

# GENERAL TERMS AND CONDITIONS

## 1. Interpretation

### 1.1 Definitions

The definitions set out below apply to this Agreement.

- (a) **Affiliate Clinic** means an independent clinic that is engaged by the Company to provide the Services to the Client from time-to-time.
- (b) **Agreement** means the agreement between the Company and the Client set out in this Agreement and, where a written quotation or proposal has been issued to the Client by the Company, includes that document also
- (c) **Allied Health Professional** means the independent allied health care professionals engaged by the Company to provide services to the Client from time to time.
- (d) **Bulk Booking** means a booking for Services for 5 or more Candidates.
- (e) **Business Day** means a day that is not a Saturday, Sunday or public holiday in Perth, Western Australia.
- (f) **Candidate** means a candidate for employment nominated and put forward for medical assessment by the Client, and/or any personnel put forward by the Client to receive Services.
- (g) **Candidate Records** means the medical and other records of Candidates generated during or in connection with the provision of the Services and includes any Intellectual Property Rights created in respect of such records.
- (h) **Client** means the person or entity to which the Services are provided under this Agreement.
- (i) **Client Prevention Event** has the meaning given in clause 5(b).
- (j) **Commencement Date** means the date on which Services are first provided to the Client under this Agreement.
- (k) **Company** means Knight Health Pty Ltd (ABN 65 623 722 743).
- (l) **Company Services** means those Services that are provided directly to the Client by the Company under this Agreement.
- (m) **Confidential Information** means any information relating to a party that is designated as, or would reasonably be considered to be, confidential in nature.
- (n) **Consequential Loss** means any:
  - (i) indirect, consequential or special damages or losses; or
  - (ii) special, punitive or exemplary damages; or
  - (iii) loss of profits (or anticipated profits), loss of contract, loss of opportunity, loss of goodwill, loss of business reputation, business interruption, loss of revenue, loss of use of property or loss of production.
- (o) **Credit Limit** means the total credit granted to the Client by the Company, inclusive of the Service Fees for all Services delivered to the Client but not paid for, as set by the Company and subject to change in accordance with this Agreement.
- (p) **De-identified Clinical Data** has the meaning given in clause 9.2(a).
- (q) **Dispute** has the meaning given in clause 18.1.
- (r) **Doctors** means the independent medical practitioners engaged by the Company to provide Services to the Client from time to time.
- (s) **Force Majeure Event** is an event that:
  - (i) is beyond the reasonable control of the party affected by that event and was not caused by the affected party;
  - (ii) causes or results in prevention of the performance by the affected party of any of its obligations under this Agreement; and
  - (iii) could not have been prevented, overcome, or remedied by the exercise by the affected party of a standard of care and diligence consistent with that of a skilled and qualified professional (as the case may be),

which might (if it satisfies the requirements of sections 1.1(m)(i) to 1.1(m)(iii)) include an act of God, acts of Government Agencies, a pandemic (including COVID-19) and any directives of any Government Agencies in relation to any such pandemic, political sanctions, war, riot, civil disturbance, cyclone, flood, storm, fire, explosion, a strike or industrial dispute (not caused directly or indirectly by, or confined to, the party claiming relief from performance of obligations under this Agreement), embargo, shortage of or interruption in labour or supply, failure of power or water supply, or breakage or accident to or loss of items of plant and equipment, indigenous claims (including claims as to title, heritage or authorisation in or in relation to land or waters which affects the provision of the Services), or other event whatsoever beyond that party's reasonable control, provided that, lack of funds, financial insolvency or financial distress will not constitute a Force Majeure Event.

