

# Transitioning Well Terms & Conditions of Engagement (“TERMS”)

These Terms apply to use of this website, the portal and other services carried out by the Company and should be read in conjunction with any related Proposal. Unless agreed in writing by the Company, these Terms will apply to the exclusion of any inconsistent terms and conditions which may appear on any order form or other document issued by the Client. These Terms will apply to any variations to the scope of the Services which may be agreed (verbally or in writing) by the Parties or ordered (verbally or in writing) by the Client and to any supplementary services which may be agreed (verbally or in writing) by the Parties.

The Client will be deemed to have accepted these Terms when the Client signs or accepts a Proposal (where indicated), the client accesses or uses this website, the portal or any part of the site or when the Company commences the Services for the Client.

## 1 DEFINITIONS

In these Terms:

“**Business Day**” means day except a Saturday, Sunday or public holiday in the State the Services to which these Terms relate are delivered;

“**Claim**” means, in relation to any person, a damage, loss, cost, expense or liability incurred by the person or a claim, demand, action, proceeding or judgement made against the person, however arising, whether in contract, tort (including but not limited to negligence), equity, product liability, under any warranty or indemnity, by operation of statute or otherwise, and whether present or future, fixed or unascertained and actual or contingent;

“**Program**” means any Public Program, Customised Program, workshop, coaching session or consulting; face to face or digital.

“**Client**” means the client to which the Company will provide the Services;

“**Company**” means Transitioning Well Pty Ltd (ABN 24 155 476 592);

“**Confidential Information**” means any information obtained by one party concerning the other party or its business activities and that:

- 1.1 by its nature is confidential;
- 1.2 is designated by the disclosing party as confidential; or
- 1.3 the recipient knows or ought to know is confidential; and
- 1.4 includes details of the Proposal, including the Fee, but excludes information that:
  - 1.4.1 is publicly available, except as a result of a breach of these Terms; or
  - 1.4.2 was disclosed to the recipient by a third party who was not under a duty of confidentiality in relation to that disclosure;

“**Consequential Loss**” includes loss of profit, loss of revenue, loss of production, loss of or loss of use of any plant or facility, business interruption, loss of business opportunity or business contract (in each case whether direct or indirect) or any indirect, consequential, special, contingent or penal damage or loss;

“**Customised Program**” means a program, or series of programs specifically developed for or made available to the Client or its personnel.

“**The Portal**” refers to any digital solution used by the company to deliver programs in an online environment. The Learning Management System is provided by JWGecko.

“**Fee**” means the fee(s) payable by the Client to the Company for the Services as accepted and agreed;

“**Force Majeure Event**” includes earthquake, flood, landslide, fire, explosion, war, invasion, act of foreign enemies, hostilities, civil war, rebellion, revolution, insurrection, military or usurped power, martial law or confiscation by order or any government or other authority, change in Law, strikes, lockouts, labour difficulties, rationing or unavailability of essential equipment, labour or supplies and disruption or unavailability of utilities and services which are beyond a party’s control.

“**GST Act**” means *A New Tax System (Goods and Services Tax) Act 1999* (Cth) as amended, superseded or replaced from time to time;

“**Insolvency Event**” means any of the following:

- 1.5 the threatened or actual appointment of a voluntary administrator, liquidator, provisional liquidator, receiver, receiver and manager, controller, trustee in bankruptcy, administrator or other person of similar office, including any application to a court for such an appointment;
- 1.6 entry into or proposing an arrangement or compromise for the benefit of creditors;
- 1.7 the levy or enforcement of a writ of execution, order or judgment;
- 1.8 becoming unable to pay debts as and when they fall due for payment;
- 1.9 the taking of possession or control of any asset by a person under an encumbrance; or
- 1.10 failing to satisfy or to apply to have set aside a statutory demand, a bankruptcy notice or other similar form of statutory notice within the time specified in the demand or notice;

“**Intellectual Property**” means all intellectual property rights including, without limitation:

