

Service Agreement

THIS AGREEMENT is made on the date that the Annexure is received by the Customer.

BETWEEN:

The **Business** - and - The **Customer** (collectively the "**Parties**").

RECITALS

Super Heroes Australia Pty Ltd (A.B.N. 39 169 216 620) ("**Super Heroes**") operates an online platform www.super-heroes.com.au through which Customers can book Businesses for Services.

The Businesses are independent services providers which are registered with Super Heroes to provide the Services.

Super Heroes does not offer the Services itself but is a third party facilitator of the contracts between Customer and Businesses. Accordingly, Super Heroes can receive and confirm Customers requests for the Services, issue invoices on behalf of the Businesses and pass on payments to the Businesses.

Customers enter into two contractual relationships, the first contract being with Super Heroes, governing the Customers' access to and use of the website www.super-heroes.com.au. ("**Website Terms and Conditions**"). The second contract being this contract between the Customer and the Business for the provision of the Services ("**Agreement**").

Through the Website, the Customer has requested and the Business has agreed to provide the Services in accordance with the terms and conditions of this Agreement.

AND THE PARTIES HEREBY AGREE:

1. Definitions and Interpretation

1.1 In the interpretation of this Agreement the following words shall have the following meanings unless the contrary intention is indicated:

: "**Agreement**" means this agreement together with any schedules or annexures hereto, which may be amended from time to time in writing, as agreed to by the Parties;

: "**Annexure**" means the email received by the Customer confirming the Business or the email received by the Business confirming its acceptance of the Booking acting as an annexure to this Agreement;

: "**Booked Services**" means the Services to be undertaken by the Business as defined in the Annexure;

: "**Booked Service Duration**" means the amount of hours that the Customer has booked the services of the Business as identified in the Annexure;

: "**Booked Service Location**" means the address where the Booked Services are to be carried out as identified in the Annexure;

: "**Booking**" means the reservation made on the Website for the Services to be carried out at the Scheduled Time and Booked Service Location for the Booked Service Duration;

: "**Business**" means the person or entity named as such in the Annexure;

: “**Claim**” shall mean any and all present and future claims, actions, demands and rights howsoever

arising out of, or in connection with the Services, including any claim for damages, complaint, action, suit, cause of action or proceedings, arbitration, debt due, cost and expense (including legal cost and expense), demand, verdict or judgment arising out of any provisions under statute, award, order or determination whether or not known at the date of this Agreement;

: “ **Fee**” means the fee (inclusive of goods and service tax, if applicable) for the Services charged on an hourly basis, as advised by Super Heroes from time to time;

: “ **Products and Equipment**” means the products and equipment required to effectively provide the Services;

: “ **Services**” means the services to be provided to the Customer by the Business in accordance with this Agreement.

: “**Customer**” means the person or entity named as such in the Annexure;

: “**Dollar**” or “**\$**” means Australian Dollars;

: “**Payment Amount**” means the amount payable by the Customer for the provision of Services by the Business as identified in the Annexure;

: “**Scheduled Time**” means the time and date the Services are to be undertaken by the business as identified in the Annexure;

: “**Website**” means www.super-heroes.com.au and associated Super Heroes mobile phone applications.

1.2 In this Agreement, unless the context otherwise requires:-

(a) headings are for convenience only and do not affect the interpretation of this Agreement;

(b) words importing the singular include the plural and vice versa;

(c) words importing a gender include any gender;

(d) an expression importing a natural person includes any entity, partnership, joint venture, association, corporation and any Governmental Agency;

(e) a reference to a ‘Party’, ‘Plaintiff’ and/or ‘Defendant’ collectively refers to the respective entity and, without limitation, its directors, officers, members, employees and agents;

(f) a reference to anything (including, but not limited to, any right) includes a part of that thing;

(g) a reference to a part, clause, party, annexure, exhibit or schedule is a reference to a part and clause of, and a party, annexure, exhibit and schedule to, this Agreement and a reference to this Agreement includes any annexure, exhibit or schedule;

(h) reference to a statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws amending, consolidating or replacing it, and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute.

