

Agreement for Supported Hosted Employment

Standard Terms and Conditions

1 Application

- 1.1 These terms and conditions apply to the Services as set out in an Order issued by Endeavour.
- 1.2 These terms and conditions are additional to any terms and conditions (including any special conditions) set out in the Order.
- 1.3 If Endeavour and the Host Employer have separately agreed in writing to other Endeavour terms and conditions applying to a Order, those terms and conditions will prevail over these terms and conditions to the extent of any inconsistency.
- 1.4 Where the Host Employer issues an invoice or any other document which contains terms and conditions other than these Terms and Conditions, the Host Employer issued terms and conditions will not be of any effect unless both parties agree to the Host Employer terms and conditions in writing.

2 Formation of Agreement

- 2.1 By issuing a Order, Endeavour is making an offer to the Host Employer.
- 2.2 The Host Employer accepts Endeavour's offer, and the agreement is formed, by the Host Employer accepting the Order in writing.
- 2.3 The Order, these terms and conditions, and any attachment to the Order expressly incorporated in writing will form a binding agreement between the Parties (**Agreement**).

3 Services

- 3.1 Endeavour will provide the Supported Employees and Support Workers to perform the Services from the Commencement Date.
- 3.2 The key duties and details of the Services are set out in Item 6 of the Order.
- 3.3 The Host Employer and Endeavour agree to meet their respective obligations under this Agreement as set out in the Shared Duties at Item 9 and Key Safety Duties at Item 10 of the Order.
- 3.4 A Host Employer may request a variation to the Services by providing Endeavour with a request in writing setting out the proposed variation requested.
- 3.5 Endeavour may accept or reject the variation in its absolute discretion and will communicate its response in writing to the Host Employer.
- 3.6 Endeavour will use its best endeavours to ensure that:
 - (a) the Supported Employees provided to the Host:
 - (i) have the necessary training and skill requirements, or the capability to develop the necessary skills, for performing the Services;
 - (ii) are legally entitled to work in Australia to perform the Services;
 - (iii) are able to safely perform the Services; and
 - (iv) perform the Services to the best of their skill and ability, for the Host Employer's benefit.

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- (b) the Support Workers provided to the Host Employer under this Agreement:
 - (i) have the necessary qualifications, training and skill requirements for supporting the Supported Employees;
 - (ii) are legally entitled to work in Australia to perform the work in respect of the Services; and
 - (iii) are able to safely perform the Services.
- 3.7 Endeavour warrants that, as at the Commencement Date, to the best of its knowledge the Supported Employees have no pre-existing injuries or medical conditions, other than those already disclosed to the Host Employer, that would prevent them from safely performing the Services.
- 3.8 Endeavour has discretion to remove and replace any Supported Employee and/or Support Worker supplied to the Host Employer to perform the Services at any time during the term of this Agreement.
- 3.9 The Host Employer shall provide a Workplace induction for all Supported Employees and Support Workers.
- 3.10 The Host Employer shall provide training on processes, procedures and equipment to Supported Employees and Support Workers.

4 Work Health and Safety & Reportable Incidents

- 4.1 The Host Employer is responsible for providing a legally compliant, safe and healthy workplace, and safe systems of work, for all Endeavour Employees.
- 4.2 The Host Employer is responsible for all inspections, permits and approvals required by law and for ensuring that all plant and equipment made available by the Host Employer (including motor vehicles and machinery) is registered where required and meets all applicable standards required by law.
- 4.3 The Host Employer acknowledges and agrees that it will:
 - (a) comply with all applicable occupational, health, safety environmental and associated legislation, regulations and codes of practice;
 - (b) provide a comprehensive structured Workplace and job safety induction for each Endeavour Employee;
 - (c) provide such information, instruction, training and supervision to each Endeavour Employee as necessary to ensure that any work is performed without hazards or risks to health and safety;
 - (d) ensure that the Endeavour Employees are not exposed to risks to their health or safety or to hazards arising from the work performed;
 - (e) ensure that any equipment or facilities provided for use in the performance of any work are safe and without risks to health and safety when properly used;
 - (f) ensure that systems of work and the working environment are safe and without risks to health;
 - (g) advise Endeavour prior to any change in the nature of the tasks undertaken, equipment operated, and chemicals (or other consumables) used by any Endeavour Employee;
 - (h) adequately supervise each Endeavour Employee at all reasonable times;
 - (i) promptly advise Endeavour of any incidents and injuries involving any Endeavour Employee; and
 - (j) assist in the rehabilitation of any Endeavour Employee injured at the Workplace by provision of suitable alternative duties.
- 4.4 The Host Employer acknowledges and agrees that it will ensure that none of the Endeavour Employees undertake any tasks for which they have not received adequate training.

