



INDEPENDENT CONTRACTOR AGREEMENT

REALCARE SYDNEY PTY LTD

and

SUBCONTRACTOR

This Independent Contractor Agreement

is made on the date noted in **Item 1** of the Schedule

Between

See **Item 2** of the Schedule (**Company**)

and

See **Item 3** of the Schedule (**Contractor**)

BACKGROUND

- A. The Company has requested the Contractor to provide the Services described in **Item 4** of the Schedule to the Company.
- B. The Contractor has agreed to provide the Services to the Company on the terms of this Agreement from the Commencement Date described in **Item 5** of the Schedule.

The Company and the Contractor agree that:

1. DEFINITIONS

Agreement means this document including the attached Schedule and any other schedules and annexures.

Claims means all or any claims, demands, debts, accounts, actions, expenses, costs, liens, liabilities and proceedings of any nature whatsoever (whether known or unknown).

Company Property means equipment, keys, documents, etc. or any other property that belongs to the Company.

Contractor means the Contractor as described in **Item 3** of the Schedule and includes all officers, employees, agents and contractors of the Contractor which have been formally approved by the Company to provide Services or to perform any Services on behalf of the Contractor.

Confidential Information means all the information including trade secrets, Intellectual Property, marketing and business plans, client and supplier lists, computer software applications and programs, business contacts, finance, data concerning the Company or any of its related entities or any client of the Company's, finances, operating margins, prospect's lists, and transactions of the Company, and any materials provided to the Contractor by the Company, but does not include information in the public domain other than through a breach of an obligation of confidentiality.

Fee means the amount payable with respect to the Services set out at **Item 6** of the Schedule.

GST means goods and services tax, value added tax or similar levied or imposed in relation to a supply (or a deemed supply) of any goods, property, services or any other thing.

Intellectual Property means all present and future copyright, registered and unregistered trademarks, patents, designs or rights and any other intellectual or industrial property rights, discoveries, inventions, secret processes or improvements in procedure of any kind whether arising from statute, under common law or in equity.

Notice period means the period described in **Item 7** of the Schedule.

Personnel means, in the respect of the Services, the person/people that the Contractor employs in order to provide the Services, including subcontractors that the Contractor may engage.

Services means the services described in **Item 4** of the Schedule.

Subcontractor's Statement means a form prepared for the purposes of section 175B of the *Workers Compensation Act 1987*, Schedule 2 Part 5 of the *Payroll Tax Act 2007* and section 127 of the *Industrial Relations Act 1996* or any similar statutory requirement under State or Territory legislation in which the Services are provided.

2. CONTRACTOR'S OBLIGATIONS

2.1 Services

The Contractor shall provide and perform the Services as described in **Item 4** of the Schedule from the Commencement Date.

2.2 Professional standard of care

The Contractor must ensure that the Services are performed in a diligent and professional manner and to the standard of skill and care expected of a professional experienced in the provision of the type of services required by the Company under this Agreement. The Contractor must continually use its best endeavours to promote the interests and welfare of the Company.

2.3 Defective performance

The Contractor guarantees that if there is a defect in the performance of the Services the Contractor will remedy the defect or redo the Services at no additional cost to the Company.

Where the Contractor refuses or fails to remedy a defect in performance of the Services or redo the Services within an agreed timeframe, the Contractor agrees that the Company may arrange for the performance of the necessary remedial work and recover any costs from the Contractor.

2.4 Licence/Qualifications

The Contractor must ensure that it, together with its employees and subcontractors hold the requisite licence(s) and qualification(s) to legally perform the services.

The Contractor has obtained and will continue to maintain all permits, visas and licences necessary for the lawful performance of the Services and agree to provide evidence of this to the Company upon request.

2.5 Contractor knowledge of requirements of the Company

The Contractor agrees that it will fully abide by the terms and conditions of the Company's policies and procedures relating to confidentiality, intellectual property, equal opportunity, and bullying and harassment.

2.6 Contractor knowledge of industry legislation

The Contractor agrees that it will fully abide by any relevant and related legislation applicable to services provided in accordance with this agreement.

2.7 Engagement in other activities

The Contractor is free to engage in other business activities at any time when the Services are not required to be performed under this Agreement provided that the provision of the Services by the Contractor under this Agreement is not affected or prejudiced in any way, or may create a potential conflict of interest.

2.8 Contractor's relationship with the Company

The relationship between the Contractor and the Company is that of principal and contractor. Nothing in this Agreement is to be construed as constituting the Contractor or any employee of the Contractor and the Company as partners. Nor shall this Agreement be construed as creating the relationship of employer and employee between the Contractor and the Company or between any employee or director of the Contractor and the Company.

2.9 Assignment of Service performance

The Contractor may assign and/or subcontract any part of the Services with the prior written consent of the Company. Such consent will not be unreasonably withheld.

Any consent given by the Company permitting the Contractor to subcontract or assign any portion of the Services does not relieve the Contractor of its obligations and liabilities under this Agreement.

