensive policy of insurance that provides the Contractor with full cover against any and all liability to it and/or its officers, employees or agents for workers compensation and at common law, howsoever arising.

7.2 All of the above policies and receipts evidencing payment of premiums are to be produced by the Contractor to the Association and the Association may take copies.

8. INDEMNITY

8.1 The Contractor shall perform its duties at its sole risk and the Association shall not be liable to the Contractor or its officers, employees or agents for any loss, damage, injury (which expression shall include disease or illness) or death sustained by any persons or any property howsoever caused whether as a result of or arising from negligence, breach of duty or breach of statute by the Association, its officers, employees or agents or otherwise.

8.2 The Contractor shall be solely liable for and indemnify and hold harmless the Association, its officers, employees and agents against all liability, damage, loss, expense, costs and proceedings of any nature whatsoever arising out of or in connection with the services, duties and other obligations hereunder where as a result of or arising from negligence, breach of duty or breach of statute by the Contractor, its officers, employees or agents or otherwise.

8.3 For the purposes of this Clause, the Association shall be or be deemed to be acting as agent or trustee for and on behalf of and for the benefit of all persons who are or might be its officers, employees or agents from time to time and all such persons shall to this extent be or be deemed to be parties to this Agreement.

9. ENGAGEMENT OF STAFF AND EMPLOYEES

9.1 The Contractor may at its discretion, but with the consent of the Association (which may refuse consent or limit at its sole discretion the terms of such engagement), employ staff to assist in carrying out the obligations imposed by this Agreement and shall forthwith notify the Contractor of the names and position or status in the organisation of all staff employed to perform the Association's business.

9.2 The Contractor shall make every reasonable endeavour to:

- (a) check appropriate references of new employees;
- (b) orientate and appropriately train all employees, including on-site training and supervision where necessary;
- (c) employ staff who are competent and hold appropriate qualifications in performing the tasks for which they were engaged;
- (d) immediately replace any staff who are incompatible or unacceptable to any carer/client of the Association;
- (e) supply employees with appropriate materials, tools and protective clothing;
- (f) pay employees properly in accordance with any relevant award pertaining to those employees.
- (g) comply with any and all requirements and policies which the Association may notify the Contractor of from time to time.

9.3 The Association shall have the power to direct the Contractor to cease to use any employees for the performance of the Association's business in circumstances where the conduct of the employee has led to any breach of the terms of this Agreement.

9.4 Any breach of any term of this Agreement by an employee of the Contractor shall be deemed to be a breach by the Contractor.

10. STATUS OF CONTRACTOR

10.1 The Contractor acknowledges that it is an independent Contractor and shall in no circumstances by virtue of this Agreement or otherwise be deemed to be a partner, employee or agent of the Association nor shall it be deemed that any contract or employment exists between the parties.

10.2 The supervision and control provisions imposed under this Agreement are intended to assist with the provision of the Association's services by independent contractors and are not intended to alter the status of the Contractor which shall remain as that of an independent Contractor.

11. NO ASSIGNMENT BY CONTRACTOR

11.1 The Contractor shall not be entitled to assign the benefit of this Agreement.

11.2 Notwithstanding the terms of this Clause, the Association may assign the benefit of this Agreement to any transferee of the whole or any part of the business of the Association and upon such assigning undertaking to the Contractor to observe and perform all obligations of the Association under this Agreement, the Association shall be released from any further liability thereunder.

12. COMPLIANCE WITH ACTS AND REGULATIONS

12.1 Notwithstanding any other Clause in this Agreement, the Contractor at all times shall act in strict compliance with all Acts, Regulations, Orders, Rules and By-Laws of any Authority having jurisdictions that are in force and effect from time to time relating to the Contractor and its business.

13. TAXATION

13.1 The Contractor shall bear sole responsibility for any taxation due or payable in respect of any payments received under this Agreement provided that the Association shall be entitled to make such deductions in respect of tax, as it considers it is by law required to deduct.

