

# Brokerage Services Agreement

**Lutheran Church of Australia Queensland District ABN 30 051 602 996  
(Lutheran Services)**

and

**Queensland Meals on Wheels Ltd ABN 63 104 919 974 (Contractor)**

# Brokerage Services Agreement

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# Details

Date 10 August 2022

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## Parties

Name **Lutheran Church of Australia Queensland District**  
ABN 30 051 602 996  
Short form name **Lutheran Services**  
Notice details Address: 24 McDougall Street, Milton, QLD 4064  
Facsimile: 07 3858 3030  
Email: [finance@lutheranservices.org.au](mailto:finance@lutheranservices.org.au)  
Attention: Chris Edwards

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Name **Queensland Meals on Wheels Ltd**  
ABN 63 104 919 974  
Short form name **Contractor**  
Notice details Address: Unit 16 / 27 South Pine Road, Brendale QLD 4500  
Fax: 07 3205 1667  
Email: [lea.readdy@qmow.org](mailto:lea.readdy@qmow.org)  
Attention: Lea Readdy

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## Background

- A Lutheran Services is an approved provider of home care under the Aged Care Act and conducts a home care business through which it provides personal care services and other personal assistance to care recipients in Queensland.
- B The Contractor carries on a business of meal preparation and delivery.
- C The Contractor has agreed to provide the Services to Lutheran Services and Lutheran Services has agreed to acquire the Services from the Contractor, on the terms and conditions of this Agreement.

# Agreed terms

## 1. Defined terms

### 1.1 Defined terms

In this document:

**Additional Expenses** has the meaning given in clause 4.4.

**Aged Care Act** means the *Aged Care Act 1997* (Cth) and the Principles made under that Act.

**Agreement** means this agreement and any schedules and annexures.

**Budget** means a budget which, in respect of each Care Recipient, is developed by Lutheran Services in consultation with a Care Recipient outlining the income and expenses necessary to implement the Care Recipient's Care Plan and meet their expressed goals and identified care needs.

**Business Day** means Monday to Friday excluding public holidays in Brisbane, Queensland.

**Care Plan** means a plan of care which, in respect of each Care Recipient, is developed by Lutheran Services in consultation with a Care Recipient outlining the support and assistance needs of the Care Recipient and provides instructions as to how those needs will be met.

**Care Recipient** means a care recipient of Lutheran Services who is:

- (a) is approved as a care recipient of home care under the Aged Care Act;
- (b) has entered into a home care agreement with Lutheran Services; and
- (c) requires services, consumables and/or equipment under their Care Plan which the Contractor is in the business of providing.

**Care Recipient Records** means all information, documents and materials, in any form, relating to the Care Recipient developed by either party in connection with this Agreement and/or in the provision of Services. Care Recipient Records include any documents or materials recording personal information or health information within the meaning of the Privacy Laws.

**Change in Control:**

- (a) means where, at any time any person alone or together with any associate, ceases to or commences to, directly or indirectly, have Control of the Contractor; and
- (b) without limiting paragraph (a), will be deemed to occur in relation to the Contractor if:
  - (i) a shareholder of the Contractor transfers legal or beneficial ownership of any voting shares to a person who is not an existing shareholder of the Contractor as at the date of this Agreement; or
  - (ii) the Contractor issues or allots voting shares in the Contractor to a person who is not a shareholder and director of the Contractor as at the date of this Agreement.

**Commencement Date** means 10 August 2022.

**Control** means:

- (a) control or influence of, or having the capacity to control or influence the composition of the board, or decision making, directly or indirectly, in relation to the decision financial and operating policies; or
- (b) being in a position to cast, or control the casting of, more than 20% of the maximum number of votes that may be cast at a general meeting,

of the Contractor (whether alone or together with any associates).

**Corporations Act** means the *Corporations Act 2001* (Cth).

**Dispute** means any dispute or difference between the parties arising out of, relating to or in connection with this Agreement or the Services, including any dispute or difference as to the formation, validity, existence or termination of this Agreement.

**End Date** means 9 August 2025 unless services are ceased prior by the home care clients.

**Home Care Regulatory Framework** means all legislation, regulations, authorisations, standards, codes of practice and guidelines of a Regulator applicable to the provision of home care services funded by the Australian Government under the Aged Care Act, including the:

- (a) the Aged Care Act;
- (b) *Quality of Care Principles 2014* (Cth);
- (c) *Charter of Aged Care Rights*; and
- (d) Home Care Packages Program Operational Manual published by the Commonwealth Department of Health.

**Insolvency Event** means any of the following events:

- (a) a party becomes insolvent;
- (b) a receiver, receiver and manager, administrator, controller, provisional liquidator or liquidator is appointed to a party or a party enters into a scheme of arrangement with its creditors or is wound up;
- (c) a party assigns any of its property for the benefit of creditors or any class of them;
- (d) an encumbrance takes any steps towards taking possession or takes possession of any assets of a party or exercises any power of sale; or
- (e) the party has a judgment or order given against it in an amount exceeding \$10,000 (or the equivalent of another currency) and that judgment or order is not satisfied or quashed or stayed within 20 Business Days after being given.

**Loss or Damage** means loss or damage however caused whether based in tort, contract or otherwise and includes without limitation any direct, indirect, special or consequential loss or damage, loss of profits, loss of production, loss or corruption of data, loss of sales opportunity or business reputation, direct or indirect labour costs and overhead expense and damage to property, personal injury and death.

**Modern Slavery Laws** means any law, statute and regulation which prohibits exploitation of a worker, human trafficking, slavery, servitude, forced labour, debt bondage or deceptive recruiting for labour or services, or similar types of conduct, and applicable or otherwise in force in the jurisdiction in which Lutheran Services or the Contractor is registered or conducts business or in which activities relevant to the Agreement are to be performed.

**Order Form** means the written request:

- (a) provided by Lutheran Services to the Contractor under clause 5.1(a); and
- (b) accepted by the Contractor under clause 5.1(b),

as amended by Lutheran Services and the Contractor in writing from time to time. To avoid doubt, an Order Form includes an Order Form made or amended in accordance with clause 5.1(d) or clause 5.2(d).

