

1. Roles of Parties

1.1. General Principles

Rocky Bay will provide a range of services to the Customer as described in the Rocky Bay Service Agreement (hereafter known as the Agreement)

Both Rocky Bay and the Customer agree to:

- a) Treat each other and their resources and property with respect at all times
- b) Abide by all known Rocky Bay policies and procedures
- c) Adhere to all relevant legislative requirements and standards, including but not limited to the NDIS Disability Service Standards and NDIS Rules
- d) Review the provision of services outlined in the Agreement at agreed intervals
- e) Reasonably mitigate any Health and Safety risks at sites for which they are responsible and where services are being delivered, including the Customer home
- f) Not place each other at any unreasonable risk by their actions, including the consumption of cigarettes, alcohol or drugs
- g) Not consume or distribute any illegal substances
- h) Not undertake any discriminatory, aggressive or hateful actions

The Customer and/or Customer Decision-Maker, further agrees to:

- i) Pay all relevant fees and/or invoices on time, understanding that failure to do so may result in relevant service/s being suspended or cancelled until the fees/invoices have been paid in full
- j) Not directly employ any current Rocky Bay staff without the prior written approval of Rocky Bay

1.2. Customer Decision-Makers

In Section 2 of the Agreement the Customer may nominate Decision-Makers to act on their behalf or a Decision-Maker may be appointed on their behalf. Where a Decision-Maker is listed Rocky Bay will take any instructions from that Decision-Maker regarding relevant Customer matters as though they were issued by the Customer themselves and undertake any contractual communications with the Decision-Maker as though they were undertaken with the Customer directly.

The Funding Decision-Maker may only make instructions related to funding, payment and financial matters and shall be bound by all terms and conditions that affect those instructions including but not limited to clauses 2, 5, 6, 7, 8, 10 & 11.

The Non-Funding Decision-Maker may only make instructions that are not related to funding, payment or financial matters and shall be bound by all terms and conditions that affect those instructions including but not limited to clauses 5, 6, 7, 8 & 11.

The Service Decision-Maker may make instructions related to any aspect of the Agreement. The Service Decision-Maker is bound by all terms and conditions as if they were the Customer.

2. Financial Arrangements

Rocky Bay will invoice the Customer or the Customer's nominated Funding Decision-Maker at least monthly for the services provided at the rates specified for each Contracted Service in the Agreement. Payment will be made in arrears within fourteen (14) days.

Rocky Bay will claim payment for the provided services directly from the relevant funder wherever possible and will not invoice the Customer directly in such cases. In this event both Rocky Bay and the Customer shall be bound by all terms of the Agreement as though the service had been invoiced directly to the Customer.

The Customer must inform Rocky Bay whenever any funding streams change, including but not limited to, changes to NDIS plans or transitions into NDIS funding.

The Customer accepts personal liability for any Rocky Bay charges accrued under this Agreement that are not recoverable through funding bodies for any reason whatsoever. Rocky Bay may take any legal action required to recover unpaid monies.

2.1. Price Increases

If for any reason a funder increases the claimable amounts that may be charged for a particular service and where charging that amount will not decrease the amount of deliverable hours to the Customer, Rocky Bay retains the right to charge the new rate immediately and without issuing a revised Agreement to the Customer for the time remaining on the Agreement. Rocky Bay will inform the Customer of any such changes.

In all other cases Rocky Bay may increase prices for any service by providing the Customer with ten (10) working days' written notice of the change, and the Customer may opt to terminate the affected service by directly contacting the Service Contact Person in accordance with clause 8 ("Termination").

3. Variations

The Customer may vary the contracted services as defined in the Agreement through discussion with the Rocky Bay Service Contact Person. Where the variation results in cancellation of a service this must be undertaken in accordance with clause 4 ("Cancellation"). Rocky Bay will not deny any reasonable request to vary the contracted services unless it adversely affects any aspect of the Individual Plan or the relevant Rocky Bay department as a whole, so long as such variations are a normal part of the Rocky Bay service offerings.

All variations to the Agreement must be given in writing to the Customer with at least ten (10) working days' notice unless otherwise specified within clause 4 ("Cancellation").

A revised Agreement will be issued to the Customer when any variations are effected unless otherwise specified in the Terms or Agreement.

4. Cancellation

Rocky Bay may from time to time cancel a service due to unforeseen circumstances. On such occasions the Customer will not be charged and every effort will be made to schedule a new appointment at a time suitable to the Customer. However the Customer recognises that this may not always be possible.

4.1. Cancellation Notice

The Customer may cancel an appointment by providing the Rocky Bay Service Contact Person with a minimum of two (2) working days' notice for appointments that are less than twelve (12) hours in duration and less than \$1000 in price. For all other appointments a minimum of five (5) working days is required. This notice may be provided in person, by telephone, in writing or email and takes effect upon receipt by the Service Contact Person. Where the cancelled service is funded by the NDIS the minimum cancellation notice shall be the greater of the period specified by the NDIS or this Agreement.

