



DATED

DAY OF

2015

**PERSONAL ALERT SYSTEMS REBATE SCHEME
PROVIDER PANER DEED**

between

MINISTER FOR COMMUNITIES AND SOCIAL INCLUSION

- and -

[INSERT PARTY NAME]

ACN [INSERT]



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SCHEDULES

THIS DEED is made on the _____ day of _____ 2015

BETWEEN:

MINISTER FOR COMMUNITIES AND SOCIAL INCLUSION a body corporate pursuant to the *Administrative Arrangements Act 1994* (SA) of Level 8 Terrace Towers, 178 North Terrace Adelaide 5000 in the State of South Australia ("**Minister**")

AND

[insert name.....] CAN..... [insert] a body corporate pursuant to the *Corporations Act 2001* whose registered office is at [insert address], ("**Service Provider**")

BACKGROUND

- A. The Minister, through the Department for Communities and Social Inclusion ("DCSI") administers the Personal Alert Systems Rebate Scheme ("PARS") in South Australia. The aims of PARS is to help Eligible Persons obtain such approved financial support towards the cost of a personal alert system and related services, allowing them to live independently in their own homes for longer using the benefits of such a system and related services.
- B. The success of PARS is reliant upon the participation of providers of personal alert systems across South Australia.
- C. The Service Provider is a provider of personal alert systems to the people of South Australia.
- D. The Minister has sought, and the Service Provider has agreed to participate in PARS pursuant to the terms and conditions of this Deed.

THE PARTIES AGREE AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

- 1.1.1 "**Code of Fair Information Practice**" means DCSI's Code of Fair Information Practice and any amended form of it, which is based on the National Privacy Principles. The Code provides a consistent approach to the handling of personal information between DCSI, the private sector and other Government jurisdictions and enables DCSI to meet external Government, business and community expectations;
- 1.1.2 "**Commencement Date**" means the date set out in Item 1 of Schedule 1;
- 1.1.3 "**DCSI PARS Approvals Database**" means the DCSI approved PARS Approval Database that lists the Eligible Persons as administered by DCSI;

- 1.1.4 **“Eligible Person/s”** means a natural person that is eligible to receive the benefits of PARS and is named in a Letter of Approval as issued by DCSI from time to time;
- 1.1.5 **“Expiry Date”** means 30 June 2017;
- 1.1.6 **“GST Act”** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);
- 1.1.7 **“GST”** means the tax imposed under the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);
- 1.1.8 **“Insolvency Administration”** means:
- (a) an administrator is appointed to the Service Provider or action is taken to make such an appointment;
 - (b) the Service Provider resolves to be wound up;
 - (c) an application is made to a court for an order or an order is made that the Service Provider be wound up (whether on grounds of insolvency or otherwise);
 - (d) the Service Provider ceases to carry on business;
 - (e) a receiver or a receiver and manager of property of the Service Provider is appointed whether by a court or otherwise;
 - (f) an application is made to a court for an order appointing a liquidator or provisional liquidator in respect of the Service Provider or one of them is appointed, whether or not under an order;
 - (g) the Service Provider enters into a compromise or arrangement with its creditors or a class of them; or
 - (h) the Service Provider is or states that it is unable to pay its debts when they fall due.
- 1.1.9 **“Letter of Approval”** means a letter or other approved document as issued by DCSI from time to time that notifies the Eligible Person that they have been approved for a rebate under PARS;
- 1.1.10 **“Minister’s Representative”** means the person specified in Item 2(a) of Schedule 1 or any other such person notified to the Service Provider in writing by the Minister from time to time;
- 1.1.11 **“Personal Information”** means information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about a natural person whose identity is apparent, or can reasonably be ascertained, from the information or opinion.
- 1.1.12 **“Service Provider”** includes Service Provider’s Staff where appropriate to the context;
- 1.1.13 **“Service Provider’s Representative”** means the person specified in Item 2(b) of Schedule 1 or any other such person notified to the Minister in writing by the Service Provider from time to time;

- 1.1.14 **“Service Provider’s Staff”** means any person employed or engaged (and includes any person subcontracted under clause 11.8) by the Service Provider;
- 1.1.15 **“Specified Equipment and/or Services”** means any of the items listed in the table of Specified Equipment and Services in Schedule 2;
- 1.1.16 **“Subsidy”** means the payments made by the Minister to the Service Provider under this Deed;
- 1.1.17 **“Tax Invoice”** has the meaning attributed in the GST Act and for the purposes of this Deed means a tax invoice in an approved form that summarises the claims made for past relevant period and complies with clause 7.4 of this Deed.