**Personal Information** has the same meaning as that term in the Privacy Laws.

**Personnel** means the Contractor's officers, employees, agents and contractors.

**Privacy Laws** means legislation relating to the privacy of personal information and health information including the *Privacy Act 1988* (Cth) and the applicable stated-based legislation (if any), applicable privacy standards, codes of practice and guidelines in force from time to time.

**Regulator** means any statutorily recognised supervisory or government agency, body or authority having regulatory or supervisory authority over a party or in respect of the provision of home care services under the Aged Care Act.

**Representatives** means the Contractor's officers, employees, contractors, agents, advisers or financiers.

**Services** means the services, consumables and equipment to be provided (or if the context permits, provided) by the Contractor as set out in Order Form (including associated or ancillary goods and services).

**Service Rates** means the fees for the services contained in Schedule 1.

**Term** means the term of this Agreement commencing on the Commencement Date and ending on the date that this Agreement ends for any reason.

## **1.2 Corporations Act defined terms**

In this Agreement each of **associate, officer, body corporate and related body corporate** have the meanings given in section 9 of the Corporations Act.

## **2. Term**

This Agreement commences on the Commencement Date and ends on the End Date, unless it is terminated in accordance with clause 17 or by law.

## **3. Nature of relationship**

### **3.1 Engagement of the Contractor**

Lutheran Services engages the Contractor to provide the Services, and the Contractor accepts this engagement, on the terms and conditions of this Agreement.

### **3.2 Nature of relationship**

- (a) The Contractor is engaged by Lutheran Services as a non-exclusive, independent contractor and nothing in this Agreement is to be treated as creating any employer and employee relationship, agency arrangement, partnership or joint venture between Lutheran Services and the Contractor (or between Lutheran Services and the Personnel).
- (b) Without limiting clause 3.2(a), the Contractor must not, and must ensure that the Personnel do not, purport to incur any obligation, or make any promise, contract or undertaking, warranty or representation for or on behalf of Lutheran Services (without the express written authorisation of Lutheran Services to do so).

### **3.3 Personnel remuneration**

- (a) The Contractor is responsible for the following amounts (if any) payable to or in respect of the Personnel:
  - (i) remuneration and benefits, including superannuation contributions, annual leave, sick leave, long service leave, overtime and penalty rates;
  - (ii) imposts or levies imposed by law, such as workers' compensation levies, group tax, payroll tax, fringe benefits tax, superannuation guarantee charges; and
  - (iii) payments upon termination of services (including on redundancy).
- (b) Lutheran Services is not liable for, and will not be required to make, any of the payments referred to in clause 3.3(a).

## **4. Nature of Services**

### **4.1 Home care**

The Contractor acknowledges that Care Plans may include services of a diverse nature in accordance with the needs and goals of the Care Recipient including:

- (a) care and services selected from the care and services specified in Part 1 of Schedule 3 of the *Quality of Care Principles 2014* (Cth); and
- (b) such other care and services required to support the Care Recipient to live at home provided that the item is not specified in Part 2 of Schedule 3 of the *Quality of Care Principles 2014* (Cth).



## **4.2 Services**

The Contractor must:

- (a) comply with the responsibilities of Lutheran Services under the Aged Care Act in providing Services to the Care Recipients;
- (b) provide the Services to the Care Recipients:
  - (i) in a timely and efficient manner with due care, skill and diligence;
  - (ii) using good industry practice;
  - (iii) in accordance with the Order Form, this Agreement and all applicable laws and the requirements of any applicable Regulator; and
  - (iv) in accordance with the reasonable directions of Lutheran Services; and
- (c) comply with Lutheran Services' policies and procedures, as required by Lutheran Services acting reasonably; and
- (d) not do anything or omit to do anything in relation to the provision of the Services which may cause Lutheran Services to breach the Aged Care Act.

## **4.3 Consumables, equipment and other goods**

The Contractor:

- (a) agrees that any consumables and equipment supplied under any Order Form and any other goods supplied by the Contractor for use in (or as part of) the Services will be new and comply with all applicable laws; and
- (b) assigns to Lutheran Services all warranties available in connection with any consumables, equipment and other goods provided by the Contractor under this Agreement.

## **4.4 Additional Expenses**

If Lutheran Services requests in writing for the Contractor to incur additional expenses in relation to the provision of a Service (such as travel or equipment) and the Contractor agrees to incur such additional expense, the Contractor will include the expense as an item on the next invoice and Lutheran Services must pay such additional expense in accordance with clause 6.

## **4.5 No liability**

The Contractor acknowledges and agrees that any provision, receipt or review of, or the giving of any direction by Lutheran Services in respect of, any Services does not:

- (a) derogate from or lessen the Contractor's liability to Lutheran Services for failure to fully comply with the terms of this Agreement or an Order Form;
- (b) constitute acceptance by Lutheran Services that the Services meet the requirements of this Agreement or any Order Form; or
- (c) constitute a waiver of the Contractor's obligations under this Agreement or any Order Form.

# **5. Care Recipients**

## **5.1 Initiating Service requests**

- (a) Lutheran Services may from time to time request the Contractor to provide services, consumables and/or equipment to a Care Recipient by submitting a written request which includes:
  - (i) the services, consumables and/or equipment to be provided (including any applicable dates and times);

- (ii) the contact details of the Care Recipient to whom the services, consumables and/or equipment are to be provided;
  - (iii) a copy of (or an extract of) the Care Recipient's Care Plan; and
  - (iv) any special conditions required by Lutheran Services.
- (b) Within one Business Day of receipt of a written request under clause 5.1(a), the Contractor must acknowledge its receipt by counter signing the written request and giving notice to Lutheran Services that the Contractor:
  - (i) accepts Lutheran Services' written request in accordance with the written request (in its entirety); or
  - (ii) rejects Lutheran Services' written request.
- (c) If the Contractor does not comply with clause 5.1(b) in respect of a written request under clause 5.1(a), the Contractor will be deemed to have rejected that written request.
- (d) In an emergency, the provision of services, consumables and/or equipment to a Care Recipient may be agreed orally between Lutheran Services and the Contractor. A completed written Order Form must be prepared by Lutheran Services confirming the verbal request and subsequently submitted to the Contractor as soon as reasonably practicable, after which the Contractor must submit to Lutheran Services the counter signed Order Form confirming its acceptance within one Business Day of its receipt.
- (e) The Contractor acknowledges that Lutheran Services:
  - (i) is not under any obligation to request the provision of any services, consumables and/or equipment from the Contractor under this Agreement; and
  - (ii) may engage any person other than the Contractor to provide services, consumables and/or equipment the same or similar to those provided by the Contractor.