4.2. Failure to Cancel Appointments

Any scheduled appointments that are not attended by the Customer and have not been cancelled in accordance with clause 4.1 ("Cancellation Notice") may be charged at the specified rate for that service in the Agreement. Where this charge is funded by the NDIS the cancellation charge shall not exceed the maximum allowable cancellation charge under NDIS.

5. Confidentiality & Privacy

5.1. Confidentiality

No Confidential Information may be disclosed by either Party to any person except:

- a) where the information is required for the purposes of executing the Agreement; or
- b) with the consent of the Party who supplied the information which consent may be given or withheld in its absolute discretion; or
- c) if either Party is required to do so by law; or

- d) if Rocky Bay believes the Customer or others to be at risk of abuse or neglect as defined by clause 9 (“Safeguarding”); or
- e) if either Party is required to do so in connection with legal proceedings relating to the Agreement.

5.2. Privacy

Rocky Bay agrees with respect to any personal information held or collected in connection with the Agreement:

- a) to comply with the National Privacy Principles in the Privacy Act 1988 (Cth) and any other applicable law regarding privacy;
- b) to use that information only for the purposes of the Agreement and the delivery of the services defined in the Agreement.

6. Dispute Resolution

6.1. Negotiation

Any Party (“Initiating Party”) claiming that a Dispute has arisen must give the other Party (“Recipient Party”) a notice setting out brief details of the Dispute (“Dispute Notice”). Within five business days of receiving a Dispute Notice, the Recipient Party must give the Initiating Party a response. If the Parties are unable to agree to a resolution to the Dispute within a reasonable period the Initiating Party will be entitled to proceed to mediation.

6.2. Mediation

If the Dispute is not resolved in accordance with clause 6.1 above, the Parties must refer the Dispute to an independent mediator accredited under the National Mediation Accreditation System and appointed through the Citizens Advice Bureau of Western Australia. Each Party shall be responsible for their own costs for any mediation process.

6.3. Location of Mediation

Any mediation is to be conducted in Perth, Western Australia.

7. Liability

To the maximum extent permitted by law, in no event will Rocky Bay be held liable for any direct, indirect, punitive, incidental, special, consequential or any other damages whatsoever including, but not limited to, damages arising out of or in any way connected with the provision of or failure to provide services, or for any information or advice obtained from Rocky Bay staff, whether based in tort, contract, negligence, strict liability or otherwise, even if Rocky Bay or any of its agents and/or suppliers have been made aware of the possibility of damages.

7.1. Property

Each Party is responsible for insuring their own property against loss or damage and neither Party will hold the other Party liable for any such loss or damage except where such loss or damage is caused by a malicious and deliberate act.

8. Termination

8.1. Termination Notice

Either Party must provide the other Party with a minimum of twenty (20) working days’ notice prior to the termination of a Contracted Service unless otherwise defined by the Agreement. The notice may be provided in person, by telephone, in writing or an email addressed to the service contact person.

Any individual contracted service may be terminated without affecting the other Contracted Services and the Agreement will remain in force so long as at least one service remains contracted.

Either Party may terminate the entire Agreement or specific Contracted Services provided under the Agreement with immediate effect if:

- a) the Customer moves into an area that is not serviced by Rocky Bay; or,
- b) the other Party fails to meet any responsibilities as outlined in the Agreement; or,
- c) the Customer's needs change and the service is no longer appropriate or able to meet the Customer's needs as agreed between both Parties; or,
- d) any termination dates or notice periods within the Agreement have passed.

Rocky Bay may terminate the entire Agreement or specific Contracted Services provided under the Agreement with immediate effect if:

- e) the Customer fails to pay any outstanding debts to Rocky Bay within the specified time frames, notwithstanding clause 8.2 ("Continuity of Service"); or,
- f) the Customer breaches clause 4.2 ("Failure to Cancel Appointments") on at least three occasions in a twelve-month period; or,
- g) Rocky Bay is no longer able to deliver the service for any reason.

8.2. Continuity of Service

In the event that a Funding Plan ceases for any reason and the Customer does not provide Rocky Bay with new Funding Plan details within a period of four (4) weeks from the cessation of the plan Rocky Bay may terminate the entire Agreement and cease all services to the Customer.

Failure of the Customer to provide details (incl. at least plan number) of an active Funding Plan to Rocky Bay shall be treated for the purposes of the Agreement as if that active Funding Plan does not exist.

Where the Customer continues to accept services from Rocky Bay after any Agreement Termination Dates or notice periods have passed or where those services are not referenced in section 1 ("Contracted Services") of the Agreement, the Agreement and Terms shall remain in force as though the Agreement Termination Dates and notice periods have not passed and as though the accepted services were referenced in section 1 ("Contracted Services") of the Agreement and the Customer shall remain financially liable for those accepted services.