- (i) a reference to a document includes all amendments or supplements to, or replacements or notations of, that document;
- (j) no provision of this Agreement will be construed adversely to a party solely on the ground that the party was responsible for the preparation of this Agreement or that provision;
- (k) a covenant of Agreement on the part of two or more persons binds them jointly and severally.

2. Booking

- 2.1. The Customer has made a Booking and agreed to pay the Payment Amount to the Business through the Website.
- 2.2. The Business confirms that they are able to comply with the Booking, including the provision of Services at the Scheduled Time and Booked Service Location for the Booked Service Duration.

3. Business Obligation

3.1. In providing the Services to the Customer, the Business shall:

- (a) undertake the Services with acceptable care and skill;
- (b) take all necessary steps to avoid any loss and/or damage to the Customer's property;
- (c) deliver the Services in a manner, to the greatest extent possible, which gives the desired results as agreed by the Parties;
- (d) utilise the Booked Service Duration effectively and efficiently in providing the Services; and
- (e) deliver the Services in accordance with the Booked Services.

- 3.2. The Services will be deemed to have been performed and accepted in accordance with this Agreement, if the Customer does not, as soon as practicable, but no later than 24 hours after the completion of the Services, advise Super Heroes that the Services were not performed to an acceptable standard. Super Heroes shall immediately pass on any complaints to the Business, if the Customer has not already reported the deficiency to the Business.
- 3.3. If the Business has performed the Services unsatisfactorily, the Business agrees to return to the Booked Service Location and complete the Services to an acceptable standard. Super Heroes will facilitate a suitable time with the Parties for the Business to return to the Booked Service Location and complete the Services.
- 3.4. If for any reason, the Business leaves the Booked Service Location prior to the scheduled end of the Booked Service Duration, the Business must notify Super Heroes as soon as practicable.
- 3.5. If the Business does not complete the Services within the Booked Service Duration, it must notify Super Heroes immediately that the Services were not completed and the reason for non-completion. Super Heroes, acting reasonably, will assist the Parties to determine whether the Booking should be extended, at no charge to the Customer or a new Booking should be made. If the Parties cannot agree, the Business should leave the Booked Service Location at the scheduled end of the Booked Service Duration.
- 3.6. Statutory entitlements of the Customer against the Business over and above the right to a resupply of the Services remain unaffected.

3.7. The Business should provide all Products and Equipment unless the Customer has chosen to supply the Products and Equipment.

4. Customer's Obligations

4.1. The Customer shall do all things necessary to enable the Business to efficiently perform the Services in accordance with the Booking.

4.2. The Customer shall provide the Products and Equipment if they have chosen to do so at the time of Booking.

4.3. The Customer shall do all things necessary to provide a safe workplace for the Business.

4.4. The Customer acknowledges that if more than one person provides the Services under the Booking, the Booked Service Duration will be divided by the number of persons providing the Services. *For example, if the Booked Service Duration of a Booking is two (2) hours and the Business provides a team of two (2) persons to provide the Services under the Booking, the Booked Service Duration will be divided by the number of persons in the team providing the Services (so in this example, the Booked Service Duration will be reduced from 2 hours to 1 hour).*

4.5. The Customer should notify Super Heroes of any damage caused by the Business to the Customer's property as soon as practicable, but no later than 24 hours after the completion of the Services.

5. Payment

5.1. The Customer agrees that upon the successful completion of the Services, Super Heroes, on behalf of the Business will effect the automatic debit of the Payment Amount to the Customer's nominated payment method in accordance with the Website Terms and Conditions.

5.2. Super Heroes will issue the Customer with an invoice.

6. Changes and Cancellations

6.1. The Customer can cancel or amend a Booking on the Website, free of charge, up to 24 hours before the Scheduled Time.

6.2. If the Customer cancels or amends a Booking within 24 hours before the Service is scheduled to begin, they will have to pay cancellation costs equivalent to one hour of the Service Fee.

6.3 If the Customer cancels or amends a Booking within 12 hours before the Service is scheduled to begin, they will have to pay cancellation costs equivalent to full Service Fee.

6.4. The Booking cannot be amended, extended or cancelled during the performance of the Services, unless a determination has been made pursuant to clause 3.5.