## **5.2 Variation to Services**

- (a) If Lutheran Services considers that the Services being provided to a Care Recipient pursuant to this clause 5 need to be varied, Lutheran Services will submit to the Contractor an amended Order Form confirming the variation to the Services.
- (b) The Contractor will confirm its receipt and acceptance of the amended Order Form by submitting a counter signed amended Order Form to Lutheran Services within one Business Day after receipt of the amended Order Form.
- (c) If the Contractor considers the Services being provided to a Care Recipient pursuant to this clause 5 need to be varied, the Contractor must inform Lutheran Services as soon as practicable to enable Lutheran Services to determine, at its discretion, whether any of the Services need to be varied and whether to submit to the Contractor an amended Order Form under clause 5.2(a).
- (d) In an emergency, a variation to the Services being provided to a Care Recipient may be agreed orally between Lutheran Services and the Contractor. A written amended Order Form must be prepared by Lutheran Services confirming the variation to the Services and subsequently submitted to the Contractor as soon as reasonably practicable, after which the Contractor must submit to Lutheran Services the counter signed amended Order Form within one Business Day of its receipt.

## **5.3 Cancellation of Services**

- (a) Lutheran Services may at any time cancel an Order Form for a Care Recipient by giving at least 7 days' written notice to the Contractor.
- (b) If Lutheran Services cancels an Order Form for a Care Recipient under this clause 5.3:
  - (i) the Contractor is not required to provide any Services to that Care Recipient from the relevant cancellation date; and

- (ii) Lutheran Services will pay the fees (or if applicable, a reasonable proportion of the fees) payable under this Agreement for any Services provided by the Contractor before the relevant cancellation date.

## **6. Payment**

### **6.1 Payment**

In consideration of the Contractor providing the Services, Lutheran Services must pay to the Contractor, in respect of each current Order Form:

- (a) fees for the services stated in the Order Form which have been provided to the Care Recipient in accordance with this Agreement, being the applicable fees:
  - (i) set out in the Service Rates; or
  - (ii) as otherwise agreed in writing by Lutheran Services and the Contractor in the relevant Order Form;
- (b) the cost of any consumables and equipment stated in the Order Form which have been provided to the Care Recipient in accordance with this Agreement, as agreed in writing by Lutheran Services and the Contractor in the relevant Order Form; and
- (c) any other agreed Additional Expenses

fortnightly in arrears for the Services provided in the previous fortnight.

### **6.2 Invoices**

- (a) The Contractor will provide Lutheran Services with an itemised invoice for Services it has provided on a fortnightly basis in a form approved by Lutheran Services containing sufficient detail for Lutheran Services to reconcile the fees to be paid and expenses to be reimbursed, including:
  - (i) details of the actual Services provided by the Contractor during the relevant period (including timesheets); and
  - (ii) supporting documentation for all expenses for which the Contractor is seeking reimbursement;
- (b) The Contractor agrees that:
  - (i) a written Order Form must be signed by Lutheran Services and the Contractor before the Contractor will submit an invoice for payment under this Agreement; and]
  - (ii) Lutheran Services may require the Contractor to prepare a separate itemised invoice in respect of each relevant Order Form.

### **6.3 Payment**

Lutheran Services must pay an invoice received by the Lutheran Services in accordance with this clauses 6.1 and 6.2 within 30 days of receipt of the invoice by such method as Lutheran Services may determine from time to time.

### **6.4 No payments or benefits to Contractor staff other than by Contractor**

The Contractor must ensure that all persons engaged by the Contractor to provide the Services to the Care Recipients do not accept any personal payment or other benefit in money or kind from any person (other than the Contractor) as an inducement or reward for the provision of any Services by the Contractor under this Agreement.

## 7. Obligations of the parties

### 7.1 Obligations of Contractor

- (a) **Provision of Services:** The Contractor must, in respect a Care Recipient who is provided Services pursuant to this Agreement, ensure that the Services are:
  - (i) provided in accordance with this Agreement; and
  - (ii) consistent with the Care Recipient's Care Plan and Budget from time to time (if Lutheran Services provides the Contractor with a copy of the Care Recipient's Care Plan and Budget (or an extract)).
- (b) **Home Care Regulatory Framework:** The Contractor must provide the Services in accordance with the Home Care Regulatory Framework.
- (c) **Protect Lutheran Services:** The Contractor must not do anything which would adversely affect or damage the reputation, operations or commercial viability of Lutheran Services, its officers, employees or agents.
- (d) **Personnel:** Without limiting clause 3.3, the Contractor must pay the employment and employment related costs owing to the Personnel, including all payments due in relation to wages and salaries, superannuation, allowances and leave entitlements in accordance with the terms of any award, industrial agreement, contract or agreement applicable to the Personnel.
- (e) **Safety equipment:** The Contractor must provide any protective supplies and equipment such as gloves, goggles and face masks, necessary for its Personnel to provide the Services.
- (f) **Policies and Procedures:** The Contractor must have policies and procedures in place to comply with its obligations under this Agreement (and provide copies of its policies and procedures to Lutheran Services upon request).
- (g) **Care Recipient home and property.** The Contractor must not, and must ensure that its Personnel do not, cause damage to a Care Recipient's home and other property in the course of providing the Services.
- (h) **Information and assistance.** The Contractor must provide, and must ensure that all Personnel provide, all reasonable assistance, information and documentation requested by Lutheran Services in respect of the provision of the Services (including any amounts payable to the Contractor under this Agreement) to assist Lutheran Services in providing statements, notices and other information to Care Recipients or the Regulator in accordance with the Aged Care Act.

