



## T/A Van Ryan Therapies

### Terms and Conditions

#### 1 SCOPE AND FEES

##### 1.1 Engagement

- (a) Company has provided as attached to these terms and conditions (**T&Cs**) a quotation or proposal (**Proposal**) specifying, amongst other things, the scope of the Services to be provided to Client (each a **party**) and an estimate of the fees involved in providing those Services.
- (b) These T&Cs form part of the Proposal as if incorporated into the Proposal (together the **Agreement**).
- (c) These T&C's may be updated periodically on Company's website. Client agrees to comply with the T&C's in the current form and any later version of the T&C's that may be available on our website from time to time which constitute the Agreement.
- (d) Company does not represent that it will provide any Services unless they are included in the agreement.

##### 1.2 Acceptance

- (a) The offer in the Proposal remains open for acceptance for a period of 28 days, after which time the offer expires.
- (b) Client accepts the Agreement (**Acceptance**) by:
  - (i) signing the Agreement;
  - (ii) scheduling a counselling therapy session;
  - (iii) attending a counselling therapy session;
  - (iv) agreeing to a collaborative treatment plan offered by Company upon an assessment and feedback session;
  - (v) paying the Fee for the Services to Company; or
  - (vi) willing participation through oral, written, or electronic communication with Company.

##### 1.3 Fees

- (a) Client must pay the Fee for the rendered Services as set out in the Proposal to Company under the Agreement.
- (b) Client must pre-pay the Fee (**Pre-Payment**) for the Services where delivery of Services are:
  - (i) not conducted at Company's Location; or
  - (ii) conducted by way of Telehealth method, at least 2 days prior to the appointment.
- (c) Any Fee estimate provided by Company for the Services is only an estimate of the likely costs of providing the Services and does not bind Company for any period after it advises a change of that estimate. The estimate can be revised by Company at its discretion based on the required Services, and Client will be notified of any revision of the Fee estimate within a reasonable time.
- (d) Company may vary its hourly rates during the provision of its Services subject to providing a written notice of no less than 28 days prior to application of the variation in hourly rates and Fees to Client.
- (e) Company may charge and Client will pay for all disbursements properly incurred in performing the Services. Any reasonable additional costs or expenses incurred by Company for the provision of Services will be passed onto Client.
- (f) Company may charge a Cancellation Fee to Client for non-attendance of an Appointment should Client fail to comply with the Company's cancellation policy as set out in the Proposal.

#### 2 PROVISION OF SERVICES

##### 2.1 Company's rights and obligations

- (a) Company will commence the Services on Commencement Date, subject to any variation agreed by the parties, and provide the Services during the Term.
- (b) Prior to payment of any amount of the Fee (as applicable), Company may, at its discretion:
  - (i) decline to provide the requested Services; or
  - (ii) postpone, cancel or re-schedule the Services; by providing notice to Client as early as possible.
- (c) In the event of Pre-Payment, Company may, at its discretion:
  - (i) decline to provide the requested Services; or
  - (ii) postpone, cancel or re-schedule the Services; by providing notice to Client as early as possible.
- (d) Client acknowledges that Company will not be liable for any loss or damage arising as a result of clauses 2.1(b) and 2.1(c).
- (e) Company will ensure that the Services comply with all applicable laws, regulations, and standards in accordance with the scope of practice, code of ethics, and code of conduct that may be applicable as set by the Australian Counselling Association (**ACA**) and the Psychotherapy and Counselling Federation of Australia (**PACFA**).
- (f) Company does not warrant that it will be able to provide the Services at specific times, unless expressly specified in the Proposal or otherwise by Company in writing.
- (g) Company will use its discretion as to the most suitable manner of providing the Services to Client.
- (h) Company will comply with all reasonable directions given by Client as to the provision of the Services. If in the reasonable opinion of Company a direction by Client results in reasonable additional costs or expenses to Company for the delivery of its Services, Company must inform Client of this additional cost and Client must pay these amounts to Company.
  - (i) Company may collect all personal and private information;
    - (i) directly from Client during consultations, sessions, hardcopy forms, or correspondences via email or telephone;
    - (ii) indirectly with any employee of Company; or
    - (iii) subject to clause 2.2(a)(i), through third parties such as other health practitioners via referrals, correspondences, and medical reports.
- (j) Nothing in the agreement will affect Company's right to use its own judgment and its own skills to achieve compliance with ACA, PACFA, any laws, regulations, standards, directions, resolutions or other obligations.