- (t) **Government Agency** means any government or government department, any governmental, semi-governmental or judicial authority or person, any statutory body or authority or body exercising any administrative or legislative function.
- (u) **Intellectual Property Rights** means all intellectual property rights and related rights anywhere in the world, registered or unregistered and whether registrable or not, including:
  - (i) patents, copyrights (including future copyright), rights in circuit layouts, designs, source code, trademarks, know-how, inventions and the right to have Confidential Information kept confidential;
  - (ii) any application or right to apply for registration of any of the rights referred to in paragraph (i) above.
- (v) **Practitioners** means Doctors and Allied Health Professionals (as applicable).
- (w) **Practitioner Services** means those Services that are provided to the Client by Practitioners and facilitated by the Company under this Agreement.
- (x) **Personal Information** means "personal information", "health information" or similar as defined in the Privacy Laws which is collected by a party from any source as a consequence of or in the performance of this Agreement.
- (y) **Privacy Laws** means the laws relating to the protection of Personal Information in force from time to time, including the Privacy Act 1988 (Cth) and any other legislation, regulation, or binding code in respect of privacy.
- (z) **Service Time** has the meaning given in clause 7(a).
- (aa) **Services** means pre-employment medical assessments, injury management and support services, and such other related services from time-to-time provided to the Client (or ordered by the Client but not yet supplied) under this Agreement, and includes Services described on any quotation or proposal provided to the Client by the Company.
- (bb) **Services Fee** means the services fees charged by the Company for and in connection with the provision of the Services (including fees for all disbursements and consumables used in the provision of the Services) as referred to in the Company's price lists, quotes, proposals or any other specific arrangements with the Client (as applicable), as may be reviewed and amended from time-to-time in accordance with clause 6.7.
- (cc) **Term** means the period starting on the Commencement Date and continuing until this Agreement is terminated pursuant its provisions.
- (dd) **Willful Misconduct** means any act or failure to act which was deliberate and wrongful, or involved reckless disregard or wanton indifference to the likely harmful consequences.

## 1.2 Interpretation

The interpretation rules set out below apply to this Agreement unless the context requires otherwise.

- (a) Words in the singular include the plural and vice versa.
- (b) If a word or phrase is defined its other grammatical forms have corresponding meanings.
- (c) Including, such as, for example and similar expressions are not words of limitation.
- (d) A person includes a corporation, trust, partnership, unincorporated body, or other entity, whether or not it comprises a separate legal entity.
- (e) A person includes its executors, administrators, successors and permitted assigns.
- (f) A gender includes all other genders.
- (g) If a party consists of more than one person, this Agreement binds each of them separately and any two or more of them jointly.

- (h) A document(including this Agreement) includes the document as novated, amended or replaced and despite any change in the identity of the relevant parties.
- (i) A statute includes a regulation under it and includes any consolidation, amendment, re-enactment or replacement of any of them.
- (j) A regulation includes an instrument of a statutory character such as a rule, by-law, ordinance, or proclamation.

### 1.3 Headings

Headings do not affect the interpretation of this Agreement.

### 1.4 No Disadvantage

No interpretation rule will apply to any part of this Agreement to the disadvantage of a party merely because that party put forward the part or would otherwise benefit from it.

## 2. Agreement

- (a) This Agreement applies to the supply or facilitation of the Services by the Company to a Client. To the extent permitted by law, no other terms are implied or incorporated by trade, custom, practice or course of dealing. Without limiting the foregoing:
  - (i) the inclusion of the Client's purchase order number in any invoice issued by the Company is for convenience only and does not incorporate the terms of that purchase order in to this Agreement; and
  - (ii) any terms and conditions provided by the Client to the Company will be of no legal effect and will not form part of the Agreement unless in writing and signed by the Company or its duly authorised representative.
- (b) This Agreement is the entire agreement between the Client and the Company in relation to its subject matter, and supersedes all prior discussions, negotiations, understandings, and agreements. The Client acknowledges that it has not relied on any statement, promise, representation, assurance, or warranty that is not expressly set out in this Agreement.

## 3. Term

- (a) This Agreement will continue for the Term unless terminated earlier in accordance with its terms.
- (b) If any Service is provided before this Agreement is signed or continues after the expiry of the Term, such Service will be deemed to be provided on and subject to the terms of this Agreement unless otherwise agreed in writing.