### 7.2 Obligations of Lutheran Services

- (a) **Care Plans and Budgets:** Lutheran Services acknowledges that, in respect of Care Recipients who are provided Services pursuant to this Agreement, Lutheran Services is responsible for providing overarching case management, including developing, monitoring and revising the Care Recipient's Care Plan and Budget.
- (b) **Changes to Care Plans and Budgets:** If Lutheran Services provides the Contractor with a copy of the Care Recipient's Care Plan and Budget (or an extract), Lutheran Services must provide the Contractor with details of any relevant changes to the Care Plan and as soon as reasonably practicable (subject to any necessary consent of the Care Recipient required by the Privacy Laws).

## 8. Performance of the Services

### 8.1 Contractor's Personnel

- (a) The Contractor will undertake reference and background checks on Personnel prior to Personnel attending Care Recipients.

- (b) Subject to clause 8.1(e), the Contractor will ensure that each of its Personnel:
- (i) has appropriate training, skills, qualifications and experience (including successfully completing from time to time any mandatory training required by law and/or required by Lutheran Services acting reasonably);
  - (ii) hold and maintain all requisite registrations or authorisations with relevant professional bodies;
  - (iii) has not had any adverse findings made or conditions imposed in relation to any registration or authorisation referred to in clause 8.1(b)(ii);
  - (iv) has a national criminal history record check not more than three years old and which does not reveal the person has been:
    - (A) convicted of murder or sexual assault or convicted of, or sentenced to, imprisonment for any other form of assault; or
    - (B) convicted of any other offence which would affect the person's suitability to provide the Services;
  - (v) who at any time after turning 16 years of age were a citizen or permanent resident of a country other than Australia, make a statutory declaration stating that the person has never been:
    - (A) convicted of murder or sexual assault or convicted of, or sentenced to, imprisonment for any other form of assault; or
    - (B) convicted of any other offence which would affect the person's suitability to provide the Services;
  - (vi) unless otherwise contrary to law, are required to notify the Contractor if they are:
    - (A) charged or convicted of murder or sexual assault or charged or convicted of, or sentenced to, imprisonment for any other form of assault; or
    - (B) charged or convicted of any other offence which would affect the person's suitability to provide the Services,
 and on receiving such notification, the Contractor must:
    - (C) notify Lutheran Services (subject to any Privacy Laws); and
    - (D) ensure that the relevant person has no further contact with Care Recipients without Lutheran Services' prior written approval;
  - (vii) where applicable, has a current driver's licence;
  - (viii) performs the Services in a timely and efficient manner with due care, skill and diligence;
  - (ix) acts in a professional manner while performing the Services and at all times acts in a courteous, helpful and cooperative manner towards the Care Recipients; and
  - (x) reports any incident that occurs while providing any of the Services or any complaint made in relation to the Services immediately to the Contractor who will relay the information to Lutheran Services in accordance with clause 8.3.
- (c) The Contractor must maintain records regarding national criminal history record checks and statutory declarations of criminal history necessary to enable Lutheran Services to comply with its obligations under the Home Care Regulatory Framework and applicable law in relation to background checks and prevention of harm to Care Recipients.
- (d) The Contractor must:
- (i) upon request by Lutheran Services from time to time, provide Lutheran Services with a statutory declaration that the Contractor has complied with its obligations under clauses 8.1(a), (b) and (c) with respect to its Personnel during the relevant period nominated by Lutheran Services; and

- (ii) allow Lutheran Services access to (and provide copies of) all relevant records to enable auditing of the relevant documentation referred to in clause 8.1(c), upon reasonable request.
- (e) The obligations in clauses 8.1(b)(iv), (v) and (vi) do not apply in respect of clerical staff who do not have direct contact with Care Recipients unless required by law.

## **8.2 Safety of Care Recipients and Personnel**

- (a) The Contractor must ensure, so far as reasonably practicable, that the health and safety of Care Recipients is not put at risk from any act or omission of the Contractor or its Personnel in the provision of Services.
- (b) The Contractor must comply with relevant work health and safety legislation including ensuring, so far as is reasonably practicable, the health and safety of Personnel while Personnel are providing the Services.

## **8.3 Incident reporting**

- (a) The Contractor must immediately provide to Lutheran Services an incident report in relation to:
  - (i) any incident, accident, illness, injury or complaint arising in connection with the provision of any of the Services;
  - (ii) any loss or damage to property in connection with the provision of any of the Services; or
  - (iii) any circumstances where:
    - (A) an incident, accident, illness, or injury; or
    - (B) loss or damage to property, was narrowly avoided.
- (b) The Contractor must provide, and must ensure that all Personnel provide, all reasonable assistance, information and documentation requested by Lutheran Services when investigating incidents, complaints or making enquiries in relation to the provision of any of the Services.

## **8.4 Reallocation of Personnel**

Lutheran Services may require the Contractor to cease to use any of its Personnel for the performance of any of the Services in circumstances where the person is incompatible with or unacceptable to a Care Recipient.

## **8.5 Review meetings**

The Contractor and Lutheran Services will meet monthly, or at such other intervals agreed between the parties in writing, to discuss and review operational issues, including performance of both parties under the Agreement and performance of the Personnel in the provision of the Services.

# **9. Record keeping**

## **9.1 Contractor must keep records**

Without limiting any term of this Agreement, the Contractor must maintain complete and accurate records of the Services in a form specified by Lutheran Services, within such timeframes specified by Lutheran Services and with sufficient detail to enable:

- (a) Lutheran Services to substantiate invoices submitted for payment (including time sheets and service records);
- (b) to verify the Contractor's compliance with this Agreement; and

- (c) to comply with any reporting obligations to which Lutheran Services is subject to under any law.

## **9.2 Inspect and obtain copies**

Upon reasonable notice by Lutheran Services, the Contractor must permit Lutheran Services and its representatives to:

- (a) examine the records referred to in clause 9.1; and
- (b) take extracts from and copies of them at the reasonable expense of Lutheran Services.

## **9.3 Ownership of records**

- (a) All Care Recipient Records and intellectual property in the Care Recipient Records are owned by Lutheran Services and vest in Lutheran Services immediately upon creation.
- (b) To the extent that the Contractor may at any time acquire any right, title or interest in any Care Recipient Records or any intellectual property in Care Recipient Records, the Contractor assigns to Lutheran Services all such rights, title and interest.

