

Terms and Conditions for Companies

Last updated: 22 April 2024

1. **Acceptance**

- (a) These Terms and Conditions together with any schedules apply to and are incorporated into your purchase of the Services pursuant to the relevant Order Form and are incorporated into our Agreement with you.
- (b) You will be taken to have accepted, and will be legally bound by, these Terms and Conditions if you:
 - (i) reply electronically to us confirming that you agree to an Order Form for Services provided to you by us;
 - (ii) sign an Order Form and return it to us electronically or by any other means;
 - (iii) click "I accept" on these Terms and Conditions where the option is made available to you; and/or
 - (iv) provide us with further instructions for the Services after receiving an Order Form and a copy of these Terms and Conditions electronically or by any other means.
- (c) These Terms and Conditions apply to all transactions between Medcast Pty Ltd ACN 166 955 433 (**us, we or our**) and you relating to the provision of the Services and constitutes a separate legal agreement in respect of each Order Form.
- (d) We will provide 10 business days' notice (**Notice Period**) to you by email and/or through the Platform if we intend to amend these Terms and Conditions (**New Terms**). If you do not notify us in writing that you disagree with the New Terms prior to the end of the Notice Period, you will be taken to have agreed to the New Terms and the New Terms will be effective from the end of the Notice Period. If you notify us in writing that you do not agree to the New Terms within the Notice Period, you will remain on your current Terms and Conditions until the end of your then-current Initial Term or Further Term, at which time and unless otherwise agreed, this Agreement will automatically terminate effective at the end of the current Initial Term or Further Term.
- (e) You must not enter into an agreement with us for the supply of the Services, and we will be under no obligation to supply the Services, if you do not agree to and accept these Terms and Conditions or if you do not have authority to act on behalf of any person or body corporate for whom you are acquiring the Services.
- (f) This Agreement applies to all transactions between Medcast and you relating to the provision of the Services and constitutes a separate legal agreement in respect of each Order Form that you receive and accept (either by signing or otherwise proceeding with a Service, including by making a payment in respect of a Service).
- (g) In the event of any inconsistency between these Terms and Conditions and the Order Form, the terms of the Order Form will prevail to the extent of the inconsistency.

2. **Basis of engagement**

We are a non-exclusive independent contractor to you. Nothing in this Agreement is intended to create an employment or agency relationship between us and you, or any of our employees, agents or contractors and you.

3. **Term**

This Agreement commences on the Commencement Date and continues until the Services under the relevant Order Form are completed, unless terminated earlier in accordance with these Terms and Conditions.

4. **Medcast Course Centre Services**

If an Order Form contains Medcast Course Centre (**MCC**) services or, you otherwise purchase MCC services from us, then Schedule 1 to these Terms and Conditions will apply to your purchase and our provision of the MCC services.

5. **Your Obligations**

- (a) You and your Users must:
 - (i) comply with all applicable laws and regulations;
 - (ii) co-operate with us and promptly provide all assistance and information reasonably required by us;
 - (iii) not unreasonably impede our provision of the Platform and Services;
 - (iv) only use the Materials for the purpose of receiving or using the Services from us;
 - (v) ensure that you do not cause or contribute to any matter or circumstance that is likely to give rise to an Infringement Claim; and
 - (vi) not provide access to the Materials to persons other than your Personnel.
- (b) You acknowledge and agree that our ability to provide the Services to you relies on your reasonable cooperation and assistance. We will not be liable to you if we are not able to provide the Services to you or achieve the timeframes set out in the Order Form as a direct or indirect result of your failure to cooperate with or assist us. We will use best endeavours to notify you of any expected or anticipated delays in performance of the Services.
- (c) You may request us to provide additional services and we may provide a further proposal for such services which, if accepted by the you, will form a separate agreement between us.

6. **Our Obligations**

- (a) We will:
 - (i) perform our obligations under this Agreement with due care, skill and diligence and ensure that our employees, agents or contractors are appropriately skilled and qualified;
 - (ii) provide the Material in accordance with this Agreement; and
 - (iii) comply with all applicable laws and regulations.
- (b) We may, but are not obliged to, monitor the use of the Platform. We may remove or block, or direct you to remove or block, any User Content from the Platform if we believe, in our absolute discretion, that such User Content breaches this Agreement.

7. Account

- (a) You and your Users may be required to create an account (**Account**) for the purposes of accessing the Platform. Registration may require you to provide personal details including a valid email address, telephone number, and a username and password for log in purposes (**Registration Details**).
- (b) If you or your Users' registration information changes, you and your Users must promptly update your Account to reflect those changes.
- (c) You and your Users are responsible for keeping your Account details, including username and password, secure and confidential at all times.
- (d) You and your Users must immediately notify us of any unauthorised use of or access to your Accounts, or any other breaches of security.
- (e) We have the right to suspend your and your Users' access to your and your Users' Accounts, or to terminate your and your Users' Account at any time if you breach this Agreement.
- (f) You acknowledge that:
 - (i) it is your responsibility to verify the identity of your Users;
 - (ii) it is your responsibility to ensure the security of your Account; and
 - (iii) we will not be held liable or responsible for any unauthorised access to or use of your Account.