## 4. Services

### 4.1 Provision of Services

The Company will provide the Company Services to the Client and will facilitate the provision of the Practitioner Services to the Client during the Term on and subject to the terms of this Agreement.

### 4.2 Appointments and Bookings

- (a) The Client must pre-book consultations for each Candidate in advance of a proposed consultation using the Company's booking system.
- (b) If a Candidate arrives without an appointment, the Company may treat that Candidate as a private candidate and require up-front payment from the Candidate on the day of the appointment.

### 4.3 Scope of Services

The Services set out in this Agreement are all the Services to be provided by the Company. Any further services requested by the Client may be provided on terms (including costs) as may be agreed between the parties. The Services may be provided at clinics operated by the Company or Affiliate Clinics.

## 4.4 Other Matters

- (a) The Company warrants the Client that the Services will be provided using reasonable care and skill and, where applicable, carried out appropriately trained, qualified and licensed personnel.
- (b) The Company will use all reasonable endeavours to meet any performance dates requested by the Client and/or agreed by the Company, however any such dates are estimates only and failure to perform the Services by such dates will not give the Client the right to terminate this Agreement or otherwise constitute a default by the Company of this Agreement.

## 5. Client Obligations

- (a) It is the Client's responsibility to ensure that:
  - (i) any order or request for Services it makes is complete and accurate in all respects, and is submitted in accordance with and using the Company's processes, policies and systems notified to the Client from time-to-time;
  - (ii) the Client and its Candidates cooperate with the Company in all matters relating to the Services;
  - (iii) it provides the Company with such information and materials the Company may reasonably require in order to supply the Services, and that such information is complete and accurate in all material respects;
  - (iv) it obtains and maintains all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to commence; and
  - (v) it complies with all applicable laws, including health and safety laws.
- (b) If the performance of the Services is prevented or delayed by the Client or its Candidate, including by any failure of the Client to fulfil any obligation listed in clause 5(a) (Client Prevention Event):
  - (i) the Company will be entitled to suspend performance of the Services until the Client Prevention Event is remedied, and the Client Prevention Event relieves the Company from the obligation to perform the Services, in each case to the extent the Client Prevention Event prevents or delays performance of the Services.
  - (ii) the Company will not be responsible for any costs or losses the Client sustains or incurs arising directly or indirectly from any failure or delay to the Services; and
  - (iii) the Client must reimburse the Company, on written demand, for any costs or losses the Company sustains or incurs arising directly or indirectly from a Client Prevention Event.

## 6. Fees

### 6.1 Company Services

- (a) The Client must pay any Services Fees in respect of the Company Services to the Company.
- (b) Unless otherwise agreed in writing, the Company will charge the Client its standard rates for the provision of each Company Service provided, as may be applicable at that time.
- (c) The Client will be liable to pay additional fees and/or surcharges when:
  - (i) additional consumables are used by the Company as a result of any act or omission of a Candidate. This may include, without limitation, where an additional instant drug screen cup is required when a Candidate is not able to void, or when samples provided are too dilute;
  - (ii) the Client requests and the Company agrees to any bespoke or non-Company standard processes for the provision of the Services, or delivery of the results of the Services or any other deliverable to be provided in the course of the Services;
  - (iii) making payment via credit card, over the phone or via another non-Company preferred method;
  - (iv) candidates are late or do not attend bookings for Services or bookings for Services are cancelled or rescheduled without the required notice as specified in this Agreement.

### 6.2 Practitioner Services

- (a) The Company has been appointed by the Practitioners to invoice and collect all Services Fees payable by the Client for the Practitioner Services, and the Client must pay any Services Fees in respect of the Practitioner Services to the Company.

- (b) Unless otherwise agreed in writing, the Company will charge the Client its standard rates for the provision of each Practitioner Service provided, as may be applicable at that time.
- (c) Any additional fees charged by Practitioners or Affiliate Clinics (including, without limitation, cancellation fees) that are not included in the Company's Service Fees will be on-charged to and payable by the Client.