13.2 It is the responsibility of the Contractor to prove to the satisfaction of the Association that payments are exempt from the withholding of tax and the Association shall not be required to make any enquiries of the Contractor as to the Contractor's status or liability for tax or as to the Association's liability to make deductions.

13.3 The Association shall not be liable for any withholding of tax pursuant to this Clause where that withholding was not required by law. The Association will provide the Contractor with such receipts or other documentation received by it so as to enable the Contractor to claim a credit for tax withheld pursuant to this Clause.

14. CONFIDENTIALITY

14.1 The Contractor acknowledges and agrees that all information supplied to it by the Association pursuant to this Agreement or which may come to the Contractor's knowledge as a consequence of this Agreement concerning the business of the Association (including, but not by way of limitation, customer lists, names, service procedures of the Association and all the Association's forms and other documents) shall be kept strictly confidential and shall be used by the Contractor only in connection with the performance of its obligations under this Agreement and shall not be disclosed to any other party during or after the term of this Agreement PROVIDED HOWEVER that the foregoing shall not apply in respect of the information which has:

- (a) entered the public domain otherwise than as a result of the breach by the Contractor of the provision of this clause; or
- (b) has otherwise become known to the Contractor;
- (c) in all the circumstances cannot reasonably be considered to be confidential information.

15. PROVISIONS APPLICABLE WHERE CONTRACTOR IS A COMPANY

15.1 If the Contractor is a Company then the following provisions shall apply:

- (a) the Shareholders hereby agree that they will personally observe and perform all of the obligations of the Contractor under this Agreement and that they will procure the performance by the Contractor of those obligations;
- (b) the Principal Shareholder agrees that he will personally undertake the obligations of a personal nature required by this Agreement. The Shareholders (other than the Principal Shareholder) agree to procure the performance by the Principal Shareholder of this undertaking;
- (c) the Shareholders personally guarantee to the Association the due performance and observance by the Contractor of all the terms, conditions and agreements on the Contractor's part contained and applied in this Agreement. It is agreed and declared that although as between the Shareholders and the Contractor, the Shareholders may be sureties only, yet as between the Shareholders and the Association, the Shareholders shall be deemed to be principal parties to this Agreement;
- (d) the Shareholders hereby indemnify the Association against all loss or damage resulting to the Association from any breach or failure by the Contractor to pay monies or to perform and observe all the terms, conditions and agreements on the Contractor's part contained or implied in this Agreement and it is agreed that this indemnity shall not be effected by the giving of time or any other indulgence.

16. AGREEMENT OF LIMITED DURATION

16.1 The Contractor acknowledges that this Agreement is of limited duration, that no long term tenure is guaranteed and that, notwithstanding the rights of the Association to terminate this Contract pursuant to Clause 18, this Agreement may be terminated at any time during the period of the Agreement by the one party giving to the other six (6) days notice in writing to terminate this Agreement.

17. TERMINATION

17.1 Either the Contractor or the Association may terminate this Agreement effective from a date on or after the date of expiry of the period of Agreement by giving to the other not less than thirty (30) days notice in writing advising of its intention so to terminate this Agreement and specifying the date of termination. Any such notice may be given before the expiry of the period of Agreement.

17.2 The Association may immediately terminate this Agreement by written notice to the Contractor if:

- (a) the Contractor makes default in the performance of any or all its obligations under this Agreement and fails to remedy such default within five (5) working days of receiving from the Association written notice specifying such default and requiring such default to be remedied;