8. Use of Platform

8.1 By accessing the Platform and Services, you must and must ensure that your Users:

- (a) use the Platform for lawful purposes only;
- (b) not commit any act or engage in any practice that:
 - (i) is harmful to our systems, reputation or goodwill; or
 - (ii) interferes with the integrity of the Platform, including, but not limited to, by hacking, transmitting any viruses, spyware, malware or any other code of a destructive or disruptive nature;
- (c) not create Accounts with us through unauthorised means, including by using an automated device, script, bot or other similar means;
- (d) not restrict, or attempt to restrict, another customer from using the Platform;
- (e) not encourage or facilitate violations of this Agreement;
- (f) not distribute or send communications that contain spam, chain letters, or pyramid schemes;
- (g) not harvest or otherwise collect information about others, including Registration Information, without their consent;
- (h) not bypass measures used to prevent or restrict access to the Platform;
- (i) not interfere with the privacy of, harass, intimidate, act violently or inappropriate towards or be discriminatory against another person; and
- (j) not infringe any intellectual property rights or any other contractual or proprietary rights of a third party.

8.2 By accessing the Platform and using our Services, you agree and acknowledge that:

- (a) you are responsible for determining who your Users are and are responsible for your Users' use of the Platform and Service;
- (b) you and your Users are authorised to make available, access and use the User Content on the Platform; and
- (c) we reserve the right, but are not obliged, to monitor, review, verify, edit, modify or delete User Content and we do not control the accuracy or completeness of User Content.

9. User Content

- (a) You are solely responsible for User Content:
- (b) You must ensure that the User Content does not contain anything which:
 - (i) is offensive, abusive or menacing;
 - (ii) is pornographic, obscene or indecent;
 - (iii) is unlawful;
 - (iv) is an invasion of privacy
 - (v) infringes any Third Party IP; or
 - (vi) incites, or is capable of inciting, violence, racial hatred, cruelty or which encourages any unlawful or illegal act or omission.
- (c) You grant us a non-exclusive, non-transferable, non-assignable, royalty-free, irrevocable, worldwide licence to access, copy, modify and store the User Content to the extent necessary for the purposes of providing the Service and/or the Platform and performing our obligations under this Agreement.

10. Maintenance and Support

10.1 Maintenance

- (a) We may amend, upgrade or conduct maintenance of the Platform at any time. Where practicable, we will advise you of any material changes to the Platform by providing written notice to you and publishing information on our Website.
- (b) We do not guarantee that any change, error correction or patch will be compatible with any application, other software or interface that connects to or interfaces with the Platform.

10.2 Support levels and assistance requests

- (a) Where applicable to the Services, we will provide assistance that aligns with our Support Levels during our normal business hours provided that you give us notice in accordance with this clause 10.2 and reasonably assist us where necessary.
- (b) Requests for assistance should be made through our website at <https://help.medcast.com.au/s/>.



- (c) You agree to assist us with investigating and ascertaining the cause of any error and provide us with all necessary information relevant to the error (including but not limited to any act or omission by you or your Users which may have contributed to the error).
- (d) If we agree to provide any requested assistance, we will notify you of any additional charges that apply.

11. Your Facilities

- (a) Where we are required to physically attend your Facilities, such as where we are delivering Face to Face Services, you must:
 - (i) give us and our Personnel, safe, convenient, and easy access to your Facilities as reasonably required for us to provide the Services;
 - (ii) provide us with all reasonable assistance and access to any Material, equipment (such as a projector screen) or other information, documents, systems and data as required and relevant to the supply of the Services; and
 - (iii) provide all catering, food, drink and access to basic amenities during the Services.
- (b) In addition to clause 11(a), you must at all times:
 - (i) provide a healthy and safe working environment;
 - (ii) comply with all applicable work health and safety laws; and
 - (iii) provide us and our Personnel who are providing Services on-site with any applicable work health and safety policies and appropriate health and safety training.

12. Training Equipment and Material

- (a) We may provide Training Equipment for use during the Services upon request and with prior notice.
- (b) When using any Training Equipment, you must and must ensure that your Personnel:
 - (i) only use the Training Equipment for their permitted or intended purpose and in accordance with all directions provided by us;
 - (ii) not damage, deface or destroy any Training Equipment; and
 - (iii) return the Training Equipment to us in good working order.
- (c) We do not represent or warrant that any Training Equipment that we provide for the Services will be the same or similar to your equipment or tools.
- (d) You are liable for and indemnify us against any loss we incur as a result of your misuse of any Training Equipment, and for any damage or destruction of any Training Equipment while it is in your possession.
- (e) We may require you to register through our Website for access to Material for training and progress tracking.
- (f) The Services may include links to third party's website application, service or content (**Third Party Material**). Where you access such Third Party Material, you acknowledge and agree that we do not warrant the Third Party Material and that you use it at your own risk.

13. Fees and GST

13.1 Fees

In consideration of us providing the Services, you will pay us the Fees in accordance with the terms of this Agreement.

