# Service Agreement

**Between**

(Insert HOST Business), ABN: (insert ABN)

of *(insert address)*

 **AND**

 (Insert HOME Business) (and on behalf of the worker).

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## DEFINITIONS

**“Commencement Date”** means the date set out in Schedule 2 or such other date as is agreed by the parties.

**“HOST Business”** means the person(s) or Business specified in clause 1. The Business that will be "hosting" a worker from another organisation for a specified time.

**"HOME Business"** means the person(s) or Business specified in clause 1. The Business that offers their "Worker" to the HOST business to provide services, for a specified time.

**"Worker"** means the employee that will provide the services. The Worker will remain an employee of the HOME Business, while providing servicers for the HOST Business.

**This Agreement** is made on the  day of 2021

**Insert HOST Business Name (HOST Business),** ABN: (insert ABN), of (insert address),

and

**Insert HOME Business (and on behalf of the worker). (HOME Business)**

# RECITALS

A HOST Business:

(i) Delivers Services to clients from the Business located at (insert address); some service delivery external to the office may be required at times.

(ii) Places a high priority on improving the quality of clients’ lives through care, support or therapy and consultation with family and professionals, as well the integration of care with a range of other programs and services available at the Business;

(iii) Wishes to provide programs and services that are responsive to the needs of its clients and their families.

(iv) Wishes to enter into a Service Agreement with HOME Business whereby the Worker can utilise facilities, rooms and access management services at the Business.

B In the context of recital A, the HOME Business supports their Worker who:

(i) Wishes to operate services at the HOST Business address, utilising management services and facilities on the terms and conditions set out in this Agreement;

(ii) Wishes to provide programs and services that are responsive to the needs of its clients and their families.

C HOST Business has agreed to provide access to facilities and management services to the Worker in return for payment of the Service Fee, on the terms set out in this Agreement.

# THE PARTIES NOW AGREE AS FOLLOWS:

## 1 Commencement and Duration of Agreement

1.1 This Agreement commences on (insert commencement date).

1.2 The Services to be provided by the Worker may be provided after the Commencement Date until the Termination of the Agreement or the date as set out in Schedule 2.

1.3 Nothing in this Agreement requires HOST Business to offer the HOME Business a new agreement after expiry of this Agreement.

1.4 Any extension of this agreement will be subject to a new agreement to be negotiated between the parties.

## 2 Obligations of the HOST Business

2.1 HOST Business must:

2.1.1 Provide a WorkSafe compliant, clean and hygienic workplace for the work required by the Worker;

2.1.2 Provide appropriate room(s) or facilities at the Business to allow the Worker to provide services;

2.1.3 Provide some management services and equipment necessary for services as outlined in Schedule 3. In doing so, all equipment, instruments and supplies provided by the Business remains the property of HOST Business; and

2.1.4 Invoice the HOME Business on a fortnightly basis, the Fee as outlined in Schedule 4.

2.1.5 Provide the Worker with copies of any relevant policies and procedures implemented by the HOST Business from time to time which cover the HOST Business. These policies and procedures are not incorporated into this Agreement and do not operate to impose contractual obligations on the Business.

## 3. Obligations of the HOME Business (and on behalf of the Worker)

3.1 The HOME Business agrees to:

3.1.1 Provide the HOST business with evidence of the Workers NDIS screening as per the Practice Standards – Worker Screening Rules 2018, prior to the Workers Commencement Date.

3.1.2 Advise the HOST Business of any complaint they have become aware of from the Worker, regarding a client or a family of a client, with respect to the standard of accommodation or level of services available to that client during the life of this Agreement.

3.1.3 Advise the HOST Business that they have become aware of any adverse event impacting a client due to the service provision of the Worker during the life of this Agreement.

3.1.4 Resume the Workers employment at the HOME Business, reverting back to the Workers substantive terms and conditions including but not limited to; status, position, responsibilities and salary, at the termination date of this agreement.

3.1.5 During the term of this agreement, maintain and manage all employment records, accruals and payments with respect to statutory entitlements for the Worker relevant to their local jurisdiction and relevant Award. This includes, but is not limited to, any entitlements to salary, superannuation, leave or termination payments.

3.2 The HOME Business agrees on behalf of the Worker to:

3.2.1 Provide services only in accordance with the highest standards of care and support and in a manner, which does not interfere with the reputation of HOST Business;

3.2.2 Advise HOST Business of any complaint from a client or a family of a client, regarding the standard of facility or level of services available to that client during the life of this Agreement.

