

Aligned General Terms of Service

1. Introduction

- 1.1 **Umbrella Solutions: Umbrella Solutions Pty Ltd ABN 20 637 149 565 (Umbrella Solutions)** is responsible for providing Aligned.
- 1.2 **Other information:** These General Terms of Service refer to Pricing Information and Aligned Description (together, **Other Information**). If any Other Information conflicts with these General Terms of Service, the General Terms of Service will prevail to the extent of such inconsistency.
- 1.3 **Applicable terms:** These General Terms of Service and the Other Information (together, the **Terms**):
- (a) set out the terms on which Umbrella Solutions will provide Aligned; and
 - (b) governs the Customer's access to and use of Aligned.
- 1.4 **Changes to Terms:**
- (a) Umbrella Solutions may make changes to the Terms from time to time. Umbrella Solutions will publish on Umbrella Solutions' website at <https://umbrella.solutions> an updated version of the General Terms of Service and Other Information containing any changes made to them from time to time.
 - (b) Changes to the General Terms of Service and Pricing Information will be effective from the start of the calendar month following 30 days after the date the updated version is published. Changes to the Aligned Description will be effective when those changes are implemented to Aligned unless another effective date is set out in the Aligned Description. (These are **Change Effective Dates**).
 - (c) The Customer will be taken to have accepted the changes to the Terms if it continues to use Aligned from the applicable Change Effective Dates.
- 1.5 **Terms constitute contract:** The acceptance by the Customer of these Terms (including any changes to them) constitutes a contract between the Customer and Umbrella Solutions. By clicking the "Accept" button, the Customer:
- (a) warrants and represents that it has the authority to enter into the Terms; and
 - (b) accepts and agrees to the Terms.

2. Fees and payment

- 2.1 **Fees payable:** The Customer must pay the applicable fee (including any GST) set out, and according to the payment instructions, in the Pricing Information. Fees are charged each year in advance unless otherwise stated in the Pricing Information.

- 2.2 **Invoicing:** Umbrella Solutions will issue an invoice for the applicable fee charged each year in advance.

3. **Use of Aligned Badge Logo and Documentation**

- 3.1 Umbrella Solutions grants the Customer a non-transferable, non-exclusive license to use the Aligned Badge Logo and Documentation in the Customer's advertising, websites, branded products and services.
- 3.2 The Customer may not assign or otherwise transfer any of the rights or obligations under these General Terms of Service without the prior written consent of Umbrella Solutions.
- 3.3 The Customer acknowledges Umbrella Solutions' exclusive right, title, and interest in and to the trademark rights in the Aligned Badge Logos. The Customer agrees that the Customer shall not acquire any right of any kind in the Aligned Badge Logos as a result of the Customer's use other than as specified in these General Terms of Service.
- 3.4 The Customer shall not, directly or indirectly, during the term of these General Terms of Service or thereafter use the Aligned Badge Logos in any manner likely to diminish its commercial value.

4. **Termination**

- 4.1 The Customer may, at its discretion, terminate this agreement. The Customer must advise Umbrella Solutions in writing of its intention to terminate, providing a minimum of one week's notice. In the event of termination, the Customer agrees to pay Umbrella Solutions for all work performed by Umbrella Solutions to date and not already invoiced and paid for. Umbrella Solutions will provide the Customer with an invoice and time sheets covering all outstanding work. If the Customer terminates the annual subscription for Aligned, no portion of the annual fee paid will be refunded. Umbrella Solutions has the option to remove the Customer and their associated product details from the Umbrella Solutions website or to mark the Aligned status for the Customer and/or related products as expired. The Customer retains the right to use the Aligned Badge Logo for any years that a subscription has been paid for.
- 4.2 If Umbrella Solutions terminates the agreement in circumstances other than through breach of this agreement or default by the Customer, and no deliverable has been finalised for the Aligned Assessment, Umbrella Solutions will refund to the Customer monies paid to date for that service. If Umbrella Solutions terminates the agreement in circumstances other than through breach of this agreement or default by the Customer during a renewal year Umbrella Solutions will refund the portion of the fee applicable for the period of the renewal that has not been recognised. For example, if termination occurred after three months of the subscription period with nine months of the subscription period remaining then 9/12ths of the annual subscription fee paid by the Customer for that subscription year would be refunded by Umbrella Solutions.