13.2 Invoices and payment term

Unless otherwise specified in Order Form, we will issue you an invoice for the Fees (including any Deposit) and you must pay an invoice within 14 days of the date of the invoice.

13.3 Deposits

- (a) We may request a Deposit to be paid by you in advance of the Services and to secure the Services.
- (b) All Deposits for Services are non-refundable and payable in accordance with clause 13.2 above.
- (c) If the invoice for the Deposit is not paid in accordance with clause 13.2 above, we may change or postpone any service delivery dates specified in timetable in the Order Form.
- (d) For the avoidance of doubt, we will not provide any Services or Material until such time as payment of the Deposit has been received in full.

13.4 Expenses

- (a) You must reimburse us any expenses or other costs that we incur on your behalf and as incidental to the Services, including travel expenses such as airfares, taxi and rideshare fares, accommodation costs and food allowances.
- (b) Such costs will generally be disclosed in the Order Form and acceptance of the proposal will also constitute approval of the expenses. Where we have not previously disclosed such costs to you, we will obtain your written approval before we incur any costs.

13.5 Disputed fees

- (a) If you dispute any invoice issued under clause 13.2, you must:
 - (i) notify us of the amount in dispute and the reason for the dispute by the due date for payment; and
 - (ii) pay any amounts not in dispute.
- (b) The parties must resolve any dispute under this clause 13.5 in accordance with clause 23.
- (c) If it is resolved that some or all of the amount in dispute should have been paid by the due date for payment, you must pay the amount finally resolved together with interest on that amount calculated in accordance with clause 13.6(a).

13.6 Failure to pay

If you do not make payment in accordance with this Agreement, we are entitled to do any or all of the following:

- (a) charge interest on the outstanding amount at a rate of 10% per annum, accruing daily;
- (b) require you to pay in advance for any Services which have not yet been performed; and

- (c) not perform and suspend any further Services without notice to you.

13.7 Withholding of Materials

We may withhold:

- (a) confirmation of completion or any certification or accreditation in connection with the Services from you; and/or
 - (b) delivery of any Materials to you,
- until all money owing by you to us has been paid in full.

13.8 GST

- (a) You acknowledge that the Fees are exclusive of GST.
- (b) If GST is payable in respect of a supply made under or in relation to this Agreement, the recipient must pay to the supplier an amount equal to the GST payable on the supply (**GST Amount**). The GST Amount is payable by the recipient in addition to and at the same time as any consideration for the supply, provided the supplier has given the recipient an invoice.

14. Confidential Information

14.1 Protection of Confidential Information

Each party must keep confidential any Confidential Information disclosed to it or made available to it by the other party.

14.2 Removal of Confidential Information

At the request of the party to whom the Confidential Information belongs, each party must deliver, erase or destroy all electronic and physical documents in its possession or control that contain Confidential Information.

14.3 Return exceptions

If a party must retain the other party's Confidential Information for the purpose of:

- (a) complying with any law;
- (b) litigation;
- (c) internal quality assurance and record-keeping; or
- (d) performing its obligations or exercising its rights under this Agreement,

it may retain and use it solely for this purpose but must deal with the Confidential Information in accordance with clause 14.2 promptly after it is no longer required for this purpose.

15. Privacy

15.1 Privacy Obligations

Each party must:

- (a) comply with all Privacy Laws in relation to Personal Information applicable to that party;
- (b) only collect, store, use, disclose or otherwise deal with Personal Information in accordance with all Privacy Laws;
- (c) only use or disclose Personal Information to the extent necessary to provide, use or provide the Services;
- (d) ensure any person to whom it discloses Personal Information is aware of and complies with the party's obligations under this clause 15.1; and
- (e) not do any act, engage in any practice, or omit to do any act or engage in any practice that:
 - (i) would result in a breach of a Privacy Law if the Privacy Law applies to those things done, engaged in, or omitted to be done by the party; or
 - (ii) would cause the other party to breach or be taken to breach a Privacy Law.

15.2 Permitted Disclosure of Personal Information

You acknowledge and agree that we may disclose Personal Information to our Personnel to the extent they have a need to know for the purposes of providing the Services, providing additional assistance or support, or as otherwise permitted under our published Privacy Policy.

16. Intellectual Property

16.1 Background Intellectual Property

- (a) Background IP will remain the sole property of the owner. Neither party acquires any right, title or interest in or to the Background IP of the other party by virtue of this Agreement or the disclosure or use of the Background IP in the course of the performance of the Services, other than as expressly set out in this Agreement.
- (b) You grant us a royalty free, revocable, worldwide, personal, non-exclusive licence to use, copy, duplicate or print your Background IP for the purpose of performing the Services and our obligations under this Agreement, and without the right to re-sell or share your Background IP.
- (c) We grant you a non-exclusive, non-transferable, non-assignable, revocable licence to use our Materials strictly for the purpose of receiving and utilising the Services in the ordinary course of your business and without the right to re-sell, commercially exploit or share our Material.