- 1.11 patents, copyright, registered designs, rights in circuit layouts, trademarks, inventions, secret processes, discoveries and improvement and modifications of any kind;
- 1.12 the right to have Confidential Information kept confidential; and
- 1.13 any application or right to apply for registration of any of the rights defined in this clause;

“**Law**” includes all legislation, statutes, enactments, regulations, standards, by-laws, treaties, ordinances, equity and other such unwritten laws applicable to any act, omission, conduct, matter or thing for any reason;

“**Parties**” means the Company and the Client;

“**Proposal**” means the proposal, quotation or booking confirmation to which these Terms are attached or referred to; “**Public Program**” means any program offered by or on behalf of the Company to the general public.

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“Services” means the educational programs, workshops, digital portal access or other services to be provided by the Company in accordance with these Terms; and

“Tax Invoice” means the invoice issued by the Company in accordance with these Terms and has the respective meaning ascribed to it in the GST Act.

## 2 SERVICES

2.1 The Company will provide the Services to the Client at the:

3.1.1 times;

3.1.2 location;

3.1.3 frequency;

3.1.4 quantity; and

3.1.5 manner,

as specified in the Proposal or otherwise agreed (verbally or in writing) by the Parties.

2.2 The Services may be varied as agreed (verbally or in writing) between the Parties.

2.3 Where Services are performed at the Client’s premises, the Client will ensure that the Company has access to all of the Client’s sites and buildings as required by or necessary for the Company to undertake the Services. The Company will have no liability to the Client or any third party to the extent that the performance of the Services is not able to be undertaken (in whole or in part) due to access to any relevant sites or buildings being prevented or delayed due to the Contractor, the Client or their respective employees or contractors expressing safety or health concerns associated with such access.

## 3 FEE

3.1 The Client will pay the Company the Fee in consideration of the Company providing the Services.

3.2 The Company is entitled to withhold the issuance of any access to the portal or continuing services to the Client until the Fee is paid in full.

3.3 Where the Client is participating in a Customised Program, The Client will pay all Tax Invoices without deduction or set off within thirty (30) days of the date of the relevant Tax Invoice.

3.4 Fees include all program materials

3.5 Fees and Public Program dates are subject to change without notice and, subject to clause 4.3, will be confirmed at the time of booking, prior to payment being processed.

3.6 The Company may vary the Fee payable in respect of any Customised Program by notice to the Client if:

3.6.1 the Company undertakes additional services at the request (written or verbal) by the Client; or

3.6.2 the Services are varied by agreement of the Parties in accordance with these Terms.

3.7 If the Proposal is not accepted by the Client within two (2) months from the date of the Proposal, the Company may (in its sole discretion) vary the Fees set out in the Proposal at any time prior to acceptance of the Proposal by notice in writing to the Client.

3.8 Allowance to the Client of additional time to pay the Fee will not constitute a waiver by the Company of any of these Terms.

3.9 In the event of non-payment of the Fee in accordance with these Terms, the Client will pay all reasonable collection expenses, legal costs and any other expenses incurred by the Company in the event of non-payment.

3.10 The Company may withhold or cease the Services immediately without notice to the Client if the Client fails to pay any Fees or Tax Invoice in accordance with these Terms. The Company will not be obliged to recommence the Services until such time as the outstanding amount is paid in full to the Company.

3.11 If an amount of GST is payable on a supply under these terms:

3.11.1 the Client must pay, in addition to the other consideration payable or to be provided for the supply, an additional amount equal to the GST payable on the supply; and

3.11.2 the Client must pay the additional amount to the supplier at the same time as the other consideration.

3.12 If for any reason (including, without limitation, the occurrence of an adjustment event) the amount of GST payable on a supply varies from the GST amount paid to the Company, the parties will account to each other for the difference. If the Client is required to pay an additional amount under this clause, and the reason an additional amount is payable is because of the occurrence of an adjustment event, the Client needs not pay the additional amount until the Company gives the recipient an adjustment note.