3.2.3 Advise the HOST Business of any adverse event impacting a client during the life of this Agreement.

3.2.4 Provide the services as set out in Schedule 5.

3.2.5 The Worker agrees to act in a professional manner and to conduct themselves appropriately so as not to have any negative effect on HOST Business’s reputation.

3.2.6 Leave the office in a tidy condition at the end of each of the designated sessions, with all client records and other documents securely packed away.

3.2.7 The fee structure terms as set out in this agreement. The fee structure cannot be altered without consultation and agreement with both the HOME Business and the HOST Business.

3.2.8 Immediately return all of HOST Business’ property (keys and / or any equipment in their possession or control), when the agreement expires or terminates.

3.2.9 Must Not provide services at the Business address other than as set out in Schedule 5,

3.2.10 Must not direct staff employed by HOST Business to perform tasks other than clerical, reception or administrative tasks that form part of the Management Services, as set out in Schedule 3.

## 4. Fees, Charges, Compensation, GST and Payment

4.1 HOST Business will invoice the HOME Business fortnightly in arrears for the Services provided by the Worker.

4.2 The charge for Worker Service Fee is outlined in the Schedule and will be determined at the time of this agreement. The charge will reflect the entitlements as per the Workers terms and conditions of employment with the HOME Business at the time of this agreement.

4.3 The parties agreed that the rate negotiated between HOST Business and the HOME Business is fixed for the duration of this Agreement.

4.4 The HOME Business agrees to pay all invoices issues by the HOST Business in accordance with the agreed fee structure within 14 days of receipt.

4.5 Except where this Agreement states otherwise, each amount payable under this Agreement in respect of a taxable supply by the other party is expressed as a GST exclusive amount. In addition to any amount paid or allowed by a party under this Agreement in relation to a taxable supply, that party must pay a sum equivalent to the GST payable, if any, in respect of that amount, at the same time and in same manner as the relevant amount is payable, and.

4.6 The parties agree to do everything reasonably necessary to assist the other party to comply with any GST obligations in relation to this Agreement, including issuing valid tax invoices in respect of relevant taxable supplies.

4.7 Terms used in clauses 5.2 have the same meaning as those terms in A New Tax System (Goods and Services Tax) Act 1999 (Cth).

## 5. Insurance

5.1 Prior to providing any services at the HOST Business, the HOME Business must continue its provision for the Worker and maintain this for the duration of the Agreement to an adequate amount, as agreed upon by both parties;

(a) adequate private professional indemnity insurance; and

(b) adequate public liability insurance; and

(c) any workers compensation required by law.

5.2 The HOME Business must provide HOST Business with certificates of currency for all insurance policies required under this Agreement, prior to the Commencement Date.

5.3 Nothing in this Agreement requires HOST Business to pay the cost of any of the Worker insurances.

## 6. Nature of Relationship

6.1 No party is liable for an act or omission of the other party, except to the extent set out in this Agreement. The HOME Business (and on behalf of the worker), has no authority to enter into any agreement or incur any liability on behalf of HOST Business, and must not represent to any person that they have any such authority.

6.2 The parties acknowledge that mutual goodwill should exist for the benefit of both the HOME Business, the Worker and HOST Business

6.3 The parties agree that issues should be raised and discussed by the parties as they arise.

## 7. Indemnity and Limitation on Liability

7.1 The HOME Business (and on behalf of the Worker) indemnifies HOST Business, its officers, servants, employees and agents and shall at all times keep HOST Business, its officers, servants, employees and agents indemnified against any liability, loss, claim or proceedings whatsoever (including legal costs on a full indemnity basis) arising directly from:

7.1.1 any breach of this Agreement by the Worker;

7.1.2 any breach of statute, breach of statutory duty or any unlawful or criminal act or omission by the Worker or any other person for whose acts or omissions the Worker is vicariously liable;

7.1.3 any infringement of HOST Business’ or any third party’s intellectual property rights; or

7.1.4 claims and demands resulting from any accident, damage, death or injury occurring in connection with the services provided by the Worker.

7.2 Without limiting clause 8, HOST Business will not be liable for any indirect or consequential loss, damage, costs or expenses awarded against, or incurred by the Worker under, or as a result of this Agreement, including without limitation, loss of revenue or profits, loss of goodwill, loss of information or failure to realise anticipated benefits or savings.

7.3 To the fullest extent permitted by law the HOME Business unconditionally and irrevocably releases and discharges HOST Business from all claims and liabilities outside the scope of the agreed limitations under this clause 8.

7.4 The indemnity and release contained in this clause 8 shall be continuous and survive the expiry or termination of this Agreement.