### 6.3 Invoicing and GST

- (a) Unless otherwise stated, all Services Fees are exclusive of goods and services tax (GST). Where GST is payable in respect of some or all of the Services, the Client must pay the Company such additional amounts in respect of GST, at the applicable rate, and at the same time as paying the Services Fees.
- (b) The Company will issue the Client with a valid tax invoice for the Services provided during the relevant period. If the Client requires a purchase order or reference number(or similar) in respect of those Services, it must advise the Company of that number in advance at the time the Services are booked.

### 6.4 Payment Terms

- (a) The Client must pay the Company's invoices within 30 days of the invoice date in full, without setoff or deduction and using an approved payment method advised by the Company from time to time.
- (b) Overdue amounts will incur interest at a rate of 1.5% per calendar month or part thereof payable on demand.
- (c) The Client must pay all fees and costs (including an administration fee in a reasonable amount to be set by the Company) incurred as a result of any cheque, electronic banking transmission or other payment attempt being dishonored for any reason whatsoever.
- (d) If the Client disputes any part of an invoice, it must pay the undisputed part and notify the Company of the reasons for dispute within 30 days of the invoice date, and pay any disputed parts agreed or determined as due no later than 5 days after settlement of the dispute.

### 6.5 Debt Recovery

If the Client does not pay Services Fees or any other amounts due to the Company in accordance with this Agreement, the Company may pursue the payment of those debts, and the Client must pay the Company's costs in doing so, including (without limitation) administrative, legal and court fees.

### 6.6 Set Off

The Company is entitled to set off any amount the Client owes the Company under this Agreement against any amounts that the Company owes the Client.

### 6.7 Review of Services Fee

The Company may review and adjust the Services Fees:

- (a) on 1 July of each year during the Term; and
- (b) at any other time during the Term by giving the Client not less than 30 days' notice.

Such notice will be deemed given when the revised Service Fees are posted on the Company's website, and the Client's continued ordering or use of the Services will be deemed acceptance of the revised Service Fees.

### 6.8 Deposits and Credit Limits

- (a) The Company may, at its absolute discretion:
  - (i) require a deposit to be paid by the Client prior to provision of the Services; and/or
  - (ii) set a Credit Limit for the Client.

- (b) The Company will review the Credit Limit throughout the Term and may, acting reasonably, change the Credit Limit by giving the Client 30 days' prior notice. The Company will notify the Client in writing of the Client's Credit Limit following a request by the Client or if the Company deems it necessary. The Client acknowledges that the Company's withholding, amendment, or termination of credit privileges does not constitute constructive termination of this Agreement, nor does it relieve either party of any obligations under this Agreement. The Client's Credit Limit does not in any way limit its liability under or in connection with this Agreement and (without limitation) the Client is liable for all ordered Services which exceed its Credit Limit.
- (c) The Client agrees to provide to the Company (or its nominated agent or contractor) such financial information and documentation relating to the Client as reasonably requested by the Company from time-to-time, including (without limitation) financial statements of account. Such financial information will constitute Confidential Information and the Company agrees not to disclose such financial information to any third party (other than the Client's agents and contractors engaged for purposes of assessing the Client's credit) without the prior consent of the Client and will only use it for the purposes of administering this Agreement, including setting, and reviewing the Credit Limit.
- (d) If the total amount invoiced but not paid under this Agreement by the Client to the Company at any time exceeds the prevailing Credit Limit (Credit Limit Exceedance), or if the provision of a Service to the Client under this Agreement would result in a Credit Limit Exceedance, the Company may:
  - (i) suspend provision of the Services until the Credit Limit Exceedance is rectified; or
  - (ii) provide Services only on an up-front payment basis until the Credit Limit Exceedance is rectified; or
  - (iii) require the Client to make immediate payment to the Company to rectify the Credit Limit Exceedance or to ensure that the provision of further Services will not result in a Credit Limit Exceedance (as relevant).
- (e) Without prejudice to any of the Company's rights under this Agreement or at law, if the Client fails to make any payment in full to the Company at the time it is due, the Company may in its option:
  - (i) immediately withdraw or alter any Credit Limit allowed to the Client;
  - (ii) provide further Services only on an up-front payment basis or if security is provided to the reasonable satisfaction of the Company; or
  - (iii) suspend the provision of further Services to the Client.
- (f) The Company shall not be liable for any failure to provide or delay in the provision of the Services by reason of the Company exercising its rights under this clause.