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- 4.5 The Endeavour Representative may from time to time, attend the Workplace for the purpose of carrying out occupational health and safety inspections, safety/toolbox meetings with Endeavour Employees at the Workplace and the investigation of incidents and injuries.
- 4.6 If any issue arises concerning:
- (a) the performance of any Endeavour Employee; or
 - (b) any potential or alleged misconduct of any Endeavour Employee; or
 - (c) the health, safety or wellbeing of any Endeavour Employee,
 - (d) the Host Employer must immediately advise the Endeavour Representative and the Host Employer must provide Endeavour reasonable co-operation to enable Endeavour to deal with the matter as Endeavour considers appropriate.
- 4.7 During the term of this Agreement, where the Host Employer, or the Host Employer's employees, become aware of, or suspect, a Reportable Incident occurring, the Host Employer must immediately notify:
- (a) the Endeavour Representative; and
 - (b) any Support Worker,
- of all information relevant to the Reportable Incident, including providing Endeavour with reasonable access to the employees of the Host Employer to enable Endeavour to deal with the matter as it considers appropriate and in compliance with its obligations under the NDIS Act.

5 Endeavour's Specific Obligations

- 5.1 The Endeavour Employees are employees of Endeavour and Endeavour is responsible for the following:
- (a) payments of all amounts due under the terms of any relevant industrial instrument or employment contract;
 - (b) payment of annual leave, personal leave and long service leave;
 - (c) payment of superannuation;
 - (d) deduction of all appropriate taxation, including income tax and fringe benefits tax, and payment of payroll tax.

6 Fees and Payment

- 6.1 In consideration for the supply of the Services, the Host Employer will pay Endeavour the amount set out in the Order (**Fees**).
- 6.2 All Fees are inclusive of GST unless the Order specifies otherwise.
- 6.3 Endeavour will render invoices for the Fees each fortnight in respect of the provision of the Services for that period.
- 6.4 The Host Employer agrees to pay the Fees within 14 days of receipt of a tax invoice.
- 6.5 Failure to pay the Fees in full when due may incur a late settlement charge of 4% of the amount outstanding for each month or part month during which it is overdue until payment has been made in full.
- 6.6 Endeavour may review the Fees annually and will notify the Host Employer of any changes to the Fees. The updated Fees shall become effective on the date specified in the notice and shall apply to all Services provided thereafter.

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- 6.7 There will be an increase to the Fees line with the Annual Wage Review conducted by the Fair Work Commission under the Fair Work Act 2009 (Cth).

7 GST

- 7.1 Unless GST is expressly included, the Fees for any supply made under or in connection with this Agreement do not include GST.
- 7.2 To the extent that any supply made under or in connection with this Agreement is a taxable supply, the GST exclusive consideration to be paid or provided for that taxable supply is increased by the amount of any GST payable in respect of that taxable supply and that amount must be paid at the same time and in the same manner as the GST exclusive consideration is to be paid or provided.
- 7.3 To the extent that a party to this Agreement is required to reimburse or indemnify another party for a loss, cost or expense incurred by that other party, that loss, cost or expense does not include any amount in respect of GST for which that other Party is entitled to claim an input tax credit.

8 Confidentiality

- 8.1 Each party must keep any Confidential Information disclosed to it confidential and must take reasonable steps to ensure its security.
- 8.2 The obligation in clause 9.1 does not apply to disclosure:
- (a) where required by law; or
 - (b) to a party's officers or employees who need to know the information for the purposes of the Agreement and have been directed to keep the information confidential.