16.2 Platform Content

- (a) We own or are the licensee of all rights, title and interest (including Intellectual Property rights) in the Platform or to the Material (including all text information and content, graphics, logos, type forms and software, but excluding any User Content) made available to you on the Platform (**Platform Content**). Your use of and access to the Platform does not grant or transfer any rights, title or interest to you in relation to the Platform Content.
- (b) You may access the Platform using a web browser or mobile device, and electronically copy and print hardcopies of the Platform Content solely for your personal, non-commercial use.
- (c) You must not modify, copy, distribute, transmit, display, perform, reproduce, publish, license, commercially exploit, reverse engineer, create derivative works from, transfer, or sell any Platform Content or any other material in whatever form contained within the Platform unless expressly stated otherwise in this Agreement.



- (d) We may request the use of your name and any of your User Content for our business or commercial (including marketing and promotional) purposes. If you consent to the request, you grant us a royalty free, worldwide, perpetual, irrevocable, non-exclusive, transferable, assignable, sub-licensable licence to use, reproduce, modify, copy, store, share, and exploit any such User Content for our business or commercial purposes.

16.3 New Intellectual Property

Unless otherwise agreed, we will retain all rights and title to any new Material developed or created by us as part of the Services under this Agreement.

17. Third Party Links

The Platform may contain links and other pointers to Internet websites or applications operated by third parties. We do not control these linked websites and are not responsible for the contents of any linked website. Your access to any such website is entirely at your own risk. You should contact the relevant third-party directly to enquire as to the accuracy and completeness of that information prior to entering into a transaction in relation to the third-party products and services.

18. Warranties

18.1 Mutual warranties

Each party represents and warrants to the other party that during the Term:

- (a) it has full corporate power and authority to enter into, perform and observe its obligations under this Agreement, and that its execution, delivery and performance of this Agreement has been duly and validly authorised by all necessary corporate action; and
- (b) its obligations under this Agreement are valid, binding and enforceable.

18.2 Our warranties to you

We represent and warrant to you that, at all times during the Term:

- (a) to the best of our knowledge, we have the right and power to grant you the licences under this Agreement;
- (b) we, and each of our employees, agents or contractors, has the level of skill, knowledge, experience and ability which may be reasonably expected of a professional organisation or individual, as applicable, experienced in providing services of the type and complexity of the Services; and
- (c) we will do all things reasonably necessary to ensure the Services are completed in accordance with the terms of the Order Form.

18.3 No warranties in relation to completion or content

- (a) We provide no warranty that any result or objective can or will be achieved or attained at all as a result of the provision of the Services.
- (b) We provide no warranty as to the suitability of the content of the Materials for any purpose other than that specified in the Order Form, which we may interpret, and apply using our experience, skill and judgment, in order to prepare the Materials and determine the content.

18.4 No warranties in relation to fitness for purpose

- (a) We provide no warranty as to the Platform being fit for purpose, continuous, uninterrupted, accurate, error-free, virus-free, secure or accessible at all times.
- (b) We provide no warranty as to the suitability of the Platform for any purpose other than that specified in this Agreement or in the Order Form, which we may interpret and apply using our experience, skill and judgment.

19. Disclaimer

(a) To the fullest extent permitted by law, you agree and acknowledge that:

- (i) our Platform is provided "as is" and "as available" and the entire risk arising out of your use of the Platform remains solely with you;
- (ii) we do not control, endorse and are not responsible for any User Content;
- (iii) we retain complete control over the Platform and may alter, amend or cease the operation of the Platform in our discretion;
- (iv) while we adhere to best practice policies and procedures to prevent data loss or unauthorised access or disclosure, including regular system back-ups, we do not make any guarantees that there will be not loss of or unauthorised access to or disclosure of your User Content; and
- (v) we may remove any content, material and/or information, including any User Content, without giving any explanation or justification for removing the material and/or information.

20. Indemnity

Each party (**Indemnifying Party**) indemnifies the other party (**Indemnified Party**) and their Personnel against all and any claims (including, but not limited to, reasonable legal costs and defence or settlement costs) directly or indirectly arising out of, or in connection with:

- (a) any breach of this Agreement by the Indemnifying Party or its Personnel;
- (b) any fraudulent or unlawful act or omission of the Indemnifying Party or its Personnel;
- (c) any damage to or loss or destruction of real or personal property (including Training Equipment) caused or contributed to by any act or omission of the Indemnifying Party or its Personnel; and
- (d) any third-party claim,
- except to the extent the loss, damage or cost is caused or contributed to by the act or omission of the Indemnified Party or its Personnel.

21. Infringement Claims

If an Infringement Claim is made:

- (a) you must promptly notify us and provide us with assistance to manage the Infringement Claim, as reasonably requested by us; and



- (b) we are responsible for and will have the right solely to control the defence and settlement of the Infringement Claim.

22. Force Majeure

- (a) If a Force Majeure Event prevents us from providing the Services, we will provide you with written notice of the Force Majeure Event and the anticipated impact on our performance of the Services.
- (b) If a Force Majeure Event continues for more than 15 business days, either party may terminate the Agreement by written notice to the other without liability for damages of any kind, including for Consequential Loss.