## 7. Cancellations and Reschedules

- (a) If Services (other than Bulk Bookings) to be provided by the Company on a certain date and time (Service Time) are cancelled or rescheduled by the Client:
  - (i) less than 6 hours before the applicable Service Time where the Services are to be provided at the Company's clinic; or
  - (ii) less than 48 hours before the applicable Service Time where the Services are to be provided at any Affiliate Clinic,or the Services cannot be provided at the Service Time because a Candidate does not attend or is more than 15 minutes late, the Company will be entitled to charge a cancellation fee at the Company's (or Affiliate Clinic's, as applicable) standard rate from time-to-time.
- (b) If the Client cancels or reschedules a Bulk Booking less than 2 Business Days before the Service time, the Company will be entitled to charge a cancellation fee at the Company's (or Affiliate Clinic's, as applicable) standard rate from time-to-time. Services for Bulk Bookings will be charged in full regardless of whether all or any booked Candidates attend.

## 8. Clinical Matters

### 8.1 Professional Judgment of Practitioners

The Client acknowledges that each Practitioner may exercise its own professional judgment and discretion at any time, in respect of:

- (a) the Practitioner Services provided;
- (b) the referral of patients by the Practitioner to specialists or to other medical practitioners; or
- (c) the use of ancillary medical services including, without limitation, pathology, and diagnostic imaging services.



## 8.2 Practitioner Services

- (a) The Company will coordinate the delivery of the Practitioner Services to the Client.
- (b) The Client agrees and acknowledges that:
  - (i) the Company engages numerous Affiliate Centres and Practitioners to provide the Practitioner Services and the Company's obligation with respect to the Practitioner Services is limited to the coordination of their delivery in accordance with this Agreement;
  - (ii) the Company does not ordinarily employ Practitioners nor provide Practitioner Services;
  - (iii) unless the Client is otherwise advised by the Company, each Practitioner is directly responsible for the Practitioner Services it provides to the Client;
  - (iv) despite anything to the contrary in this Agreement, the Company assumes no liability for any Practitioner Services; and
  - (v) the Client waives and releases the Company from any and all liability in relation to the Practitioner Services including (without limitation) their performance or non-performance or the nature or correctness of the Practitioner Services or their results, except to the extent of any gross negligence or Willful Misconduct on the part of the Company.

## 9. Privacy and Use of Data

### 9.1 Privacy

Where the Company processes Personal Information in connection with this Agreement, the Company will:

- (a) comply with all applicable Privacy Laws and the Company's privacy policy which is available on the Company's website or upon request to the Company; and
- (b) take all appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Personal Information and accidental loss, disclosure, or destruction of, or damage to, Personal Information.

### 9.2 De-identified Clinical Data

- (a) Subject to applicable laws, the Company may use and share any appropriately and correctly de-identified Candidate Records and other data generated and/or collected in connection with the performance of the Services (De-identified Clinical Data):
  - (i) where required by applicable laws or Government Authorities; and/or
  - (ii) in connection with research and reporting, marketing, development and delivery of products and services, or any other legitimate business purpose.
- (b) To the extent required by applicable law, the Client consents to the collection of information and use of De-identified Clinical Data for such purposes.