## **9.4 Retention period**

The Care Recipient Records must be retained for a period of seven years after expiry or termination of this Agreement or as otherwise required by law.

# **10. Insurance**

## **10.1 Insurance**

The Contractor must, at its cost, effect and maintain the following insurances with a licensed Australian insurer with a Standard & Poor or equivalent agency rating of not less than "A":

- (a) **Public liability insurance:** providing a minimum limit of indemnity of \$10 million in respect of any one occurrence;
- (b) **Workers' compensation insurance:** as required by law, covering all persons who will perform Services under this Agreement;
- (c) **Motor vehicle third party compulsory insurance and comprehensive insurance (including third party property insurance):** in respect of all motor vehicles to be used in connection with the performance of the Services; and
- (d) **Professional indemnity insurance:** covering the liability of the party for a breach of professional duty by it, its Personnel or those for whom it is responsible in performing this Agreement for at least \$5 million in respect of each claim and \$10 million in the aggregate, for all claims for each 12 month policy period.

## **10.2 Contractor's duties**

The Contractor must ensure that in relation to any insurance policy required to be maintained by this clause 10 it:

- (a) does not do anything or fail to do anything or (insofar as it is reasonably within its power) permit anything to occur which prejudices any insurance;
- (b) if necessary, rectifies anything which might prejudice any insurance;
- (c) punctually pays or causes to be paid all premiums;
- (d) reinstates an insurance policy if it lapses;
- (e) immediately notifies Lutheran Services of an insurance policy lapsing or being cancelled;
- (f) gives full, true and particular information to the insurer of all matters and things the non-disclosure of which might in any way prejudice or affect any such policy or the payment of all or any benefits under the insurance; and

- (g) immediately informs Lutheran Services whenever it receives or gives a notice under or in connection with any insurance policy including any claim which relates to the provision of the Services under this Agreement.

### **10.3 Evidence of insurances**

The Contractor must on the Commencement Date and upon request by Lutheran Services, provide a certificate of currency and coverage of its insurance policies to Lutheran Services.

### **10.4 Obligations in relation to motor vehicle insurances**

The Contractor may satisfy the requirement to effect and maintain motor vehicle third party compulsory insurance and comprehensive insurance (including third party property insurance) in respect of motor vehicles which are owned by persons engaged to provide the Services by ensuring that any person who utilise their own vehicle in connection with the provision of Services under this Agreement complies with this clause in relation to motor vehicle insurance as though they were the Contractor.

## **11. Non-interference with business**

### **11.1 Definitions**

In this clause 11:

**Contractor Affiliate** means a related body corporate of the Contractor or a person who is an officer, employee or agent of the Contractor or of a related body corporate of the Contractor.

**Non-interference Period** means each of the following periods:

- (a) during the Term;
- (b) the period of 12 months beginning at the end of the Term.

### **11.2 Contractor's non-interference obligations**

- (a) The Contractor must not during any Non-interference Period:
  - (i) seek to attract the custom of, or entice away, any person who is a Care Recipient;
  - (ii) represent itself to a Care Recipient as being in any way connected with or interested in or associated with Lutheran Services except as a provider of Services pursuant to this Agreement;
  - (iii) do or say anything harmful to the reputation of Lutheran Services' business or which may lead a Care Recipient to cease, curtail or alter the terms of its dealings with Lutheran Services;
  - (iv) use any of the intellectual property, trade secrets, policies, procedures, processes or confidential information of Lutheran Services without the consent of Lutheran Services;
  - (v) for any reason solicit or attempt to solicit for employment any employee of Lutheran Services.
- (b) The Contractor must also ensure that each Contractor Affiliate complies with the provisions of clause 11 as if it were the Contractor.
- (c) Notwithstanding clause 11.2(a), the parties acknowledge that the Contractor may provide services to a Care Recipient if those services are:
  - (i) provided under a separate contractual arrangement between the Contractor and the Care Recipient (and are not Services within the meaning of this Agreement); and
  - (ii) over and above the services available under the Care Recipient's Budget.



### **11.3 Non-interference obligations cumulative**

Each of the non-interference obligations in clause 11.2 resulting from various combinations of the Non-interference Periods is a separate, severable and independent non-interference obligation and:

- (a) clause 20.11 applies to each of those non-interference obligations; and
- (b) the invalidity or unenforceability of any of the non-interference obligations in clause 11.2 does not affect the validity or enforceability of any other non-interference obligations.

### **11.4 Non-interference obligations reasonable**

The Contractor acknowledges that each of the non-interference obligations in clause 11.2 is reasonable to its extent (including as to duration) having regard to the interests of each party to this Agreement and goes no further than is reasonably necessary to protect Lutheran Services.

### **11.5 Legal advice for the Contractor**

The Contractor acknowledges that it has received legal advice, or has had the opportunity to obtain legal advice, about this Agreement including this clause 11.

## **12. Warranties**

### **12.1 Contractor warranties**

The Contractor represents, warrants and undertakes to Lutheran Services that:

- (a) it has the full power and authority to enter into this Agreement and has taken all necessary action to authorise the execution, delivery and performance of this Agreement in accordance with its terms;
- (b) this Agreement constitutes a legally valid and binding obligation enforceable in accordance with its terms;
- (c) it has and will maintain all approvals, licences, consents and permissions, including from any Regulator, necessary for the performance of its obligations under this Agreement and as an approved provider pursuant to the Aged Care Act; and
- (d) each of its Personnel:
  - (i) has appropriate training, skills, qualifications and experience in accordance with this Agreement;
  - (ii) hold and maintain all requisite registrations or authorisations with relevant professional bodies;
  - (iii) has not had any adverse findings made or conditions imposed in relation to any registration or authorisation referred to in clause 12.1(d)(ii);
  - (iv) has a national criminal history record check not more than three years old and which does not reveal the person has been:
    - (A) convicted of murder or sexual assault or convicted of, or sentenced to, imprisonment for any other form of assault; or
    - (B) convicted of any other offence which would affect the person's suitability to provide the Services;
  - (v) who at any time after turning 16 years of age were a citizen or permanent resident of a country other than Australia, make a statutory declaration stating that the person has never been:
    - (A) convicted of murder or sexual assault or convicted of, or sentenced to, imprisonment for any other form of assault; or
    - (B) convicted of any other offence which would affect the person's suitability to provide the Services; and

- (vi) where applicable, has a current driver's licence.

