



Terms & Conditions

For provision of services by NCI Group Australia Pty. Limited ABN 75 126 789 099 and Assure GP Pty Ltd ABN 92 658 410 747 trading as Assure Global Plus (**we/us/our**) to the client (**you/your**) identified in the proposal attached to an application for appointment (collectively, the **Appointment**).

These Terms & Conditions (**General Terms**) and each Appointment forms the basis of the agreement to provide services (**Services**) pursuant to the terms set out in these General Terms and each Appointment (**Agreement**) with you.

Acceptance of this Agreement may be by:

- (a) Signing and returning the Appointment; or
- (b) Giving us instructions after receiving the Appointment; or
- (c) Contacting us and advising of your acceptance (either orally or in writing); or
- (d) Paying us any amount requested towards our costs and outlays.

1. Appointment

- a. We will perform the Services generally in accordance with the Agreement, including each Appointment provided to you.
- b. The Appointment itself may take different forms, including a formal application form or more informal communications such as email. If there is any inconsistency between these General Terms and the Appointment, the Appointment will prevail.

2. Our Services and Fees

- a. Services
 - i. The Services that we will undertake for you will be set out in each Appointment provided to you and may be amended from time-to-time by agreement between the parties, either orally or in writing.
- b. Fees
 - i. The fees payable in relation to the Services will be set out in each Appointment provided to you as they relate to the Services (**Fees**).
 - ii. Our Fees may be charged in any of the following ways:
 1. At an hourly rate for time recorded;
 2. Fixed fees for specific services; and/or
 3. A commission in relation to contingent collections or recoveries.
 - iii. Any disbursements incurred by us in connection with the Services will be on-charged to you for reimbursement.
 - iv. Payment of our Fees must be paid by direct deposit into our nominated



bank account and otherwise is accordance with the terms specified in the Appointment.

- v. Any outstanding Fees will be deducted from any amount of a sum owing to you for which you have appointed us to recover pursuant to these General Terms, including accrued interest and costs (**Debt**) recovered from a party owing the sum to you (**Debtor**) by us (**Amount Recovered**) before distribution of the balance funds is made to you.
- c. Unpaid Fees and Interest and Costs
- i. If our Fees are not paid in full by the due date for payment, we may charge interest on the unpaid amount to be accrued daily from the date when payment becomes due until the date of payment at the rate of the **12%** per annum and interest shall compound at that rate monthly both before and after any judgment obtained by the Company.
 - ii. You are not entitled to set off, deduct or otherwise withhold payment of any amount due and owing to us including where you have disputed the Fees or alleged amounts are owed or will become owing.
 - iii. You are liable for all costs and disbursements incurred by us or our appointed agents in recovering payment of any outstanding invoice or in enforcing our rights under these General Terms, including, but not limited to, legal costs on an indemnity basis, commission and bank dishonour fees.
 - iv. We are entitled to retain any documents held on your behalf pending payment of any outstanding Fees.
- d. GST
- i. Any amount payable under this Agreement for a taxable supply will be the amount of consideration for the supply set out in the applicable invoice rendered plus any amount of GST payable in relation to that supply unless otherwise stated by us.

3. Authority to Act

- a. Upon your acceptance of the Agreement, you engage us to provide the Services and authorise us to act on your behalf in taking such action as we reasonably consider necessary to recover Debt as described in your application for appointment by us (**Application Form**).
- b. The authority includes the right for us to, as your agent and on your behalf, take any such action to recover a Debt (**Recovery Action**) as we consider appropriate for the recovery of the Debt including:
 - i. commencing recovery action against the Debtor including sending letters of demand and making telephone calls;
 - ii. engaging legal practitioners (including solicitors and barristers);



- iii. commencing proceedings instituted in a court or tribunal for the recovery of the Debt (**Court Proceedings**);
 - iv. obtaining judgment against the Debtor in relation to Court Proceedings and taking action to enforce any judgment obtained; and
 - v. such other steps as we reasonably consider appropriate to recover the Debt.
- c. You agree to sign any further authority that we reasonably require in relation to the performance of our Services and the Recovery Action that we take, including any engagement or costs agreement with legal practitioners that we engage.
 - d. You agree to pay all costs in connection with taking Recovery Action, including all associated expenses we incur in connection with the action taken by us to recover a Debt, including legal fees, barrister's fees, search fees, the cost of expert consultants and court filing and lodgement fees (**Recovery Expenses**), and agree to indemnify us, in relation to a person, a demand, claim, action, dispute or proceeding made or brought by or against the person, however arising and whether present, unascertained, immediate, future or contingent (**Claim**) made against us by a person or entity besides the Client and Agent subject to these General Terms and the Application Form (**Third Party**) in relation to payment of those Recovery Expenses.
 - e. You agree that if any Amount Recovered from a Debtor includes payment of any Recovery Expenses, you authorise us to reimburse those Recovery Expenses as a first charge against the Amount Recovered.

