



OSCAR Plus

Terms & Conditions

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1. Commencement of Services



- a. A binding agreement between OSCAR Care Group and the Client shall take effect from the date on which OSCAR Care Group commences the Services and shall continue until terminated in accordance with this Agreement.
- b. The Agreement will automatically extend for a further 12 months upon expiration of the Term (and any subsequent extension) unless otherwise agreed in writing between the parties or either party terminates this Agreement in accordance with clause 15 below prior to the automatic extension.
- c. The Client acknowledges and agrees that this Agreement does not constitute an exclusive retainer for any of the services offered by OSCAR Care Group. OSCAR Care Group reserves the right to provide its services to other customers or aged care, retirement living or child care providers including, but not limited to, competitors of the Client.
- d. The agreement shall only consist of (in order of priority) the terms and conditions in this Agreement, any Schedules here to, any applicable quotation and any other document expressly referenced herein. Any quotation will be valid for 30 days from the date of issue. OSCAR Care Group reserves the right to correct any error or omission in a quotation or invoice.

2. Provision of Services

- a. The Services shall consist of:
 - i. The provision of the OSCAR Plus Software to the Client by OSCAR Care Group ("Licensed Software");
 - ii. The provision of the OSCAR Temperature Monitoring System to the Client by OSCAR Care Group;
 - iii. the provision of Services to the Client by OSCAR Care Group, which shall include; Operations support, Catering and hospitality services, Food Safety Auditing, Training – onsite or online, OSCAR Buying Group,
 - iii. the provision of Services to the Client by OSCAR Care Group, which shall include; Allied Health services including Dietetics, Speech Pathology, Physiotherapy
- b. Services and information included in this Agreement shall be listed in Schedule A.
- c. OSCAR Care Group may at any time, by mutual agreement with the Client, vary the scope of the services referred to in Clause 2 above.
- d. Each party warrants that it is duly authorised and capable of entering and fulfilling its obligations under this Agreement.
- e. For the purposes of this Agreement an Authorised User means an employee, agent or representative of the Client;
 - i. who the Client has authorised to access or use the Services as stated in Schedule A and
 - ii. who the Client has ensured (by way of covenant, undertaking, contract or agreement) will comply with all of their obligations under this Agreement.

3. Obligations of OSCAR Care Group

OSCAR Care Group:

- a. will provide the Services with due care, skill and diligence and will determine the manner in which the Services are provided;
- b. will provide the Services in accordance with any applicable OSCAR Care Group approved policy;
- c. will use commercially reasonable efforts to ensure that:
 - i. the Services are available with minimal downtime;
 - ii. the Client is given at least 48 hours notice of scheduled maintenance and at least 2 hours notice of unscheduled maintenance where such maintenance will affect the provision of access to the Services; and
 - iii. helpdesk responds within 24 hours on weekdays to requests made by Authorised Users to OSCAR Care Group's nomination contact point.
- d. will not, save as otherwise provided in this Agreement;
 - i. access or use Client Data except as necessary to maintain, update or provide the Services, or as necessary to comply with the law or a binding order of a government body; or
 - ii. disclose Client Data to any third party; or
 - iii. transfer Client Data from the regions selected by the Client without prior notice. OSCAR Care Group acknowledges that it is the Client's preference that all Client data shall be stored within Australia throughout the term of this Agreement.
- e. shall use all reasonable efforts to fully inform itself of the Client's requirements during the performance of Services;

- f. does not warrant that access to the Services will be continuous or uninterrupted;
- g. will not be responsible for any loss of access, loss of confidentiality, loss of integrity or failed transmission of any Client Data which is not solely attributable to the actions of OSCAR Care Group, its employees or authorised agents; and
- h. shall not be responsible for any delays, errors or failures that are not solely attributed to OSCAR Care Group.

4. Obligations of the Client

The Client:

- a. will provide such access, information and assistance as may be reasonably required by OSCAR Care Group to enable it to provide the Services. If the Client fails to perform their obligations under this clause they will be in breach of the Agreement and OSCAR Care Group may terminate the Agreement in accordance with the termination procedure outlined in clause 15.c.iii below;
- b. must comply with OSCAR Care group's requests and directions in relation to the security of the Services, Licenced Software or Licenced Materials;
- c. will ensure, and is solely responsible for ensuring, except as otherwise stated in this Agreement or the Licensed Materials, that Client Data and its use of the Services, Licenced Software and Licenced Materials comply with any laws, regulations, codes, by-laws, policies and procedures and standards applying to the Client and its Authorised users;
- d. agrees that it is solely responsible for providing and maintaining the network connections, telecommunications links and internet connections to the Services, and will ensure that its systems, hardware and software are suitable for the Services, Licenced Software and Licenced Materials;
- e. agrees that it is solely responsible for:
 - i. any security arrangements for its Authorised Users in using the Services, Licenced Software and Licenced Materials including, without limitation, ensuring that persons who cease to be its Authorised Users are removed or otherwise denied access;
 - ii. the supply of Client Data, including its accuracy, completeness and currency;
 - iii. nominating the regions (as may be made available by OSCAR Care Group in its sole discretion), if any, in which it wants Client Data to be stored; and
 - iv. ensuring that it and its Authorised Users comply with all their obligations under this Agreement.
- f. warrants that it has not relied upon any representation made by OSCAR Care Group other than as set out in this Agreement, and that it has come to its own independent conclusions as to the fitness of the Services for the purposes it contemplates;
- g. will indemnify OSCAR Care Group in relation to any loss or damage, whether direct or indirect, which is suffered by OSCAR Care Group as a result of a breach of this Agreement by the Client.

5. OSCAR Plus Development Stage

If, and only if, the box in Item 8 of Schedule A of the service agreement is marked with the word 'Applicable' then the provisions in this clause will apply to this Agreement, and will supersede any other clause in this Agreement to the extent of any inconsistency;

- a. for the avoidance of doubt, the entirety of this Agreement applies for the duration of its Term from the Commencement Date.
- b. either party may terminate this Agreement during the Development Period in accordance with Clause 15 below.

OSCAR Care Group:

- c. will waive all Fees (but not Expenses) for its provision of the Services for the duration of the Development Period only;
- d. will provide the Services gratuitously and subject to any restriction OSCAR Care Group may impose in its absolute discretion including, without limitation, restrictions on the packaged function;
- e. OSCAR Care Group commits to ensure all training and support is applicable during the Development Period.

The Client:

- f. The Client agrees to use the Services to enable OSCAR Care Group to test, further develop and analyse the results achieved.
- g. The Client also acknowledges that standard package and subscription costs will be applicable once the Development period ceases and a further mutual contractual arrangement is applied.

6. Reports and Meetings

- a. OSCAR Care Group will provide the Client with relevant training reports, attendance information and progress reports from time to time as agreed between the parties in writing;
- b. OSCAR Care Group will attend meetings with the Client at intervals agreed by the parties in writing, or at such other times as reasonably required by the Client.

7. Fees, Expenses and Payment

- a. The Fees charged to the Client by OSCAR Care Group for the provision of the Services are set out in Item 7 of Schedule A to this Agreement and shall be billed to the Client in accordance with the clause 7.d below;
- b. Any reasonable Expenses, as described in Item 10 of Schedule A to this Agreement, incurred or paid by OSCAR Care Group shall be reimbursed by the Client in accordance with clause 7.d and 7.e below;
- c. The Fees and Expenses are exclusive of any applicable taxes, duties and charges unless otherwise stated, and the Client agrees to pay the Fees and reimburse the Expenses to OSCAR Care Group together with any applicable taxes, duties and charges.
- d. At the beginning of each calendar month OSCAR Care Group shall issue the Client an invoice for the Fees and Expenses of the immediately preceding month which relate to the provision of the Services under this Agreement or any Expenses thereby incurred or paid by OSCAR Care group ("invoice").
- e. The Client will pay invoices issued by OSCAR Care Group under clause 7.d above within 14 days of the date of said invoice and will otherwise make payment of the amount specified on the invoice in the manner described on the invoice itself or as otherwise agreed by the parties in writing.
- f. OSCAR Care Group may at any time give the Client 30 days written notice ("Fee Notice") that new fees will be implemented effective from the next invoice to be issued following the expiration of the 30 day notice period.
- g. The Client will be liable for any debt recovery costs incurred by OSCAR Care Group on an indemnity basis. The Client is not entitled to set off or withhold any amounts claimed under an invoice.
- h.

8. Registration and Insurances

Each party will ensure that it complies with all applicable laws, regulations, directions and/or relevant authorities. Each party will maintain the appropriate level of Public Liability insurance, Products Liability insurance and Professional Indemnity insurance as required and be able to present evidence when requested.

9. Occupational Health & Safety

Each party shall comply with all applicable laws, regulations, and policies with respect to Occupational Health and Safety. Without limitation, the Client will ensure that it complies with applicable occupational health and safety requirements in respect of OSCAR Care Group's onsite personnel.