### **13. Indemnity**

#### **13.1 Indemnity**

- (a) The Contractor must indemnify Lutheran Services, and hold Lutheran Services harmless, in respect of Loss or Damage suffered or incurred by Lutheran Services in connection with:
- (i) any breach of the Contractor's obligations under this Agreement;
  - (ii) any unlawful or negligent act or omission of the Contractor or any of its Personnel in connection with this Agreement; or
  - (iii) attending or responding to any complaint, inquiry, proceedings (including court proceedings or pre-proceedings), inquest or commission (including a coronial inquest) relating to the Contractor's provision of Services.
- (b) The extent of any indemnity provided by the Contractor in clause 13.1(a) will be reduced proportionally to the extent that such Loss or Damage is due to any unlawful or wrongful act or omission of Lutheran Services.

#### **13.2 Indemnity for officer and employees**

The indemnity given in clause 13.1(a) is also given for the benefit of, and is held on trust for, the officers and employees of Lutheran Services.

### **14. Confidentiality and privacy**

#### **14.1 Confidentiality**

- (a) This Agreement and all information gained by either party relating to the business and affairs of the other, shall be kept strictly confidential and shall not be divulged to any person, other than to a party's officers and employees and professional advisers on a strict 'need-to-know' basis or as may be required by applicable law, without the prior written consent of the other party.
- (b) Each party must take reasonable steps to ensure that its officer, employees, agents and contractors comply with the substance of its obligations under this clause 14.1
- (c) The Contractor must not make any statement or issue any information, publication or document or article for publication concerning this Agreement in any media without the prior written consent of Lutheran Services.

#### **14.2 Personal Information**

The Contractor must:

- (a) comply with its obligations under the Privacy Laws in respect of the Care Recipient's Personal Information;
- (b) ensure that the Care Recipient's Personal Information is protected against loss and unauthorised access, use, modification, disclosure or other misuse;
- (c) ensure that access to the Care Recipient's Personal Information is restricted to those of its Personnel who require access in order to perform the Services under this Agreement;
- (d) not use or disclose the Care Recipient's Personal Information other than for the purpose of performing its obligations under this Agreement, unless required by law;
- (e) not disclose or transfer any of the Care Recipient's Personal Information outside of Australia with the prior written consent of Lutheran Services;

- (f) fully co-operate with Lutheran Services to enable Lutheran Services to respond to any application for access to, or amendment of, a document containing a Care Recipient's Personal Information and to privacy complaints;
- (g) immediately notify Lutheran Services upon becoming aware of:
  - (i) any breach of clause 14;
  - (ii) any unauthorised access, use, modification, disclosure or other misuse of any of the Care Recipient's Personal Information collected or accessed in connection with this Agreement;
  - (iii) any potential or suspected eligible data breach (as that term is defined in the Privacy Laws);
- (h) not notify any Care Recipient or the Office of the Australian Information Commission of any potential or suspected breach of the Privacy Act relating to the Care Recipient's Personal Information collected or accessed in connection with this Agreement, without the written consent of Lutheran Services (or unless required by law); and
- (i) ensure that its Personnel comply with the same obligations imposed on the Contractor under this clause 14.2.

Nothing in this clause 14 is intended to limit any obligation of the Contractor under the Privacy Laws.

## **15. GST**

### **15.1 GST Act**

In this clause words that are defined in *A New Tax System (Goods and Services Tax) Act 1999* have the same meaning as their definition in that Act.

### **15.2 Exclusive of GST**

Except as otherwise provided by this clause, all consideration payable under this Agreement in relation to any supply is stated as exclusive of GST.

### **15.3 Recipient must pay**

If GST is payable in respect of any supply made by a supplier under this Agreement, subject to clause 15.4 the recipient will pay to the supplier an amount equal to the GST payable on the supply at the same time and in the same manner as the consideration for the supply is to be provided under this Agreement.

### **15.4 Tax invoice**

The supplier must provide a tax invoice to the recipient before the supplier will be entitled to payment of the GST payable under clause 15.3.

## **16. Dispute Resolution**

### **16.1 Condition precedent to litigation**

Subject to clause 16.4, a party to this Agreement must not commence court or arbitration proceedings relating to a Dispute arising from this Agreement unless the party has attempted to resolve the Dispute in accordance with this clause 16.

### **16.2 Negotiation**

- (a) If a Dispute arises from this Agreement, a party to the Dispute (**Referring Party**) must give notice of the Dispute to the other party (**Dispute Notice**).
- (b) The Dispute Notice must:

- (i) be in writing;
- (ii) state that it is given pursuant to this clause 16; and
- (iii) include or be accompanied by reasonable particulars of the Dispute.
- (c) Within 10 Business Days of the Referring Party giving the Dispute Notice, senior representatives from each of the parties must meet to attempt to resolve the Dispute and must negotiate reasonably and in good faith to resolve the Dispute as promptly as possible.
- (d) Each party warrants that their senior representative has full authority to resolve any Dispute.

### **16.3 Continuance of performance**

Despite the existence of a Dispute, the parties must continue to perform their respective obligations under this Agreement.

### **16.4 Summary or urgent relief**

Nothing in this clause 16 will prevent a party from instituting proceedings to seek urgent injunctive, interlocutory or declaratory relief in respect of matters which are the subject of a Dispute.

### **16.5 Termination**

Nothing in this clause 16 limits the rights of each party to terminate this Agreement.

## **17. Termination**

### **17.1 Termination by notice**

Each party may terminate this Agreement at any time by providing at least 30 days' prior written notice to the other party.

### **17.2 Termination by Contractor**

- (a) The Contractor may terminate this Agreement by written notice to Lutheran Services if Lutheran Services defaults in the performance of a material obligation under this Agreement, and in the case of a default capable of remedy, fails to remedy such default within 10 Business Days of receiving from the Contractor written notice specifying such default and requiring such default to be remedied.
- (b) Where the Contractor issues a written notice of termination under clause 17.2(a), the termination will take effect 10 Business Days from the receipt by Lutheran Services of the notice of termination.