## 8. Confidentiality and Property

8.1 Except where required by law or by mutual agreement, the parties shall not divulge the terms and conditions of this Agreement to any person except his or her their legal and financial advisers.

8.2 ” Confidential Information” means any information acquired by the HOME Business and Worker in connection with the provision of the services to HOST Business's clients which is in the public domain (other than as a result of a breach of confidence). It includes information concerning HOST Business, its staff or procedures, the identity of any client of HOST Business or their condition of or the treatment received by any client of HOST Business. Both during and after the expiration of this Agreement they must maintain the secrecy of the Confidential Information except where:

8.2.1 HOST Business expressly permits the disclosure of the Confidential Information (as evidenced in writing);

8.2.2 It is necessary, on reasonable grounds, for the Worker to divulge the Confidential Information in the course of providing services; or

8.2.3 The Confidential Information is required or permitted by law to be divulged.

8.3 The HOME Business (and on behalf of the Worker) agrees that all property of the HOST Business which are relevant to the operations of HOST Business, shall remain at all times the property of HOST Business, and where relevant shall be physically returned to HOST Business immediately upon expiry or termination of this Agreement or at any other time at the reasonable request of HOST Business.

8.4 The obligations imposed by this clause shall survive the expiry or termination of this Agreement.

***9 Conflicts of Interest***

9.1 HOST Business and the HOME Business warrants that at the Commencement Date, there are no conflicts of interest actual or foreseen.

9.2 The HOME Business or Worker must immediately notify HOST Business if a conflict arises or is foreseeable. They must also notify HOST Business of their plan for resolving or minimising that conflict.

9.3 The HOME Business agrees that they will not, without HOST Business’s prior authorisation, divulge to any other person, business or corporation any information concerning the affairs of HOST Business which might reduce the effectiveness or competitiveness of the HOST Business.

9.4 The HOME Business agrees that they will not make use of information concerning the affairs of HOST Business for their own benefit or the benefit of others outside the HOST Business.

## 10 Termination of Agreement

10.1 The date of this Agreement is due to expire (insert #) months from the date of commencement.

10.2 Notwithstanding clause 11, HOST Business can terminate this agreement for any reason and at any time by giving the HOME Business one calendar months notice in writing.

10.3 The HOST Business may at its sole discretion, decide to terminate this Agreement with immediate effect by giving notice to the HOST Business, if any of the following occur:

10.3.1 The HOME Business or Worker is in breach of their obligations under this Agreement and does not remedy the breach (to the extent that it can be remedied) within five (5) Business Days after receiving a written notice from HOST Business specifying the breach and requiring it to be remedied;

10.3.2 The HOME Business or Worker is in breach of a term of this Agreement which cannot be remedied; or

10.3.3 The HOME Business or Worker has persistently been in breach of its obligations under this Agreement.

10.4 The HOST Business terminating this Agreement has no liability to compensate the other party as a result of the termination.

## 11 Conciliation

11.1 If a dispute arises between the parties arising out of this Agreement or the breach, termination, validity or subject matter of it, or as to any related claim at law, in equity or pursuant to any statute, the parties to the Agreement and the dispute expressly agree to endeavour to settle the dispute by non - court conciliation administered by the Australian Commercial Disputes Centre (‘ACDC’) prior to having recourse to arbitration or litigation.

11.2 The conciliation shall be conducted in accordance with the ACDC Guidelines for Commercial Conciliation which are operating at the time the matter is referred to the ACDC.

11.3 The Guidelines set out the procedures to be adopted, the process of selection of the conciliator and the costs involved.

11.4 Whilst the dispute resolution is in motion, the parties will do everything required under this agreement to ensure that the Services pursuant to this agreement continue to be provided.

11.5 All matters in dispute shall be treated as confidential and the terms of any settlement of the dispute shall be confidential.

11.6 The parties will resolve any disputes within a reasonable time frame and in any event, the period from the commencement of the dispute (i.e. the first meeting of the parties) to the resolution of the dispute, shall occur within 14 days, as far as is practicable.

11.7 The terms of the Guidelines are hereby deemed incorporated into this Agreement.

## 12 Force Majeure

12.1 Where a party is unable, wholly or in part, by reason of force majeure, to carry out any obligations under this Agreement and that party:

12.1.1 Gives the other party prompt written notice of that force majeure with particulars and the probable extent to which it will be unable to perform or be delayed in performing that obligation, and

12.1.2 Uses all possible diligence to remove that force majeure as quickly as possible, that obligation is suspended so far as it is affected by force majeure.