## 10. Intellectual Property

### 10.1 Ownership

Full ownership of all Intellectual Property Rights in any material created for the purpose of, or in connection with the performance of the Services under this Agreement (including, without limitation, all Candidate Records) will vest in the Company on their creation. The Client will do all things and take all actions necessary to assign any such Intellectual Property Rights to the Company where necessary.

### 10.2 License to Use

The Company hereby grants the Client a non-exclusive, transferrable, royalty-free, perpetual, and irrevocable license to use the Intellectual Property Rights created in the Services for the purpose of receiving and using the Services and any such deliverables in the Client's business.

## 11. Workplace Health and Safety

If the Services (or any part of them) are performed at the Client's premises, or on sites controlled or managed by the Client, the Client must ensure that it complies with all applicable workplace health and safety laws and standards necessary to ensure a safe work environment for the Practitioners and the Company's personnel.

## 12. Force Majeure

- (a) No party will be liable to the other for any failure in the performance or observance on its part of any obligation or condition expressed or implied in this Agreement (other than an obligation to pay money) to the extent that such failure is attributable to a Force Majeure Event which is not caused by any fault, act or omission of the party seeking to rely upon the protection of this clause.
- (b) A Force Majeure Event may be relied upon by a party only to the extent that and for so long as it continues to directly affect the performance or observance of this Agreement by that party.
- (c) A party affected by a Force Majeure Event must:
  - (i) promptly notify the other party giving full particulars of the Force Majeure Event and the probable delay in the performance or observance of the obligation or condition;
  - (ii) mitigate the effects of the Force Majeure Event using all reasonable precautions and any reasonable alternative measures; and
  - (iii) resume performance of its obligations under this Agreement as soon as practicable after termination or abatement of the Force Majeure Event.
- (d) If a Force Majeure Event continues:
  - (i) for a continuous period of 45 or more days; or
  - (ii) for successive periods totaling 45 or more days within any period of 90 days,either party may terminate this Agreement by written notice to the other party.

## 13. Limitation of Liability

### 13.1 Limitation of Liability

- (a) The Company's aggregate liability arising out of or in connection with the Services or this Agreement, whether for breach of contract, strict liability, in tort (including negligence), equity, common law, under statute or otherwise, shall be limited to 100% of the Services Fees paid or payable in the 12-month period immediately preceding the event giving rise to the claim of liability.
- (b) The limitations of liability in this clause 13.1 do not exclude or limit the Company's liability with respect to:
  - (i) death or personal injury or property damage of any person due to gross negligence or Willful Misconduct; or
  - (ii) intentional fraud; or
  - (iii) where liability cannot be limited or excluded under applicable law.

### 13.2 Consequential Loss

Notwithstanding any other provision of this Agreement, neither party nor its officers, employees, agents, contractors, consultants or suppliers shall be liable to the other party, or to its respective officers, employees, agents, contractors, consultants or suppliers, under any cause or causes of action, whether in tort, contract or otherwise (including but not limited to claims and liability under or for breach of contract, negligence, professional errors or omissions, strict liability, indemnity, and breach of express or implied warranty) for any Consequential Loss.

### 13.3 Australian Consumer Law

- (a) Nothing in this Agreement is intended to have the effect of excluding, restricting or modifying the application of all or any of the provisions of Part 5-4 of the Australian Consumer Law in Schedule 2 of the Competition and Consumer Act 2010 (Cth) (ACL), or the exercise of a right conferred by such a provision, or any liability of the Company in relation to a failure to comply with a guarantee that applies under Division 1 of Part 3-2 of the ACL to a supply of services.
- (b) If the Company is liable to the Client in relation to a failure to comply with a guarantee that applies under Division 1 of Part 3-2 of the ACL that cannot be excluded, the Company's total liability to the Client for that failure is limited to, at the Company's option, the resupply of the services or the payment of the cost of resupply.



