

# TERMS AND CONDITIONS OF SERVICE

## AGREEMENT

1. Shimazaki Sentinel Pty Ltd (ACN 677 611 997) of PO Box 140, Quinns Rocks WA 6030, Australia ("we", "Supplier") agree to supply you (the "Client") with the services specified in the above proposal.
2. We will commence providing the services to you on the and cease providing services to you on the dates as specified in the above proposal or as otherwise agreed.

## PAYMENT OF THE FEES

3. Price means the amount agreed between us as specified in the above proposal.
4. You must pay the price on the payment terms set out in the above proposal and these terms and conditions.
5. If you must make a payment or do any other thing on or by a day that is not a business day you must make the payment or do the thing on or by the next business day. Your observation of agreed time frames is of primary importance.
6. Unless we otherwise agree to you paying by instalments and note this in the proposal, payment is a condition precedent to delivery of the services.
7. Any services required by the Client that are beyond the scope outlined within the proposal, whether by the Client's request or required due to the discovery of further security breaches or weaknesses discovered after the commencement of the Services, will be charged to the Client as an additional cost. The Supplier reserves the right to vary Fees during the term of this agreement with written notice to the Client five (5) working days prior to the change being implemented.
8. If the Client disputes the whole or any portion of the amount claimed in an invoice submitted by the Supplier, the Client must:
  - a. pay the portion of the amount stated in the invoice which is not in dispute in accordance with the terms of payment set out in this agreement; and
  - b. notify the Supplier in writing (within five (5) days of receipt of the invoice) of the reasons for disputing the remainder of the invoice.
9. Payment may be made by bank cheque, online banking transfer, credit card (surcharges may apply), PayPal, or by any other method as agreed by the Parties.

## RISK AND TITLE

10. Subject to clause 6, title in the materials or deliverables does not pass to you until we have received payment in full.
11. To protect our security interest in the services until payment we may choose to register this agreement under the Personal Properties Securities Act 2009. You agree to do all things necessary to facilitate such registration.
12. If we provide to you any materials or deliverables, then risk passes to you at the time we send or deliver to you the materials or deliverables.

## CLIENT OBLIGATIONS

13. During performance of the services the Client will:
  - a. cooperate with the Supplier as the Supplier reasonably requires;
  - b. provide the information and documentation that the Supplier reasonably requires;
  - c. make available to the Supplier such Facilities as the Supplier reasonably requires; and
  - d. ensure that the Client's staff and agents cooperate with and assist the Supplier.
14. The Client will not charge for the Supplier's use of the facilities made available by the Client.
15. The Client must not use any advice or reports prepared by the Supplier for any other purposes other than those described in the proposal without the Supplier's prior written consent

16. If the Client does not provide the facilities that the Supplier reasonably requires (and within the time period) to perform the services, then any additional costs and expenses which are reasonably incurred by the Supplier will be paid by the Client.

## SUPPLIER OBLIGATIONS

17. During the performance of the services, the Supplier will:
- exercise all due care and diligence in performance of the Services; and
  - ensure that the Services are provided to the Client in accordance with the scope and requirements set out in the above proposal.
18. Subject to clause 17(a), the Client acknowledges that the Supplier will be indemnified from any poor performance, crash or other occurrences that may arise as a result from performing any diagnostic testing or breaches of security in connection with the services.
19. The Supplier's obligations under this Agreement and in particular under clause 17(b) are subject to:
- the Client abiding by any recommendations the Supplier makes in relation to the Services; and
  - the Client not using an alternative service provider other than the Supplier for the same or related services and ensuring any alternate service provider service does not in any way impact the technology or risk environment of the Client.

## INTELLECTUAL PROPERTY

20. For the purposes of this clause and Agreement, Intellectual Property means:
- any patent, registered and common law trade mark, trade name, business name, company name, domain name, copyright, registered or other design right, circuit layout right and any corresponding property right, together with any right to apply for the grant or registration of the same; and
  - any right in respect of an idea, invention, discovery, trade secret, improvement, technical information, specification, know how, data, algorithm, formula or Confidential Information.
21. You agree we retain ownership of all Intellectual Property rights in respect of the services including any copyright, patent, trade secrets or trade marks. You agree not to disclose any discovery, design, procedure, invention or improvement in procedure made known to you by us in relation to the services.
22. You confirm that at all times it is and was understood and agreed that from the moment of creation of any materials or deliverables, we would own all rights in respect of the materials or deliverables arising under the *Copyright Act 1968*.
23. In consideration for payment of the fee to us, we grant you a non-exclusive, perpetual license to use the materials or deliverables for personal or business purposes as agreed. You agree that you cannot license, transfer or sell the materials or deliverables to a third party, unless agreed by us in writing. You agree that we may use these materials or deliverables how we deem necessary, including for display on our website.