### **17.3 Termination by Lutheran Services**

- (a) Lutheran Services may immediately terminate this Agreement by written notice to the Contractor if:
  - (i) the Contractor defaults in the performance of any or all of its obligations under this Agreement and, in the case of a default capable of remedy, fails to remedy such default within 10 Business Days of receiving from Lutheran Services written notice specifying such default and requiring such default to be remedied;
  - (ii) subject to any law to the contrary, an Insolvency Event occurs in relation to the Contractor, any of its shareholders or a related body corporate of the Contractor;
  - (iii) the Contractor acts or fails to act in a manner which Lutheran Services reasonably considers to be offensive or is disruptive or detrimental to Lutheran Services' business or reputation;
  - (iv) the Contractor breaches a warranty given under this Agreement;

- (v) Lutheran Services has reasonable cause to believe that the Contractor has (or its Personnel have) been involved in theft or other criminal acts or any physical or emotional abuse perpetrated upon a Care Recipient; or
- (vi) a Change in Control of the Contractor occurs without the written consent of Lutheran Services.

#### **17.4 Consequences of expiry or termination**

- (a) If this Agreement is terminated under this clause 17, then, in addition to any other rights, power or remedies provided by law:
  - (i) subject to clause 17.4(a)(ii), each party is released from its obligations under this Agreement other than in relation to this clause 17 and any other clauses which survive termination; and
  - (ii) each party retains the rights it has against the other party in connection with any breach or claim that has arisen before termination.
- (b) On termination or expiration of this Agreement:
  - (i) to avoid doubt, each Order Form which is current at the date of termination or the End Date is terminated from the date of termination or End Date, as applicable;
  - (ii) the Contractor must immediately, at its own cost, return or deliver up to Lutheran Services all material and property concerning or belonging to Lutheran Services, including any Care Recipient list, names, operating procedures of Lutheran Services and all of Lutheran Services' forms and other documents, in the possession or control of the Contractor or its Personnel. The Contractor must not retain any copies (in any form) of such material (except copies which it is required by law to retain); and
  - (iii) the parties must take all reasonable steps to ensure the orderly transition of Services to alternative arrangements, if required by Lutheran Services.

### **18. Notices**

#### **18.1 Service of notice**

A notice or other communication required or permitted under this Agreement to be served on a person must be in writing and may be served:

- (a) personally on the person;
- (b) by leaving it at the person's current address for service;
- (c) by posting it by prepaid post addressed to that person at the person's current address for service;
- (d) by facsimile to the person's current number for service; or
- (e) by email to the person's current email address for service.

#### **18.2 Particulars for service**

- (a) The particulars for service of each party are set out on page one of this Agreement under the heading Parties.
- (b) Any party may change the address, facsimile or email number for service by giving notice to the other parties.
- (c) If the person to be served is a company, the notice or other communication may be served on it at the company's registered office.

#### **18.3 Time of service**

A notice or other communication is deemed served:

- (a) if served personally or left at the person's address, upon service;
- (b) if posted within Australia to an Australian address, two Business Days after posting and in any other case, seven Business Days after posting;
- (c) if served by facsimile, subject to clause 18.3(e), at the time indicated on the transmission report produced by the sender's facsimile machine indicating that the facsimile was sent in its entirety to the addressee's facsimile;
- (d) if served by email, subject to clause 18.3(e), at the time the email containing the notice left the sender's email system, unless the sender receives notification that the email containing the notice was not received by the recipient;
- (e) if received after 5.00pm in the place of receipt or on a day which is not a Business Day, at 9.00am on the next Business Day.

## **19. Modern slavery**

### **19.1 Modern Slavery Laws**

The Contractor must ensure that:

- (a) in performing its obligations in connection with the Agreement, the Contractor must and will ensure that its Representatives must:
  - (i) not engage in any conduct or omission which may contravene any Modern Slavery Laws; and
  - (ii) comply with any Lutheran Services policy relating to modern slavery; and
- (b) it does all things required or necessary to mitigate or reduce modern slavery risks in its operations and supply chains and stay in compliance with all applicable Modern Slavery Laws.

### **19.2 Contractor contractual commitment**

The Contractor must use reasonable endeavours to ensure the terms of the contractual commitment entered into with any Personnel engaged by the Contractor to provide goods or services in connection with this Agreement, permit termination of such commitments where the Contractor has reasonable grounds to believe there has been, or is likely to be, a breach of any applicable Modern Slavery Laws.

### **19.3 Modern slavery warranties**

The Contractor represents and warrants to Lutheran Services that:

- (a) neither the Contractor nor its Representatives:
  - (i) have been convicted of any offence involving modern slavery and human trafficking; and
  - (ii) having made reasonable enquiries, to the best of its knowledge, have been or are the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of any Modern Slavery Laws; and
- (b) it conducts its business in a manner that is consistent with Modern Slavery Laws.

### **19.4 Contractor obligations**

- (a) The Contractor must:
  - (i) implement due diligence procedures for its own suppliers, and other participants to ensure that there is no, or there is no risk of, slavery or human trafficking or similar types of conduct in its supply chains;

- (ii) to the fullest extent possible, require its suppliers to implement their own binding guidelines for ethical behaviour and compliance with Modern Slavery Laws;
  - (iii) promptly notify Lutheran Services as soon as it becomes aware of a potential, suspected or actual breach by it or its Representatives of any Modern Slavery Laws in connection with the Agreement; and
  - (iv) cooperate in good faith with Lutheran Services in investigating the circumstances relevant to any potential, suspected or actual breach of any Modern Slavery Laws, whether or not notification has been given under this Agreement.
- (b) If Lutheran Services knows of or has reasonable grounds to suspect a past, present or potential breach by the Contractor or its Representatives of any applicable Modern Slavery Laws or any of their own policies relating to modern slavery, in connection with the Agreement, Lutheran Services may give notice in writing to the Contractor requiring an explanation, copies of documents, and access (for the purposes of interview by internal or external lawyers) to the Contractor's Representatives.
  - (c) The Contractor must give such assistance and access to the documents and the Contractor's Representatives as Lutheran Services may reasonably require under clause 19.4(b) and must provide (at the Contractor's cost) all reasonable assistance (including the provision of information) to Lutheran Services in order to allow them to comply with Lutheran Services' obligations under the Modern Slavery Laws.
  - (d) The Contractor must establish and maintain policies and procedures to ensure that the Contractor and its Representatives comply with the obligations set out in this clause 19.4. The Contractor must ensure that its policies and procedures as contemplated in this clause 19.4 contain requirements that training will be provided to the Contractor's Representatives, as the case may be, in relation to the matters addressed by those policies and procedures.