9 Privacy and Data Protection

- 9.1 Each party must comply with all applicable privacy laws in the performance of the Agreement.
- 9.2 If the Host Employer handles Data on behalf of Endeavour under the Agreement, the Host Employer must:
- (a) only use the Data for the purpose of performing its obligations under the Agreement;
 - (b) not transfer Data outside Australia without Endeavour's prior written consent;
 - (c) take reasonable and prudent measures to ensure the Data is protected from unauthorised access or damage; and
 - (d) implement and maintain effective systems, controls and other measures (including data protection plans) that comply with all relevant laws and meet accepted industry standards for data security and integrity.
- 9.3 The Host Employer must notify Endeavour immediately of any Data Threat (including providing all relevant details) and comply with Endeavour's reasonable directions with respect to protection of Data and minimising the impact of the Data Threat.

10 Liability

- 10.1 To the full extent permitted by law, in connection with the Services, Endeavour is not liable for:
- (a) any financial loss or damage;
 - (b) any loss or damage to any property; or

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- (c) for death or personal injury (to the Host Employer's personnel or another person), caused or contributed to by a Supported Employee or Support Worker (whether by negligence or otherwise).
- 10.2 Whilst Endeavour will use all reasonable endeavours to meet the Host Employer's requirements and ensure the Supported Employees have the necessary skills to perform the Services, Endeavour is not liable for any loss or damage (including Consequential Loss or damage) if Endeavour is unable to supply Supported Employees or Support Workers required by the Host Employer at any time.
- 10.3 To the extent that Endeavours' liability cannot be limited as provided in this clause, Endeavours' liability is limited to:
 - (a) Endeavour supplying the Services again; or
 - (b) Endeavour paying the actual market value cost of supplying the Services again.

11 Insurance

- 11.1 The Host Employer must hold and maintain:
 - (a) all insurances the Host Employer is required to hold by law (including worker's compensation insurance);
 - (b) public and product liability insurance to the value of no less than \$20 million;
 - (c) to the extent not already covered by the policies under clauses 12.1(a) and 12.1(b), adequate insurance to cover:
 - (i) loss or damage to the Host Employer's property, and the property of third parties, including machinery, motor vehicles, plant and equipment, where such property may be operated, handled, or used by any Supported Employee or Support Worker; and
 - (ii) liability for death, injury, or illness to the Host Employer's personnel or any third party, to the extent caused or contributed to by a Supported Employee or Supported Worker. Such insurance must extend to cover Endeavour and its Supported Employees and Support Workers and cover the full period that Services are being provided; and
 - (d) any other insurances specified in the Order.
- 11.2 The Host Employer must provide evidence of the currency of its insurance policies to Endeavour on request.

12 Assignment

- 12.1 The Host Employer must not assign this contract without the prior written consent of Endeavour.
- 12.2 Endeavour may assign the benefit of the Agreement, or warranties pursuant to the Agreement to a Related Body Corporate or third party without consent of the Host Employer.

13 Term and Termination

- 13.1 The Services commence on the Commencement Date.
- 13.2 The minimum period of a Hosting, if applicable, is set out in Item 4 of the Order.
- 13.3 Either party may terminate the Agreement by providing at least 3 months' written notice to the other party. Such notice must include reasons for the termination.