4.3 **Termination for breach:** Without limiting any other rights of Umbrella Solutions under the Terms, Umbrella Solutions may by notice to the Customer terminate the Customer's rights to use Aligned under the Terms, and this contract, if the Customer breaches the Terms.

5. **Other Aligned terms**

5.1 **All rights reserved:** Umbrella Solutions reserves all its rights in relation to Aligned except as expressly granted under the Terms.

5.2 **Feedback about Aligned:** If the Customer chooses to provide any feedback or suggestions about Aligned (**Feedback**), the Customer assigns to Umbrella Solutions all right, title and interest in that Feedback.

5.3 **References:**

(a) Umbrella Solutions may refer to the Customer as a customer of Umbrella Solutions and a user of Aligned. The Customer and products that have been granted an Aligned status will be listed on the Umbrella Solutions website as described in the Aligned Description.

(b) For any other reference to the Customer's name, brand or trade mark(s) (**Customer Brand**) in any marketing or promotional material about Aligned and Umbrella Solutions, Umbrella Solutions will obtain the Customer's consent before referring to the Customer Brand. The Customer's consent will not be unreasonably refused or delayed.

6. **Liability and indemnity**

6.1 **Customer acknowledgements:**

(a) Except as otherwise expressly set out in the Terms, Umbrella Solutions provides Aligned "as is". The Customer uses Aligned at its risk. The Customer is responsible for satisfying itself that Aligned meets its requirements. Despite any representations that Umbrella Solutions may make in relation to Aligned, the Customer's use of Aligned does not transfer any responsibility to Umbrella Solutions in relation to the Customer's obligations to meet any legal or regulatory requirements that the Customer is required to comply with.

(b) To the extent permitted by law, Umbrella Solutions disclaims all warranties whether express, implied or otherwise, including any warranties in relation to quality, performance, accuracy, non-infringement, or that it will meet the Customer's requirements.

(c) Aligned may contain references (including website links) or direct the Customer to third party sites or applications, e.g. a third party payment gateway provider. Umbrella Solutions does not endorse, and is not responsible or liable for, the Customer's access or use of such third party sites or applications, including any Losses (as defined further below) arising from or in connection with such access or use. The Customer accesses or uses such third party sites or applications (as the case may be) at its risk. Such access or use of third party sites or applications is subject to those third parties' separate terms and conditions.

- (d) The Customer will fully indemnify and hold Umbrella Solutions harmless against all claims and proceedings arising from infringement of any third party's Intellectual Property Rights, by reason of Umbrella Solutions' publication of the Customer's products, logos and information.

6.2 Limitation of Liability

- (a) To the maximum extent permitted by law, Umbrella Solutions' maximum aggregate liability to the Customer for any loss, damage, claim, action, liability, proceeding, demand, cost, charge, expense, outgoing (Losses) sustained by the Customer arising from or in connection with the Terms, whether arising in contract, tort (including negligence), statute, equity or otherwise, is limited to the fees paid by the Customer to Umbrella Solutions for the services provided under this Aligned Terms of Service agreement.
- (b) Umbrella Solutions' liability to the Customer will not include:
 - (i) any indirect, incidental, special or consequential damages;
 - (ii) any loss of revenue, profits, anticipated profits, savings, business or data; or
 - (iii) any other commercial damages or losses.
- (c) Any representation, warranty, condition or undertaking that would be implied or imposed in the Terms by legislation, common law, equity, trade, custom or usage is excluded to the maximum extent permitted by law. Nothing in the Terms excludes, restricts or modifies any condition, warranty, right or remedy conferred or imposed by applicable law that cannot be excluded, restricted or modified by agreement. To the maximum extent permitted by law, the liability of Umbrella Solutions for a breach of a non-excludable condition or warranty referred to in this section 6 is limited to, at Umbrella Solutions' option, replacing the goods or services or paying the cost of re-supplying the goods or services.

7. Confidentiality

Any material provided to Umbrella Solutions by the Customer for use in this project and marked as confidential remains the property of the Customer, and as such, remains proprietary and confidential. Umbrella Solutions agrees not to divulge said information to any third party without written consent from the Customer.

8. Events

- (a) Non-performance by Umbrella Solutions of any obligation will be excused, without liability, for the time and to the extent that it is unable to perform that obligation due to an event or circumstances beyond the reasonable control of Umbrella Solutions (**Event**).
- (b) If Umbrella Solutions is unable to perform an obligation due to an Event, it will notify the Customer as soon as practicable setting out the cause and extent it is unable to perform the obligation, and the likely delay.