23. Dispute Resolution

- (a) A party must not commence legal proceedings relating to this Agreement unless the party wishing to commence proceedings has complied with this clause 23. However, this clause will not apply where a party seeks urgent interlocutory relief from a court.
- (b) If a dispute arises between the parties out of or relating to this Agreement, then:
 - (i) the party alleging the dispute must notify the existence and nature of the dispute to the other party within 10 days of the dispute arising;
 - (ii) upon receipt of a notification, the parties must, within 5 days, engage in good faith negotiations and use best endeavours to resolve the dispute;
 - (iii) if the dispute is not resolved as provided in paragraph (ii) within 14 days of receipt of the notification, then any party may refer the dispute to mediation as provided in paragraph (iv) and must do so before initiating proceedings in a court to resolve the dispute;
 - (iv) any dispute which is referred to mediation must be referred to the Resolution Institute and must be conducted in accordance with the Mediation Rules of the Resolution Institution or the parties may appoint a mediator by mutual agreement; and
 - (v) if the dispute is not resolved within 30 days of referral to mediation, any party is free to initiate proceedings in a court in respect of the dispute.

24. Cancellation

- (a) You may cancel your Subscription at the end of the Initial Term or any Further Term by providing Medcast with a minimum of 30 days prior written notice.
- (b) Your cancellation will take effect at the end of the relevant Initial Term or Further Term.
- (c) We will not provide a refund for the remainder of the Initial Term or Further Term in which you cancel your Subscription.
- (d) If you cancel your Subscription under this clause 24, your Account will be removed from the effective date of the cancellation and your User Content will be dealt with in accordance with clause 25.2.

25. Termination

25.1 Termination for cause

Either party may terminate this Agreement by 14 days' written notice if the other party:

- (a) commits a material breach of the Agreement that is not capable of remedy;
- (b) commits a material breach of the Agreement capable of remedy, and does not remedy that breach within 10 business days after receipt of notice of the breach; or
- (c) suffers an Insolvency Event.

25.2 Consequences of termination by you for our default

- (a) If you terminate this Agreement under clause 25.1 then, without limiting any other rights, you:
 - (i) will no longer be able to access the Platform and your Account, and your User Content will be deleted (if applicable);
 - (ii) will not be required to make any payment in respect of Services not yet supplied on the effective date of termination; and
 - (iii) may recover from us all money paid for any Services, or part of a Service, not yet supplied.
- (b) After exercising your rights under clause 25.1, you must pay the net amount outstanding to us for the Services, or part of a Service, supplied on or before the effective date of termination.

25.3 Termination by us for your default

We may immediately terminate this Agreement by notice to you, if:

- (a) you fail to pay one or more undisputed amounts due and payable; and
- (b) we issue a notice to you that we intend to terminate this Agreement pursuant to this clause 25.3 if payment of the outstanding amount, plus interest, is not received within 10 business days of you receiving the notice; and
- (c) you fail to make payment of the outstanding amount plus interest within 10 business days of receiving a notice in accordance with the clause 25.3.

25.4 Consequences of termination by us for your default

If this Agreement is terminated by us under clause 25.1 or 25.3, all money owing by you to us under this Agreement, will immediately become due and payable.

26. Liability and exclusion

26.1 Limitations on liability

- (a) Subject to clause 26.1(b) to the fullest extent permitted by law, the total liability of a party under or in connection with this Agreement in respect of all claims will not exceed the fees paid and payable for the Services.
- (b) The limitations and exclusions in this clause 26 do not apply to a party's liability for loss suffered or incurred by the other party in respect of:
 - (i) death or personal injury;
 - (ii) damage to or loss or destruction of real or personal property (including Training Equipment); or

- (iii) any Infringement Claim.

26.2 Implied terms

- (a) Subject to clause 26.2(b), any condition or warranty which would otherwise be implied in this Agreement is excluded.
- (b) Pursuant to s 64A of the Australian Consumer Law, this clause applies regarding any services that are not of a kind ordinarily acquired for personal, domestic or household use or consumption. Liability for breach of a guarantee conferred by the Australian Consumer Law is limited:
 - (i) to re-supplying the Services; or
 - (ii) making full payment for the cost of having the services supplied again.

26.3 Exclusion of consequential loss

Neither party is liable to the other for any kind of indirect or Consequential Loss or damage, including loss or corruption of the Confidential Information, copies or backups, arising out of or in connection with this Agreement.

27. General

27.1 Notice

- (a) A notice, consent, approval, waiver or other communication provided in connection with this Agreement must be in writing.
- (b) A notice may be given by hand delivery, post or by email and is effective upon receipt.

27.2 Entire agreement

This Agreement represents the entire agreement between the parties and supersedes all prior discussions, negotiations, understandings and agreements in relation to the subject matter of this Agreement.

27.3 Subcontracting

We may subcontract any or all of our obligations under this Agreement to a third party at any time and without your prior consent, provided that we remain liable for the provision of the Services to you in accordance with this Agreement.

27.4 No exclusivity

You acknowledge that you are not, and will at no time be, an exclusive client for the kinds of services contemplated by this Agreement and any Order Form.

27.5 Assignment

- (a) You must not assign or otherwise deal with all or any part of its rights or obligations under the Agreement without our prior written consent (which may not be unreasonably withheld but which may be given subject to reasonable conditions).
- (b) We may assign or otherwise deal with any of our rights or obligations under the Agreement without your prior consent.