## 14. Termination

### 14.1 Termination by the Company

The Company may either suspend the provision of all or any part of the Services or immediately terminate this Agreement by giving written notice to the Client on the happening of any of the following events:

- (a) the Client fails to pay the Service Fees when due in accordance with this Agreement;
- (b) the Client otherwise breaches this Agreement, and fails to remedy that breach within 14 days of receiving written notice from the Company to do so: or
- (c) the Client is insolvent, or in the reasonable opinion of the Company, is otherwise unable to pay its debts as they fall due.

### 14.2 Termination by the Client

The Client may terminate this Agreement immediately on written notice to the Company if the Company has breached this Agreement and fails to remedy that breach within 21 days of receiving written notice from the Client to do so.

### 14.3 Termination for Convenience

- (a) Either party may, at any time and at its sole discretion, terminate this Agreement, in whole or with respect to any particular Service, by giving the other party not less than 30 days' prior written notice.
- (b) In addition, by not less than 5 Business Days prior written notice given to the Company within 30 days following a change:
  - (i) to the Service Fees made by the Company in accordance with clause 6.7; or
  - (ii) to the terms and condition of this Agreement made by the company in accordance with clause 21.4(a),the Client may, in its sole discretion, terminate this Agreement in its entirety or with respect to any particular Service.

### 14.4 No Compensation

In the event of a termination of this Agreement in accordance with clause 14.3, the Client must immediately pay to the Company all outstanding amounts due under this Agreement and Client will not have any claim against the Company nor be entitled to any compensation or damages from the Company in relation to that termination.

### 14.5 Survival of Provisions

Termination of this Agreement will not affect those provisions of the Agreement expressed to operate or have effect after termination, and is without prejudice to any rights, obligations or liabilities accrued by either party up to the date of termination.

## 15. Non Solicitation

- (a) During the Term of this Agreement and for a period of 12 months following the termination or expiration of this Agreement, the Client must not make any solicitation to employ the Company's employees, contractors, or other personnel without prior written consent of the Company.
- (b) For the purposes of this clause, a general advertisement or notice of a job listing or opening or other similar general publication of a job search or availability to fill employment positions, including on the internet, will not be construed as a solicitation or inducement, and the hiring of any such employees or independent contractor who freely responds thereto will not be a breach of this clause.

## 16. Warranties

### 16.1 Warranties

Each party represents and warrants to the other party that:

- (a) if it is a corporation, it is duly registered and validly existing under the laws of its place of registration;
- (b) it has full legal capacity and authority to sign, deliver and perform its obligations under this Agreement; and
- (c) this Agreement constitutes a legal, valid and binding obligation of the party enforceable in accordance with its terms by appropriate legal remedy.

## 16.2 No Reliance

Unless this Agreement expressly states otherwise, each party has entered into this Agreement without relying on any representation by the other party or any person purporting to represent that party.

## 17. Confidentiality

### 17.1 Confidentiality

Unless permitted by clause 17.2, each party must keep any Confidential Information in respect of the other party confidential, including the existence and terms of this Agreement, as well as all negotiations between the parties in relation to its subject matter.

### 17.2 Permitted Disclosure

Clause 17.1 does not prevent a person from disclosing any information if, and to the extent that:

- (a) the disclosure is required to enable a party to perform its obligations or exercise its rights under this Agreement;
- (b) the disclosure is to any professional adviser of a party who has been retained to advise in relation to the transactions contemplated by this Agreement or any auditor of a party who reasonably requires to know;
- (c) the disclosure is required by law, by an applicable stock exchange or in legal proceedings under or in connection with this Agreement;
- (d) the information has come into the public domain other than from a party breaching this Agreement; or
- (e) (a)the party has obtained the prior consent of the other party to whom the information relates.

## 18. Disputes

### 18.1 Dispute

If a dispute arises under or in connection with this Agreement (Dispute), a party must give notice of the Dispute to the other party to the Dispute.

### 18.2 Discussion

Within 10 Business Days of receiving a notice under clause 18.1, each party to the Dispute must meet and discuss in good faith with a view to resolving the Dispute.

