

## GENERAL TERMS

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### 1. Interpretation

In these General Terms a reference to the following words has the meaning set out adjacent to them, unless the context in which the words are used requires otherwise:

- (a) **Agreement** means the Engagement and Consent Schedule, General Terms including any schedule, annexure or other attachment and any other document provided by us to you;
- (b) **Claim** means, in relation to a person, any action, allegation, claim, demand, judgment, liability, proceeding, remedy, right of action or right of set-off made against the person concerned however it arises whether it is present, unascertained, immediate, future or contingent; it is based in contract, tort, statute or otherwise; or it involves a third party or a party to the Agreement.
- (c) **Client** means the client / parent or guardian identified in the Engagement and Consent Schedule and is referred to as 'you' or 'your' and includes the Child;
- (d) **Child** means the child identified in the Engagement and Consent Schedule;
- (e) **Confidential Information** includes but is not limited to information that is identified as confidential, information you should reasonably expect to be confidential, business plans, Client and Child information, details of our intellectual property, marketing and strategy plans, online access
- (f) **Engagement and Consent Schedule** means the engagement and consent schedule provide to you with a copy of these General Terms;
- (g) **Facilities** includes but is not limited to tools, toys, equipment or other

amenities we use or provide at the Location;

- (h) **Kalm Kids** means Kalm Kids Pty Ltd A.C.N. 635 973 081 and is referred to as 'we', 'us' or 'our'.
- (i) **Location** means any establishments or venues where the Services are carried out;
- (j) **Payment** means the amount, method and frequency referred to in the Engagement and Consent Schedule;
- (k) **Services** means those services outlined in the Engagement and Consent Schedule;

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### 2. Use of Services

- (a) The provision of Services is subject to completion and submission of the Engagement and Consent Schedule to us by you, and acceptance of same by us.
- (b) None of the Services provided by us or the products recommended by us is meant to diagnose, treat, alleviate or relieve any medical, health or mental conditions, nor guarantee any particular outcome or results.
- (c) Our Services are not intended as a substitute for the advice provided by your doctor, psychologist or other healthcare professionals.
- (d) Our Services are based on knowledge, skills and personal experience and are intended for general education and information purposes only.
- (e) If you suspect that you have a medical problem or if you have pre-existing medical or mental condition, you should contact your healthcare provider before using our Services.
- (f) You should consult with your health care professional to ensure that you are mindful of your current health and any restrictions that are appropriate for you. You should immediately seek medical attention if there are any unanticipated changes

to your physical or mental condition at any time.

- (g) You acknowledge that our Services are provided based on the accuracy and completeness of the information that you provide to us. You further acknowledge that your failure to provide accurate and complete information or otherwise follow our recommendations, programs or training tools, may adversely affect the quality, efficacy or suitability of the Services.

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### **3. Medicare and Insurance Rebates**

- (a) Medicare, insurance or other health rebates are not available for our Services.

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### **4. Services Generally**

- (a) We agree to perform the Services with due care and skill.
- (b) We may provide the Services to you using our employees, contractors or any third-party provider.
- (c) Our Services may include face to face appointments and training but may also comprise delivery through our website or other online platforms and communication channels.
- (d) The Service delivery mechanisms and platforms as well as face to face delivery locations may change from time to time, provided such change is reasonable.
- (e) We reserve the right to suspend our Services for up to four (4) weeks during the year, including the December/January holiday season.

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### **5. Payments**

- (a) It is your responsibility to ensure that on each Payment due date there are sufficient cleared funds in your nominated account to meet your scheduled payment. Should your credit or debit card payment decline on the agreed Payment date, we

reserve the right to continue attempts to process your payment. We will attempt to process the declined amount each day until successful. If you fail to clear the arrears prior to the following week / month's debit, you will be charged twice on the agreed date to clear the arrears. If this payment declines and you fall into arrears for more than one calendar month, we reserve the right to suspend this Agreement effective immediately and will deny you access to any online platforms or communication channels. Once you have cleared your arrears this Agreement may be reactivated. We reserve the right to charge an administration fee of \$50 for each declined payment.

- (b) Should your credit or debit card expire or be cancelled, it is your responsibility to provide us with new card details to ensure payments continue to be successfully debited.
- (c) We may charge interest at the rate of 12.5% per annum on any amounts unpaid 14 calendar days after the payment due date. We reserve the right to engage external debt collection services for the collection of unpaid and undisputed debt, and the right to commence legal proceedings for any outstanding amounts owed to us. You will be liable for all costs involved, including legal fees where relevant.
- (d) Our pricing structure, payment methods, payment processes and these General Terms may be amended at any given time at our reasonable discretion. All other changes will apply from the date that the amended or new General Terms are posted on our website or are provided to you, whichever is earlier.

