



Brightwater

# GENERIC SUPPLY OF GOODS AGREEMENT

Contract BWNN-NN

Chris Hingston

[Chris.Hingston@Brightwatergroup.com](mailto:Chris.Hingston@Brightwatergroup.com)

# Purchase Agreement

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Date [Insert Date]

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Parties **Brightwater Care Group Limited**

ACN 612 921 632 of 2A Walter Road West, Western Australia

(Brightwater)

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[Name]

as more particularly described in Item 1 of the Schedule

(Contractor)

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Recitals

- A. Brightwater is an Australian public company limited by guarantee, a public benevolent institution, a registered charity, and a deductible gift recipient.
  - B. Brightwater is established to be a charity and its objects are solely benevolent. Its vision is to lead in providing care services, support and development opportunities for older people and those with specific care needs. Its mission is "Pursuing the dignity of independence".
  - C. Brightwater in furtherance of its objects provides residential aged care, disability, at-home care, retirement, research, catering and linen services.
  - D. Brightwater wishes to purchase the Goods from the Contractor, on a non-exclusive basis.
  - E. The Contractor has agreed to supply the Goods (and any other Deliverables) in accordance with this agreement.
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## 1. Definitions and interpretation

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### 1.1 Definitions

In this agreement:

**Applicable Laws** means all acts of parliament (whether State or Commonwealth), laws, regulations, codes, rules, orders, permits, policies, licences, certifications or standards imposed by any government authority that in any way govern or affect the Deliverables or the performance of this agreement by the Contractor, including (where relevant) Therapeutic Goods Administration approval requirements.

<b>Applicable Standards</b>	means such Australian Standards or International Organization for Standardization (ISO) Standards that are relevant or applicable to the Deliverables.
<b>Bank Account</b>	means the bank account detailed in Item 2 of the Schedule.
<b>Brightwater Representative</b>	means the person specified in Item 3 of the Schedule or such other person advised to the Contractor by Brightwater as authorised to act on Brightwater's behalf for the purpose of this agreement.
<b>Business Day</b>	means a day on which banks are open for business in Perth, Western Australia, excluding a Saturday, Sunday or public holiday in that city.
<b>Client</b>	means any party to whom Brightwater provides goods or services.
<b>Commencement Date</b>	means (in the case of a Standing Offer Agreement) the date set out in Item 4 of the Schedule.
<b>Contractor Representative</b>	means the person specified in Item 1 of the Schedule or such other person advised to Brightwater by the Contractor as authorised to act on the Contractor's behalf for the purpose of this agreement.
<b>Deliverables</b>	means the Goods, and anything else which the Contractor must supply to Brightwater under this agreement, including: <ul style="list-style-type: none"><li>(a) any services specifically described in Item 5; and</li><li>(b) any other services that are ancillary or incidental to the supply of the Goods.</li></ul>
<b>Event of Default</b>	means, in relation to a party ( <b>Defaulting Party</b> ), the occurrence of any one or more of the following events: <ul style="list-style-type: none"><li>(a) the Defaulting Party breaches an obligation under this agreement that cannot be remedied or is not remedied within 10 Business Days after the other party gives a notice to the Defaulting Party specifying the breach complained of and requiring the breach to be remedied; or</li><li>(b) if the Contractor is the Defaulting Party, the Contractor ceases, or threatens to cease, to carry on the whole or a material part of its usual business; or</li><li>(c) if the Contractor is the Defaulting Party, the Contractor's registration or licences required to provide the Deliverables are invalidated, cancelled, withdrawn or suspended (or have not been obtained); or</li><li>(d) in the event of the Defaulting Party's insolvency, administration, receivership, application for winding up, death or bankruptcy.</li></ul>
<b>Equipment</b>	means the materials, tools, instruments, products, vehicles, machinery, plant, appliances, equipment, labour, transport and other items required or necessary for the proper performance of this agreement.

<b>Expiry Date</b>	means (in the case of a Standing Offer Agreement) the date specified in Item 4 of the Schedule.
<b>Extended Term</b>	means (in the case of a Standing Offer Agreement) an extended term as described in clause 3.1(e), for the period specified in Item 4 of the Schedule.
<b>Fees</b>	means the fees specified in Item 6 of the Schedule.
<b>Goods</b>	means: <ul style="list-style-type: none"><li>(a) where this agreement is a Single Engagement, the goods described in Item 5 of the Schedule; and</li><li>(b) where this agreement is a Standing Offer Agreement, those goods described in Item 5 of the Schedule and a Purchase Order.</li></ul>
<b>GST</b>	has the same meaning as in the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth).
<b>Initial Term</b>	means (in the case of a Standing Offer Agreement) the initial term described in clause 3.1(d).
<b>Insurances</b>	is defined in clause 11.1.
<b>Intellectual Property</b>	means all industrial and intellectual property rights whether protectable by statute, at common law or in equity, including current and future registered and unregistered rights in respect of copyright, designs, circuit layouts, trade marks, trade secrets, know-how, formula, accompaniments, confidential information, patents, inventions and discoveries and all other intellectual property as defined in article 2 of the convention establishing the World Intellectual Property Organisation 1967, including any application or right to apply for registration of those rights and all renewals and extensions of those rights but excluding non-assignable moral rights and similar non-assignable personal rights of authors and producers.
<b>Personnel</b>	means all employees, agents and Subcontractors of the Contractor, and all employees or agents of any Subcontractors, engaged in the provision of the Deliverables.
<b>Purchase Order</b>	means an order issued by Brightwater to the Contractor in accordance with clause 3.1(c)(i) for the purchase of the Goods, or certain of the Goods, specifying the Goods, the Site, the time and date of supply, and Brightwater's delivery instructions (if any).
<b>Safety and Health Guidelines</b>	means the Safety and Health Guidelines annexed to this agreement as Annexure A.

<b>Single Engagement</b>	means an engagement of the Contractor of the type referred to in clause 3.2.
<b>Site</b>	means the location to which Deliverables are to be supplied or delivered, being: <ul style="list-style-type: none"><li>(a) where this agreement is a Single Engagement, the location described in Item 10 of the Schedule; and</li><li>(b) where this agreement is a Standing Offer Agreement, the location specified in each Purchase Order.</li></ul>
<b>Special Conditions</b>	means the special conditions (if any) in Item 12 of the Schedule.
<b>Standing Offer Agreement</b>	means an engagement of the Contractor of the type referred to in clause 3.1.
<b>Subcontractor</b>	is defined in clause 11.3.
<b>Term</b>	means (in the case of a Standing Offer Agreement) a total of no more than five (5) years, comprised of the Initial Term and any Extended Term.

## 1.2 Interpretation

In this agreement, unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) a reference to a gender includes other genders;
- (c) a reference to a person includes a public body, a company and an incorporated or unincorporated association or body of persons;
- (d) a reference to a party includes a reference to the party's executors, administrators, successors, substitutes (including a person taking by novation) and permitted assigns under this agreement;
- (e) an agreement, representation or warranty on the part of, or in favour of, 2 or more persons binds, or is for the benefit of, them jointly and severally;
- (f) headings are included for convenience and do not affect the interpretation of this agreement;
- (g) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;

- (h) no rule of interpretation is to be applied to the disadvantage of a party on the basis that that party was responsible for preparing this agreement or a particular provision in this agreement;
- (i) if a word or phrase is defined, other grammatical forms of that word or phrase have a corresponding meaning;
- (j) if the word “including” or “includes” is used, the words “without limitation” are taken to immediately follow;
- (k) if a date stipulated for payment or for doing an act is not a Business Day, the payment must be made, or the act must be done, on the next Business Day.

## 2. Deliverables

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### 2.1 Agreement to supply

The Contractor must supply the Goods and any other Deliverables to Brightwater in accordance with this agreement.

### 2.2 Other terms and conditions not applicable

The provisions of this agreement override any invoices or other documentation exchanged between the parties unless any such document expressly provides that it overrides this agreement by name. If there is any inconsistency between any Purchase Order, invoices or other documentation and this agreement, the provisions of this agreement prevail to the extent of any inconsistency.