12.2 An obligation to pay money or services is not excused by force majeure.

## 13 Notices

13.1 Address for service:

All notices, requests, consents and other documents authorised or required to be given by or pursuant to this Agreement must be given in writing and either personally served or sent by mail or electronically, or by facsimile transmission addressed as follows:

 To HOST Business:

 Address: (Name of HOST BUSINESS RECIPIENT)

 (HOST BUSINESS)

(HOST BUSINESS ADDRESS)

 Telephone: (PHONE)
 Fax: (FAX)

 Email: (EMAIL)

 To the HOME Business (on Behalf of Worker):

 Address: (Name of HOME BUSINESS RECIPIENT)

 (HOME BUSINESS)

 (HOME BUSINESS ADDRESS)

 Telephone: (PHONE)

 Facsimile: FAX)

 Email: (EMAIL)

## 14 Miscellaneous

14.1 Governing Law

This Agreement is governed and construed in accordance with the laws of ( Insert State -ACT) and subject to the parties obligation to conciliate, each party submit to the non-exclusive jurisdiction of the courts of (Insert State - ACT) and any courts entitled to hear appeals from those courts.

14.2 Entire Agreement

This Agreement constitutes the sole and entire Agreement between the parties and supersedes all previous agreements, contracts and representations between the parties concerning those services. Any previous contracts between these parties are deemed to have been terminated by mutual consent effective on the Commencement Date (subject to the ongoing application of any unfulfilled payment obligations and any provisions which are specified in the previous contracts to survive termination).

14.3 Variation

This Agreement may be varied only in writing by mutual agreement.

14.4 Severability

If any clause or part of a clause of this Agreement is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this document, but the rest of this Agreement is not affected.

14.5 Accrued Rights

The ending of this Agreement does not affect any accrued rights.

14.6 Independent Legal Advice

Parties acknowledge that prior to the execution of this Agreement, parties had the opportunity to seek independent legal advice regarding the contents of this Agreement and its effect.

**Executed as an Agreement**

**Signed** on [date]

for and on behalf of **HOST Business**,

…….……………………………………………

 Signature on behalf of the Business

in the presence of:

…….……………………………………………

 (name printed in full)

 …………………………………………………

 Signature of witness

Signed on [date]

by the HOME Business

 …………………………………………

 [the HOME Business (on behalf of the Worker) signature]

 in the presence of: ………………………………………….

(name printed in full) ……………………………………………

 Signature of witness

## SCHEDULE 1:

 The Worker

|  |  |
| --- | --- |
| Name(s) of the Worker(s): |  |
| Identification Number (s)*(As per the National Disability Service* *COVID-19 Sector Support Project**data base)* |  |

## SCHEDULE 2:

DURATION OF CONTRACT

|  |  |
| --- | --- |
| Commencement date |  |
| Termination date |  |

## SCHEDULE 3:

**Facilities provided by HOST Business to the Worker under this Agreement.**

**1. General**

Access to clients and room / facilities will be provided under an agreed schedule of times per hour(s), day(s) or week(s).

**2. Resources**

HOST Business will provide the following activities and/or resources as agreed.

Provision has been made for access and use of facilities, room(s)s at the HOST business.

**3. Business Management Services**

Business Management Services includes administrative and support, and providing access to office equipment, photocopying, telephone, fax and printing on a reasonable use basis.

Resources includes:

1. Reception Services
	* Managing phone enquiries
	* Scheduling new appointments
	* Sending reminder email for appointments
	* Collect fees and issue receipts on the day of appointment, limited to the periods agreed to by the parties.
	* Meet/greet clients, limited to the periods agreed to by the parties.
2. Other, limited to the periods agreed to by the parties:
	* Furnished room for the life of the Agreement
	* Basic office stationery
	* Use of photocopier, facsimile, landline telephones
	* Internet connection and printing facilities

## SCHEDULE 4:

**Worker Fees and Instructions:**

|  |  |
| --- | --- |
| **Item** | **Fee** |
| Rate of Pay:This may be expressed as an hourly, daily or weekly rate or as deemed appropriate by both parties. | $ (Insert Rate of Pay) |
| Rate of Pay for additional services:If Applicable |  |
| Sessions external to the office | $(Insert rate) and stipulate what the additional rate covers (Travel, Domestic Assistance, Personal Care, Home Care, Social Support Services) |
| Client Assessments (if required) | $(insert rate) per (insert #) minutes |
| Report Writing (if required) | $(insert rate) per (insert #) minutes |
| During this agreement, the Worker will report to: | HOST Business Manager Name and Title: |

## SCHEDULE 5

|  |  |
| --- | --- |
| Nature of Business | Disability Service, Client / Domestic Assistance / Therapy / Personal Care / Support Services. |