27.6 Waiver and variation

A provision of the Agreement, or right, power or remedy created under it, may not be varied or waived except in writing signed by the party or parties to be bound.

27.7 Severability

If any provision is unenforceable or invalid, it will be ineffective to the extent it is unenforceable or invalid, without affecting the validity or enforceability of the remaining provisions of the Agreement.

27.8 Survival

Termination or expiration in whole or in part of the Agreement does not affect those provisions and those obligations of a party which by their very nature survive termination, including clause 14 (Confidential information), clause 16 (Intellectual property), clause 18 (Warranties), clause 20 (Indemnity and infringement claims), clause 23 (Dispute resolution), clause 25.2 and 25.3 (Consequences of termination), clause 26 (Liability and exclusion) and clause 27.9 (Governing law and jurisdiction).

27.9 Governing law and jurisdiction

This Agreement is governed by the laws in force in Sydney, New South Wales and the parties submit to the exclusive jurisdiction of the courts of Sydney, New South Wales.

28. Definitions and interpretation

28.1 Definitions

The following definitions apply to this Agreement:

Account has the meaning given in clause 7.

Agreement means the agreement between you and us for the supply of Services comprised of the Order Form and these Terms and Conditions.

Australian Consumer Law means Schedule 2 of the *Competition and Consumer Act 2010* (Cth).

Background IP means Intellectual Property developed, owned by or licensed to a party as at the Commencement Date, or acquired or developed by a party during the Term, other than for the sole purpose of this Agreement, which that party has the right to license to third parties and which are necessary or desirable for the performance of the Services.

Commencement Date means the date on which you enter into the Agreement with us by accepting the Order Form, or by accepting these terms in accordance with clause 1.

Confidential Information of a party means:

- (a) this Agreement and the information within this Agreement;
- (b) all information, know-how, ideas, concepts, technology, data, source or object code, designs, functions, features and performance notes, technical data and marketing information such as customer lists, financial information and business plans which is disclosed, communicated or delivered to, learnt by, or which otherwise comes to the knowledge of or into the possession of the other party under or in connection with this Agreement,

but does not include:

- (c) information which is or becomes available in the public domain (other than through breach of confidence);

- (d) information received by the other party other than as a result of a breach of any duty of confidence owed to the first party; or
- (e) information which has been independently developed by the other party.

Consequential Loss means the following, however arising and even if it is reasonably contemplated by the parties at the Commencement Date as a likely result of breach of the Agreement:

- (a) incidental, special, remote or unforeseeable loss;
- (b) loss of revenue, profit, income, bargain, opportunity, use, production, business, contract, goodwill, or anticipated savings, loss caused by business interruption, or the cost of obtaining new financing or maintaining existing financing, but excluding loss of any amounts that would, but for the act or omission of a party, have otherwise been payable under this Agreement;
- (c) costs or expenses incurred to prevent or reduce loss or damage which otherwise may be incurred or suffered by a third party; or
- (d) loss or damage of the nature set out above in clauses (a) to (c) (inclusive) that is incurred or suffered by or to a third party.

Deposit means the amount specified as such in the Order Form (if applicable).

Face to Face Services means any course, training or other service that is provided to you in-person by Medcast or its agents as set out on our Website or in the Order Form.

Fee means the fees for the Services, as specified in the Order Form, including any applicable Deposit.

Force Majeure Event means anything outside the reasonable control of a party regardless of whether it is reasonably contemplated by the parties at the Commencement Date as a likely result of breach of the Agreement.

GST means the goods and services tax imposed by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Infringement Claim is any actual, threatened or potential claim, demand, proceeding, suit, objection or other challenge:

- (a) affecting either parties' ownership of, or rights in, that party's Background IP; or
- (b) claiming that the supply or other use of the Material or Background IP, infringes or may infringe the Intellectual Property rights of a third party.

Insolvency Event means bankruptcy, a liquidation or winding up, the appointment of a controller, administrator, receiver, manager or similar insolvency administrator to a party, or any substantial part of its assets or any event that has a substantially similar effect to the above events.

Intellectual Property means all rights conferred under statute, common law or equity, wherever in the world subsisting, in relation to trade marks, copyright, patents, patentable inventions and designs, whether existing now or in the future and whether or not registered or registrable, and includes any rights subsisting in or relating to Confidential Information, trade secrets, know-how, inventions, discoveries, geographical indications of origin, semiconductor and circuit layouts, programming tools, object code, source code, microcode, mask works, methods, techniques, recipes, formulae, algorithms, modules, libraries and databases and further includes the right to apply for the registration or grant of any such intellectual property.

Material means all material in whatever form, including documents, specifications, reports, products, equipment, Training Equipment, information, data, graphic layouts, images and software, prepared and provided by us in connection with the Services, and which may be more particularly described in the Order Form.

Order Form means a hard copy or online (including via our Website) order particularising the Services and the Fees which is accepted by you.

Payment Method means a financial instrument that you have added to your Account such as a credit card, debit card, or any payment processing services available on our Website from time to time.