#### **19.5 Audit**

- (a) Lutheran Services may conduct the following audits of the Contractor's compliance with clause 19 and Modern Slavery Laws:
  - (i) as scheduled at least once every three months upon reasonable notice by Lutheran Services and conducted during normal business hours; and
  - (ii) as determined by Lutheran Services on an unscheduled basis without notice and conducted during normal business hours,

**(Modern Slavery Audits).**
- (b) The Contractor agrees to cooperate reasonably when Lutheran Services is conducting a Modern Slavery Audit, including providing:
  - (i) information and documents;
  - (ii) access to its premises, including but not limited to any operational, leisure and residential facilities; and
  - (iii) access to its Representatives, including for the purposes of conducting an interview.

#### **19.6 Remediation action**

- (a) If the Contractor is in breach of this clause 19, Lutheran Services may notify the Contractor of the breach and require within 20 Business Days that it undertake remedial action to rectify the breach, ensure its compliance with Modern Slavery Laws and minimise the risk of modern slavery within the Contractor's supply and value chains.
- (b) If the Contractor fails to undertake the remedial action as required in clause 19.6, Lutheran Services may terminate this Agreement with immediate effect by giving written notice to the Contractor.

## **20. General**

### **20.1 Amendment**

This Agreement may only be varied or replaced by a document duly executed by the parties.

### **20.2 Entire understanding**

This Agreement contains the entire understanding between the parties as to the subject matter contained in it. All previous agreements, representations, warranties, explanations and commitments, expressed or implied, affecting this subject matter are superseded by this Agreement and have no effect.

### **20.3 Legal costs and expenses**

Each party must pay its own legal costs and expenses in relation to the negotiation, preparation and execution of this Agreement and other documents referred to in it, unless expressly stated otherwise.

### **20.4 Waiver and exercise of rights**

- (a) A single or partial exercise or waiver of a right relating to this Agreement does not prevent any other exercise of that right or the exercise of any other right.
- (b) No party will be liable for any loss or expenses incurred by another party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

### **20.5 Assignment and subcontracting**

- (a) The Contractor must not:
  - (i) assign or otherwise deal with this Agreement or any right under this Agreement; or
  - (ii) subcontract to any person the performance of any of its obligations under this Agreement,without the prior written consent of Lutheran Services.
- (b) Notwithstanding any consent under clause 20.5(a)(ii), the Contractor remains responsible for performing its obligations under this Agreement and for the acts or omissions of its subcontractors.
- (c) Lutheran Services may assign or otherwise deal with this Agreement or any right under this Agreement without the prior consent of the Contractor.

### **20.6 Indemnities**

The indemnities in this Agreement are continuing obligations, independent from the other obligations of the parties under this Agreement and continue after this Agreement ends. It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity under this Agreement.

### **20.7 Inconsistency**

If an Order Form is inconsistent with the terms of this Agreement, this Agreement will prevail to the extent of the inconsistency.

### **20.8 Operation of surviving provisions**

Clauses 7.1(h), 9, 10, 11, 13, 14, 15, 16 and 19 survive the expiry or termination of this Agreement.

### **20.9 Governing law and jurisdiction**

This Agreement is governed by and is to be construed in accordance with the laws of Queensland. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction



of the courts of Queensland and waives any right to object to proceedings being brought in those courts.

#### **20.10 Legislation**

In this Agreement, a reference to a statute includes subordinate legislation under it and amendments, re-enactments or replacements of any of them.

#### **20.11 Severance**

- (a) If a provision in this Agreement is held to be illegal, invalid, void, voidable or unenforceable, that provision must be read down to the extent necessary to ensure that it is not illegal, invalid, void, voidable or unenforceable.
- (b) *If it is not possible to read down a provision as required in this clause, that provision is severable without affecting the validity or enforceability of the remaining part of that provision or the other provisions, in this Agreement.*

#### **20.12 Counterparts**

This Agreement may be executed in any number of counterparts all of which taken together constitute one instrument.

#### **20.13 Business Day**

If a payment or other act is required by this Agreement to be made or done on a day which is not a Business Day, the payment or act must be made or done on the next following Business Day.

#### **20.14 Interpretation**

In this Agreement, a reference to:

- (a) the singular includes the plural and vice versa;
- (b) a gender includes the other genders;
- (c) the word "person" includes an individual, a firm, a body corporate, a partnership, a joint venture, an unincorporated body or association or any government authority;
- (d) a person includes the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
- (e) a document includes any variation or replacement of it; and
- (f) the word "including" is not used or interpreted as a word of limitation and when introducing an example, does not limit the meaning of the words to which the example relates or examples of a similar kind.

# Schedule 1 – Service Rates

- Each service will have their own Schedule of Fees.
- When onboarding a client, please request the Schedule of Fees from your local Meals on Wheels Service Provider as each service is unique and have their own schedule of fees and meals / menu's that they provide.

# Signing page

EXECUTED as an agreement.

Executed by **Lutheran Church of Australia  
Queensland District ABN 30 051 602 996  
(Lutheran Services)**  
in accordance with Section 127 of the *Corporations Act  
2001*



Signature of authorised officer

Chris Edwards, Financial Controller, 10 August 2022

Name of authorised officer, position and date



Signature of Witness

Michelle Deo

Name of witness (print)

Executed by **Queensland Meals on Wheels Ltd  
ABN 63 104 919 974** in accordance with Section 127  
of the *Corporations Act 2001*



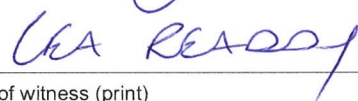
Signature of authorised officer

EVANN HILL, CEO, 11/8/22

Name of authorised officer, position and date



Signature of Witness



Name of witness (print)