9. Safeguarding

Where Rocky Bay has reason to believe that the Customer may be a victim of Abuse or Neglect it will undertake all necessary actions, in line with policy, practice and law, to ensure the matter is investigated and resolved in the most expedient and appropriate manner. Rocky Bay reserves the right to use all available information and resources within any investigations or legal actions in order to prevent any Abuse or Neglect of the Customer.

This clause 9 takes precedence over clauses 5.1 and 5.2.

10. Travel and Transportation

All travel and transportation shall be billed in accordance with the relevant funding body guidelines (e.g. NDIS) and the Agreement. Where travel and/or transport is not covered by any funding body the Customer shall be personally liable for all such costs and shall be made aware of any such costs in advance of receiving the service.

11. General

11.1. Governing Law

The Agreement and Terms are governed by the laws of Western Australia.

11.2. Entire Agreement

The Agreement and Terms constitutes the entire agreement of the Parties about its subject matter and supersedes all previous agreements, understandings and negotiations on that subject matter.

Changes to the Terms can be made at any time by providing ten (10) working days' notice to the Customer.

11.3. GST

Unless otherwise indicated, all consideration provided for a supply under the Agreement is exclusive of any GST imposed on the supply. Where GST is imposed on a supply under the Agreement, the recipient of the supply on receipt of a tax invoice must pay to the supplier an additional amount equal to the GST imposed on the supply.

11.4. Severability

The unenforceability or invalidity of any clause in the Agreement shall not affect the enforceability or validity of any other clause. Any unenforceable or invalid clause shall be regarded as removed from this Agreement to the extent of its unenforceability and invalidity.

11.5. Survivability

The following shall survive termination of this Agreement (for whatever reason):

- a) All outstanding invoices and debts between the Parties
- b) clause 5 ("Confidentiality & Privacy")

11.6. Definitions

Abuse	the violation of an individual's human or civil rights, through the act or actions of another person or persons. This includes self-harming by the Customer on themselves.
Authorised Representative	anyone who is a legal guardian or has been defined as a Customer Decision-Maker in section 2 of the Agreement.
Customer	the person(s) named in "Client Name" in ("Client Details") of the Agreement to whom Rocky Bay is providing the service(s) defined in the Agreement.
Confidential Information	any information concerning a party that is not publicly available or otherwise obtainable by a third party.
Funding Plan	a legal agreement between a government agency and the Customer committing government funds for the purpose of obtaining third party products & services for the Customer.
Individual Plan	the document that is agreed between Customer and Rocky Bay and defines the outcomes desired by the Customer from the services provided by Rocky Bay.
NDIA	the National Disability Insurance Agency
Neglect	the harm caused as a result of the failure of those responsible for the care of children or vulnerable adults, including but not limited to the provision of support, food, shelter, clothing or hygienic living conditions.
Rocky Bay	means Rocky Bay Limited, Australian Company Number 636 892 898
Rocky Bay Property	Any fixed, portable or electronic assets owned by Rocky Bay, including but not limited to, buildings, vehicles and equipment.
Service Contact Person	the Rocky Bay staff member who is nominated to act as the primary liaison between Rocky Bay and the Customer on all service-related matters.
Terms	the whole of the content of the document Rocky Bay Service Terms and Conditions

11.7. Amendments to Terms

The Customer acknowledges and agrees that Rocky Bay acting reasonably and to the extent reasonably necessary to protect Rocky Bay's legitimate business interests may vary the Terms from time to time in accordance with the Minimum Notice Periods provided in the table below. Upon any change in the Terms Rocky Bay will notify the Customer which may be undertaken by way of email or letter.

If the Customer does not agree to the changes in the Terms the Customer may choose to terminate this Agreement by giving written notice to Rocky Bay as soon as reasonable, but in any event no later than twenty (20) working days from the date the changes come into effect. In this event the Customer shall not be charged any termination fees however any outstanding contractual obligations shall remain in force, including liability for all outstanding invoices and debts.

The Customer further agrees that if the Customer continues to use and/or access Rocky Bay services after the changes come into effect, such use and/or access shall constitute agreement by the Customer to abide and be bound by the Agreement and the varied Terms.

Type of Change	Minimum Notice Period
To comply with changes in NDIS policy, practices or associated legislation, regulations and rules	10 working days or shorter as required by law if the change is not adverse to the Customer
Changes to pricing of existing services	20 working days or shorter if the change is not adverse to the Customer as defined in clause 2.1
Introduction of any new charges	20 working days or shorter if the change is not adverse to the Customer
Permanent changes to agreed services outlined in the Service Agreement due to a material change in Customer circumstances	20 working days or shorter if the change is not adverse to the Customer as defined in clause 3
Permanent changes to agreed services outlined in the Service Agreement as a result of such services no longer being offered by Rocky Bay	40 working days or shorter if the change is not adverse to the Customer as defined in clause 3
Changes of an administrative nature or which we make in order to fix an error, inconsistency or omission	20 working days or shorter as required by law if the change is not adverse to the Customer
Any other change which we reasonably consider will not be adverse to you	No later than the date the change takes effect