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- 13.4 The Host Employer may suspend or terminate the Services provided by any or all of the Supported Employees or Support Workers at any time by providing written notice to Endeavour if:
- (a) the Supported Employee or Support Worker engages in misconduct, negligence, or breaches the Host Employer's reasonable directions, policies, or safety requirements; or
 - (b) the Supported Employee or Support Worker does not have, or ceases to hold, the qualifications, licences, or clearances (if any) required for the Services.
- 13.5 If the Host Employer suspends or terminates the Services provided by a Supported Employee or a Support Worker under clause 14.4, the Host Employer shall promptly provide Endeavour with sufficient details of the circumstances leading to the suspension or termination (including the nature of any misconduct, negligence, unsuitability, or failure to follow directions), to enable Endeavour to manage its employment or engagement relationship with the Supported Employee or Support Worker and to comply with its legal obligations.
- 13.6 Without limiting clause 14.4, if the Services are suspended:
- (a) the parties agree to work together in good faith to resolve the circumstances giving rise to the suspension and, where possible, resuming the Services; and
 - (b) the Fee shall be adjusted on a pro rata basis to reflect the period during which the Services are suspended.
- 13.7 Either party may terminate this Agreement if the other party commits any material breach of this Agreement that is not capable of being rectified or is capable of being rectified but has not been rectified within 20 Business Days after receiving a notice requiring rectification.
- 13.8 Endeavour may terminate the Services immediately without prior notice if:
- (a) the Host Employer fails or refuses to pay the Fee invoiced to the Host Employer within 10 Business Days of payment being due, or
 - (b) there is any change which prevents Endeavour from effecting the Services, or which causes a material change to the effecting of the Services.
- 13.9 To the extent permitted by law, a party may terminate the Agreement on written notice if the other party suffers an Insolvency Event.
- 13.10 On termination or expiry of the Agreement, a party must comply with any reasonable request of the other party to return any Confidential Information of the requesting party.
- 13.11 Any accrued rights or remedies of a party remain unaffected by termination or expiry of the Agreement.
- 13.12 Clauses 8, 10, 10, 13.10, 13.11, 13.12, 14, and 17 survive termination or expiry of the Agreement.

14 Disputes

- 14.1 If a dispute arises under the Agreement:
- (a) the disputing party must notify the other party in writing of the dispute and include all relevant details;
 - (b) senior representatives of each party will meet within 20 Business Days of that notification to resolve the dispute; and
 - (c) discussions to resolve the dispute will be without prejudice.
- 14.2 If no agreement is reached by the senior representatives with 20 Business Days, a party may commence legal proceedings.
- 14.3 During a dispute, each party must continue to perform its obligations under the Agreement.

14.4 This clause does not prevent a party seeking urgent or injunctive relief.

15 Relationship Between the Parties

- 15.1 The Host Employer engages Endeavour to provide the Services as an independent contractor.
- 15.2 Neither Endeavour nor any Endeavour Employee, is the Host Employer's employee, partner, legal representative, agent, joint venturer or franchisee.
- 15.3 Neither party has any right or authority to:
- (a) bind the other party;
 - (b) assume or create any obligations for, or on behalf of, the other party; or
 - (c) make any representations or warranties for, or on behalf of, the other party.
- 15.4 No contractual relationship will exist between the Host Employer and the Endeavour Employees. However, all Endeavour Employees will be under the direct supervision of the Host Employer during the term of the Agreement.
- 15.5 The Endeavour Employees are not entitled to any benefit from the Host Employer that is usually attributable to an employee.

16 General

- 16.1 A notice given by one party to the other under the Agreement must be in writing and sent to the address of the other party set out in any Order.
- 16.2 This Agreement and any Order is governed by the laws in force in Queensland and the parties submit to the non-exclusive jurisdiction of the courts of that State.
- 16.3 This Agreement and any corresponding Order:
- (a) contains or incorporates by reference the entire agreement and understanding between the Host Employer and Endeavour, on everything connected with the subject matter of this Services; and
 - (b) supersedes and merges any prior agreement or understanding on anything connected with that subject matter.
- 16.4 Each party has entered into the Agreement without relying on any representation by any other party or any person purporting to represent that party.
- 16.5 This Agreement is not intended to create any relationship of partnership, agency or joint venture between the parties.
- 16.6 A waiver of any right arising under the Agreement must be in writing and executed by the party granting the waiver. A failure or delay in exercising a right under the Agreement does not result in a waiver of that right.
- 16.7 If any provision of the Agreement is held invalid, unenforceable or illegal for any reason, that provision is severed, and the Agreement will otherwise remain in full force and effect.
- 16.8 This Agreement and any Order may be executed by exchange of signed counterparts, including both counterparts that are executed on paper and counterparts that are in the form of electronic records and executed electronically. All executed counterparts shall constitute one document.

17 Definitions and Interpretation

- 17.1 In the Agreement:

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Business Days means any day except Saturday or Sunday or a day that is a public holiday.