- (b) in the event of the bankruptcy, liquidation or insolvency of the Contractor or any of the Shareholders;
- (c) a receiver or trustee is appointed in respect of all or any of the assets of the Contractor or any of the Shareholders;
- (d) the Contractor is a Company and:
 - (i) the effective management and control of the Contractor ceases to be vested in the Shareholders; or
 - (ii) a resolution is passed, or proceedings are commenced for the winding up of the Contractor;
- (e) any judgment against the Contractor remains unsatisfied for a period of five (5) working days;
- (f) the Contractor shall compound or make any arrangement with its creditors or is unable to pay its debts;
- (g) the Contractor behaves in a manner with which the Association believes to be offensive or is disruptive or detrimental to the Company's business or reputation;
- (h) the Contractor or the Principal Shareholder is unable to perform its duties and responsibilities under this Agreement for any reason whatsoever;
- (i) the Association has reasonable cause to believe that the Contractor has been involved in a theft or other criminal act or any physical or emotional abuse perpetrated upon a client.

18. CONSEQUENCES OF TERMINATION

18.1 The expiration or termination of this Agreement shall be without prejudice to the rights and remedies of the Association in respect of any antecedent breach of any of the terms and conditions of this Agreement.

18.2 Forthwith, upon termination or expiration of this Agreement, the Contractor at its own cost shall return or deliver up to the Association all material and property concerning or belonging to the Association, including but not by way of limitation, customer list, names, operating procedures of the Association and all of the Association's forms and other documents, in the possession or control of the Contractor and the Contractor shall not retain any copies or replicas of such material.

19. GOVERNING LAW

19.1 This Agreement is governed by and shall be interpreted in accordance with the laws of the State of New South Wales and the parties hereby submit to the jurisdiction of the Courts of such State.

20. HOLDING OVER

20.1 In the event that the Contractor continues to provide services on behalf of the Association beyond the period of Agreement with the express written consent of the Association, the Contractor agrees to be bound by the same terms and

Association beyond the period of Agreement with the express written consent of the Association, the Contractor agrees to be bound by the same terms and conditions of this Agreement, as applicable that apply during the period of Agreement, save that either the Contractor or the Association may terminate the Agreement after the period of Agreement at any time pursuant to Clause 17.

21. GENERAL

- 21.1 If for any reason any one or more of the provisions of this Agreement is found to be invalid or unenforceable, then the remaining provisions of this Agreement shall not be affected thereby and shall continue in full force and effect.
- 21.2 A release or waiver by the Association of any particular obligation under this Agreement and no indulgence by the Association, shall prejudice the rights and powers of the Association under this Agreement other than as to the matter to which the release, waiver or indulgence relates.
- 21.3 A release or waiver by the Association of any particular obligation under this Agreement shall be of any effect on this in writing.
- 21.4 This Agreement constitutes the entire Agreement between the parties with respect to the matters dealt with in this Agreement and supersedes all or any prior oral or written understandings, representations or commitments of any kind expressed or implied. The Contractor acknowledges that it has not been induced to enter this Agreement by any prior representation made in respect of this Agreement. No oral or written modification of this document shall be of any force or effect unless such modification is in writing and executed by both parties.
- 21.5 Any notice permitted or required to be given under this Agreement shall be in writing and in the case of:
- (a) the Contractor may be delivered personally or posted to:
 - (i) where the Contractor is a Company;
 - (ii) the Contractor's registered office, principal place of business or to any Director or Shareholder of the Contractor;
 - (iii) where the Contractor is an individual or individuals by personal delivery or by post to such individual or individuals;
 - (b) the Association by delivering it personally or by post to -
 - (i) the Association's registered office at
Far North Coast Carer Respite Centre, PO Box 739 Alstonville 2477

IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED THIS AGREEMENT

If the Contractor is an individual:

SIGNED by the said)

in the presence of:)

.....

SIGNED by the said)

in the presence of:)

.....

If the Contractor is a Company:

.....
Secretary

.....
Director

Where the contractor is a Government Funded Community Service –
The stamp of the Community Service or the full name and contract details of the Community
Service.....
.....
.....

The signature and position of an employee of the Community Service authorised to enter into
a brokerage agreement

.....
Signature Position