### 2.3 Non-exclusive arrangement

This agreement does not prevent Brightwater from entering into arrangements or agreements with third parties for the supply of goods equivalent or similar to the Goods.

### 2.4 Variations to Goods

- (a) The Contractor must not vary any of the Goods, including the quantity and specifications of the Goods, except pursuant to an amendment of this agreement in accordance with clause 18.10 or (in the case of temporary substitutions) where Brightwater otherwise directs or agrees in writing.
- (b) Without limiting the foregoing, the Contractor must not agree to any variations to the Goods that may be requested or directed by a Client or a Client’s representative, without Brightwater’s prior written consent, which may be withheld in Brightwater’s absolute discretion.

### 2.5 Title to Goods

Property and title in the Goods passes to Brightwater upon delivery of the Goods to Brightwater in accordance with any delivery instructions issued by Brightwater – whether in a Purchase Order or otherwise.

### 3. Single Engagement or Standing Offer Agreement

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#### 3.1 Standing Offer Agreements

If Item 8 of the Schedule provides that this agreement is a Standing Offer Agreement:

- (a) the Contractor makes a standing offer to Brightwater to provide the Deliverables as required by Brightwater from time to time during the Term in accordance with clause 3.1(c);
- (b) the Contractor acknowledges that:
  - (i) Brightwater does not guarantee or make any assurances that any Goods or particular volume of the Goods will be ordered from the Contractor under this agreement; and
  - (ii) Brightwater is not obliged to issue any Purchase Orders to the Contractor.
- (c) the following will apply:
  - (i) if Brightwater requires the Contractor to supply Goods during the Term, it will provide the Contractor with a Purchase Order;
  - (ii) the Contractor must supply the Goods in accordance with the Purchase Order and the terms of this agreement;
  - (iii) Brightwater may cancel a Purchase Order by notice to the Contractor if the Contractor fails to commence, perform or complete the relevant supply in accordance with requirements as to timing set out in the Purchase Order or, if none are specified, within a reasonable period of time having regard to the nature of the Deliverables.
- (d) the Initial Term of this agreement shall begin on the Commencement Date and end on the Expiry Date, unless validly terminated prior; and
- (e) should Brightwater wish to extend the term of this agreement for an Extended Term, beyond the Initial Term, then:
  - (i) Brightwater shall give written notice to the Contractor no later than 30 days prior to the Expiry Date; and
  - (ii) provided the Contractor is not in breach of any of the terms of this agreement, this agreement will remain in full force and effect for that Extended Term unless validly terminated prior.

#### 3.2 Single Engagement

If Item 8 of the Schedule provides that this agreement is a Single Engagement, the Contractor must supply the Deliverables on the date(s) or within the timeframe(s) specified in Item 4 of the Schedule.

## 4. Contractor standards

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### 4.1 Packing and delivery of Goods

- (a) Goods must be delivered correctly, accurately and in a timely manner.
- (b) The Contractor must ensure that Goods are safely and securely stored, and packed for transportation to Brightwater, having regard to:
  - (i) the fragility and perishability of the Goods;
  - (ii) the distance the Goods are likely to travel; and
  - (iii) the method of transportation used to transport the Goods.

### 4.2 Continuity of supply

- (a) The Contractor must:
  - (i) maintain or ensure access to a sufficient inventory of Goods to fulfil the terms and requirements of this agreement and avoid interruption in delivery;
  - (ii) deliver Goods only with expiry dates that allow sufficient time for use before expiration, based on Brightwater's usage patterns;
  - (iii) deploy a system to notify Brightwater of product recalls in a timely way, and to track batch numbers and distribution to Brightwater facilities for this purpose;
  - (iv) if Brightwater gives notice of an incorrect delivery, replace the incorrectly delivered Goods with the correct Goods, within 24 hours at no additional cost to Brightwater. This does not limit any other rights or remedies which Brightwater may have in relation to faulty or defective Goods, any breach of warranty, or any breach of contract generally.

### 4.3 Specifications and performance

Without limiting any other specifications applicable to the Deliverables, the Contractor must meet any specifications described in Item 5 of the Schedule, including any requirements as to reporting, review and Key Performance Indicators.

### 4.4 Other Obligations

Without limitation to the other provisions of this agreement, the Contractor must carry out, and ensure that its Personnel carry out, this agreement:

- (a) in accordance with standards and practices normally exercised by a professional and competent Contractor in the supply of the same or similar deliverables in the same or similar industry;
- (b) in accordance with all Applicable Laws and Applicable Standards, including obtaining and maintaining all licences and permits which are legally required to be held by the Contractor or its Personnel in order to supply the Deliverables;



- (c) in compliance with all reasonable directions and Brightwater's policies and procedures as advised to the Contractor from time to time;
- (d) so as to provide a safe system of work for all Personnel; and
- (e) so as to prevent nuisance, unreasonable noise and disturbance to other people and property at the Site.

#### 4.5 **Safety and Health Guidelines**

- (a) Without limitation to the other provisions of this agreement, the Contractor must comply with the Safety and Health Guidelines.
- (b) If there is any inconsistency between a provision of the Safety and Health Guidelines and any other provision of this agreement, the other provision of this agreement will prevail to the extent of the inconsistency.

#### 4.6 **Personnel**

- (a) The Contractor must:
  - (i) ensure that its Personnel:
    - (A) act in a fit and proper manner at all times;
    - (B) have the necessary qualifications, skills and experience, licences and permits to supply the Deliverables to the standard required under this agreement; and
  - (ii) provide at its cost a current National Police Record Check for itself, and each member of its Personnel in respect of whom Brightwater requests such a check, from time to time.
- (b) If Brightwater gives notice to the Contractor that any Personnel have ceased to be acceptable to Brightwater for any reason the Contractor must take immediate steps to remove that Personnel and provide alternative Personnel acceptable to Brightwater at no cost to Brightwater.

#### 4.7 **Conduct at Sites**

- (a) The Contractor must, and must ensure that its Personnel, when supplying the Deliverables at any Site:
  - (i) comply with all reasonable directions and procedures of Brightwater in relation to security and occupational health and safety at the Site (which may involve a temporary suspension of the Contractor's access to the Site);
  - (ii) not cause the Site to be left in an untidy state;
  - (iii) take reasonable steps to avoid causing any harm, injury, damage, loss or disturbance to people and property on the Site; and
  - (iv) avoid unnecessary interference with the operations of Brightwater, Brightwater staff or any other Brightwater Contractors and contractors or with the passage of people and vehicles on or in the vicinity of the Site.

- (b) If the Contractor is provided with keys or access cards by Brightwater for the purpose of gaining entry to a Site to supply the Deliverables (**Keys**), the Contractor:
  - (i) must, and ensure that its Personnel, keep the Keys secure;
  - (ii) must not, and must ensure that its Personnel do not, copy or cause the Keys to be copied;
  - (iii) must advise Brightwater of any Personnel to whom the Keys are provided;
  - (iv) must immediately report any loss of the Keys to Brightwater.

#### 4.8 Brightwater Representative

- (a) The Contractor must liaise with the Brightwater Representative for instructions, notifications and authorisations relating to the supply of the Deliverables under this agreement.
- (b) The Brightwater Representative may exercise the rights and duties of Brightwater under this agreement on behalf of Brightwater, and the Contractor must comply with instructions, notifications and authorisations provided by the Brightwater Representative under this agreement.

#### 4.9 Modern Slavery Act

- (a) The Contractor acknowledges that Brightwater is subject to the *Modern Slavery Act 2018* (Cth) (**Modern Slavery Act**) and does not condone the presence of modern slavery in the organisation's supply chain. Brightwater exercises due diligence to avoid contributing to the global issue of modern slavery.
- (b) If Brightwater considers that the Contractor operates in a higher-risk field, or the Goods are of a higher-risk kind, it may require the Contractor to:
  - (i) complete a modern slavery questionnaire;
  - (ii) supply information about the Contractor's supply chains and labour practices, and facilitate an audit of the same; and
  - (iii) warrant and represent that any information supplied by the Contractor may be relied upon by Brightwater for the purposes of the Modern Slavery Act; undertake that they will comply with their own obligations under the Modern Slavery Act.
- (c) For the avoidance of doubt, this clause does not limit clause 4.4(c).