9. Definitions and interpretation

9.1 **Definitions:** Set out below are definitions of capitalised words that are not defined in the body of the General Terms of Service. Unless otherwise specified, in these Terms:

- (a) **Aged Care Quality Standards** means the quality standards as listed on the Australian Aged Care Quality and Safety Commission website at the time the Aligned assessment is completed.
- (b) **Aligned** means a service offered by Umbrella Solutions that provides an assessment program for aged care vendors to understand their product or services alignment to the Aged Care Quality Standards, as described in the Aligned Description, which may change from time to time according to the Terms;
- (c) **Aligned Badge Logo and Documentation** means the Aligned Badge logotypes as specified by Umbrella Solutions from time to time, a current version of which can be found at <https://umbrella.solutions/aligned/>; Documentation means the matrix and assessment pack provided to the Customer outlining how the Customer's product(s) or service(s) align with the Aged Care Quality Standards. The Aligned Badge Logos are only current for the year specified on the logo.
- (d) **Aligned Description** means the description of the specifications, (including features, functionality, documentation and other technical information) of the Aligned service, which may change from time to time according to the Terms. The Aligned Description is accessible at <https://umbrella.solutions/aligned/>; and
- (e) **Customer** means the purchasing individual or entity, subsidiaries, related entities (as defined in the Corporations Act 2001) including holding companies and parties that are the ultimate holding company or any company that becomes a related entity of the Customer as a result of a restructure, merger or acquisition.
- (f) **Intellectual Property Rights** means any and all existing and future intellectual and industrial property rights throughout the world, including rights in relation to copyright, trademarks, designs, circuit layouts, business and domain names, trade secrets and Know How (including the right to apply for registration of any such rights), Patent Rights and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields. To be clear, this includes source code / software.
- (g) **Pricing Information** means information detailing pricing for the use of Aligned, which may change from time to time according to the Terms. Pricing Information is accessible at <https://umbrella.solutions/aligned/>.

9.2 Interpretation

In the Terms, unless the contrary intention appears:

- (a) a reference to:
 - (i) the singular includes the plural and the plural includes the singular;

- (ii) a section is a reference to a section to these General Terms of Service;
 - (iii) a document (including the Terms) includes any variation or replacement of it;
 - (iv) a person includes a partnership, body corporate, unincorporated association or an authority;
 - (v) a party includes the party's executors, administrators, successors and permitted assigns;
 - (vi) **dollars, Australian dollars, A\$ or \$** is a reference to the lawful currency of Australia;
- (b) if a period of time dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
 - (c) if an act must be done on a given day which is not a Business Day, it must be done instead on the next Business Day. A Business Day is a day that is not a Saturday, Sunday or any other day which is a public holiday or a bank holiday in New South Wales, Australia;
 - (d) the words **include, including, for example** or **such as** when introducing an example, do not limit the meaning of the words to which the example relates to the example or to examples of a similar kind;
 - (e) headings and any index are for convenience only and do not form part of the Terms or affect its interpretation; and
 - (f) a provision of the Terms must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of the Terms or the inclusion of the provision in the Terms.

10. **General**

10.1 **Insurance**

Umbrella Solutions is a proprietary limited company and carries full workers compensation and public liability insurance.

10.2 **Notices**

- (a) Umbrella Solutions may satisfy any notice, written approval and consent requirements under the Terms by sending an email to the Customer's designated email address provided by the Customer. Notice will be treated as received by the Customer when the email is sent. The Customer is responsible for keeping the Customer's email address held by Umbrella Solutions current.

- (b) The Customer may satisfy any notice, written approval and consent requirements under the Terms by submitting a message using the following contact process <https://umbrella.solutions/contact-us/> or hello@umbrella.solutions. The Customer must not assume any notice is received by Umbrella Solutions unless the Customer receives an electronic response receipt from Umbrella Solutions.

10.3 Severability

If anything in the Terms is unenforceable, illegal or void then it is severed, and the rest of the Terms remains in force.

10.4 Waiver

A failure, delay, or relaxation by a party in exercising any power or right in relation to the Terms does not operate as a waiver of the power or right.

10.5 Relationship of parties

Nothing in the Terms creates a relationship between the parties of partnership, employment or principal and agent between the parties.

10.6 Governing law and jurisdiction

The law of New South Wales, Australia governs the Terms. The parties submit to the exclusive jurisdiction of the courts of New South Wales, Australia and any courts which are entitled to hear appeals from them.