1.2 Interpretation

Subject to any inconsistency of subject or context, the following rules of construction will be used in the interpretation of this Deed:

- 1.2.1 any word importing the plural includes the singular and vice versa;
- 1.2.2 any word importing a gender includes all other genders;
- 1.2.3 a reference to a body corporate includes a natural person and vice versa;
- 1.2.4 a reference to a recital, party, clause, schedule or annexure is a reference to a recital, party, clause, schedule or annexure of this Deed;
- 1.2.5 the captions, headings, section numbers and clause numbers appearing in this Deed are inserted only as a matter of convenience and in no way affect the construction of this Deed;
- 1.2.6 a reference to a statute includes all statutes amending, consolidating or replacing the statutes referred to;
- 1.2.7 the paragraphs listed in the Background are correct and form part of this Deed; and
- 1.2.8 anything which is expressed to be done or performed by the Minister shall be properly and lawfully done or performed if so done or performed by any officer or agent of the Minister who is duly so authorised.

2. CONTRACT ADMINISTRATION

- 2.1 The Service Provider’s Representative and the Minister’s Representative have authority to:
- 2.1.1 exercise all of the powers and functions of their respective party under this Deed, other than the power to amend this Deed; and
- 2.1.2 bind their respective party in relation to any matter arising out of, or in connection with, this Deed.
- 2.2 Either party may, by giving fourteen (14) days written notice to the other, change their Representative.

3. **TERM**

This Deed commences on the Commencement Date and ends on the Expiry Date (the “Term”) unless that period is mutually extended or otherwise terminated under this Deed.

4. **OBLIGATIONS OF THE SERVICE PROVIDER**

The Service Provider must:

- 4.1 supply Specified Equipment and/or Services as selected by the Eligible Person but only upon the Service Provider:
 - 4.1.1 having sighted the Eligible Person’s Letter of Approval; and,
 - 4.1.2 having recorded the name of the Eligible Person and the unique identifying number referred in the Letter of Approval in the Service Provider’s records;
- 4.2 at all times:
 - 4.2.1 ensure all promotional material and advice to Eligible Persons about PARS acknowledges the South Australian Government as the administrator of PARS and provider of PARS rebates;
 - 4.2.2 not represent themselves as owners or administrators of PARS;
 - 4.2.3 refer all queries about eligibility to PARS to DCSI and not in any way indicate or appear to indicate to any person that they may be approved as an Eligible Person for PARS;
 - 4.2.4 provide DCSI contact information on all promotional material it uses;
 - 4.2.5 only publish a link to www.sa.gov.au website or direct to the PARS application form on the sa.gov.au website to ensure the most current form is used at all times;
 - 4.2.6 not claim that the supplied Specified Equipment and/or Services guarantees an ambulance or “triple zero” response;
- 4.3 not disclose, divulge or permit any of the Service Provider’s Staff to disclose or divulge any Personal Information relating to any Eligible Person other than where such disclosure is permitted or required by law;
- 4.4 comply with and implement DCSI’s Code of Fair Information Practice as well as such related policies, principles and guidelines or such directions at the request of the Minister;
- 4.5 use such reasonable measures to prevent a breach of the Code of Fair Information Practice to the satisfaction of the Minister regarding any Personal Information held or acquired under this Deed;
- 4.6 not seek or demand extra costs from Eligible Persons for Specified Equipment and/or Services in relation to any extra costs incurred by the Service Provider as a result of any errors or variations in the supply of the Specified Equipment and/or Services;

-
- 4.7 ensure that the Eligible Persons receive the benefit of the Subsidy in any bill issued to them regarding the cost for the Specified Equipment and/or Services;
- 4.8 where there is a monetary difference between the rebate applicable to the Eligible Person as set out in the Letter of Approval and for any Specified Equipment and/or Services as selected by the Eligible Person, collect that monetary difference direct from the Eligible Person;
- 4.9 ensure that if the Service Provider's charges for any Specified Equipment and/or Services supplied to the Eligible Person is less than or equal to the value of the rebate due to the Eligible Person as per the Eligible Person's Letter of Approval, then no payment will be due by the Eligible Person to the Service Provider for any of the Specified Equipment and/or Services supplied;
- 4.10 at no further cost to the Minister and as soon as practicable, provide the Minister (electronically via DCSI) with all current information on any Specified Equipment and/or Services (including but not limited to product information, specifications and current prices) that is sufficient and accurate using the current DCSI approved format and webstyle sheets so that DCSI can update the PARS website and to permit third parties accessing that website to view or compare any information submitted by any provider for the Specified Equipment and/or Services;
- 4.11 only issue a Tax Invoice to the Minister on a basis agreed to with DCSI, being no more frequent than weekly and no less frequent than quarterly, for the Specified Equipment and/or Services that have been supplied to Eligible Persons containing sufficient particulars satisfactory to the Minister that:
- 4.11.1 lists the Specified Equipment and/or Services supplied in the immediately preceding period covered by the invoice, and
 - 4.11.2 has the name and unique identifying number of the Eligible Person against each item of Specified Equipment and/or Service supplied, and
 - 4.11.3 for each item of Specified Equipment and/or Services supplied by the Service Provider, the Service Provider certifies that:
 - (a) it or the Service Provider's Staff has sighted and recorded the unique identifying number and Eligible Person's name from the Eligible Person's Letter of Approval as per clause 4.1;
 - (b) the Specified Equipment and/or Services were supplied to the Eligible Person;
 - (c) the following information has been recorded and is available on request:
 - (i) the names of the Service Provider's Staff that supplied the relevant Specified Equipment and/or Services and sighted the unique identifying number on the Eligible Person's Letter of Approval;
 - (ii) the date of supply of the Specified Equipment and/or Services;

