

BACKGROUND

- A. The Service Provider operates and runs the Business.
- B. The Representative work for the Service Provider and is authorised to enter into this Agreement on behalf of the Service Provider.
- C. Rocqup Pty Ltd (ACN 601 023 269) (**rocqup**) agrees to promote the Service Provider's Business on the Website and on the App on the terms and conditions set out in this Agreement.

OPERATIVE PROVISIONS

1. Definitions and Interpretations

1.1 In this Agreement where the context permits; unless the contrary intention appears, the following expressions shall bear the following meanings:

- (a) **Agreement** means these terms and conditions and includes the information provided by the Service Provider and the Authorised Representative to rocqup during sign up process and from time to time;
- (b) **App** means rocqup Marketplace app;
- (c) **Authorised Representative** means the person described as a representative of the Service Provider during the sign up process or from time to time;
- (d) **Business Day** means a day other than a Saturday, Sunday or public holiday in Melbourne, Victoria;
- (e) **Business Hours** means from 9.00 am to 5.00 pm on a Business Day;
- (f) **Credit** means pre-paid amount at the value of 1 Credit equalling \$1.00;
- (g) **Credit Card** means the credit card provided by the Service Provider or the Authorised Representative from time to time;
- (h) **GST** means the same as in the GST Law;
- (i) **GST Law** means the same as in "GST law" means in the *A New Tax System (Goods and Services Tax) Act 1999*;
- (j) **Intellectual Property Rights** means any and all intellectual and industrial protection rights throughout the world including copyright (past, present and future copyright and rights in the nature of or analogous to copyright);
- (k) **Marketing Material** means any and all data, text, software, images, audio or video material and other content, in any medium, relating to the Business provided to rocqup by the Service Provider pursuant to this Agreement;
- (l) **Opening Hours** means the hours of the Business from time to time.
- (m) **Parties** means the parties to this Agreement and **Party** means any one of the Parties;
- (n) **Provider App** means the rocqup Provider app.
- (o) **Services** goods and/or services offered by the Business during the Opening Hours;

- (p) **Service Fee** means the cost of each Service provided by the Service Provider, and booked by rocqup, multiplied by 7%, including GST.
- (q) **Service Provider** means the company and/or individuals set out during the sign up process;
- (r) **Term** means the period starting on the execution of this Agreement and continues until terminated in accordance with this Agreement; and
- (s) **Website** means <http://www.rocqup.com> and <https://app.rocqup.com>.

1.2 In this Agreement, except where the context otherwise requires:

- (a) headings are for ease of reference only and do not affect the meaning of this Agreement;
- (b) the singular includes the plural and vice versa, and a gender includes other genders;
- (c) another grammatical form of a defined word or expression has a corresponding meaning;
- (d) a reference to "price" or \$ is a reference to Australian dollars and does not include GST;
- (e) a reference to time is to the time in Melbourne, Victoria, Australia;
- (f) the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions; and
- (g) a rule of construction does not apply to the disadvantage of a Party because the Party was responsible for the preparation of this Agreement or any part of it.

2. Appointment of rocqup

2.1 The Service Provider grants, for the Term, rocqup a non-exclusive licence to promote the Business and the Services using the Website and the App.

2.2 rocqup will:

- (a) promote the Business, using the Website and the App by listing:
 - (i) the details of the of the Business;
 - (ii) the Services;
 - (iii) the Opening Hours;
 - (iv) the cost of the Services; and
 - (v) promotional material about the Business as provided by the Service Provider.
- (b) using the Website and/or the App accept bookings by customers, on behalf of the Service Provider, for the Services and provide the Service Provider with the details of the accepted bookings.

2.3 rocqup, in its absolute discretion, may:

- (a) choose not to promote the Business at any time; or
- (b) determine to promote the Business on any part the Website and/or the App as determined by it.

3. Obligations of the Service Provider

3.1 The Service Provider must provide rocqup with:

- (a) a description of the Services; and
 - (b) a clear break down of the costs associated with the Services, whether such cost is based on an hourly rate or fixed per service.
- 3.2 The Service Provider must use the Provider App (or the Website) to notify rocqup of:
- (a) any changes to the Services including the cost of the Services; and
 - (b) the performance of the Services.
- 3.3 The Service Provider warrants and agrees to honour all bookings arranged by rocqup under clause 2.2(b) including all rescheduling of any bookings.
- 3.4 The Service Provider warrants to rocqup that:
- (a) any promotional material supplied to rocqup is not false, misleading or deceptive; and
 - (b) it owns all logos and Business information it has provided to rocqup.
- 4. Customer booking**
- 4.1 As contemplated by clause 2.2(b) rocqup will accept bookings on behalf of the Service Provider for the Services and at the times available during the Opening Hours.
- 4.2 rocqup must provide the Service Provider with (or make available to the Service Provider, as determined by rocqup in its sole and unfettered discretion) details of the booking including:
- (a) the details of the customer;
 - (b) time and date of the booking; and
 - (c) the cost of the Service booked.
- 5. Credits**
- 5.1 The Service Provider must purchase Credits, used to pay for the Service Fee, using the Credit Card. The Credits can be purchased by not less than 20 Credit increments.
- 5.2 The Service Provider may opt to accept the auto top up option of Credits in which case should the balance of Credits in the Service Provider's account fall to four (4) or less then rocqup will charge the Credit Card the nominated auto top up amount (if the auto top up amount is set to 20 Credits, then each time the Credit balance falls to four (4) or less Credits, rocqup will charge the Credit Card \$20 to bring the Credit balance to 20 Credits plus the balance of Credits in the account at the time of the auto top up). rocqup will notify the Service Provider of this charge.
- 5.3 rocqup may from time to time provide the Service Provider with complimentary (free) Credits in the Service Provider's account. The Service Provider acknowledges and accepts that such free and/or complimentary Credits cannot be redeemed for cash or in any way transferred to the Service Provider and in the event this Agreement is terminated such Credits will be forfeited by the Service Provider.
- 5.4 In the event the Service Provider's Credit balance is zero (0) or below the amount of the Service Fee for a