4. Your Obligations

- a. Obligations to comply:
 - i. You acknowledge and agree that the Services are provided on the basis that:
 - 1. all information that you have within your possession or control in relation to the Debt and the Debtor, including but not limited to documents and invoices (**Debt Information**) provided to us regarding the Debt is complete and accurate and not misleading in any way, as we will be relying upon that information being complete and accurate;
 - 2. you will not do anything that impacts on the Recovery Action or the ability to recover the Recovery Expenses;
 - 3. you will cooperate with us in relation to the Recovery Action including providing additional information and instructions when requested and sign any further documents we reasonably require in connection with the Recovery Action; and



4. you will comply with your obligations under these General Terms in relation to all matters associated with any Recovery Action that is taken (collectively, the **Client Obligations**).
- ii. You agree to comply with all the Client Obligations.
 - iii. You must indemnify us in relation to any Claim made against us or any damage, loss, cost, liability or expense of any kind and however arising (including as a result of any Claim) including penalties, fines and interest whether prospective or contingent and any amounts that for the time being are not ascertained or ascertainable (**Loss**) we suffer as result of your failure to comply with any of the Client Obligations.
- b. Communications with Debtor:
- i. You must:
 1. notify us within one (1) Business Day of receiving payment (in whole or part) of the Debt by or on behalf of the Debtor;
 2. immediately notify us if you receive any communication (whether verbal or in writing) from a Debtor regarding the Debt;
 3. notify us immediately if you have any additional Debt Information that you have not provided to us;
 4. not negotiate with or communicate with the Debtor in relation to the Debt, nor agree to accept a reduced amount of the Debt, or payment of the Debt without payment of Recovery Expenses (**Compromise**), unless we consent in writing.
 - ii. If, without our written consent, you agree with a Debtor to Compromise payment of the Debt (including for a reduced amount of the Debt or Recovery Expenses that may be recovered) then:
 1. any Fee we are entitled to receive in relation to the recovery of that Debt will be charged on the full amount of the Debt and not on any reduced amount, as if the Debt was not Compromised; and
 2. you must pay us the amount of Recovery Expenses that we incurred in relation to the collection of that Debt which can no longer be recovered from the Debtor as result of the Compromise.
- c. Settlement Agreements
- i. When we take Recovery Action we may wish to negotiate a settlement agreement with the Debtor in relation to payment of the Debt (**Settlement Agreement**).
 - ii. We will act reasonably in determining the terms of any Settlement Agreement, considering our assessment of the likelihood of



succeeding in Court Proceedings and otherwise the ability to recover payment of the Debt from the Debtor.

- iii. You agree to accept our recommendation in relation to the terms of any Settlement Agreement (which may include an agreement to compromise the Debt and accept an amount lower than the full amount of the Debt) that we propose and agree to execute any document required to record the terms of that Settlement Agreement.
- iv. You agree that if you do not accept the terms of a Settlement Agreement that we recommend:
 1. we may give you notice changing the basis upon which we will charge our Fees in relation to the recovery of that Debt;
 2. our Fees in relation to our Services for the recovery of the Debt will no longer be charged on a commission basis and that we may charge you on a time basis (at our standard hourly rates) for the Services provided up to the time that you refuse to accept the terms of the Settlement Agreement;
 3. we may recover from you any Recovery Expenses that we have incurred in relation to the recovery of the Debt;
 4. any further Services that we provide for the recovery of the Debt will be charged on a time basis and you will be responsible for paying any future Recovery Expenses that are to be incurred; and
 5. the indemnity we give you against any order of the Court made against you to pay the costs of the other party in unsuccessful Court Proceedings (**Adverse Costs Order**) will no longer apply.

5. Costs In Court Proceedings

- a. If Court Proceedings are taken on your behalf:
 - i. The Court may order the Debtor to pay your costs. You agree we may take such action as is necessary to recover payment of those costs from the Debtor;
 - ii. The court may order that you pay the Debtor's costs, in the event that you are unsuccessful in Court Proceedings, in the form of an Adverse Costs Order.

6. Security

- a. In order to secure performance of your obligations, you, and where you are unincorporated, each proprietor of yours, hereby charge/s with payment of the monies and compliance with all obligations owed by you all beneficial interests (freehold and leasehold) in real and personal property held now or in the future by you or your proprietor.