- (iii) any such other information as the Minister may require from time to time and in any format as required by the Minister including via an online system.
 - (d) the claim made for the reimbursement of the Subsidy component for any Services sought for each Eligible Person is limited to the value of the Subsidy attributable to such Services that have been supplied to that person for up to and equal to one calendar month as at the date of the relevant Tax Invoice.
 - (e) no claim has been made seeking in advance the payment of the Subsidy for the supply of relevant Specified Equipment and/or Services.
- 4.12 only issue a Tax Invoice for Monitoring Services to the Minister on a quarterly basis, in arrears after the Monitoring Service has been provided, for the Specified Services that have been supplied to Eligible Persons containing sufficient particulars satisfactory to the Minister that:
 - 4.12.1 lists the Specified Services supplied in the immediately preceding quarter covered by the invoice, and
 - 4.12.2 has the name and unique identifying number of the Eligible Person against each item of Specified Service supplied, and
 - 4.12.3 for each item of Specified Services supplied by the Service Provider, the Service Provider certifies that:
 - (a) it or the Service Provider's Staff has sighted and recorded the unique identifying number and Eligible Person's name from the Eligible Person's Letter of Approval as per clause 4.1;
 - (b) the Specified Services were supplied to the Eligible Person;
 - (c) the following information has been recorded and is available on request:
 - (i) the names of the Service Provider's Staff that supplied the relevant Specified Services and sighted the unique identifying number on the Eligible Person's Letter of Approval;
 - (ii) the date of supply of the Specified Services;
 - (iii) any other such information as the Minister may require from time to time and in any format as required by the Minister including via an online system.
 - (d) the claim made for the reimbursement of the Subsidy component for any Services sought for each Eligible Person is limited to the value of the Subsidy attributable to such Services that have been supplied to that person for up to and equal to one quarter as at the date of the relevant Tax Invoice.
 - (e) no claim has been made seeking payment of the Subsidy in advance for the supply of relevant Specified Services.

- 4.13 The Service Provider must at their cost implement and continue to meet any requirement on the Service Provider or the Service Provider's Staff as is determined by and at the request of the Minister from time to time.

5. OBLIGATIONS OF THE MINISTER

- 5.1 Subject to this clause, within thirty (30) days of receipt of a correctly completed Tax Invoice issued by the Service Provider pursuant to clause 4.11, the Minister must pay to the Service Provider, the Subsidy.
- 5.2 If the Minister disputes any portion of a Tax Invoice, the parties must make their best endeavours to resolve the dispute. Once resolved, the Minister must pay any further amount that the parties agree is outstanding within fourteen (14) days of such resolution.
- 5.3 The Minister is not obliged to make any payment under this Deed unless the Service Provider has provided a correctly completed Tax Invoice in respect of that payment.
- 5.4 The Minister will not pay:
- 5.4.1 the Subsidy in advance
 - 5.4.2 the Subsidy other than in quarterly instalments for Monitoring Services
 - 5.4.3 the Subsidy for Specified Equipment or installation services other than at the frequency agreed to in 4.11;
 - 5.4.4 the Subsidy for any items that are not Specified Equipment and/or Services or not expressly listed in the Table of Specified Equipment and Services;
 - 5.4.5 for any amount claimed in respect of any upgrades in any equipment or services selected by the Eligible Person; and
 - 5.4.6 for any extra costs incurred by the Service Provider as a result of any errors or amendments to Equipment or Services howsoever caused.
- 5.5 Where an amount claimed in any Tax Invoice that has been submitted to the Minister represents an advance payment for Services to be supplied to an Eligible Person, the Minister may elect to recover that amount from the Service Provider or set off that amount against any subsequent tax invoice.
- 5.6 If the Service Provider submits any information under clause 4.10, the Minister via DCSI will, on receipt of the same, update its web page for PARS within five business days.