10. Liability

- a. OSCAR Care Group excludes all implied conditions and warranties to the maximum extent permissible by law and limits its liability (at its option) to resupplying the particular service, or refunding the amount paid.
- b. To the maximum extent permitted by law, neither party shall be liable to the other party (whether by way of indemnity, damages or otherwise) for any indirect, incidental, or consequential loss, loss of revenue or profits, business interruption, loss of data or failure to realise anticipated savings or benefits whatsoever incurred by or awarded against the party liable arising in any way out of or in relation to this Agreement.
- c. In any event, OSCAR Care Group's total cumulative liability (including for negligence) shall not, to the maximum extent by law, exceed the Fees paid by the Client as at the date of the event causing liability.

11. Confidentiality

- a. Subject to this clause, each party agrees that it and its officers, employees, agents, and contractors will keep at all time as strictly confidential any Confidential Information that is disclosed or provided to it by or on behalf of the other party.
- b. Confidential information includes any information marked as confidential or as a reasonable person in the position of the recipient might expect to be confidential, including without limitation technical,

business, or financial information, all customer names and lists, sales records, marketing research and reports and other marketing information, trade secrets, know how, operating procedures and computer software code or programming.

- c. The confidentiality obligations of the parties will not extend to information already in the public domain other than due to a breach of this Agreement or any disclosure required or permitted by law.
- d. All confidential information will remain the property of the party providing it and (where possible) will be returned to the owner promptly after termination. These confidentiality obligations will survive termination of this Agreement.

12. Privacy

- a. OSCAR Care Group will collect, use and disclose and protect the Personal and Sensitive Information (as defined by *Privacy Act 1988* ("Personal and Sensitive Information")) provided to it at any time by the Client, in accordance with its privacy policy located at www.oscarcaregroup.com.au.
- b. The Client must only collect, use and disclose Personal and Sensitive Information provided to it at any time by OSCAR Care Group in compliance with the *Privacy Act 1988* and only for the primary purpose for which such information was provided to the Client.
- c. Should either party become aware of a data breach affecting either of their data bases which may expose any individual to a risk of serious harm, it shall immediately inform the other party and both parties shall take all responsible steps to remedy the risk of serious harm, which may involve notifying affected individuals and notifying relevant authorities in relation to such data breach.
- d. The Client must ensure that all Personal and Sensitive Information it provides to OSCAR Care Group is accurate, complete and current.
- e. The Client warrants and represents to OSCAR Care Group, that prior to providing any Personal and Sensitive Information to OSCAR Care Group, it has obtained consent from all individuals, or where relevant, their next of kin to provide such information to OSCAR Care Group.
- f. OSCAR Care Group's Privacy Policy contains information about how a Client may access or seek correction of its Personal and Sensitive Information, how to file a complaint and how OSCAR Care Group will deal with such a complaint. OSCAR Care Group's Privacy Policy is located at www.oscarcaregroup.com.au.

13. Software Licence

- a. OSCAR Care Group provides the Client with the Licenced Software as a limited, non-exclusive, non-assignable, revocable licence (without the right to sub-licence) for the Client to use only in accordance with the terms of this Agreement or as otherwise agreed by the parties in writing.
- b. In respect of the Licenced Software the Client will not, unless in accordance with the terms of this Agreement or as otherwise agreed in writing between the parties:
 - i. use the Licenced Software for purposes other than internal business purposes;
 - ii. cause or allow the Licenced Software or any of its components, programming, code, features or functionalities to be reverse-engineered, disassembled, de-compiled, replicated, copied or reproduced;
 - iii. allow the Licenced Software to be used by, or disclosed to, any person who not an Authorised user;
 - iv. provide access to any part of the Licenced Software to third parties;
 - v. sell, resell, licence or sub-licence access to the Licenced Software, or archive, modify, reproduce, redistribute, display, perform, publish, licence, create derivative work from, offer for sale to any person, or frame or mirror the Licenced Software or any part of it;
 - vi. access or use the Licenced Software in order to build a competing product or service, or to copy any feature or function of the Licenced Software;
 - vii. circumvent, remove, amend, deactivate, degrade or thwart any security protections on the Licenced Software, or attempt to do so;
 - viii. introduce any malicious code or damaging content, information or material to the Licenced Software, or otherwise send or transmit, destroying or limiting the Licenced Software's (or the Authorised Users') functionality or OSCAR Care Group's, the Clients, or a third party's computing systems or networks;
 - ix. interfere with or disrupt access to or use the Licenced Software by anyone authorised by OSCAR Care Group;

or permit or procure anyone else to do so. The Client acknowledges and agrees that OSCAR Care Group is under no obligation to monitor any information or material, including any user data, the Client transmits or otherwise makes available through the Licenced Software; however OSCAR Care Group has the right to do so, and to remove any information or material, including any user data, from the Licenced Software at any time in its sole discretion.