## 5. Personnel in risk assessed roles - NDIS

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### 5.1 Definitions

In this clause 5:

- (a) "NDIS worker screening check" and "reportable incident" have the same meanings as in the *National Disability Insurance Scheme Act 2013*; and

- (b) "clearance", "closed", "exclusion", "interim bar", "risk assessed role", "suspension" and "transitional arrangements" have the same meanings as in the *National Disability Insurance Scheme (Practice Standards—Worker Screening) Rules 2018*.

## 5.2 Operation of clause

- (a) This clause 5 applies to Contractors and Personnel acting in a risk assessed role in the performance of this agreement where that risk assessed role has been identified by Brightwater to the Contractor.
- (b) Nothing in this clause 5 limits any other provision of this agreement.

## 5.3 Contractor obligations

- (a) Subject to clause 5.5, the Contractor must only allow Personnel to engage in a risk assessed role in the performance of this agreement if they have a clearance.
- (b) The Contractor must only allow Personnel to engage in a risk assessed role in the performance of this agreement if the Contractor may disclose information to Brightwater about any matter relating to whether the Personnel may engage in a risk assessed role, including but not limited to information about:
  - (i) the making of an application for an NDIS worker screening check;
  - (ii) an interim bar;
  - (iii) a suspension;
  - (iv) an exclusion;
  - (v) the closure of an application for a worker screening clearance;
  - (vi) the revocation or exclusion of a clearance;
  - (vii) the expiry date of a clearance; and
- (c) The Contractor must cooperate with any reasonable request from Brightwater for information relating to whether Personnel have a clearance or are subject to an exception referred to in clause 5.4.
- (d) The Contractor must cooperate with any reasonable request from Brightwater for assistance to investigate any complaint made to Brightwater about the conduct of, or any reportable incident involving, any Personnel engaged in a risk assessed role.
- (e) The Contractor must cooperate with any reasonable request from Brightwater for information relating to whether and how it is complying with its obligations under this clause 5.
- (f) The Contractor must impose obligations equivalent to those in clauses 5.3(a), 5.3(b), 5.3(c), 5.3(d) and 5.3(e), on any other party with whom the Contractor enters into an agreement or arrangement, which involves or allows for the supply of Deliverables by Personnel to Brightwater.

## 5.4 Exceptions

The Contractor may allow Personnel to engage in a risk assessed role without a clearance only if:

- (a) they are in the process of obtaining a clearance, and are appropriately supervised by a person with a clearance; and
- (b) the law of Western Australia allows them to engage in a risk assessed role, while they are in the process of obtaining a clearance.

## 6. Contractor Warranties

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### 6.1 Goods and other Deliverables

- (a) The Contractor warrants that:
  - (i) all Deliverables will comply with all Applicable Laws and Applicable Standards; and
  - (ii) all Goods will be free from defects, and meet the specifications required under this agreement, for a period of 90 days from the date of supply to Brightwater ("**Warranty Period**").
- (b) If, within the Warranty Period, a defect is discovered in the Goods or the Goods fail to perform to the specifications required under this agreement, the Contractor must (at Brightwater's election) either:
  - (i) replace the Goods at the Contractor's cost; or
  - (ii) accept a return of the Goods, refund the Fee paid by Brightwater for the Goods, and reimburse any associated costs incurred by Brightwater.
- (c) The Contractor must obtain all available warranties from third parties relating to the Deliverables and ensure that Brightwater obtains the benefit of those warranties.
- (d) The Contractor acknowledges that Brightwater may, in some circumstances, have rights as a consumer under the Australian Consumer Law and other laws which cannot be excluded, modified or restricted (**Consumer Rights**). These rights may relate to conditions, warranties and guarantees in relation to the Goods and other Deliverables.
- (e) Nothing in this clause 6.1 limits any Consumer Rights or other express or implied warranties given by the Contractor to Brightwater, or any other rights or remedies available to Brightwater.

### 6.2 Performance of agreement

The Contractor warrants to Brightwater throughout the duration of this agreement that:

- (a) it is authorised to enter into this agreement and perform the Contractor's obligations under this agreement;
- (b) it and its Personnel hold the necessary licences, qualifications and authorisations required by Applicable Laws to enable them to lawfully supply the Deliverables;
- (c) it has adequate resources and the Contractor and its Personnel have sufficient skills, experience, human, technical, equipment and financial resources to perform the Contractor's obligations under this agreement; and

- (d) it is able to pay all its debts as and when they become due and presently payable either out of its own money or by use of existing financial accommodation.

## 7. Invoicing and payments

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### 7.1 Invoicing

Prior to payment of the Fees the Contractor must submit to Brightwater a valid tax invoice containing details of the relevant Purchase Order (if any), and complying with any requirements in Item 7 of the Schedule ("**Invoice**").

### 7.2 Payment

- (a) Subject to this clause 7, Brightwater must pay the Fees the subject of an Invoice into the Bank Account within 30 days of receipt of the Invoice.
- (b) Payment of Fees by Brightwater in respect of any Deliverables is subject to those Deliverables being supplied in accordance with this agreement.
- (c) Brightwater may set-off or deduct from the Fees:
  - (i) any amounts owed to Brightwater by the Contractor under this agreement; and
  - (ii) the cost of rectifying any defective Deliverables, as determined by Brightwater acting reasonably.
- (d) If any Invoice is disputed by Brightwater, Brightwater must pay the undisputed amount to the Contractor in accordance with this agreement and the parties must deal with the disputed amount in accordance with clause 17.

### 7.3 Industrial awards and remuneration

- (a) The Contractor is solely responsible and liable for the payment of all:
  - (i) remuneration to its Personnel, including salaries, wages, overtime, penalty rates, leave entitlements, superannuation and other benefits; and
  - (ii) payroll and other taxes in respect of such remuneration and benefits.
- (b) The Contractor must indemnify Brightwater if any of the Contractor's Personnel makes a claim against Brightwater in respect of any payments for which the Contractor is responsible under clause 7.3(a).
- (c) Failure by the Contractor to comply with clause 7.3(a) shall entitle Brightwater to immediately terminate this agreement by notice in writing to the Contractor, without prejudice to any other rights or remedies of Brightwater.

## 8. GST

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### 8.1 Preliminary

Words or expressions used in this clause that are defined in *A New Tax System (Goods and Services Tax) Act 1999 (GST Act)* have the same meaning given to them in that Act.

### 8.2 GST inclusive

Unless otherwise stated, any amount specified in this agreement as the consideration payable for any taxable supply includes any GST payable in respect of that supply.

### 8.3 Tax invoice

Each party agrees to do all things, including providing valid tax invoices and other documentation that may be necessary or desirable to enable or assist the other party to claim any input tax credit, adjustment or refund in relation to any amount of GST paid or payable in respect of any supply made under or in connection with this agreement.

### 8.4 Reimbursement of expenses

If a third party makes a taxable supply and this agreement requires a party to this agreement (**the payer**) to pay for, reimburse or contribute to (**pay**) any expense or liability incurred by the other party to that third party for that taxable supply, the amount the payer must pay will be the amount of the expense or liability plus the amount of any GST payable in respect thereof but reduced by the amount of any input tax credit to which the other party is entitled in respect of the expense or liability.

### 8.5 Adjustment event

If an adjustment event arises in relation to a taxable supply made by a party under this agreement (**Contractor**), the amount paid or payable by the party to whom the taxable supply is made (**Recipient**) pursuant to clause 8.2 will be amended to reflect this and a payment will be made by the Recipient to the Contractor or vice versa as the case may be.

### 8.6 Non merger

This clause does not merge on completion and will continue to apply after expiration or termination of this agreement.