- b. You, and where applicable, your proprietors, agree that if demand is made upon it, him or her by us, you or, if applicable, those proprietors, will immediately execute a consent to caveat, or a caveat or mortgage, as required by us to secure the obligations pursuant to this clause 6. You or, if applicable, each proprietor, irrevocably and by way of security appoints us and any director, credit manager or solicitor engaged by us to be its, his or her true and lawful attorney to give effect to this clause 6 including but not limited to execute and register all documents.
- c. We can retain your money, property and documents until all money due to us has been paid, including after this Agreement terminates, to the extent permitted by law. This right is called a lien and survives termination of this Agreement, and survives any bankruptcy or liquidation.

7. Termination of this Agreement

- a. You may terminate this Agreement and the delivery of our Services if we commit a material breach our obligations under these General Terms and do not remedy that breach within 30 days of being given written notice to do so.
- b. We may terminate this Agreement and the delivery of our Services, and immediately cease all Recovery Action, if you:
 - i. breach these General Terms or anything contained in the Application Form, including but not limited to breaching any of the Client Obligations;
 - ii. require us to act unlawfully or unethically;
 - iii. do not promptly give us adequate instructions or Debt Information whenever we request;
 - iv. fail to accept or agree to the terms of a Settlement Agreement that we propose; or
 - v. become an externally administered body corporate within the meaning of the Corporations Act.
- c. Without prejudice to any other remedies available to us, if you become insolvent or appoint an administrator, receiver, receiver and manager, liquidator or trustee in bankruptcy or are in breach of any these General Terms (including any term for payment), all monies become immediately due and owing to us and we may immediately:
 - i. terminate or suspend supply of Services;
 - ii. ; and/or
 - iii. recover from you any loss of profits arising from the your default.
- d. If this Agreement is terminated by either party, you agree that we are entitled to all Fees up to the termination and will be entitled to retain possession of all documents in our possession until we have received payment of those Fees.



You acknowledge and agree that we have such a lien over your documentation.

- e. If we terminate this Agreement because of your breach or default, then:
 - i. we may recover from you our Fees and all Recovery Expenses incurred to the date of termination on the same basis as set out in clause 4(b)(ii); and
- f. If we exercise our rights pursuant to clause 7(c) above, we are not liable to you for any consequential loss or damage suffered by you.

8. Dispute Resolution

- a. Any dispute in relation to the Services, shall at our option, proceed by way of mediation with a mediator appointed by us. You are not entitled to commence proceedings unless we elect not to proceed with mediation, or the mediator provides consent for you to do so.
- b. For the avoidance of doubt, this clause will not prevent us from instituting legal action at any time to recover monies owing by you to us.

9. Authority to Release Funds

- a. You revocably agree and authorise us to direct payment of any Amount Recovered to pay our Fees and the amount of any Recovery Expenses for which we are entitled to be reimbursed, from any person holding the Amount Recovered including any lawyers that we engage on your behalf as part of the Recovery Action and that we may give such an authority or direction to those lawyers on your behalf.

10. Restructure

- a. You shall provide written notice to us of any change to the structure or management of the client including change of director, shareholder, partnership, trusteeship or management or details (including changes to its name or address). If you fail to comply then you agree to indemnify us from any resulting loss.

11. Personal Responsibility

- a. In consideration of our providing the Services each person who signs the Appointment or otherwise gives us instructions to act (irrespective of the capacity or authority they had to sign the Appointment or to give us instructions), acknowledges and agrees they are jointly and severally liable for the payment of our Fees as if they were named as the Client in these General Terms or in the Appointment. Each such person agrees to indemnify us for any Loss we suffer because the Client does not pay our Fees for any reason.
- b. You agree that we may accept instructions from those persons who represent to us that they are authorised to provide instructions on behalf of the Client (for example, other directors, business partners, employees, accountants, approved



licensed Tradespeople and other advisers) and that in the case of joint Clients, we may act on instructions given by either Client.

- c. You acknowledge that we will use and rely primarily on the Debt Information that you provide without having an opportunity to independently verify or assume responsibility for the accuracy or completeness of such information.

12. Privacy Authority and Consent

- a. You agree and expressly consent to us undertaking the following activities to the extent permitted by law:
 - i. provide any items of your personal information described in section 18E of the *Privacy Act 1988* (Cth) to a credit reporting agency;
 - ii. obtain a consumer credit report about you from a credit reporting agency to assess any credit application or proposed guarantee or collect overdue payments;
 - iii. give credit worthiness information about you to other service providers to assess your credit worthiness or applications for credit or to notify defaults or the status of the credit.
- b. You acknowledge and agree that you are aware that you may request access to your personal information held by us. You expressly consent to us accessing your personal information in order to complete the Services.
- c. You warrant that all information referred to us is correct, accurate, and current. You further warrant that you have obtained express permission from other services providers, which may include personal information, to refer information to us or any other credit reporting agency.
- d. You agree and expressly consent to us sharing your personal information to our related companies and services, which may engage in direct marketing activities to you from time to time. You may choose to unsubscribe to such direct marketing activities directly with the related companies and services.