## CONFIDENTIALITY

24. For the purposes of this clause and agreement, Confidential Information means:
- any information which is by its nature confidential, regardless of the form or medium of that information; and
  - any other information relating to the business, computer systems or affairs of the recipient, the recipient's affiliates, or their patients (including personal information and patient files), including designs, proposals, contracts, financial details, marketing strategies, policies, products, services, processes, operating practices and procedures, business plans, reports, plans and documents, which is or has been disclosed (whether orally, electronically, in writing or otherwise), or otherwise obtained by the Supplier,  
but excludes information which:
    - was in the public domain at the time of its receipt by the Supplier; or
    - became part of the public domain after its receipt by the recipient, otherwise than through a disclosure by the Supplier, or any person to whom it has disclosed Confidential Information.
  - was in the public domain at the time of its receipt by the Supplier; or
  - became part of the public domain after its receipt by the recipient, otherwise than through a disclosure by the Supplier, or any person to whom it has disclosed Confidential Information.
25. Both parties agree to take all reasonable measures to ensure the Confidential Information of the other party is protected against loss and against unauthorised access, use, modification, disclosure or other misuse and that only authorised representatives, employees and officers have access to such information.
26. The Supplier may only use, disclose or reproduce the other party's Confidential Information strictly for the purposes of providing the services to the other party under this agreement.
27. The parties agree:

- a. to comply with those provisions of the Privacy Act which concern the security, use and disclosure of personal information (as defined in the Privacy Act) as if it were an APP entity, credit provider or a tax file number recipient as defined in the Privacy Act;
- b. to take due care and diligence in maintaining the confidentiality of customer files, including but not limited to customers personal information;
- c. not to transfer any Confidential Information, or personal information outside of Australia, or allow parties outside of Australia to have access to it; and
- d. immediately notify the other party of any breach of this clause (including where the party should reasonably suspect such a breach has occurred), and co-operate with the other party in the investigation, or resolution, of any such breach, or any complaint alleging a privacy breach.

## EXCLUSIVE AGREEMENT

28. Notwithstanding any other clause in this agreement, you agree that you must not engage any other party to provide the services during the course of this agreement, unless agreed by us in writing.

## LIMITATION OF LIABILITY

29. We disclaim all and any warranties, not required by law, whether express or implied including but not limited to warranties as to merchantability and fitness for a particular purpose of the services.
30. Acceptance of the materials or deliverables must take place immediately following delivery and is established if you signify by words or conduct that the materials or deliverables are conforming or that you retain them in spite of their nonconformity or deal with them in a way inconsistent with our ownership. You may reject them on good grounds after a reasonable opportunity to inspect them. The rejection must immediately be communicated to us with full particulars of the nonconformity. On acceptance if payment arrangements are in place then they must be honoured. If payment has been made, then it will either be refunded by us or credited towards payment of replacement materials or deliverables for the nonconforming materials or deliverables.
31. In the event you suffer any loss or damage howsoever arising as a result of the services not being fit for purpose, then you agree that our liability is limited to the replacement of the services and is not to include economic or consequential damages of any nature.
32. You represent and warrant to us that all information and representations that you, or any person acting on your behalf has given in connection with our transactions are correct and that you have not failed to disclose to us anything relevant to our decision to have dealings with you and that no court proceedings or dispute is current that may have an adverse effect on performing your obligations under this agreement.
33. By accepting payment of any sum after its due date we do not waive our right either to require payments as they fall due or to suspend or end our arrangements.

## TERMINATION

34. This agreement will terminate on the cessation date unless otherwise agreed between the parties.
35. Notwithstanding any other clause in this agreement, either party may terminate this agreement at any time by providing the other party with 30 days' written notice.
36. Either party may terminate this agreement immediately if the other party commits a material breach of the agreement which has not been rectified within fourteen (14) days after receiving a notice of breach.
37. Upon termination of this agreement, you must promptly deliver to us all Confidential Information and copies of any materials or deliverables provided by us to you during the course of this agreement, including but not limited to access to any digital or social media provided by us to you.

## DEFAULT

38. You will be in default if you do not pay us when monies are due for payment or fail to comply with any other obligation under our business arrangements.
39. If you are in default under our agreement, we may send you a default notice. The notice will tell you what the default is and what you are required to do to correct the default. You will have 5 business days to rectify the default.
40. If you do not comply with the default notice, then we may terminate the agreement with immediate effect and you become immediately liable to pay us all monies owing with interest on that amount from the due date until payment at the rate of 10% per annum.

41. You agree to pay on default all costs and expenses incurred in exercising our rights of recovery from you if any and indemnify us against any losses resulting from the default.

## **SPECIAL CONDITIONS**

42. We each agree to be bound by the special conditions set out in the proposal above and agree they take precedence over any contrary provision in this agreement.

## **GENERAL**

43. Notices must be in writing and be sent by Express or Registered Post with delivery confirmation to the address in the proposal above or by facsimile transmission or email with receipt confirmation.
44. The law of Western Australia governs this agreement. We submit to the exclusive jurisdiction of the courts of Western Australia and the Federal Court of Australia.