## 9. Assignment and subcontracting

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### 9.1 Assignment

- (a) The Contractor must not assign this agreement without the prior written consent of Brightwater (which consent may be given or withheld in Brightwater's absolute discretion).
- (b) The Contractor acknowledges and agrees that Brightwater may, at its sole election, assign and/or novate this agreement to another party, including a related entity or a purchaser of any of the Sites or some or all of Brightwater's business, and if Brightwater elects to assign and/or novate this agreement, the Contractor must, without being entitled to any further

compensation or other payment, promptly execute a deed of assignment or novation (as required) in the form required by Brightwater, to give effect to the assignment and/or novation.

## 9.2 Subcontracting

- (a) The Contractor must not, except with the prior written approval of Brightwater (which approval may be granted or withheld in Brightwater's absolute discretion) subcontract the whole or any part of the performance of this agreement.
- (b) Brightwater's approval of a subcontract under clause 9.2(a) shall not relieve the Contractor from any liability or obligation under this agreement.

## 10. Indemnity

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### 10.1 Indemnity by Contractor

The Contractor must indemnify Brightwater from and against any loss, cost, damage, expense (including lawyer's fees and expenses on a full indemnity basis), claim, demand or liability arising directly or indirectly from or in connection with:

- (i) personal injury to, or illness or death of, any person (including the Contractor's Personnel, Brightwater officers, employees and subcontractors, Clients, visitors to Sites and other third parties) caused or contributed to by any breach of this agreement or negligent act or omission of the Contractor or its Personnel in connection with the supply of the Deliverables;
- (ii) damage to any property (including to any property of the Contractor, Brightwater or a third party) caused or contributed to by any breach of this agreement or any negligent act or omission of the Contractor or its Personnel in connection with the supply of the Deliverables;
- (iii) any claim made against Brightwater by any Personnel in respect of any Applicable Law concerning remuneration, income tax, workers compensation, annual leave, long service leave, superannuation or any applicable award, determination or agreement of a competent industrial tribunal;
- (iv) any penalty imposed for breach of an Applicable Law in connection with the supply of the Deliverables by the Contractor; and
- (v) any claim that the Deliverables, anything the Contractor does in supplying Brightwater with the Deliverables, or Brightwater use of the results of the Deliverables infringes or allegedly infringes the Intellectual Property rights of any person.

### 10.2 Extent to which indemnity will not apply

The indemnity in clause 10.1 will not apply to the extent that any loss, cost, damage, expense, claim, demand or liability is caused or contributed by the acts or omissions of Brightwater or its officers, employees or contractors (other than the Contractor or the Personnel).

### 10.3 No incurring of expense necessary

The Contractor acknowledges that it is not necessary for Brightwater to incur expense or make payment before enforcing a right of indemnity conferred by this agreement or to mitigate its loss.

#### 10.4 Continuing indemnity

The indemnity in clause 10.1 and any other indemnity in this agreement is a continuing obligation separate and independent from any other obligation and survives the expiry or termination of this agreement.

### 11. Insurance

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#### 11.1 Insurance

The Contractor must, at its own expense, procure and maintain for the duration of this agreement all insurance required to be maintained by it under Applicable Law and by this clause 11 (together the **Insurances**).

#### 11.2 Evidence of Insurance

The Contractor must provide evidence of the Insurances to Brightwater (including, if requested, a copy of the relevant insurance policy) and provide a certificate of currency of insurance at least once every 12 months, and otherwise when requested by Brightwater.

#### 11.3 Subcontractors' insurance

The Contractor must ensure that any subcontractor engaged by the Contractor in connection with this agreement (**Subcontractor**) maintains insurance in accordance with this clause 11, as appropriate having regard to the nature of the Deliverables being supplied by that Subcontractor.

#### 11.4 General insurance obligations

- (a) The Contractor must not, for the duration of this agreement, vary or cancel any Insurance or allow it to lapse and must not otherwise do or allow to be done anything which may vitiate, invalidate, prejudice or render ineffective the Insurance or entitle the insurer to refuse a claim.
- (b) The Contractor must, in relation to all required insurance policies:
  - (i) reinstate a policy if it lapses;
  - (ii) not cancel, vary or allow a policy to lapse without the prior written consent of the Brightwater Representative;
  - (iii) immediately notify the Brightwater Representative of any event which may result in a policy lapsing or being cancelled; and
- (c) If the Contractor becomes aware of any event or incident occurring which gives rise or is likely to give rise to a claim under any Insurance, it must as soon as reasonably practicable notify Brightwater in writing of that event or incident.
- (d) Nothing in this clause limits the Contractor's other liabilities under this agreement (including under any indemnity) or restricts the Contractor from insuring for sums or risks greater than those required under this agreement.



- (e) If the Contractor fails to insure or maintain the Insurances or fails to provide evidence of renewal, Brightwater may effect such insurances and deduct the amount of premiums paid from any money payable to the Contractor, or may withhold money payable to the Contractor until the insurance policies and receipts for payment of premiums are received by Brightwater.
- (f) The Contractor must report promptly to Brightwater in writing, or in the case of emergency verbally, any event or circumstance which is likely to give rise to a claim by any person against Brightwater or the Contractor or any of the Personnel in connection with the supply of the Deliverables by the Contractor under this agreement, and provide Brightwater with such information and documentation as Brightwater reasonably requires regarding the event or circumstance.

### 11.5 Insurance of Employees

- (a) The Contractor shall effect and maintain insurance covering all liability for death of, or injury to, persons employed or engaged by the Contractor in connection with this Agreement, including liability under any Applicable Laws (including under the *Workers' Compensation and Injury Management Act 1981* (WA) (**Workers Compensation Act**) and at common law, which insurance must:
  - (i) provide cover for an amount not less than the amount stated in Item 10(a), in respect of any one accident to any one person or number of persons, arising out of any one occurrence and unlimited as to the number of occurrences;
  - (ii) where permitted by law, the insurance cover must be extended to indemnify Brightwater for Brightwater's statutory liability for persons employed by the Contractor and contain a waiver of subrogation from the insurer in favour of Brightwater including where:
    - (A) Brightwater is liable pursuant to section 175 of the Workers Compensation Act; or
    - (B) Brightwater is sued by an employee of the Contractor (or an employee of a Subcontractor) as a result of the Contractor's negligence; and
  - (iii) be maintained by the Contractor for the duration of this agreement.
- (b) The Contractor shall ensure that all Subcontractors effect and maintain insurance which complies with the requirements set out in this subclause 11.5 in respect of persons employed or engaged by Subcontractors.

### 11.6 Public and products liability Insurance

- (a) The Contractor shall effect and maintain a public and products liability policy of insurance against all claims by third parties arising from the supply of the Deliverables.
- (b) Such insurance must:
  - (i) provide cover for an amount not less than the amount stated in Item 10(b) in respect of any one occurrence, and unlimited as to the number of claims in respect of public liability; and in the aggregate in respect of products liability.
  - (ii) include Brightwater as an additional insured with respect to any liability incurred as a result of the acts or omissions of the Contractor (or the Contractor's Staff); and

- (iii) include a cross liability endorsement that:
  - (A) all agreements and endorsements, except limits of liability, shall operate in the same manner as if there were a separate policy of insurance covering each party insured; and
  - (B) a failure by any insured party to observe and fulfil the terms and conditions of the policy of insurance shall not prejudice the rights of any other insured party.
- (iv) Be maintained by the Contractor for the duration of this agreement.
- (c) For the avoidance of doubt, the policy effected and maintained by the Contractor in accordance with this clause 11.6 must be on a loss occurring basis.

### 11.7 Motor vehicle Insurance

The Contractor shall effect and maintain, for the duration of this agreement, insurance which provides cover for:

- (a) loss or destruction of, or damage to, motor vehicles owned by or held in trust by or in the custody or control of the Contractor, for an amount not less than the market value of the motor vehicles.
- (b) liability to third parties in respect of:
  - (i) the death of, or personal injury to, any person, as required to comply with any Applicable Laws relating to compulsory third party liability insurance; and
  - (ii) loss or destruction of, or damage to, property, including property owned or held in trust by or in the custody or control of the Principal, for an amount not less than that specified in Item 10(c), arising out of the ownership or use of motor vehicles.