6. SERVICE PROVIDER'S STAFF

The Service Provider acknowledges and agrees that the Service Provider:

- 6.1 is liable for all remuneration, claims and other entitlements payable to the Service Provider's Staff; and
- 6.2 must comply with all relevant laws arising out of or in connection with this Deed and includes but is not limited to their dealings with any person (including any Eligible Person) seeking information on PARS or the use of or whenever using the Specified Equipment or Services.

7. GOODS AND SERVICES TAX

- 7.1 The Subsidy is inclusive of all government rates, duties, taxes and charges except GST.
- 7.2 Specified Equipment or Services marked with a “*” in the Table of Fees is GST inclusive whereas all other Specified Equipment and Services are GST exclusive.
- 7.3 The Service Provider represents that:
- 7.3.1 it is registered under the *A New Tax System (Australian Business Number) Act 1999* (Cth), and that the ABN shown in the Schedule is the Service Provider’s ABN;
 - 7.3.2 it is registered under the ANTS GST Act; and
 - 7.3.3 the supply of services under this Deed will be a Taxable Supply.
- 7.4 The Service Provider acknowledges that should any of the representations in subclause 7.3 be or become incorrect, the Minister may be obliged under any law to deduct a withholding from the Subsidy and will not be obliged to gross up the Subsidy pursuant to clause 7.5, or make any other compensation to the Service Provider.
- 7.5 In respect of any GST exclusive Specified Equipment or Services, if the supply of that Specified Equipment or Service is a Taxable Supply within the meaning of the *A New Tax System (Goods and Services) Act 1999* then the Subsidy will be grossed up by multiplying it by one hundred and ten percent (110%).
- 7.6 If the Minister sets off an amount against another tax invoice in accordance with clause 5.5, the Service Provider must make such adjustments to the extent required under the ANTS GST Act.

8. RECORDS AND REPORTS

- 8.1 The Service Provider must keep true and accurate records containing all information relating to:
- A. the making of any claim made under this Deed or
 - B. the supply of any Specified Equipment and/or Service, including the name and unique identifying number of each Eligible Person supplied with Specified Equipment and/or Services or subcontractors used.
- This information must be provided to DCSI in any format requested by the Minister, including via a DCSI approved online system.
- 8.2 All records must be kept and maintained in South Australia.
- 8.3 For the purpose of monitoring the Service Provider's performance of its obligations under this Deed, the Minister may require the Service Provider to produce these records for inspection by the Minister by giving the Service Provider 24 hours written notice of this requirement.
- 8.4 The Minister may make copies of any records required to be kept under this clause.

- 8.5 The Service Provider must also provide to the Minister at no cost to the Minister such reports (in an acceptable format) as required by the Minister from time to time in respect of the claims made by the Service Provider or other matter required or performed under this Deed.

9. DISPUTE RESOLUTION

9.1 If:

9.1.1 either party is not satisfied with the other party's performance of its obligations under this Deed; or

9.1.2 the parties are unable to agree on any matter on which they must agree in relation to the provision of the Specified Equipment or Services

either party may give the other party written notice expressing the nature of its dissatisfaction or its position in relation to the matter in question.

9.2 Within 7 days of receipt of the notice a representative of each party must meet and make their best endeavours to resolve the dispute.

9.3 If the dispute is not resolved within 14 days of the meeting referred to in clause 9.2, it must be immediately referred to the most senior executive of each party and they must personally or through their nominated delegates (each of whom must be senior to the persons nominated in clause 9.2), meet within 48 hours and make their best endeavours to resolve the dispute.

9.4 If the matter is not resolved within a further 14 days either party may refer it to arbitration, or, if the dispute is of a technical nature the parties must consult a person who is an independent expert in its subject matter.

9.5 Any costs incurred under clause 9.4 will be borne equally by the parties.

10. TERMINATION

10.1 The Minister may terminate this Deed immediately by notice in writing to the Service Provider if:

10.1.1 the PARS ceases;

10.1.2 the Service Provider defaults in the performance of its obligations under this Deed and fails to rectify such default within thirty (30) days of receiving written notice from the Minister specifying the default and requiring rectification;

10.1.3 the Minister forms the opinion that the Service Provider will be unable to perform its obligations under this Deed;

10.1.4 the Service Provider enters into any form of Insolvency Administration; or

10.1.5 the Service Provider assigns or purports to assign its rights under this Deed without the prior written consent of the Minister.