13. Referrals

- a. If you are referred to us by a Third Party, and you have engaged us to pursue recovery action pursuant to these General Terms and the Appointment, we may pay a referral fee, commission or other benefit to the Third Party for the referral.
- b. Any referral fee, commission or other benefit payable to the Third Party will be at our expense and will not be payable by or passed on as an expense to you.



14. General Matters

a. **Amendment**

Any amendment to this Agreement, including the General Terms, must be made in writing or, if agreed verbally between us, must be confirmed in writing within a reasonable time after such verbal agreement.

b. **Confidentiality.**

All information concerning the Services referred to you is strictly confidential and must not be conveyed to any Third Party without our permission.

c. **Federal *Privacy Act 1988***

- i. You agree to preserve the privacy of personal information concerning any of our employees or employees whose personal information has been provided to you, or accessed by you, to a standard not less than that prescribed by the *Privacy Act 1988* (Cth); and additionally, to hold you as a trustee of the promise to do so for the benefit of our employees.
- ii. So far as the law allows, you must maintain the confidentiality of any information that we communicate to you. You must not use or disclose confidential information that we communicate to you without our written consent.
- iii. You must identify any information that you require us to keep confidential. If you do not properly and expressly identify information that you communicate to us as being confidential, we may use and disclose it as we think fit for the purpose of providing or offering our Services to you.
- iv. You must indemnify us against any Claims (including costs) for breach of confidentiality that may flow from our use or disclosure of it.

d. **Indemnity**

You indemnify and will keep us indemnified (on a full indemnity basis) from and against any and all Claims, liabilities, obligations, expenses or damages which we may suffer or incur as a result or in connection with the Services and this Agreement, generally.

e. **Limitation of Liability**

We expressly exclude any liability for consequential loss, incidental or indirect damages (including but not limited to damages for loss of business profits, business interruption and loss of opportunity) due to or arising from the Services. Where the law precludes such exclusion and implies certain conditions and warranties into this Agreement, our liability for breach of such condition or warranty shall be limited to the amount paid by you in respect of the Services with respect to the specific case referred to us.

f. **Goods and Services Tax**



If any amounts payable by you are subject to Goods and Services Tax (**GST**), then you are liable to pay the GST on that amount.

g. **Waiver**

A party's failure or delay to exercise a power or right does not act as a waiver of that power or right.

h. **Assignment**

You are not entitled to assign the benefits or obligations under this Agreement to any entity without our prior written consent, which may be given in our absolute discretion. We may assign all or any part of the benefits and obligations under this Agreement without the requirement for your consent.

i. **Variation**

This Agreement may not be varied except by written document signed by or on behalf of each of the parties.

j. **Notices**

Any notices under this Agreement must be in writing which may be given by personal delivery, pre-paid postage or email to the party's business address, registered office or nominated email address.

k. **Email Communication**

We may use email to communicate with you and may use the email address that you provide to us for that purpose. You release us from any liability for any loss which you might incur if an email is intercepted or corrupted during transmission or if a document which we prepare for you is altered by you or any other party without our written consent.

l. **Force Majeure.**

We shall not be or be deemed to be in default or breach of any agreement as a result of force majeure (**Force Majeure**), which shall include national emergency, war, prohibitive government regulations or any cause beyond our reasonable control including trade disputes which means that the services cannot or are delayed in being provided by us to you.

m. **Survival**

Termination of this Agreement will not release either party from any liability or right of action which at the time of expiry or termination has already accrued to either party or which may thereafter accrue in respect of any act or omission prior to such expiry or termination. Such rights may include but not be limited to the recovery of any money due.

n. **Counterparts**

This Agreement may be executed, physically or electronically, in any number of counterparts each of which shall be an original but such counterparts together



shall constitute one and the same instrument and the date of the Agreement will be the date on which it is executed by the last party.

o. Entire Agreement

This Agreement constitutes the entire agreement between the parties in relation to its subject matter and the parties agree that all prior representations, agreements, statements and understandings, whether verbal or in writing, have not been relied upon and are expressly excluded.

p. Severance

If any provision of this Agreement is wholly or partly invalid or unenforceable in any jurisdiction, that provision will be severed from this Agreement and will not affect the validity or enforceability of the remaining provisions which will continue in full force.

q. Governing Law and Jurisdiction

This Agreement is governed by the laws of Queensland and each party irrevocably submits to the exclusive jurisdiction of the courts of Queensland. Each party irrevocably waives any right to any claim of forum non conveniens, inconvenient forum, or transfer or change of venue.