14. Intellectual Property

- a. Intellectual Property means all documents, materials and information, whether registered or unregistered, in Australia or throughout the world, that are owned or used by either party including, without limitation, trade marks, copyright and neighbouring rights, all rights in relation to inventions and designs, any other intangible proprietary rights whether registered or not including rights in get-up and business names, design rights, rights to registered domain names and rights to use, and protect the confidentiality of, Confidential Information (include know how, trade secrets, and datasets).
- b. Intellectual Property in any material provided by either party (whether pre-existing or created in connection with the Services or this Agreement) will remain the sole and exclusive property of the party providing it.
- c. OSCAR Care Group grants the Client a limited, non-exclusive, non-assignable, revocable licence (without the right to sub-licence) to use such of its Intellectual Property that OSCAR Care Group specifies in writing ("Licenced Material"). The Licenced Material is provided strictly for the Client's internal business purposes.
- d. The Client grants OSCAR Care Group a non-exclusive, royalty-free licence to use and reproduce its Intellectual Property for the purpose of providing the Services.
- e. Each party warrants that it is entitled to provide its materials to the other party and shall indemnify that other party against claims in respect of intellectual property infringement brought against that party by third parties, and a party who becomes aware of any potential infringement or claim shall promptly inform the other party.

15. Termination

- a. This Agreement will terminate upon completion of the Term (and any agreed Extension) as set out in Schedule A.
- b. Either party may terminate this Agreement for any reason upon providing 30 days written notice to the other party ("Termination Notice"), with such termination being effective on and from the 31st day after the receipt or deemed receipt of the Termination Notice.
- c. Either party may terminate this Agreement by written notice with immediate effect if:
 - i. the other party undergoes to pay its debts as and when they fall due, enters liquidation or external control, or is declared bankrupt (in the case of a natural person); or
 - ii. an event beyond its reasonable control occurs which prevents the reasonable and timely performance of their obligations under this Agreement (including, but not limited to, acts of God, war, famine, flood, lightning, tempest, cyclone, strikes, terrorist acts, sabotage and malicious damage) and such an event continues for 60 days; or
 - iii. the other party breaches this Agreement and fails to rectify that breach within 14 days of the receipt or deemed receipt of a written notice from the terminating party detailing the breach and requiring its rectification ("Breach Notice")
- d. On termination, each party shall immediately return all the other party's Confidential Information and Intellectual Property in its possession, and any outstanding Fees and Expenses due to OSCAR Care Group shall become immediately due and payable. Termination shall not affect the accrued right and remedies of either party.

16. Miscellaneous

- a. This Agreement is deemed to be made on the state/s of Australia and the parties submit to the exclusive jurisdiction of the courts of that/those State/s.
- b. Each party warrants and represents that it is duly authorised and fully capable of entering into this Agreement and performing its obligations hereunder;
- c. Any disputes under this Agreement are to be resolved between the parties acting commercially and reasonably. Should the parties fail to resolve the dispute the parties will engage a qualified mediator to mediate the dispute before taking steps to initiate any legal proceedings.

- d. OSCAR Care Group may vary the Services from time to time and communicate this with the Client when relevant.
- e. Where a provision, term, clause, phrase, or word of this Agreement is, or renders the Agreement, void or unenforceable, the same may be severed without affecting the remainder.
- f. This Agreement consists of the entire agreement between the parties and supersedes all prior representations and agreements between the parties in relation to its subject matter. The Client warrants this is has not relied upon representation made by OSCAR Care Group other than as set out in this Agreement.
- g. The relationship of the parties is the Client as principal and OSCAR Care Group as independent contractor. Nothing in this Agreement shall be construed so as to render the parties' relationship one of employment, partnership, joint venture, or agency.
- h. The omission or forbearance of a party in relation to any of its rights under this Agreement, including rights in relation to a breach of this Agreement, is not to be construed as a waiver of those rights or its rights to sue in respect of any breach.
- i. OSCAR Care Group may subcontract the provision of the Services and may assign its rights under this Agreement at its sole discretion.
- j. Any notices permitted or required to be given under this Agreement must be in writing and delivered by hand, post, facsimile, or email to the recipient's current address.

CONFIDENTIAL