### 11.8 Professional Indemnity Insurance

- (a) The Contractor shall effect and maintain, for the duration of this agreement and for a period of 6 years after the end of this agreement (or alternatively 6 years run-off cover), professional indemnity insurance with a level of cover not less than that stated in Item 10(d); and
- (b) The Contractor must ensure that every Subcontractor engaged to express a professional opinion effects and maintains, for the duration of this agreement and for a period of 6 years after the end of this agreement (or alternatively 6 years run-off cover), professional indemnity insurance with levels of cover not less than that stated in Item 10(d).

## 12. Intellectual Property

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- (a) All material and information made available by Brightwater to the Contractor in the performance of this agreement, and all Intellectual Property subsisting in such materials and information, remain the property of Brightwater.
- (b) All Intellectual Property created by the Contractor and its Personnel in the performance of this agreement shall vest in Brightwater (or its nominees), and the Contractor hereby

assigns, and shall ensure that the Personnel assign, to Brightwater all existing and future rights, title and interest in all Intellectual Property created in the performance of this agreement.

- (c) The Contractor grants Brightwater and its employees, agents and contractors a perpetual, irrevocable, royalty-free, non-exclusive licence to use any pre-existing Intellectual Property belonging to the Contractor or its Personnel for the purposes of Brightwater obtaining the benefit of the Deliverables.

## 13. Privacy and data protection

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### 13.1 Confidential Information

- (a) For the purposes of this clause, in addition to its natural and ordinary meaning, **Confidential Information** includes all information and data about Brightwater and any of its operations, dealings, service requirements, transactions, financial arrangements, internal structures, assets, liabilities, strategies, businesses, affairs and clients, in whatever format (and whether written, oral or otherwise) and includes Brightwater's requirements for Deliverables or other goods or services from time to time.
- (b) The Contractor and its Personnel must keep confidential and not disclose to any third party without Brightwater's prior written consent any Confidential Information:
  - (i) supplied to or made available by or on behalf of Brightwater to the Contractor or any Personnel; or
  - (ii) brought into existence by the Contractor or any Personnel in the course of any dealings with Brightwater or through the supply of the Deliverables; or
  - (iii) of which the Contractor becomes aware through its dealings with Brightwater or through the supply of the Deliverables.
- (c) The restriction in clause 13(b) does not apply to any disclosure of Confidential Information:
  - (i) which is in the public domain through no fault of the Contractor or the Personnel; or
  - (ii) where such disclosure is required by Applicable Law.
- (d) The Contractor must comply with all of Brightwater's data security and other requirements in connection with the handling, storage and use of Brightwater's Confidential Information and data, including any personal information of any of Brightwater's employees, contractors and clients.
- (e) Except to the extent that the Contractor is required by Applicable Law to retain any records, the Contractor must return all records containing Brightwater's Confidential Information immediately at the expiration or termination of this agreement. The Contractor must notify Brightwater of any records that are retained pursuant to this clause 13.1(e).

### 13.2 Privacy and Data Protection

The Contractor and its Personnel agree to comply with the *Privacy Act 1988* (Cth) and any other legislation which may apply to the collection, management, use and disclosure of personal information

in connection with this agreement (including solicitation, storage, security and access to personal information).

## 14. Suspension

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- (a) Brightwater may immediately suspend the purchase of any or all of the Deliverables at any time and for any reason by giving written notice to the Contractor.
- (b) The Contractor must resume supply of the suspended Deliverables as soon as practicable, and in any event not later than 5 Business Days, after the date of a written instruction from Brightwater to do so.

## 15. Termination

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- (a) A party may terminate this agreement by giving notice to the other party at any time after an Event of Default occurs in relation to the other party.
- (b) Without limiting any other rights of termination, Brightwater may at its absolute discretion, terminate this agreement at any time by giving not less than thirty (30) days written notice to the Contractor.
- (c) If Brightwater terminates this agreement pursuant to clause 15(b) then, subject to clause 7.2 and the submission of invoices pursuant to clause 7.1, the Contractor is entitled to be paid Fees for Deliverables supplied by the Contractor up to the date of termination of this agreement but is not entitled to damages or any other form of compensation.
- (d) In addition to the rights set out above, this agreement may be terminated by written agreement of both parties.
- (e) On termination or expiration of this agreement, the Contractor must:
  - (i) cease to supply any outstanding Deliverables;
  - (ii) if applicable, vacate the Site, ensure the Site is left in a tidy state and remove any Contractor's Equipment from the Site as soon as practicable after the date of expiration or termination of this agreement; and
  - (iii) co-operate with Brightwater as reasonably required by Brightwater in order to minimise any loss, damage or inconvenience to Brightwater resulting from the expiration or termination of this agreement.

## 16. Notices

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### 16.1 Requirements

All notices, requests, demands, consents, approvals, or other communications under this agreement (**Notice**) to, by or from a party must be:

- (a) in writing;

- (b) in English or accompanied by a certified translation into English;
- (c) addressed to a party in accordance with its details set out in clause 16.2 or as otherwise specified by that party by Notice (**Notified Contact Details**); and
- (d) signed by the sending party or a person duly authorised by the sending party or, if a Notice is sent by email (if applicable), sent by the sending party.

### 16.2 **Notified Contact Details**

For the purposes of this clause 16, the Notified Contact Details of the parties are as follows:

- (a) Brightwater:  
As set out in Item 3 of the Schedule.
- (a) Contractor:  
As set out in Item 1 of the Schedule.

### 16.3 **How a Notice must be given**

A Notice must be:

- (a) delivered personally;
- (b) sent by express post if sent within Australia; or
- (c) sent by email.

### 16.4 **When Notices considered given and received**

Subject to clause 16.5, a Notice takes effect when received (or such later time as specified in it) and a Notice is regarded as being given by the sending party and received by the receiving party:

- (a) if delivered by hand to the address set out in the Notified Contact Details, when delivered to that address;
- (b) if sent from a place within Australia by express post to the address set out in the Notified Contact Details which is an address that is within Australia, at 9.00 am on the second Business Day after the date of posting; and
- (c) if sent by email to the email address set out in the Notified Contact Details, when the email (including any attachment) is sent to the receiving party at that email address, unless the sending party receives a notification of delivery failure within 24 hours of the email being sent.

### 16.5 **Time of delivery and receipt**

If pursuant to clause 16.4 a Notice would be regarded as given and received on a day that is not a Business Day or after 5.00 pm on a Business Day, then the Notice will be deemed as given and received at 9.00 am on the next Business Day.

## 17. Disputes

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### 17.1 Dispute Notice

- (i) If any party to this agreement claims that a dispute has arisen under or in connection with this agreement (**Dispute**), that party must give notice of the Dispute (**Dispute Notice**) to the other party.
- (ii) The Dispute cannot be the subject of litigation until the provisions of clauses 17.2 and 17.3 have been complied with (except where a party seeks urgent equitable relief from a court, in which case that party does not need to comply with clauses 17.2 and 17.3 before seeking such relief).

### 17.2 Resolution by Representatives

Within three Business Days of the date of the Dispute Notice (or such other period as agreed between the parties), the Brightwater Representative and Contractor Representative must meet to negotiate in good faith and seek to resolve the Dispute.

### 17.3 Resolution by senior executives

If the Dispute is not resolved under clause 17.2 within 10 Business Days (or such other period agreed between the parties) after the date of the Dispute Notice, the Dispute must be referred to the senior executives of each of the parties to the Dispute, who must meet to negotiate in good faith and seek to resolve the Dispute.

### 17.4 Litigation

If the Dispute is not resolved under clause 17.3 within 15 Business Days after the date of the Dispute Notice, either party may commence litigation proceedings.

### 17.5 Obligations During Dispute

Pending resolution of any Dispute, the parties must continue to perform their obligations under this agreement without prejudice to their respective rights and remedies (except where such obligations are the subject of the Dispute).

### 17.6 Survival

This clause 17 will survive termination of this agreement.

## 18. General

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### 18.1 Binding On Successors

This agreement shall be for the benefit of and binding upon the parties and their heirs, executors, successors and permitted assigns.