booking, and rocqup is unable to charge the Credit Card as contemplated under clause 5.1, then rocqup:

- (a) will not be obliged to accept any bookings for an on behalf of the Service Provider; and/or
- (b) in its sole and unfettered discretion terminate this Agreement.

6. Payment

6.1 The Service Provider must pay to rocqup the Service Fee for all booking for Services accepted by rocqup on behalf of the Service Provider.

6.2 The Service Fee is payable:

- (a) once the booking for the Services is made; and
- (b) even though the customer cancels the booking, noting specifically that once a booking is accepted by rocqup the Service Fee is payable in full.

6.3 rocqup will charge the Service Fee by:

- (a) deducting the value of the Service Fee from the Credits in the Service Provider's account; or
- (b) subject to clause 5.2, charging the Credit Card for the value of the Service Fee.

6.4 For the purposes of calculating the Service Fee, the cost of a Service is either the hourly rate or the fixed fee per Service as provided by the Service Provider.

6.5 The Service Provider is solely responsible for the recovery of any costs of the Services from the customers and must indemnify, and keep indemnified, rocqup in relation to all claims in relation to those costs.

7. Intellectual property

7.1 The Service Provider warrants to rocqup that it owns or has the right to licence the Intellectual Property Rights associated with the Marketing Material.

7.2 The Service Provider automatically grants to rocqup a non-exclusive, royalty-free, world-wide licence to use, copy, display and distribute the Marketing Material of its advertising or promotional material and to prepare derivative works of the Marketing Material or incorporate the Marketing Material into other works in order to publish the Marketing Material and promote the Business.

8. Credit Card

The Service Provider hereby declares that it is authorised to use the Credit Card and hereby authorises rocqup to debit the Credit Card in respect of the work performed by it under this Agreement.

9. Indemnity

- 9.1 The Service Provider indemnifies rocqup against all loss, costs, expenses, actions or claims directly or indirectly incurred or suffered by rocqup:
- (a) arising in relation to any information or material provided by the Service Provider;
 - (b) arising in relation to any breach of this Agreement by the Service Provider; and
 - (c) arising in relation to any death, personal injury or property loss or damage caused in connection with or relating to a customer that purchased the good and/or services of the Business.
- 9.2 The indemnity in clause 9.1 includes but is not limited to all loss, costs, damages and expenses incurred by rocqup in defending and/or settling any such loss, costs, expenses, actions, suits proceedings, claims or demands (including legal costs and disbursements on a full indemnity basis).

10. Customer Reviews

- 10.1 The Service Provider acknowledges and accepts that rocqup subscribers/customers may submit commentary about the Service Provider, and its Business and the Services to designated areas of the rocqup of the Website and the App.
- 10.2 The Service Provider acknowledges and agrees that rocqup is not responsible for any commentary provided by any person other than rocqup and the Service Provider holds rocqup harmless from any actions, claims, liability or loss in respect of such commentary.

11. Termination

- 11.1 Either Party may terminate this Agreement by giving not less than one (1) one month's notice in writing to the other Party. This Agreement terminates at the expiration of the period of notice.
- 11.2 In the event the Service Provider terminates this Agreement under clause 11.1, then during the said period of one (1) month rocqup will continue to accept booking on behalf of the Service Provider and the Service Fee will be payable, and at the end of which period the value of any Credits in the Service Provider's account will be refunded to the Credit Card.
- 11.3 Should the Service Provider terminate this Agreement without any notice then a termination fee of 20 Credits will be payable to rocqup by the Service Provider to cover the administrative costs of such termination.
- 11.4 In the event the Service Provider's Credit balance is less than 4 Credits for a continuous period of six (6) months without any Credit purchases, then rocqup may terminate this Agreement on one (1) month's notice however all remaining Credits shall be applied towards rocqup's administrative costs of such termination.
- 11.5 This termination by notice does not affect any claim either Party may have against the other arising out of the terms of this Agreement at the date of the termination

11.6 rocqup can terminate this Agreement by giving the Service Provider three (3) days notice, if the Service Provider:

- (a) fails to carry out any material provision of this Agreement and the failure is not capable of remedy; or
- (b) become insolvent; or
- (c) is unable to carry out the Services.