### 18.3 Mediation

If, after the steps in clause 18.2, the Dispute has not been resolved, a party to the Dispute must refer the Dispute to mediation in accordance with, and subject to, the Resolution Institute Mediation Rules.

### 18.4 Legal Proceedings

A party must not commence legal proceedings in relation to a Dispute unless:

- (a) it has complied with its obligations under this clause 18; or
- (b) those proceedings are for the purpose of seeking injunctive or interlocutory relief, despite this clause 18.

### 18.5 Continued Performance

Each party must continue to perform its obligations under this Agreement despite the existence of a Dispute.

## 19. Notices

### 19.1 Form

- (a) A notice, demand, direction, determination, certification, consent, approval, request, waiver, or similar communication given under this Agreement must be in writing and signed by the sender or an authorised officer of the sender, unless this Agreement expressly states otherwise.
- (b) An email communication must state the first and last name of the sender and is taken to be signed by the named sender.

## 19.2 Delivery

A communication must be:

- (a) sent by email to the relevant address, in which case it is taken to be received upon the earlier of:
  - (i) the sender receiving an automated message confirming delivery; and
  - (ii) 6 hours after the time sent (as recorded on the device from which the sender sent the email), unless the sender receives an automated message that delivery failed;
- (b) physically left at the relevant address; or
- (c) served by any other service method permitted by law.

## 19.3 Business Hours

Despite anything else in this clause 19, if a communication is received or taken to be received after 5:00pm on a Business Day or on a non-Business Day, it is taken to be received at 9:00am on the next Business Day. For the purposes of this clause 19.3, the place in the definition of "Business Day" is taken to be the place of the relevant address of the recipient, and the receipt time is the time in that place.

## 20. Costs and Taxes

### 20.1 Costs

Unless expressly stated otherwise in this Agreement, each party is responsible for its own legal and other costs relating directly or indirectly to the preparation of, and performance of its obligations under, this Agreement.

### 20.2 GST

If goods and services tax or similar value added tax (GST) is levied or imposed on or in respect of a supply made under or in connection with this Agreement, the recipient of that supply must pay to the supplier (or, the representative member if the supplier is a member of a GST group) in addition to any consideration provided for under this Agreement, such amount as is necessary to ensure that the supplier (after payment of any GST which is imposed or levied in respect of the supply) is in the same financial position it would have been in had the GST not been imposed or levied.

## 21. General

### 21.1 Governing Law

This Agreement is governed by the laws of Western Australia. The parties submit to the non-exclusive jurisdiction of the courts of Western Australia.

### 21.2 Relationship

Unless this Agreement expressly states otherwise, nothing contained or implied in this Agreement constitutes any party as the partner, agent, associate, employee or representative of the other party for any purpose, or creates any partnership, agency or trust between them, and no party has authority to bind the other party in any way as a result of this Agreement.

### 21.3 Severance

If any part of this Agreement is void, unenforceable or illegal but would not be void, unenforceable or illegal if it were read down or severed, it is to be read down or severed accordingly, and the remainder of this Agreement will continue to apply to the full extent possible.

### 21.4 Amendment

- (a) The terms and provisions of this Agreement may be amended by the Company by providing 30 days' notice to the Client. Such notice will be deemed given when the revised terms and conditions are posted on the Company's website, and the Client's continued ordering or use of the Services will be deemed acceptance of the revised terms and conditions.

(b) Subject to clause 21.4(a), unless this Agreement expressly permits or contemplates otherwise, an amendment to this Agreement is not effective unless it is in writing and signed by the parties.

### **21.5 Waiver**

No failure or delay on the part of a party in exercising any right, power or remedy under this Agreement will operate as a waiver.

### **21.6 Assignment**

The Client may not assign, novate, sub-license or charge any of its rights or obligations under this Agreement without the prior written consent of the Company.

### **21.7 Further Steps**

Each party must sign all documents and do all things that may be reasonably required by the other party to carry out and give effect to the terms and intentions of this Agreement.