10.2 Any termination of this Deed is without prejudice to the rights and remedies of the Minister which may arise prior to the date of such termination.

- 10.3 If the Minister terminates this Deed prior to the expiry of the Term the Service Provider will not be entitled to any payment (including payment by way of compensation) other than payments due for Specified Equipment and/or Services supplied in accordance with this Deed prior to the date of termination.
- 10.4 Notwithstanding any other provision of this Deed, the Minister may terminate this Deed at its absolute and sole discretion immediately upon written notice to the Service Provider.

11. GENERAL

11.1 Disclosure of Contracts

The Minister may disclose this Deed in either printed or electronic form and either generally to the public or to a particular person as a result of a specific request. Nothing in this clause derogates from the Service Provider's obligations under any provision of this Deed or from the provisions of the *Freedom of Information Act 1991 (SA)*.

11.2 Auditor-General

Nothing in this Deed derogates from the powers of the Auditor-General under the *Public Finance and Audit Act 1987 (SA)*.

11.3 Exclusion of Implied Relationships

11.3.1 Nothing in this Deed constitutes any relationship of employer and employee or partnership between the parties.

11.3.2 Neither party has the authority to act for or to incur any liability or obligation on behalf of the other party except as expressly provided in this Deed or, without first obtaining the express written consent of the other party.

11.4 Entire Agreement

This Deed is the entire agreement between the parties with respect to the PARS.

11.5 No Waiver

No waiver by a party of any part of this Deed is binding unless it is made expressly and confirmed in writing.

11.6 Variation

This Deed may be varied at any time by mutual agreement in writing by both parties to this Deed.

11.7 Effect of Failure to Enforce Rights

A failure or omission by a party to strictly enforce its rights under this Deed does not amount to a waiver of those rights.

11.8 Sub-contracting

The Service Provider may sub-contract such monitoring or installation services provided that at all times any subcontractors to be used or retained must at their cost comply with any requirements made under clause 4.12. Otherwise the Service Provider may not sub-contract any other component of the Services under this Deed.

11.9 No Assignment

11.9.1 The Service Provider must not assign any of its rights under this Deed without the prior written consent of the Minister.

11.9.2 For the purpose of this clause, a change of either:

- (a) 51% the legal or beneficial shareholding; or
- (b) the effective control of the ownership or the management of the Service Provider

will be deemed to be an assignment.

11.10 Severance

If any provision of this Deed is void or unenforceable that provision may be severed and the remaining provisions will continue in full force and effect.

11.11 Governing Law and Jurisdiction

This Deed is governed by and is to be construed in accordance with the laws in force in South Australia and the parties submit to the jurisdiction of its Courts.

11.12 Costs

Each party is responsible for its own costs in relation to the negotiation and execution of this Deed.

12. NOTICES

12.1 All notices required or permitted to be given under this Deed:

12.1.1 must be in writing and addressed to the recipient; or

12.1.2 may be delivered by hand, by pre-paid letter or by facsimile transmission or other agreed electronic means,

at the relevant address documented in Item 2 of Schedule 1, as the case may be.

12.2 The notice will be deemed to have been served, if served by hand, when delivered, if by post, 48 hours after posting, and if by facsimile, upon receipt of confirmation of successful transmission.

EXECUTED AS AN DEED

SIGNED FOR and on behalf of)
MINISTER FOR COMMUNITIES AND)
SOCIAL INCLUSION)
By

[Print Name]))
[Authorised Persons Signature]
being a person duly authorised in that regard,)
in the presence of:)

.....
Witness
[Print Name:]

THE COMMON SEAL of)
)
[insert name and ACN of Service Provider])
)
was affixed to this Deed in)
the presence of:)

..... **DIRECTOR** **DIRECTOR/SECRETARY**
.....
Print name Print name

OR
EXECUTED by)
in accordance with Section 127 of the)
Corporations Act 2001 and its Constitution)

.....
Signature of Director Signature of Director/Secretary*
.....
[Print Name of Director] [Print Name of Director/Secretary*]
(*delete the inapplicable)

SCHEDULE 1

Item 1 Commencement Date

[eg, upon execution of the Deed or on a particular day]

Item 2 Representatives

(a) Minister's Representative & address for notices

[insert details]

.....

ABN

Telephone:

Facsimile:

(b) Service Provider's Representative & address for notices

[insert details]

.....

ABN

Telephone:

Facsimile:

SCHEDULE 2

[insert "Table of Specified Equipment and Services" applicable to the Service Provider]

(Ensure items are marked GST inclusive or GST exclusive)