##### 2.2 Client's obligations

- (a) Client must:
  - (i) execute and return to Company the consent form provided as attached to these T&Cs as set out in the Proposal;
  - (ii) review the scope of practice, code of ethics, and code of conduct as set out on the website of ACA at [www.theaca.net.au](http://www.theaca.net.au) and PACFA at [www.pacfa.org.au](http://www.pacfa.org.au);
  - (iii) co-operate with Company as reasonably required;

- (iv) accept or reject the Proposal within 28 days of the date of Proposal;
  - (v) provide, or procure the provision of, sufficient information, including, but not limited to, Client's mental health and medical history, as requested by Company in a timely manner to enable Company to deliver the Services, including personal and private information;
  - (vi) ensure that the appointments are maintained by Client to enable Company's delivery of its Services;
  - (vii) attend appointment with Company;
  - (viii) actively participate in the delivery of Services by Company;
  - (ix) complete all agreed homework or assignments prescribed by Company;
  - (x) not carry out or undertake any audio recordings of any Appointment session unless verbal consent is provided by Company; and
  - (xi) ensure cooperation with and assist Company (collectively 'Client Services').
- (b) If Client does not comply with clause 2.2, then any additional costs and expenses which are reasonably incurred by Company will be paid by Client and Company will not be responsible for any delay in provision of the Services resulting from a breach of clause 2.2.
- (c) If Client cancels the agreement after Acceptance, Client must pay to Company the cost (if any) of any Company personnel or contractors reasonably procured in anticipation of commencing and providing the Services.

### **3 PAYMENT**

#### **3.1 Prepayment**

- (a) Client must complete Pre-Payment as specified in the Agreement.
- (b) Company is not required to provide its Services until Pre-Payment is completed by Client.

#### **3.2 Invoices**

Company will issue its invoice for payment of Fee to Client in respect of its rendered Services to Client at the end of each Appointment session.

#### **3.3 Payment obligation**

- (a) Client must pay each Company's Invoice in full at the end of each Appointment session unless Company agrees to payment at a later date with Client. If the Invoice does not list a payment date, the Client must make full payment to the Company within 7 days from the date of its issue.
- (b) Client must pay each Invoice in full without set-off, deduction or counterclaim and Client acknowledges that this clause may be produced in bar of any proceeding for set-off, deduction or counterclaim.

#### **3.4 Failure to pay**

If Client does not pay Company in accordance with this clause 3, Company is entitled to do any or all of the following:

- (a) require Client to pay, in advance, for any Services (or any part of the Services) which have not yet been performed;
- (b) reserve the rights to negotiate with Client a payment plan acceptable to all parties in line with future Services;
- (c) if Client is refusing or fails to pay or is not cooperative, not perform any further Services;
- (d) charge penalty interest on the outstanding amount at the rate fixed under the *Penalty Interest Rates Act 1983* (Vic); and
- (e) terminate this agreement under clause 10.

#### **3.5 Further costs**

- (a) If an outstanding account is referred to a law firm and/or debt collection agency for recovery, Client will be liable for:
  - (i) any recovery costs incurred; and

- (ii) any commission payable by Company.

- (b) If an outstanding account is referred to a legal practitioner, Client must pay all costs reasonably claimed by the legal practitioner on a solicitor/client basis.

### **4 CONFLICT OF INTEREST**

- (a) If Company determines in its absolute discretion (acting reasonably) that there is a conflict of interest in respect of the Services or Client, Company must notify the Client.
- (b) If Company notifies Client of a conflict of interest pursuant to clause 4(a), the parties must use their reasonable endeavours to vary the Services (if applicable) to eliminate the conflict of interest.
- (c) If the parties are unable to eliminate the conflict of interest in accordance with clause 4(b), Company may:
  - (i) terminate this agreement; and
  - (ii) refer the Client to a third-party mental health professional for the Services.