2.10 Remuneration of Personnel

The Contractor is liable to pay all Personnel for Services provided under this Agreement.

The Contractor must pay all payroll tax due in respect of the Personnel who provide Services under this Agreement as required.

3. CONFIDENTIALITY AND INTELLECTUAL PROPERTY

3.1 The Contractor must ensure that the Confidential Information is:

- (a) maintained confidential
- (b) not disclosed to or used by any third party without the Company's written consent
- (c) only used for the purpose of the Company's business and the performance of the Services
- (d) not appropriated, copied, memorised, reproduced or reverse engineered for the Contractor's or any other person's use and
- (e) not removed from the Company's place of business without the Company's written consent.

3.2 All Confidential Information remains the exclusive property of the Company and no rights in respect of Confidential Information are granted or conveyed to the Contractor. In the event that the Contractor is legally required to disclose any Confidential Information, the Contractor must immediately notify the Company of that fact.

3.3 The Contractor acknowledges that any Intellectual Property created during the course of this Agreement is the property of the Company. The Contractor must disclose to the Company all Intellectual Property created by it during the course of this Agreement.

3.4 The Contractor consents to any acts or omissions (both past and future) by the Company which, apart from this clause, would infringe their moral rights (as defined in the *Copyright Amendment (Moral Rights) Act 2000 (Cth)*) in any works made or to be made by them in the course of this Agreement.

3.5 The Contractor must, both during and after the term of this Agreement, do all necessary acts and things and sign all necessary documents as the Company reasonably requires to secure the Company's Intellectual Property created during the course of this Agreement.

3.6 The Contractor acknowledges that if the Contractor breaches this clause, then the Company may seek injunctive relief at the Contractor's cost in respect of the breach.

3.7 The Contractor irrevocably appoints the Company to be its attorney for the purpose of executing any agreement and doing anything necessary to give effect to this clause.

4. FEE

In consideration for the proper provision of the Services, the Company will pay the Contractor the Fee as described at **Item 6** of the Schedule.

5. INVOICES

- 5.1 To obtain payment, the Contractor agrees to submit an itemised invoice, which complies with all relevant legislation, including but not limited to the law relating to taxation.
- 5.2 Invoices must be forwarded by the Contractor to the Company monthly and addressed to the person described in **Item 8** of the Schedule and shall include:
- (a) the title of the Services provided
 - (b) the Company's full name
 - (c) sufficient detail to allow the Company to obtain a clear understanding of the work that has been performed and to which the charges relate
 - (d) all things necessary to ensure that the invoice is also a tax invoice for the purposes of any relevant GST which may apply, that enables the Company to claim input tax credits and
 - (e) the tax invoice must include:
 - i the Australian Business Number (ABN) of the entity that issues it
 - ii the price of the supply (inclusive of GST)
 - iii the words "tax invoice" prominently on the document
 - iv the date of issue of the tax invoice
 - v title of the service and
 - vi the number of days noted at **Item 9** of the Schedule as the days for terms of payment.
- 5.3 On receipt of payment of the invoice from the Company, the Contractor must, if so requested, provide the Company with a written undertaking to confirm that it has paid its employees for the period to which the invoice relates.
- 5.4 The Company can withhold payment of any amount which it reasonably disputes and can set off from any payment to the Contractor any amount that the Contractor owes the Company under this Agreement or otherwise.
- 5.5 The parties agree that each party must immediately notify the other party if it ceases to be registered for GST purposes or for any other reason is unable to lawfully comply with this clause.

6. EQUIPMENT AND EXPENSES

- 6.1 The Contractor is expected, at its own expense, to supply any equipment necessary to perform the Services.
- 6.2 The Company may agree to provide the Contractor with tools and equipment required for the Contractor to carry out the Services. Any provision of tools and equipment will be taken into account when determining the Fee under this Agreement.
- 6.3 Where provided the Contractor must protect and keep safe and secure any and all tools, equipment, property, documents and other materials provided by the Company to the Contractor.

- 6.4 Upon the termination of this Agreement for whatever reason, the Contractor must promptly, and without further demand, return to the Company all Company Property which is in the Contractor's possession or control.
- 6.5 If the Contractor fails to return Company Property, the Company may withhold all or part of any payments which might otherwise be due to the Contractor until such time that the Company Property is returned.

7. CONTRACT HOURS

The Company expects that, consistent with industry practice, the Contractor will need to adopt a flexible approach to hours of work in order to meet the requirements of the Agreement.