**18.2 Governing Law**

- (a) This agreement is governed by the laws of the State of Western Australia and the Commonwealth of Australia which are in force in Western Australia.
- (b) The parties submit to the exclusive jurisdiction of the courts of Western Australia.

**18.3 Entire Understanding**

This agreement supersedes all prior negotiations, understandings and agreements between Brightwater and the Contractor relating to the matters covered by this agreement and shall constitute the full and complete agreement between the parties in relation to the subject matter of this agreement.

**18.4 Relationship**

- (a) The Contractor is an independent contractor, and nothing in this agreement may be construed to make the Contractor a partner, agent, employee or joint venturer of Brightwater.
- (b) The Contractor must not represent that the Contractor or any of its Personnel are the employees, agents, partners or joint venturers of Brightwater.
- (c) The Contractor has no authority to enter into any contract, commitments or other legal arrangements in the name of or on behalf of Brightwater, without the express consent in writing of Brightwater on each occasion.

**18.5 Waiver**

- (a) The non-exercise of, or delay in exercising, any power or right of a party does not operate as a waiver of that power or right, nor does any single exercise of a power or right preclude any other exercise of it or the exercise of any other power or right.
- (b) A power or right may only be waived in writing, signed by the party to be bound by the waiver.
- (c) A waiver of any breach or non-compliance shall not be, and shall not be deemed to be, a waiver of any other or subsequent breach or non-compliance.

**18.6 Severance**

If any part of this agreement is or becomes void or unenforceable, that part shall be severed from this agreement and the remaining parts that are not void or unenforceable shall be unaffected by that severance and remain in full force and effect.

**18.7 Cumulative Rights**

The rights and remedies of a party to this agreement are in addition to the rights or remedies conferred on the party at law or in equity.

**18.8 Counterparts**

This agreement may be executed in any number of counterparts, each signed by one or more parties. Each counterpart when so executed is deemed to be an original and all such counterparts taken together constitute one document.

**18.9 Costs**

The parties must bear their own respective costs of and incidental to the negotiation, preparation and execution of this agreement.

**18.10 Amendment and variation**

This agreement may only be amended, varied or supplemented in writing, signed by the parties.

**18.11 Special Conditions**

The Special Conditions set out in Item 11 of the Schedule form part of this agreement. Where the Special Conditions are inconsistent with any other provision of this agreement, the Special Conditions shall prevail to the extent of that inconsistency.

**18.12 Clauses that survive termination**

Without limiting or impacting upon the continued operation of any clause which is expressed, or as a matter of construction is intended, to survive the termination or expiry of this agreement, each indemnity contained in this agreement, this clause 18.12 and clauses 15 (Termination), 16 (Notices) and 17 (Disputes) survive the termination or expiry of this agreement.



## Schedule - Contract details

Item 1 Contractor details

Name:

ACN:

ABN:

Address:

Facsimile:

Email:

Representative:

Item 2 Bank Account

Bank:

BSB:

Account no.:

Account name:

Item 3 Brightwater  
Details

Name: Brightwater Care Group Limited

ACN: 612 921 632

ABN: 23 445 460 050

Address:

Representative:

Email:

Item 4 Term /  
timeframes

(\* = select one)

Term\* (*Standing  
Offer Agreements  
only*)

Initial Term

Commencement Date: xx Month Year

Expiry Date: xx Month Year

Extended Term [One (1)] extended term of [INSERT years/s]

Supply date(s) / timeframe(s)\*  
(Single Engagements only) 2022

Item 5 Goods

Other Deliverables

Reporting, reviews and KPIs

See Annexure B.

The parties shall meet at least [quarterly/six monthly/annually] to review the Contractor's performance against the Key Performance Indicators.

Item 6 Fees

Item 7 Additional Invoicing Requirements

The Contractor must issue an Invoice on delivery of Goods, unless otherwise agreed in writing by Brightwater.

Item 8 Single Engagement or Standing Offer Agreement

Item 9 Site

Item 10 Insurances

- (a) Workers compensation insurance - \$50,000,000
- (b) Public and Products Liability Insurance - \$20,000,000
- (c) Motor Vehicle Insurance – Not Required/\$30,000,000
- (d) Professional Indemnity Insurance – Not Required/\$20,000,000

Item 11 Special  
Conditions

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## Signing page

Executed as an agreement

**Executed** for and on behalf of **Brightwater Care Group Limited ACN 612 921 632** by its representative in the presence of:

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Signature of representative

\_\_\_\_\_  
Full name of witness (print)

\_\_\_\_\_  
Full name of representative (print)

**OR**

**Executed by Brightwater Care Group Limited ACN 612 921 632** in accordance with section 127(1) of the *Corporations Act 2001* (Cth) by:

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Signature of Director/Company Secretary

\_\_\_\_\_  
Full name (print)

\_\_\_\_\_  
Full name (print)

**SELECT CORRECT SIGNING BLOCK**

**Executed by the Contractor (if a corporation with more than one director)**

**Executed** by \_\_\_\_\_ in  
ACN \_\_\_\_\_ in  
accordance with section 127(1) of the  
*Corporations Act 2001* (Cth) by:

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Signature of Director/Company Secretary

\_\_\_\_\_  
Full name (print)

\_\_\_\_\_  
Full name (print)

**Executed by the Contractor (if a corporation – alternative method)**

**Executed** for and on behalf of  
**ACN** by its representative  
in the presence of:

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Signature of representative

\_\_\_\_\_  
Full name of witness (print)

\_\_\_\_\_  
Full name of representative (print)

\_\_\_\_\_  
Address of witness (print)

**Executed by the Contractor (if a natural person)**

**Executed** by \_\_\_\_\_ in the  
presence of:

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Signature of Insert name of signatory

\_\_\_\_\_  
Full name of witness (print)

\_\_\_\_\_  
Address of witness (print)

## Annexure A - Safety and Health Guidelines

# Safety and Health Guidelines

For

Contractor / Temporary Personnel

## Foreword

Management at Brightwater Care Group Limited ACN 612 921 632 of 355 (“Brightwater”) is committed to the provision of a safe and healthy work environment for all Contractors, Sub-Contractors and their Employees who undertake work on Brightwater premises or who carry out work under the supervision and control of Brightwater.

The prevention of occupational injury and illness in the workplace is the responsibility of everyone and the participation and cooperation of all Contractors, Sub-Contractors and their Employees in the workplace is vital.

Adherence to the Brightwater Safety and Health Guidelines (“the Safety and Health Guidelines”) is essential. It is expected that all Contractors, Sub-Contractors and their Employees will have adequate training and adhere to safe systems of work in accordance with the *Occupational Safety and Health Act 1984* (WA) and the *Occupational Safety and Health Regulations 1996* (WA).

The Safety and Health Guidelines are specifically designed to conform to the State Act and Regulations, which may at any time cover contracted work performed within Brightwaters’ premises or within Brightwater boundaries.

If you are in any doubt, as to the application or content of the Safety and Health Guidelines consult with the Brightwater Representative in charge. The Safety and Health Guidelines is a supported document with regard to the written or verbal agreement you, the Contractor, consented to work whilst on Brightwaters’ premises or within Brightwater boundaries.

Brightwater is a safety conscious organization and we therefore expect our employees to work safely. We also expect our Contractors and their employees to work in accordance with Safety and Health Guidelines.

The Safety and Health Guidelines are not intended to be fully comprehensive. They are designed as a guide only for Brightwaters’ Contractors.

Thank you for your co-operation in the observance of these practises



## Responsibilities

### ***Contractors' responsibilities include ensuring:***

- Contractors, Sub-Contractors and their employees are fully conversant with the Safety and Health Guidelines and adhere to the safety requirements as outlined in this document.