### **5 LIMITATION OF LIABILITY AND INDEMNITIES**

#### **5.1 Statutory warranties**

- (a) The provisions of this agreement do not exclude or limit the application of any laws, (including the *Competition and Consumer Act 2010* (Cth)) where to do so would contravene those laws or cause any part of this agreement to be void.
- (b) To the maximum extent permitted by law, the provisions of this agreement exclude all implied conditions and warranties except any implied condition or warranty, the exclusion of which would contravene any laws or cause this condition to be void.

#### **5.2 Limitation of Company liability**

- (a) To the extent permitted by law and subject to clause 5.3(a), the liability of Company in connection with the provision of the Services whether arising in contract, tort, negligence, breach of statutory duty or otherwise will, to the extent permitted by law, be limited to:
  - (i) the re-supply of the Services for an Appointment session;
  - (ii) the payment of costs for the Appointment session to have the Services provided again, the amount of which must not exceed the Fee; or
  - (iii) the reimbursement of any Fee paid by Client to Company for the Services related to that Appointment Session;
- (b) Each party releases the other party from any liability for any Claim arising as a result of delay or failure to provide the Services or to comply with this agreement to the extent that such delay or failure is caused by an event or circumstance that is beyond the reasonable control of that party (including a Force Majeure Event), and which by its nature could not have been foreseen or, if it could have been foreseen, was unavoidable, provided that the affected party has used all reasonable endeavours to promptly cure such an event or circumstance.

#### **5.3 Limitation of liability of both parties**

- (a) To the fullest extent permitted by law, no party will be liable for any Consequential Loss of the other party in contract, tort, negligence, breach of statutory duty or otherwise.
- (b) No party will be liable to the other party to the extent that the other party or its agents, employees or subcontractors has caused or contributed to any loss or damage.

#### **5.4 Indemnity**

Client will indemnify, keep indemnified and hold the Company harmless from and against all Claims and loss or damage, to the extent caused or contributed to by Client.

### **6 INTELLECTUAL PROPERTY**

#### **6.1 Ownership of IP Rights**

- (a) Each party will retain the rights, title, and interest in its Existing IP Rights.



## T/A Van Ryan Therapies

### Terms and Conditions

- (b) Client agrees that Company will own all Developed IP Rights, and that all right, title and interest in the Developed IP Rights will vest beneficially in favour of Company and, to the extent this does not occur, Client assigns them (by way of present assignment) to Company.

#### 6.2 Licensing of IP Rights

- (a) Client agrees and acknowledges that, subject to full payment of Fees and Costs, Company grants Client a non-exclusive royalty free licence to use its Developed IP Rights contained in its Services for the intended purpose for which it was developed for Client's own mental health treatment, therapy, and well-being and for no other purpose except as agreed to by the parties.
- (b) Client must obtain the written consent of Company where Client intends to make use of the Developed IP Rights for any other purpose other than the intended purpose.

#### 6.3 IP Rights Warranties

- (a) Each party warrants that it will not, in any way, infringe or allow any other person to infringe the other party's Existing IP Rights.
- (b) Client warrants that it will not, in any way, infringe or allow any other person to infringe the Developed IP Rights.
- (c) Client warrants that it will not, in any way, infringe or allow any other person to infringe any third-party's IP Rights.

### 7 PRIVACY AND CONFIDENTIAL INFORMATION

- (a) Client acknowledges and agrees Company may be required to collect Confidential Information from Client in accordance with its Privacy Policy attached to this Agreement.
- (b) Client agrees to provide Company with all necessary records, including Confidential Information, as reasonably required by Company for the purpose of performing the Services.
- (c) Confidential Information received by Company while providing the Services will not be disclosed to persons other than Client except as required or allowed for by law or with the Client's written consent.
- (d) Each party must ensure that to the extent it shares any data with the other party, it is compliant with all relevant privacy and data protection laws and regulations.