8. TERMINATION OF AGREEMENT

- 8.1 The Company may terminate this Agreement without notice, in the event of a fundamental breach of this Agreement. In the event that the Company terminates this Agreement for a fundamental breach, the Contractor will:
- (a) be paid any amount owing to the Contractor in respect of services provided up to and including the date of termination
 - (b) not be entitled to any notice of the termination or payment in lieu of notice of termination and
 - (c) not be entitled to any compensation other than as specifically provided for in this Agreement.
- 8.2 The Company may terminate this Agreement immediately if the Contractor becomes insolvent or bankrupt within the meaning of either section 9 of the *Corporations Act 2001 (Cth)* or the *Bankruptcy Act 1966 (Cth)*.
- 8.3 The Company may terminate this Agreement at any time without cause by:
- (a) giving the Contractor written notice equal to the Notice Period or
 - (b) in lieu of notice, paying the Contractor the Fees for the amount of work it would have performed during the Notice Period.
- 8.4 Contractor's continuing liability
- (a) Termination of this Agreement by the Company will not release the Contractor from liability in respect of any breach or non-performance of any obligation under this Agreement.
 - (b) Termination of this Agreement by either party will not release the Contractor from the Confidentiality and Intellectual Property obligations of this Agreement.

Upon termination the Company will be entitled to reimbursement of the following costs:

- (a) Company Property that is not returned in good working order immediately on termination of this Agreement and
- (b) any overpayment or other monetary benefits.

The Company may recover these amounts by setting-off against any amount owed to the Contractor by the Company.

9. INSURANCE

- 9.1 The Contractor must on request provide the Company with proof of all insurance policies required to be maintained by the Contractor.
- 9.2 Professional indemnity and public liability insurance

- (a) The Contractor must obtain and maintain a policy of professional and public liability and indemnity insurance with an insurer with a limit of liability not less than the amount specified in **Item 10** of the Schedule for the duration of this Agreement and for a period of 12 months after the termination, however caused, of this Agreement. On reasonable request by the Company, the Contractor must liaise with the Company to ensure the insurer is approved by the Company (which approval will not be unreasonably withheld).
- (b) The policy must contain the following provisions:
 - i the minimum indemnity limit in aggregate for the Services as agreed between the Parties
 - ii one automatic reinstatement provision and
 - iii a description of the risk covered by the policy.
- (c) Worker's compensation

Where required under law, the Contractor must obtain and maintain for the duration of this Agreement a workers' compensation and employer's liability insurance policy covering liability for loss, damage, claims, and all direct or indirect costs and expenses arising at common law or under workers' compensation or employer's liability legislation in respect of persons employed or deemed to be employed by the Contractor.

10. WARRANTIES AND INDEMNITIES

10.1 The Contractor warrants that:

- (a) no conflict of interest exists which may prejudice the performance of its obligations under this Agreement and agrees to declare any conflict should it arise in the future and
- (b) the Contractor has obtained and will continue to maintain all permits, visas and licenses necessary for the lawful performance of the Services and agree to provide evidence of this to the Company's satisfaction.

10.2 The Contractor must indemnify and keep the Company indemnified at all times against any Claim whatsoever against the Company by any person arising directly or indirectly out of the provision of the Services under this Agreement or out of any breach of this Agreement by the Contractor.

11. WORK HEALTH AND SAFETY

- 11.1 The Company is required to comply with health and safety laws to maintain a safe and healthy workplace.
- 11.2 The Contractor is required to adhere to the Company's work health and safety policies and procedures as amended from time to time.
- 11.3 The Company may monitor the Contractor's work activities for health and safety compliance and implement a corrective action report in the event of unsafe work activities.
- 11.4 The Company reserves the right to exercise a duty of care and halt any unsafe work activity. The Contractor agrees to remedy any unsafe practices or work activity at their own cost, to ensure health and safety compliance, before work is resumed.
- 11.5 The Contractor is responsible for site safety hazard assessments and site specific Safe Work Method Statements (**SWMS**) for any high risk activity.
- 11.6 The Contractor is responsible for ensuring their workers are adequately inducted, trained, instructed in both generic and site safety specific SWMS and are deemed competent to undertake any assigned tasks.

12. GOVERNING LAW

This Agreement is governed by the law of the State, Territory or, if applicable, the Commonwealth described in **Item 11** of the Schedule. The parties submit to the non-exclusive jurisdiction of the Courts of the jurisdiction specified in **Item 11** of the Schedule and any court hearing appeals from those courts.

13. VARIATION

This Agreement is issued without alteration, deletion or erasure. By signing this Agreement the Contractor acknowledges that no verbal variations have been or will be made to this Agreement and any variation must be made in writing and signed by both parties to this Agreement.

SIGNED BY AN AUTHORISED OFFICER OF THE COMPANY

.....
Authorised Officer

.....
Title of Authorised Officer

.....
Dated

SIGNED BY THE CONTRACTOR

.....
Contractor

.....
Dated

SCHEDULE

Item 1	Date of Agreement		
Item 2	Company name and details		
Item 3	Contractor name and details		
Item 4	Services		
Item 5	Commencement Date		
Item 6	Fee		
Item 7	Notice Period		
Item 8	Name of person and/or position to whom invoices should be sent		
Item 9	Number of days for payment under invoice terms		
Item 10	Professional and public liability requirement	Professional Indemnity \$1,000,000 Public Liability \$10,000,000	
Item 11	Governing law	New South Wales	