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### **6. Bookings and Cancellations**

- (a) Bookings are to be made in advance and fees for our Services are due and payable in advance, at the time of the booking.

- (b) You must ensure that you have access to an available computer, telephone or other mobile device at the time of your booking and have sufficient telephone and internet reception in order for us to be able to deliver our online services to you. If these resources are unavailable, then we reserve the right to terminate your session without refund.
- (c) All individual coaching sessions require that both parties be fully present and have access to a private, quiet space where you will not be interrupted. Sessions may not be conducted while driving or otherwise unduly distracted. If you do not satisfy these requirements, we reserve the right to terminate your session without refund.
- (d) While we use our best efforts to operate our programs as per any published timetable, in some instances changes are required. We do not guarantee strict performance or compliance with any timetable however changes will be communicated to you prior to the scheduled program, class or workshop. In the event of non-Service, arrangements will be made for either a refund or rebooking.
- (e) By enrolling, you are committing to a service contract for either a single program or class or for a term. Refund requests will be assessed on a case by case basis and when genuine value isn't able to be received (in our reasonable opinion), refunds may be granted.
- (f) If you are unable to attend a program or class, a make-up program or class may be available. However, we do not guarantee that there will be availability. A maximum of two (2) make-up programs or classes are available per term.

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## 7. GST

- (a) All amounts are in Australian dollars and include GST. We take no responsibility for exchange rate

fluctuations or changes in GST rates, and reserve the right to increase the Payment should GST rates increase.

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## 8. Facilities

- (a) Any use of our property, Facilities or Locations are at your own risk and you indemnify us against any and all Claims, damages, costs or liabilities that may arise as a consequence of your use of the property, Facilities or Location.

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## 9. Termination of this Agreement

- (a) We may suspend or terminate this Agreement if you:
  - (i) breach any of the terms set out in this Agreement;
  - (ii) require us to act unlawfully or unethically;
  - (iii) directly or indirectly indicate or suggest you have lost confidence in us or fail to carry out our reasonable instructions; or
  - (iv) fail to make Payment.
- (b) If our Services is terminated by either of us you agree, we are entitled to all Payments up to the termination.
- (c) On termination of this Agreement you agree to promptly return (where possible) or delete or destroy (where not possible to return), our Confidential Information and Intellectual Property, and/or documents containing or relating to our Confidential Information and Intellectual Property.
- (d) Any accrued rights or responsibility of us or you are not affected by the termination of this Agreement.
- (e) On termination of this Agreement, we will remove your access to all of our Services including but not limited to online platforms and communication channels, face to face workshops and events and we will not be liable for

any Claims related to the removal of your access.

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## 10. Online Services

- (a) When using our website, online platforms and other communication channels:
  - (i) you are solely responsible for the protection and confidentiality of any password or member identification that may be issued to or subscribed for by you from time to time;
  - (ii) you will not reveal (or cause to be revealed through act or omission) your password to any person;
  - (iii) you will immediately notify us if your password is lost or becomes known to any other person; and
  - (iv) any information or material posted or uploaded becomes our property.
- (b) Whilst we will use reasonable endeavors to ensure that our website, online platforms and communication channels are available continuously, we do not represent nor warrant that your access will be uninterrupted, timely, secure or error free.
- (c) Access may be suspended without notice in the case of system failure, maintenance or repair or any reason beyond our control.
- (d) Our website, online platforms or communication channels may contain links to other websites or online platforms not owned by us and we do not accept liability for the availability or content of these external websites and your use is subject to the terms of use and service contained within the respective online platforms.

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## 11. Feedback and Social Media

- (a) Your feedback is important to us. You agree to raise any concerns, problems or issues in relation to the Service

with us directly in person or via the phone or email.

- (b) You agree not to post any content on our website or any of our social media accounts that is or could reasonably be considered to be inappropriate, defamatory, disparaging or would otherwise bring us into disrepute.

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## 12. Warranties

- (a) You warrant that throughout the term of this Agreement that:
  - (i) you are fully and solely responsible and liable for Payment and any other financial obligations associated with this Agreement and the Services, in all circumstances;
  - (ii) you will cooperate with us and provide us with information and comply with requirements in a timely manner, as requested by us from time to time, that are reasonably necessary to enable us to perform the Services;
  - (iii) the information you provide to us is true, correct and complete;
  - (iv) you will inform us if you have reasonable concerns relating to our provision of Services under this Agreement, with the aim that we and you will use all reasonable efforts to resolve the concerns.
- (b) You agree and understand that:
  - (i) we do not change your habits for you; we give you access to information, people, tools and interactive sessions;
  - (ii) use of our Services is not a guarantee of successful behaviour change and we are not liable for any negative impacts that your actions have on you or your long-term health; and
  - (iii) you are responsible for using the materials and resources provided

to you during the term of this Agreement.