11.7 On termination of this Agreement under clause 11:

- (a) clauses 1, 5, 7, 8, and (c) continue to apply;
- (b) accrued rights and remedies of a Party are not affected; and
- (c) the Parties are released from further performing their obligations under this Agreement.

12. Assurances by the Service Provider

12.1 In addition to and despite all other warranties, express or implied, in this Agreement, the Service Provider warrants and covenants to rocqup that:

- (a) it is empowered to enter into this Agreement and to do all things that will be required by this Agreement;
- (b) the Authorised Representative is authorised to enter into this Agreement on behalf of the Service Provider;
- (c) the Service costs set out in clause 3.1(b) are true and correct costs the Service Provider charges for the Services in the usual course of the Business;
- (d) all things have been done or will be done as may be necessary to render this Agreement legally enforceable in accordance with its terms and fully valid;
- (e) no litigation, arbitration or administrative proceeding is taking place, pending or, to its knowledge, threatened against it as at the date of this Agreement which could have a material adverse effect on its ability to perform its obligations under this Agreement;
- (f) it will as soon as practicable notify rocqup of the occurrence of, or pending or threatened occurrence of, any event that:
 - (i) may cause or constitute a material breach of any of the acknowledgments, representations, warranties or covenants contained in this Agreement; or
 - (ii) could have a material adverse effect on its ability to perform its obligations under this Agreement;
- (g) no statement or representation made by it or on its behalf to rocqup in negotiations prior to this Agreement is misleading or deceptive in any material respect; and
- (h) all acts to be performed and all obligations to be discharged by the Service Provider under this Agreement will be performed or discharged with all due care and expertise.

12.2 The Service Provider in its capacity as a trustee of a trust personally and as a trustee of the trust, covenants and warrants to rocqup that:

- (a) the Service Provider has power as trustee of the trust to unconditionally execute and deliver and perform its obligations under this Agreement;
- (b) in executing this Agreement and performing those obligations the Service Provider and its officers (if any) have properly performed all their obligations to the beneficiaries of the trust;
- (c) all necessary action by the trust to authorise the Service Provider's execution of this Agreement has been taken;
- (d) the trustee has been duly appointed and has not ceased to act, resigned, retired or been removed from its office;
- (e) no action has been taken or threatened to terminate the trust, and the trust is valid and subsisting;
- (f) no order has been made by any court of competent jurisdiction and there is no litigation pending or threatened in connection with or arising out of the conduct of the trust;
- (g) the Service Provider has a right to be fully indemnified out of all of the trust property in relation to its obligations under this Agreement; and
- (h) the trust is duly constituted.

13. General Provisions

13.1 A notice under this Agreement will be sent to:

- (a) rocqup the address set out on the Website; and
- (b) the Service Provider to the address of the Business provided during sign up.

13.2 A notice may be served by giving it to the other Party personally, by registered post or by faxing it.

13.3 If the notice is:

- (a) posted by registered post it is deemed to be received by the receiving Party two Business Days after posting; and
- (b) If the notice is faxed it is deemed to be received by the receiving Party when the completed facsimile transmission report is received unless:
 - (i) the sending Party's machine indicates a malfunction in transmission or, the receiving Party within a reasonable time and in any event no later than one Business Day, informs the sending Party of an incomplete transmission; or
 - (ii) the transmission is completed outside Business Hours at the receiver's address, in which case the notice is regarded as received at the commencement of business on the following Business Day in that place.

13.4 No delay or indulgence by any Party in enforcing the provisions of this Agreement shall prejudice or restrict

the rights of that Party, nor shall any waiver of those rights operate as a waiver of any subsequent breach.

13.5 Any modification to any term of this Agreement must be in writing and signed by both Parties.

13.6 Termination of this Agreement will not end those provisions that are capable of surviving the termination of this Agreement.

13.7 This Agreement:

- (a) supersedes all previous agreements in respect of its subject matter.
- (b) embodies the entire agreement between the Parties except to the extent it is confirmed in writing and signed by the Parties;
- (c) is not to be construed to the disadvantage of a Party because that Party was responsible for its preparation;
- (d) may be executed in any number of counterparts, and all counterparts will be taken to constitute one instrument;
- (e) does not create any partnership, joint venture or agency relationship between the Parties; and
- (f) is governed by the laws of the State of Victoria and the Parties irrevocably submit to the exclusive jurisdiction of the courts of the State of Victoria, Australia and to the Federal Court of Australia sitting in Victoria.

13.8 Those clauses capable of surviving the ending of this Agreement shall continue to apply to the greatest extent possible at law.

13.9 If any provision of this Agreement is void or unenforceable, all other provisions which are capable of being given effect to shall be and continue to be valid and enforceable.

13.10 Each Party must do, and must ensure that its employees and agents do, anything (including execute any document) that the other Party may reasonably require to give full effect to this Agreement.