6.5. The Customer acknowledges and agrees that if the Business is unable for any reason to perform the Services, the Services may be performed by another Business pursuant to the Website Terms and Conditions.

7. Refunds

7.1. Should the Customer be entitled to a refund as a result of a breach of this Agreement by the Business, the refund will be limited to the Payment Amount.

8. Termination

8.1. A Party can immediately terminate this Agreement, if the other Party breaches any material term of this Agreement.

8.2. If the Booking is cancelled in accordance with clause 6.1, 6.2, 6.3 or 6.5 above, this Agreement is simultaneously terminated.

8.3. This Agreement shall terminate immediately once both Parties have fulfilled their obligations under this Agreement.

9. Force Majeure

9.1. If, by reason of any event of Force Majeure which was outside the control of a Party resulting in the delay in, or prevention from, performing any of the provisions of this Agreement:

- (a) then such delay of performance shall not be deemed to be a breach of this Agreement;
- (b) no loss or damage shall be claimed by a Party from the other by reason thereof; and
- (c) the Parties shall use their best endeavours to minimise and reduce any period of suspension occasioned by any event of Force Majeure.

9.2. An event of Force Majeure shall mean and include fire, flood, casualty, lock out, strike, labour condition or industrial action of any kind, unavoidable accident, national calamity or riot, disease, act of God, the enactment of any act of Parliament or the act of any legally constituted authority, any cause or event arising out of or attributable to war or any other cause or event (whether of a similar or dissimilar nature), outside the control of the Parties.

10. Assignment

10.1. Neither Party shall be entitled to assign and/or transfer their respective rights and/or obligations under this Agreement without the prior written consent of the other Party.

11.1. Neither Party shall start arbitration or court proceedings (except proceedings seeking interlocutory relief) in respect of a dispute arising out of this Agreement ("Dispute") unless it has complied with this clause.

11.2. A Party claiming that a Dispute has arisen must give notice to the other party to this Agreement specifying the nature of the Dispute ("**Dispute Notice**").

11.3. During the fourteen (14) day period after a Dispute Notice is served (or any longer period agreed in writing by the Parties), each Party must use its best efforts to resolve the Dispute.

11.4. If the Dispute is not resolved following the expiration of the fourteen-day period pursuant to clause 12.3, the Parties must endeavour to jointly engage a Mediator and endeavour to agree on the Mediator's terms of engagement.

11.5. If the Parties fail to agree on the engagement of a Mediator and/or the Mediator's terms of engagement within twenty-five (25) days of service of a Dispute Notice, either Party may apply to a local body of accredited mediators to appoint a Mediator and determine the terms of the Mediator's engagement.

11.6. Any information or documents disclosed by either Party under this clause:

- (a) is on a without prejudice basis;
- (b) must be kept confidential; and
- (c) may not be used except to attempt to resolve the Dispute.

11.7. Each Party must bear its own costs of complying with this clause, and the Parties must bear equally the costs of any mediator engaged under clauses 12.4 or 12.5.

12. General Provisions

12.1. Time is of the essence in the performance by the Parties of their obligations under this Agreement.

12.2. This Agreement must not be amended except by an instrument in writing signed by each of the Parties to this Agreement.

12.3. The Parties acknowledge that this Agreement constitutes the entire Agreement and understanding of and between the Parties and that there are no other representations, promises, warranties, covenants, undertakings, terms or conditions, whether oral or in writing, in relation to the subject matter of this Agreement of any force or effect unless contained in this Agreement.

12.4. All notices, demands and other communications between the Parties for the purposes of this Agreement shall be in writing and addressed to the Party's address stipulated in this Agreement.

12.5. If a clause is void, illegal or unenforceable, it may be severed without affecting the enforceability of the other provisions in this Agreement.

12.6. This Agreement may be executed in any number of counterparts and all such counterparts when executed and taken together will constitute this Agreement.

12.7. No right under this Agreement is deemed to be waived except by notice in writing to that effect signed by each party.

12.8. No waiver by any party to this Agreement of a breach by any other party shall be construed as a waiver of any subsequent breach.

12.9. This Agreement shall be governed by and construed in accordance with the laws of New South Wales and the Parties agree to submit to the non-exclusive jurisdiction of the Courts of New South Wales.