### 8 REPRESENTATIONS AND WARRANTIES

#### 8.1 By each party

Each party represents and warrants to the other party that:

- (a) the execution of the Proposal has been properly authorised by all necessary action;
- (b) it has full power and authority to execute this agreement and to perform or cause to be performed its obligations under this agreement;
- (c) this agreement constitutes a legal, valid and binding obligation on it;
- (d) this agreement does not conflict with, or result in the breach of, or default under, the provision of the constitution or other constituent documents of the party or any material term or provision of any agreement or any writ, order or injunction, judgment, law, rule or regulation to which it is a party or is subject or by which it is bound;
- (e) it is solvent, no controller, administrator or statutory manager has been appointed in respect of it or in respect of any of its assets and it has not entered into any voluntary arrangement with one or more creditors; and
- (f) if it is a trustee of a trust:

- (i) it is the sole trustee of the trust and no action has been taken to remove or replace it;
- (ii) it has the power under the trust deed to execute and perform its obligations under this agreement;
- (iii) all necessary action has been taken to authorise the execution and performance of this agreement under the constituent documents of the trust;
- (iv) this agreement is executed and all transactions relating to this agreement are or will be entered into as part of the due and proper administration of the trust and are or will be for the benefit of the beneficiaries;
- (v) no controller, liquidator or statutory manager has been appointed in respect of the trust or any part of the assets or undertaking of trust; and
- (vi) to its knowledge, there are no actions, claims, proceedings or investigations pending or threatened against it which could have a material effect upon the subject matter of this agreement

### 9 GST

- (a) Unless the contrary intention appears, any amount specified in the Proposal is exclusive of GST.
- (b) For the purposes of this clause, the terms words defined in the GST Law, have the same meaning in this agreement.
- (c) If GST has any application to any supply made under or in connection with this agreement, the party making the supply (for the purposes of this clause only, **Supplier**) may in addition to any amount or consideration expressed as payable elsewhere in this agreement, recover from the recipient of the supply (for the purposes of this clause only, **Recipient**) an additional amount on account of GST, such amount to be calculated by multiplying the amount or consideration payable by the Recipient for the relevant supply by the prevailing GST rate.
- (d) Any additional amount on account of GST recoverable from the Recipient under this clause shall be calculated without any deduction or set-off of any amount and is payable by the Recipient at the same time and in the same manner as paying the amount or consideration for the relevant supply under this agreement.
- (e) The Supplier must issue to the Recipient a tax invoice and must do anything else which may be reasonably required to enable or assist the Recipient to claim or verify any input tax credit, set off, rebate or refund in relation to any GST payable under this agreement or in respect of any supply under this agreement.
- (f) Where an adjustment event in relation to a supply under this agreement has occurred, the Supplier must issue an adjustment note to the Recipient no later than 30 days after that adjustment event.

### 10 TERMINATION

#### 10.1 Termination for breach

Either party may terminate the agreement by giving 7 days' notice in writing to the other, if the other party has:

- (a) failed to comply with the terms and conditions of the agreement; and
- (b) failed to rectify that breach, to the satisfaction of the notifying party, following the expiration of 7 days' notice of the breach.

#### 10.2 Immediate termination

Company may terminate this agreement immediately on notice to Client if:

- (a) Client:

- (i) is no longer able to perform its obligations under this agreement, including by failing to pay any amount when due to Company;
  - (ii) where it is a body corporate, any officer or employee:
    - A. is charged with or found guilty of any criminal offence;
    - B. by their conduct, act or omission brings the Company or any of its officers, employees or agents into disrepute; or
    - C. commits fraud or is alleged to have committed any impropriety in their financial dealings;
  - (iii) breaches a material term (or persistently breaches any term) of this agreement; or
  - (iv) disagrees to an alternate delivery of Services where Company may refer Client to a third-party mental health professional; or
  - (v) refuses any additional costs for an alternate delivery of Services; or
- (b) Company is unable to perform its obligations under this agreement:
- (i) where delivery of the Services to Client is not to the best interest of Client; or
  - (ii) as a result of TPD or death of Company Affiliate.