### ***Induction and Safety and Health Policy***

- Contractors shall provide Brightwater with a copy of their Occupational Safety and Health Policy and Induction procedure at the tender stage. If a contractor has no Occupational Safety and Health Policy or Procedures, evidence to demonstrate management of safety and health issues must be presented to the Manager, Physical Resources and Safety & Health Coordinator for approval.
- Contractors shall be given a copy of the Safety and Health Guidelines at the tender stage.
- Contractors are required to induct all of their employees as to the nature of the workplace and the safety requirements of the work to be undertaken. The Safety and Health Coordinator or Brightwater Representative in charge will also induct certain contractors.
- Any Contractor who is known to be on Brightwater premises for an extended period (e.g. Auditors) will be given basic directions/procedures on:
  - a) What to do in case of emergency/evacuation (e.g. fire, bomb threat)
  - b) Location of the first aid facility
  - c) Reporting of damage, loss and personal injury.

## Rights of Brightwater Site Manager or Representative

### ***The Brightwater Site Manager, Supervisor or Representative may:***

- Suspend all or part of the work being carried out by the Contractor until the Contractor demonstrates compliance with the Safety and Health Guidelines.
- Order the Contractor to remove all non-compliant Contractors' employees from any Brightwater premises.

## Legal Requirements

### ***Contractors' responsibilities include ensuring that:***

- All relevant Acts, Regulations, Standards and Codes of Practice are adhered to.
- All necessary approvals, permits, licences and insurances are obtained and evidence of such is provided to the Physical Resources Department prior to commencing work.

- Hazards which the intended work may pose to Contractors, Sub-Contractors, Contractors' employees, Residents, Brightwater employees or other persons who enter the premises are identified, assessed and controlled.

## Insurance

Contractors are not permitted to enter any Brightwater facility to undertake work until evidence of their current insurance coverage for:

- Workers' Compensation for the Contractor, any Sub-Contractors and their Employees in accordance with the *Workers' Compensation and Rehabilitation Act 1981* (WA);
- Public Liability as specified by the Brightwater tender process; and
- Motor Vehicles where requested prior to the commencement of work,

is provided to the Care/Service Manager.

## Safety Guidelines For Contractors

### Alcohol and Other Drugs

- Alcohol and drugs are not to be brought onto any Brightwater site.
- Contractors and their Employees must not enter any Brightwater site under the influence of alcohol or drugs.

**(NB: The Brightwater Service/Care Manager or Supervisor reserves the right to order the Contractor to remove any Contractors' employee who is under the influence of alcohol or drugs)**

### Behaviour of Contractors' Employees

- Contractors and their employees must conduct themselves in a proper manner at all times, recognising that they are visitors to the Residents' homes.
- Contractors and their employees must not behave irresponsibly or they will be removed from any Brightwater site.
- Contractors and their employees must not touch or interfere with any Resident's property without the consent of the Resident or an appropriate Brightwater representative.
- Practical jokes and skylarking have been the cause of many "On the job" injuries and for this reason they are banned at all Brightwater sites.
- Where work is to be performed overhead, the area below must be roped off or barricaded in such a way as to prevent people from inadvertently walking below the work area.
- When ground or floor openings are created they must be barricaded or signposted so that personnel and members of the public on foot or in

vehicles will see the hazard. Set warning lights to come on in the dark to warn people of the hazard.

- Contractors and their employees perform the contracted work in such a manner as not to expose others to harm or injury.

### **Competency of Employees and Safety Training**

- Contractors and their employees must be appropriately and adequately trained for the work they undertake.
- Contractors and their employees requiring to be licensed must hold current licenses.
- Contractors and their employees must be fully conversant with their safety and health responsibilities and the Safety and Health Guidelines.

### **Earth Leakage Protection**

- All Contractors / Sub-Contractors using hand held tools must use earth leakage protection if the existing building doesn't have protection to reduce the risk of electric shock.
- It is the Contractors / Sub-Contractor's responsibility to supply portable earth leakage protection devices where required.

### **Electrical Hazards**

- Authorisation must be obtained from the Site Manager or Supervisor prior to handling Brightwater owned electrical wires or equipment. Note: Work orders issued by Brightwater Physical Resources represents authorisation.
- Only appropriately licensed people may handle Brightwater owned electrical wire or equipment.
- All leads and insulation coverings must be in good condition.
- Double insulated power tools and earth leakage devices must be used and must be tested and tagged in accordance with Australian Standards and Occupation Safety and Health Legislation.

### **Equipment**

- All plant and equipment must be of a suitable type and capacity, and must be in good order and condition to perform the work safely.
- All plant and equipment must carry relevant current permits or approval certificates in accordance with WorkSafe WA requirements and/or other relevant standards.
- All personnel who operate equipment must possess an appropriate Certificate of Competency license or permit if applicable and must be adequately trained in the safe operation of the equipment.
- All equipment must be operated only in the manner and for the purpose intended by the manufacturer.

- All Contractors, Sub-Contractors and their employees must ensure that access to the workplace, where practicable, is kept free of obstructions to enable persons to move safely to and from the workplace.
- Electric tools, equipment and extension leads must be tested and tagged by a licensed electrician in accordance with AS / NZS 3760:2001
- All equipment must be guarded from inadvertent entanglement in accordance with AS 4024.1:1996.
- All ladders shall be maintained in good working order – in particular:
  - Ladders must be secured in position while in use.
  - Access ladders must extend at least 1 metre beyond the top level.
  - Metal ladders must not be used for electrical work.
  - Ladders must not be used as work platforms.
  - Ladders must maintain a 4:1 pitch angle ratio.
  - Selection and use of all portable ladders shall be in accordance with AS/NZS 1892.5:2000.

### **Fire Hazards**

- Contractors and their employees must know the location of fire extinguisher equipment and fire escape routes.
- Contractors and their employees must know the Brightwater fire evacuation procedures.
- Access to fire extinguisher equipment or fire escape routes must not be obstructed.
- Authorisation must be obtained from the Site Manager prior to using equipment constituting a potential fire hazard; e.g. open motors and naked flames.
- Contractors and their employees must ensure that passageways and walkways in the immediate vicinity of work are clear and that fire exits are not blocked.
- Appropriate sign-posting clearly describing hazards must be erected in all relevant areas. (e.g. Men working above, Danger Excavation or Loose Ground)
- All fires must be immediately reported to the Brightwater Supervisor or Care Manager. If it is safe to extinguish the fire, do so.
- If Contractors and their employees use a fire extinguisher, they must report it to the Brightwater Representative in charge so that he/she can arrange a replacement.
- Fire hoses must not be used for any purpose other than extinguishing fires; however, where permission is given to use the fire hoses they must be correctly dried and returned to the appropriate storage area after use.

### **Fire Extinguishers - Remember**

Carbon Dioxide (red/black band): **Used for electrical and flammable liquids.**

Dry Powder (red/white band): **Used for electrical and flammable liquids.**

Water Pressure (all red): **Used for non-electrical and non-flammable liquids.**

**Note:**

Fire extinguishers have about half a minute duration once activated so ensure you are at the fire scene before activating a fire extinguisher.

**First Aid – Injury Reporting**

- Contractors and their employees must be aware of the First Aid procedures and location of their nearest First Aid Station at Brightwater.
- All injuries or illness requiring medical treatment must be reported to the Site Manager or Supervisor as soon as is reasonably practicable.
- Contractors must conduct an Accident Investigation and supply a report to the Site Manager in respect of any injuries or illnesses requiring medical treatment.
- Contractors must maintain records of all accidents or incidents to Contractors and their employees.
- Contractors and their employees must understand the response to other types of emergency, such as fire or explosion, etc.

**Flammable Substances**

- Flammable substances must be stored in marked containers designed for that purpose in the designated storage area.
- Spills of flammable substances must be immediately cleaned up.
- Contractors and their employees must not burn or dispose of flammable substances in the site sewer or drain system.
- All storage, transport and use of flammable substances must comply with requirements of the *Dangerous Goods Safety Act 2004 (WA)* and Regulations and any other relevant legislation and Australian standards.

**Hazards**

- The Brightwater Site Manager or Supervisor must immediately be notified of any hazard or potential hazard observed or found.
- Contractors and their employees, Brightwater employees, Residents and visitors to the site must be protected against identifiable hazards.
- Where a hazard has been identified work must be suspended until adequate safety measures have been put in place.
- Brightwater has its own hazard identification and reporting procedure, which Contractors must comply with. A copy of the Brightwater hazard identification and reporting procedure will be provided to the contractor prior to commencing work.
- It is essential that all Contractors and their employees or sub-contractors participate in the identification of hazards and then assists with the elimination of them.