Personal Information means data by which a person may be personally identified, including a person's name, postal address, email address, telephone number and any other information a party collects, including that which is defined as personal or personally identifiable information under applicable Privacy Laws.

Platform is the online platform developed and owned by us to provide you and your Users with access to our online training content, webinars and courses.

Privacy Laws means all domestic and international laws, rules, regulations and regulatory guidance relating to privacy, data security, cybersecurity, anti-spam and the collection, storage, use and disclosure of Personal Information, as applicable to either party.

Personnel means any person engaged by or acting for or on behalf of a party and includes any director, officer, employee, agent, contractor or sub-contractor of the party.

Subscription means your subscription to our Platform on a recurring basis, in accordance with the terms of your Order Form.

Services means the services to be provided by us to you, as more particularly described in the Order Form, including the Platform, Face to Face Services, any application hosting or other IT services, training services, consulting services, MCC services and any support services (where relevant).

Special Conditions means those terms (if any) listed in the Order Form, which may include assumptions or prerequisites for the Services.

Support Levels means the general support services and levels as determined by us in our sole discretion from time to time.

Term means the period from the Commencement Date and the date that this Agreement is terminated or expires in accordance with its terms.

Terms and Conditions means these terms and conditions, as amended by us from time to time.

Training Equipment means all property and equipment provided by us in connection with the Services, including any tools, props, manikins, simulators, defibrillators, computers, hardware, projectors, projector screens, and which may be more particularly described in the Order Form.

User means an individual who you authorise to use the Services pursuant to your rights under this Agreement. Users may include your employees, consultants and contractors.

User Content means material, content, data or information, and any other content created, generated or transmitted by you or your Users through the Services.

Website means our website located at <https://medcast.com.au> and all subdomains thereof, as amended by us from time to time.



you, your means the party acquiring the Services from us as identified in the Order Form and, as the context requires, its Personnel.

Interpretation

In this Agreement:

- (a) no provision of this Agreement will be construed to the disadvantage of a party merely because that party was responsible for preparing this Agreement or including the provision in this Agreement;
- (b) all monetary amounts are expressed in AUD; and
- (c) the parties must perform their obligations on the dates and times fixed by reference to Sydney, New South Wales.

Schedule 1 – Medcast Course Centre Terms

1. Background

MCC services enable our clients to use the Platform, Platform Content and/or other Materials we may make available (collectively, the **Medcast System**) to provide training and education programs and issue certificates directly to their customers on the terms of this Schedule 1.

2. Application and incorporation into Terms and Conditions for Companies

- (a) This Schedule 1 applies to and will govern your purchase of MCC services from us.
- (b) The terms contained in this Schedule 1 apply to and are incorporated into our Terms and Conditions for Companies that apply to the purchase of any Services from us.
- (c) Unless specifically defined in this Schedule 1, any capitalised terms used in this Schedule 1 shall have the meaning they are given in the Terms and Conditions for Companies.
- (d) If there is any inconsistency between the terms of this Schedule 1 and the Terms and Conditions for Companies, the terms contained in this Schedule 1 will prevail to the extent of the inconsistency.

3. Term and renewal

- (a) This Schedule 1 commences on the Commencement Date and continues for the term specified in the Order Form, unless terminated earlier in accordance with the Terms and Conditions for Companies (**Term**).
- (b) You may extend the Term for the same period of time as the Term (**Renewal Term**) by giving us written notice of your wish to extend the Term at least 10 Business Days prior to the expiry of the Term and subject to you:
 - (i) not being in breach of any provisions of this Schedule 1 or the Terms and Conditions for Companies at the time of extension; and
 - (ii) paying us the applicable Fees for the MCC services for the Renewal Term.

4. Scope of services

- (a) Your Order Form will set out the scope of MCC services you are entitled to receive under this Schedule 1, including the number of users you may provide MCC services to using our Platform (**Scope**).
- (b) If you need to increase the Scope of services at any time, you should seek our prior written permission and you acknowledge and agree that a change in Scope may require an adjustment to the Fees and/or any timeframes for the delivery of Services previously agreed between you and us.

5. Users

- (a) You acknowledge and agree that you may only provide the Medcast System to the number of users set out in your Order Form and all such users must register online via the methods provided by us (**Registered Users**).
- (b) You agree that each Registered User must accept the Platform user agreement located at <https://medcast.com.au/terms-and-conditions>.
- (c) All users must be registered and onboarded to the Medcast System either by a System Administrators (as defined in clause 7(a) below) or by an Instructor (as defined in clause 8(a) below).

6. Intellectual Property Licence

- (a) Subject to your compliance with this Schedule 1 and notwithstanding any provision to the contrary in the Terms and Conditions for Companies, we grant you a non-exclusive, non-transferable, non-assignable, revocable licence to use the Medcast System strictly for the purpose of your Instructors providing training and education to the number of your Registered Users and in the manner specified in the Order Form.
- (b) For the avoidance of doubt, the licence in clause 6(a) does not include the right to sub-licence and you must ensure that anyone you permit to use or access the Medcast System does not breach the terms of this licence.
- (c) You must not, unless expressly authorised by us in writing:
 - (i) make or permit to be made any alteration, addition or modification of the Medcast System; and
 - (ii) provide any materials extrinsic to the Medcast System to Registered Users as part of a Course.