### 10.3 Consequences of termination

Upon termination of this agreement:

- (a) any Fee, expenses or reimbursements (whether invoiced or not) payable by Client to Company in respect of any period prior to termination must be paid by Client within 7 days of termination;
- (b) each party retains the rights it has against the other party, including in respect of any breach of this agreement that arose before termination or out of the events that caused termination;
- (c) the rights and obligations of each party under this agreement which are expressed to survive termination will remain in force; and
- (d) neither party may represent to any other person, whether directly or indirectly, that it remains associated with the other party;

## 11 GENERAL

### 11.1 Amendment

This Agreement may only be amended by written consent of Company.

### 11.2 Severability

If any provision in the Agreement is void, invalid, illegal or unenforceable the existence, validity, legality and enforceability of the residual provisions will not be affected, prejudiced or impaired and the offending provision will be deemed severed from the agreement.

### 11.3 Waiver

No failure or delay by a party in exercising any right, power or privilege in the agreement will impair the same or operate as a waiver of the same nor may any single or partial exercise of any right, power or privilege preclude any further exercise of the same or the exercise of any other right, power or privilege.

### 11.4 Joint and several liability

If more than one person is the Client, each will be jointly and severally liable, regardless of the person to whom the invoice is addressed to and regardless of which person received the benefit of the Services.

### 11.5 No reliance

Each of the parties acknowledges that, in entering into the agreement, it does not do so in reliance on any representation, warranty or other provision except as provided in writing. Any conditions, warranties or other terms implied by statute or common law are excluded from this agreement to the fullest extent permitted by law.

### 11.6 Priority of documents

- (a) If there are any inconsistencies between the agreement and any other document, the agreement will prevail.

- (b) If there are inconsistencies between these T&Cs and the Proposal, the T&Cs will prevail.

### 11.7 Survival of obligations

The obligations accepted by the parties under clause 5, 6 and 7 survive termination or expiry of the agreement or the provision of the Services.

### 11.8 Application of law

The rights and remedies provided in the agreement are cumulative and not exclusive of any rights and remedies provided by law.

### 11.9 Electronic Transaction

Each party consents to the execution of this Agreement by electronic communication, as contemplated by the *Electronic Transactions (Victoria) Act 2000 (Vic)*.

### 11.10 Governing law

- (a) This agreement will be governed by and construed in accordance with ACT law.
- (b) The parties irrevocably submit to the exclusive jurisdiction of the courts of ACT.

## 12 DEFINITIONS AND INTERPRETATION

### 12.1 Definitions

In this agreement, unless the context otherwise requires capitalised words have the meaning set out below or in the schedule:

- (a) **Affiliate** means in relation to a person, any company or other entity, whether, or not, with legal personality, which directly or indirectly controls, is controlled by or is under joint control with that person as described in the Proposal;
- (b) **Appointment** means the agreed date on which Client will attend the session for the delivery of its Services to Client;
- (c) **Claims** means all demands, claims, proceedings, penalties, loss, damages, fines and liability (whether criminal or civil, in contract, tort or otherwise);
- (d) **Commencement Date** means the agreed date of the first Appointment between Client and Company for the delivery of its Services as set out in the Proposal;
- (e) **Company's Location** means the business address of Company located at Level 1, 18 National Circuit, Barton, ACT 2600 or at any other nominated address location used by Company as its Office as set out in the Proposal from time to time;
- (f) **Confidential Information** means all information (whether written or oral) disclosed by a party to another party which is either:
  - (i) identified as confidential by the discloser at the time of disclosure; or
  - (ii) of a nature which should reasonably be regarded by the recipient as confidential,
 but does not include information which:
  - (iii) is in the public domain without fault of the discloser;
  - (iv) was in the recipient's lawful possession at the time of disclosure;
  - (v) is disclosed to obtain the consent of any third party to any requirement of, or to any act pursuant to, this agreement; or
  - (vi) is required by law, by an order of a court or tribunal or by the requirements of a stock exchange to be disclosed;
- (g) **Consequential Loss** means all indirect, special and/or consequential losses, damages, costs or expenses of any nature whatsoever incurred or suffered, including any economic loss or other loss of turnover, any loss of reputation or goodwill, any loss of value of intellectual property, any legal costs and other expenses of any nature whatsoever in respect of them;
- (h) **Developed IP Rights** means any IP Rights developed during the Term in the course of providing the Services;