Commencement Date means the date set out in Item 3 of the Order.

Confidential Information means all information which is by its nature confidential, designated by a party as confidential or disclosed in circumstances where the recipient ought to be aware the information is confidential, but does not include information that is or becomes public knowledge other than because of a breach of the Agreement.

Consequential Loss means consequential, special, indirect, punitive or exemplary loss or damage including without limitation pure economic loss, loss of profits and loss of opportunity or expectation.

Data means any data or information organised or formatted in a manner capable of being communicated and includes without limitation Confidential Information and Personal Information.

Data Threat means any actual or suspected threat to the security or integrity of any Data or Endeavour systems of any kind or by any means including, without limitation, unauthorised access or corruption of data.

Endeavour means Endeavour Foundation Limited ABN 80 009 670 704.

Endeavour Employees means Supported Employees, Support Workers, Endeavour Representative or any employee of Endeavour attending the Workplace.

Endeavour Representative means person(s) or role(s) named in Item 5 in the Order or as updated from to time.

Fees has the meaning provided by clause 7 and as set out in Item 7 of the Order.

GST has the meaning provided in the GST Act.

GST Act means the A New Tax System (Goods and Services) Act 1999 (Cth).

Host Employer means the person, firm or body corporate named as such in the Order together with any subsidiary or associated company as defined by the Corporations Act 2001 (Cth) that Endeavour provides Supported Employees and Support Workers to to perform the Services.

Insolvency Event means the occurrence of any of the following events:

- (a) a party is unable to pay its debts when they become due;
- (b) a party comes under a form of external administration;
- (c) proceedings are initiated to wind up a party;
- (d) a party resolves to wind itself up, or notifies of an intention to do so;
- (e) a receiver, liquidator or administrator is appointed to a party; or
- (f) a party becomes bankrupt or enters into a scheme of arrangement with creditors.

Loss means any loss, liability, damage, fine, costs or other expense (including reasonable legal costs and expenses) and excludes Consequential Loss.

NDIS Act means the National Disability Insurance Scheme Act 2013 (Cth).

Personal Information has the meaning given in the Privacy Act 1988 (Cth).

Related Body Corporate has the meaning given in the Corporations Act 2000 (Cth).

Reportable Incident in respect of a Supported Employee means an incident or alleged incident which has, or could have, caused harm to the person with disability. Reportable Incidents include, but are not limited to, the following:

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- (a) injury of a person with disability;
- (b) violence, abuse, neglect or exploitation of a person with disability;
- (c) an action, failure to act, event or circumstances that has, or could have, impacted the persons physical or mental wellbeing or their human rights. This includes actions, events or circumstances initiated or involving other employees, contractors, agency employees, clients or other persons associated with the Host Employer or the Services.

Supported Employee includes persons with disability employed by Endeavour and assigned by Endeavour to provide the Services to the Host Employer.

Services means the Supported Employment services performed by the Supported Employees and Support Workers for the Host Employer as detailed in the Order.

Order means the Supported Hosted Employment Order issued by Endeavour and accepted by the Host Employer under clause 2.2.

Support Worker means an employee engaged by Endeavour and supplied to the Host Employer to provide support and supervision to Supported Employees as detailed in the Order.

Workplace means the Host Employer's site or other location under the control of the Host Employer at which the Services are performed.

17.2 In the Agreement, unless the contrary intention appears:

- (a) the singular includes the plural and vice versa;
- (b) headings are for convenience only and do not affect interpretation;
- (c) the word 'includes' is not a word of limitation;
- (d) other grammatical forms of defined words and expressions have corresponding meanings;
- (e) a reference to a law includes any amendment or replacement of that law and includes any delegated legislation, regulations, codes or standards made under it;
- (f) a reference to a person includes a firm, body corporate, partnership, joint venture, association or authority;
- (g) a reference to a party includes that party's successors and permitted assignees;
- (h) a promise on the part of two or more persons binds them jointly and severally; and
- (i) no provision of the Agreement will be construed adversely to Endeavour because Endeavour was responsible for the preparation of the Agreement.