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### 13. Privacy

- (a) It is a requirement of the *Privacy Act 1988* that you are informed about the collection of your personal information and how we may use it. The personal information you provide during the term of this Agreement is being collected for the purpose of processing our engagement and assisting us in providing our Service to you. You have a right to access and make alterations to your personal information.
- (b) We agree not to disclose your personal information to any third party. We will use your information for the reason it was disclosed, including the purpose of providing our Services to you, and not for any other purpose without your prior consent.
- (c) You may request a copy of our Privacy Policy at any time.

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### 14. Confidential Information and Intellectual Property

- (a) You agree not to disclose our Confidential Information to any third party; to use all reasonable endeavours to protect our Confidential Information from any unauthorised disclosure; and only to use the Confidential Information for the purpose for which it was disclosed or provided by us to you, and not for any other purpose.
- (b) The work and materials that we provide to you in carrying out the Service contains material which is owned by or licensed to us, or owned by third parties, and is protected by Australian and international laws (**Materials**). We own the copyright in all creative and literary works incorporated in our Materials that we have created.

- (c) You agree that we own all intellectual property rights in our Materials, and that nothing in these General Terms constitutes a transfer of any intellectual property ownership rights in our Materials, except as stated in these General Terms or with our written permission. Your use of our Materials does not grant you a license, or act as a right of use, any of the intellectual property in the Materials, whether registered or unregistered, except as stated in these General Terms or with our written permission.
- (d) You must not breach our copyright or intellectual property rights by, including but not limited to:
  - (i) altering or modifying any of the Materials;
  - (ii) creating derivative works from the Materials; or
  - (iii) using our Materials for commercial purposes such as on sale to third parties.
- (e) We will license to you certain Materials, such as downloadable templates, handouts and resources which will be referred to as Licensed Material, subject to us receiving full Payment. You acknowledge and agree that this Licensed Material may contain intellectual property which is owned by third parties and not by us and use of such third party intellectual property is governed by the relevant third party's terms and conditions.
- (f) We grant you a non-perpetual, nonexclusive, revocable, international and non-transferable right and license (License) to use the Licensed Material:
  - (i) for your personal, non-commercial use; and
  - (ii) by members of your family.
- (g) No part of the Licensed Material may be copied, modified, licensed, published, transmitted, distributed, uploaded, broadcast, sold or

otherwise transferred to any third party without our prior written consent.

- (h) You acknowledge and agree that you must not use our Licensed Material to create a business that is similar to ours. If you do so, we reserve the right to immediately terminate your License.
- (i) Intellectual Property includes any and all intellectual and industrial property rights throughout the world, whether subsisting now or in the future and includes all copyright and analogous rights, all rights in relation to inventions (including patent rights), registered and unregistered trademarks, designs (whether or not registered or registrable), circuit trade names, trade secrets, business names, company names or internet domain names and copyright.
- (j) This clause survives termination of this Agreement.

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## 15. Indemnity

- (a) You are liable for and agree to indemnify, defend and hold us harmless for and against any and all Claims, liabilities, suits, actions and expenses, including costs of litigation and legal costs, resulting directly or indirectly from:
  - (i) any information that is not accurate, up to date or complete or is misleading or a misrepresentation;
  - (ii) the Services;
  - (iii) any breach of this Agreement; and
  - (iv) any misuse of our Services from or by you.
- (b) You agree to cooperate with us (at your own expense) in the handling of disputes, complaints, investigations or litigation that arise as a result of your use of our Services including but not limited to disputes, complaints, investigations or litigation that arises

out of or relates to incorrect information you have given us.

- (c) The obligations under this clause will survive termination of the Agreement.

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## 16. General Matters

- (a) Any amendments to this Agreement must be made in writing or if agreed verbally between us, must be confirmed in writing within a reasonable time after such verbal agreement.
- (b) You agree that we may use email to communicate with you and may use the email address that you provide to us for that purpose.
- (c) You agree to release us from any liability for any loss which you might incur if an email is intercepted or corrupted during transmission or if a document which we prepare for you is altered by you or any other party without our written consent.
- (d) This agreement is governed by the laws of Queensland and each of us agree to submit to the non-exclusive jurisdiction of the courts of Queensland.
- (e) This Agreement may be executed, in original form, by facsimile transmission or by electronic signature, and in any number of counterparts each of which will be considered to constitute the same instrument.
- (f) Any provision of this Agreement that is illegal, void or unenforceable will be severed without prejudice to the balance of the provisions.