## T/A Van Ryan Therapies

### Terms and Conditions

- (i) **Existing IP Rights** means the IP Rights of each party existing as at the Commencement Date, including but not limited to:
- (i) IP Rights from previous practitioners and employees of the Company; and
  - (ii) other third-party providers, software or otherwise;
- (j) **Force Majeure Event** means an event, or series of events, outside the reasonable control of the Company including (but not limited to) death or TPD of Company Affiliate, fire, lightning, explosion, flood, earthquake, storm, hurricane, action of the elements, riots, civil commotion, malicious damage, armed conflicts, acts of terrorism, war (declared or undeclared), blockade, revolution, pandemic, government decision or action, sabotage, radioactive contamination, toxic or dangerous chemical contamination or any other catastrophes;
- (k) **GST Law** means the same as in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);
- (l) **IP Rights** means all present and future statutory or other intellectual property rights which exist or may in future exist in respect of:
- (i) any inventions, innovations, patents copyright, confidential information and know-how; and
  - (ii) all rights with respect to intellectual property as defined in Article 2 of the convention establishing the World Intellectual Property Organisation of July 1967,
- including, but not limited to programmes, designs, briefs, materials, manuals, records, procedures, systems, marketing techniques, plans or specifications;
- (m) **Loss** means loss, damage, liabilities, deficiencies, actions, judgments, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys' fees and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers;
- (n) **Client** means the Client identified in the Proposal;
- (o) **Services** means the mental health services, treatment, and therapies provided to Client by an accredited Counsellor retained by the Company which may include, but is not limited to:
- (i) anxiety;
  - (ii) depression;
  - (iii) generalised counselling;
  - (iv) couples counselling;
  - (v) stress management;
  - (vi) grief and loss;
  - (vii) children aged 13 years and over (with parental consent);
  - (viii) life coaching;
  - (ix) LGBTQI concerns;
  - (x) conflict resolutions; and
  - (xi) abuse and trauma counselling;
- (p) **Telehealth** means where a session is conducted by Company or Company's Affiliate with Client by way of:
- (i) telephone;
  - (ii) live video;
  - (iii) store and forward;
  - (iv) remote Client monitoring;
  - (v) mobile health; and
  - (vi) any other communication technology-based services;
- (q) **Term** means the period during which the Services are to be rendered to the Client from the Commencement Date to the earlier of the last session or termination date of mental health treatment by Company; and
- (r) **TPD** means the total and permanent disability (whether physical or mental) for a period (or anticipated period) of at least three months.

### 12.2 Interpretation

In this agreement, unless the context otherwise requires:

- (a) a reference to any law includes any subordinate legislation as amended, replaced, re-enacted or consolidated;
- (b) the singular includes the plural and vice versa;
- (c) where a party is to determine a matter they are to do so acting reasonably;
- (d) a reference to 'person' includes:
  - (i) a corporation, partnership, joint venture, association, authority, trust, state or government authority; and
  - (ii) their executors, administrators, substitutes, successors and permitted assigns;
- (e) a reference to a clause or schedule is to a clause or schedule of this agreement;
- (f) headings are included for convenience only and do not affect interpretation;
- (g) a reference to any agreement or document is to that agreement or document (and, where applicable, any of its provisions) as amended, novated, supplemented or replaced from time to time;
- (h) a reference to a matter being written includes that matter being in any mode of representing or reproducing words, figures or symbols capable of written form;
- (i) a reference to dollars or \$ is to Australian currency;
- (j) if a period of time starts from a given day (or event), it is calculated exclusive of that day (or the day the event occurs);
- (k) "includes", "including", or similar expressions, are not words of limitation.

### 12.3 Neutral interpretation

Nothing in this agreement is to be interpreted against a party solely on the ground that the party put forward this agreement or a relevant part of it.