7. System Administrators

- (a) You acknowledge and agree that your use and provision of MCC services to your users is conditional upon you having at all times in your employment a system administrator who must comply with the provisions of this clause 8 (**System Administrator**).
- (b) The System Administrator must promptly, but no later than 30 days following appointment, successfully complete an Administrator Training Course.
- (c) The System Administrator must complete any other training or obtain any other qualifications as may be required by us from time to time.
- (d) The System Administrator will be responsible for administering the Medcast System on behalf of your organisation including by:
 - (i) being a single point of contact for your registered users for any support issues relating to the Platform;
 - (ii) providing all Level 1 Support to all registered users; and
 - (iii) raising any Level 2 Support or Level 3 Support issues with us by emailing us at support@medcast.com.au or calling us on 1300 652 046.

8. Instructors and instructor certification

- (a) You acknowledge and agree that to provide resuscitation or clinical deterioration training and education to Registered Users in person via the Medcast System, you must at all times appoint from among your employees and maintain the number and the type of instructors set out in your Order Form (each, an **Instructor**) or as otherwise agreed in writing by us.
- (b) Each Instructor must promptly, and prior to providing any training services using the Medcast System, successfully complete an Instructor Training Course.



- (c) At a minimum, you must:
 - (i) for the provision of advanced life support (**ALS**) or clinical deterioration courses, appoint at least one ALS-certified Instructor; and
 - (ii) for the provision of paediatric advanced life support (**PALS**) courses, appoint at least one PALS-certified Instructor.
- (d) You must ensure that the Instructor providing a specific Course will be responsible for:
 - (i) enrolling Registered Users in applicable Courses or training events;
 - (ii) performing and recording competency assessment results relating to a Course for each Registered User in the Platform;
 - (iii) providing Registered Users with access to the relevant Platform Content and User Content;
 - (iv) issuing Certificates to Registered Users who have successfully completed a Course; and
 - (v) raising any issues related to any learning materials provided by us by emailing us at support@medcast.com.au or calling us on 1300 652 046.
- (e) Unless agreed by us in writing otherwise, each Resuscitation Instructor must maintain a current Medcast Resuscitation Instructor Certificate.
- (f) For a Medcast Resuscitation Instructor Certificate to be valid, the relevant Instructor must have:
 - (i) completed an ALS or a PALS course;
 - (ii) completed the Medcast Instructor Recertification Course in the last three (3) years; and
 - (iii) in the last calendar year taught a minimum of four (4) courses or completed the Medcast Instructor Recertification Course.

9. Course Delivery Requirements

You acknowledge and agree that:

- (a) you must provide all Courses and Certificates to Registered Users in accordance with the instructions we supply to you in the Medcast System or otherwise;
- (b) Resuscitation and Clinical Deterioration Courses may only be delivered by Certified Resuscitation Instructors;
- (c) An ALS and PALS Course must have a minimum of 3 Registered Users (5 is recommended); and
- (d) An ALS and PALS Course must not exceed 8 Registered Users per Instructor at any given time.

10. Medcast Responsibilities

We undertake to provide:

- (a) the Administration Training Course to the System Administrator;
- (b) the Instructor Training Course and Instructor Recertification Course to the relevant Instructors;
- (c) access to the Medcast System to System Administrators and Instructors;
- (d) Level 2 and Level 3 support to the System Administrator; and
- (e) provide reasonable support to the System Administrator and the Instructors in relation to any learning content supplied by us.

11. Updates to Platform Content

- (a) We may update the Platform Content, including any Course materials contained therein, from time to time to ensure currency (**Updates**).
- (b) We will provide you with the Updates relevant to your Order Form via the Platform.

12. Definitions

The following definitions apply in this Schedule:

Administrator Training Course means a course designated as an 'Administrator Training Course' provided by us.

Certificate means a certificate confirming that a Registered User has completed a Course.

Course means any course provided by you using the Medcast System as set out in an Order Form or approved by us in writing.

Instructor has the meaning that term is given by clause 8(a) of this Schedule 1.

Instructor Recertification Course means a course designated as an 'Instructor Recertification Course' provided by us.

Instructor Training Course means a course designated as an 'Instructor Training Course' provided by us.

Level 1 Support means the first point of contact for user support where requests are received and responded to, and including basic troubleshooting. Examples of Level 1 support include resetting passwords, helping users to understand and effectively use the system and fixing basic configuration issues. More challenging problems may require support personnel at Level 1 to raise a Level 2 Support ticket.

Level 2 and Level 3 Support means in-depth technical troubleshooting, problem analysis and resolution, requiring a detailed or expert level understanding of the software.

Resuscitation Instructor means an Instructor who provides any courses on resuscitation to Registered Users using the Medcast System.

Resuscitation Instructor Certificate means a certificate issued by Medcast enabling a Resuscitation Instructor to provide services to Registered Users using the Medcast System.