- The workplace must not become a hazard to workers just because of poor housekeeping. Contractors and their employees must ensure that the workplace is kept clean and tidy at all times.

### **Hazardous Substances**

- Contractors and their employees must provide the Brightwater Site Manager or Supervisor with current Material Safety Data Sheets (MSDS) for any dangerous goods and hazardous or flammable material, which they intend to use on Brightwater premises.
- Contractors and their employees must obtain authorisation from the Brightwater Site Manager or Supervisor prior to bringing any dangerous goods or hazardous or flammable material into Brightwater premises.
- MSDS are readily available to Contractors and their employees from the Site Manager or supervisor who must be familiar with its use.
- Contractors and their employees must make arrangements with the Site Manager or Supervisor for the delivery and storage of non-hazardous materials required for the work.
- Contractors, Sub-Contractors and Contractors Employees must be fully conversant with exposure standards, the use, labelling, handling, storage, transportation and disposal of hazardous substances as required by the *Occupational Safety and Health Regulations 1996 (WA)*.
- All Contractors, Sub-Contractors and Contractors' employees must adequately secure and protect gas cylinders from damage and will ensure they are lifted or lowered by mechanical means unless the cylinders are contained in an appropriate box to comply with OSH Regulation 3.27a and Regulation 3.27b.

### **Housekeeping**

- The work area must be kept clean and tidy at all times.
- Rubbish and spillages must be cleaned up immediately.
- Thoroughfares must remain clear of obstructions.
- Authorisation must be obtained from the Brightwater Site Manager or Supervisor prior to storing tools or equipment on the premises. If authorisation is not given, all tools and equipment owned by the Contractors and their employees must be removed daily from the Brightwater premises at the completion of work.

***(NB: The Contractor accepts full responsibility for the loss, damage or destruction of such items stored on the premises and full liability for any loss, damage caused by items stored on the premises).***

### **Jewellery**

- Rings, bracelets, necklaces etc are recommended to be removed prior to commencing work. Where site requirements include a total jewellery ban this must be adhered to at all times.

### **Machine Safety Guards**

- Machine safety guards must not be removed except for the purposes of cleaning, repairs or maintenance and they must be securely refastened immediately after completion of the cleaning, repairs or maintenance.
- Contractors and their employees must obtain authorisation from the Brightwater Site Manager or Supervisor prior to removing any safety guard.
- Written safety procedures in relation to cleaning must be adhered to and Contractors and their employees must not alter the controls while cleaning machines.
- Warning signs indicating the removal of a safety guard must be clearly displayed.

### **Noise**

- Contractors and their employees must obtain authorisation from the Brightwater Site Manager or Supervisor prior to conducting noisy operations in the vicinity of Residents, Brightwater employees or visitors.
- Noise levels must be minimised.
- All statutory noise control regulations must be observed.
- Contractors and their employees must wear appropriate hearing protection.

### **Personal Protective Equipment and Clothing (PPEC)**

- The Contractor must supply appropriate and recognised personal protective equipment ("PPEC") and clothing for any work requiring such.
- Contractors and their employees must use appropriate and recognised PPEC that fits correctly.
- Contractors and their employees must wear appropriate and recognised safety footwear at all times while working at Brightwater sites. (E.g. flat-heeled, enclosed and supportive. Soles shall provide good grip in order to prevent slips or falls.)
- Contractors and their employees must be familiar with PPEC and have received appropriate training in its use and maintenance.

### **Scaffolding & Ladders**

- All erecting, dismantling or alteration of scaffolding must be supervised by a currently certified competent Rigger / Scaffolder and must be done in accordance with the relevant requirements of AS/NZS 1576 Parts 1-5 (this does not apply to portable scaffolding).

- All scaffolding and equipment must comply with statutory requirements and be maintained in a sound and proper working condition.
- All ladders must be securely tied at the top or held at the bottom by a second person while in use.

### Signs

- Safety and other signs are clearly posted on Brightwater premises. All signs shall be observed and their advice strictly adhered to by all contractors and their employees.

### Sharps protection (Needlestick)

- Identification of sharps and needlesticks must be reported to the Brightwater site manager or supervisor immediately.
- Only if safe to do so the sharp or needle should be picked up by the blunt end (preferable with a set of tongs) and stored in an approved container for incineration. At all times the person picking up the sharp or needle must be gloved.
- All injuries from sharps or needlesticks must be reported to the Brightwater site manager or supervisor immediately and medical attention provided.

### Smoking

- Contractors and their employees must not smoke whilst undertaking work for Brightwater on Brightwater premises.

### Supervision of Contractors Employees

- Contractors' employees must be supervised at all times by a competent supervisor who is familiar with the work tasks and the relevant safe systems of work.

### Tagging and Isolation Procedures

- Equipment and plant that is tagged out must have a "Danger" Tag or "Out of Service" Tag attached to any control, switch, valve or other activator. Under no circumstances is the item tagged to be energised, used or operated until all tags are removed.
- In every case; where there is any risk to a worker, the unit (and all associated drives) must be isolated and locked out in accordance with the site's "**Isolation Procedure**".
- Contractors and their employees must not remove any safety device or safety tag, interfere with any existing plant/equipment or operate any control device that has an attached safety tag.

### Vehicles

- All vehicles that are subject to licensing requirements shall be licensed and must be insured for third party property damage.

*When on Brightwater premises:*



- Contractor Work Vehicles when on Brightwater premises must only be used for the performance of to the job.
- Contractors and their employees must park private vehicles in appropriate carparks.
- The speed limit is to be observed whilst travelling on Brightwater roads.
- No vehicles are permitted in areas identified by the Brightwater representative as “out of bounds”.

### **Welding and Cutting**

- Contractors and their employees must obtain authorisation from the Brightwater Site Manager or Supervisor prior to using any arcs or naked flames to weld or cut.
- The work area must be clear of flammable materials and must have appropriate extinguishing equipment nearby. Welding must not be carried out in areas where fire detection systems are located or can be discharged.
- Items that could be accidentally damaged, as a result of welding or cutting work such as electrical equipment, cables, etc, must be protected.
- Suitable screens must be placed around the work area to protect other persons from flash.
- Appropriate danger signs must be displayed, when welding or cutting i.e. “Beware of flash, Welders at work”.
- Appropriate PPEC must be provided and worn (i.e. masks, goggles, face shield, aprons, spats and gauntlets.)
- All electric arc welding must be undertaken using leads in good repair.
- All Contractors and their employees proposing to undertake welding on Brightwater premises must be fully trained in welding and the use of welding equipment.
- Any welding or allied process must be undertaken in an area where there is appropriate ventilation and the means of extracting fumes generated by the welding must be as near as practicable to the point where the welding is done to comply with OSH Regulation 3.38.

### **Workers Compensation**

#### *Insurance*

- Contractors and Sub-Contractors must have insurance in place to cover their liability in accordance with the *Workers’ Compensation and Rehabilitation Act 1981 (WA)* (and their liability at common law).

#### *Rehabilitation*

- Contractors and Sub-Contractors must have a rehabilitation policy and return to work plan in place in accordance with the *Workers’ Compensation and Rehabilitation Act 1981 (WA)*. Early intervention and return to work programs are a critical component of effective injury management.

## Annexure B - Specification

### Specifications

The following Key Performance Indicators will be used to measure the Contractor's performance throughout the Term:

- Supply of Deliverables on time, correct and in full, with no interruptions to Clients.
- Quality of Deliverables and fitness for purpose.
- Deliverables compliant with agreed specifications.
- Average time (e.g. in hours) between the occurrence of an incident and its resolution.
- Frequency and quality of training/education (especially new or alternative products).
- Adaptability to changes/substitutes in Brightwater and Client requirements.
- Successful introduction and implementation of improved, enhanced suitable alternative products where appropriate.
- Robust and timely customer service for discontinued and recalled Goods
- Provision of spend reports.
- Provision of usage reports.