3.13 If any party is entitled to payment of any costs or expenses by way of reimbursement or indemnity, the claim must exclude any amount for which that party (or representative member if the party is a member of a GST group) may obtain an input tax credit.

3.14 This clause will continue to apply after expiration or termination of these terms.

## 4 CANCELLATIONS AND REFUNDS

4.1 All Program cancellations must be received in writing. The following cancellation policy applies:

4.1.1 10 or more Business Days’ notice before the scheduled commencement date - no charge and any Fees paid for the delivery of the program may be refunded. Excluding fees for the development of Customised programs program.

4.1.2 Within 10 Business Days prior to the scheduled commencement date - forfeit of the Fee.

4.2 For Digital Services (incl. the Portal) which are non-tangible digital goods, the Company does not generally offer refunds on paid fees. By purchasing Digital Services, you agree to these terms. The Company may consider a refund, within 7 days of purchase, if the Client experiences ongoing technical difficulties, that the Company is unable to resolve, which has inhibited the Client from accessing the Digital Services. No refunds will be issued more than seven (7) days after purchase.

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- 4.3 The Company may cancel or reschedule, in its sole discretion, any particular Public Program. In the event a specific Public Program is cancelled, participants will be contacted by the Company to arrange a transfer to an alternative program date, or will otherwise be provided with a full refund if no alternative program date and location is reasonably available to the Client.
- 4.4 Substitute of participant is acceptable prior to Program commencement at no charge.
- 4.5 Non-attendance of any Program will not entitle the Client to any refund, set-off, waiver or reduction of the Fee, and the Client remains required to pay all Fees in respect of Programs that it does not attend, unless otherwise agreed in writing with the Company.

### 5 LIABILITY

- 5.1 Notwithstanding any other provision of these Terms, to the maximum extent permitted by Law:
- 5.1.1 neither party will be liable to the other party for or in connection with any Claim for Consequential Loss;
- 5.1.2 the Company’s liability in respect of defective Services is limited to the re-supply of the defective Services to the Client or refund of the Fee as set out in clause 6.1 below; and
- 5.1.3 subject to clauses 5.1.1 an, 5.1.2 and 5.2.3, the maximum cumulative liability of the Company to the Client in respect of, in connection with and in relation to any and all Claims arising out of or in connection with these Terms or the Services is an amount equal to one hundred percent (100%) of the Fee paid by the Client to the Company in respect of the Services.

### 6 ON THE DAY

- 6.1 In the event that the representative of the Company conducting the Program or Service is delayed in his or her arrival at the client venue for any reason or is unable to attend at the designated venue at the designated time, the Company will contact the Client as soon as possible and if necessary, the session will be rescheduled with no further Fee payable by the Client.
- 6.2 The Services will not be postponed in the event of inclement weather unless otherwise advised by the Company.

### 7 TERMINATION OF CUSTOMISED PROGRAMS

- 7.1 The Company may terminate any Customised Programs at any time and for any reason by giving 30 days written notice to the Client.
- 7.2 If either party breaches these Terms (“Defaulting Party”) and the breach can be remedied, the other party (“Non- Defaulting Party”) may give the Defaulting Party no less than 30 days written notice to remedy that breach.  
If the breach is not remedied within the period stipulated in the notice, the Non-Defaulting Party may give the Defaulting Party a further written notice immediately terminating these Terms.

- 7.3 Either party may terminate these Terms by written notice to the other party immediately upon any of the following events:

- 7.3.1 if the other party commits a serious breach of these Terms which cannot be remedied;
- 7.3.2 if the other party ceases to do business as a going concern;
- 7.3.3 if an Insolvency Event occurs in relation to the other party; or
- 7.3.4 if the other party commits a serious criminal offence.

- 7.4 If these Terms are terminated pursuant to clauses 7.1, 7.2 or 7.3:

- 7.4.1 the Company will not be liable to the Client for any Claims by the Client relating to the termination of these Terms by the Company, including any payment for losses or expenses incurred by the Client; and
- 7.4.2 the Client will pay the Company all Fees relating to the Services provided by the Company up to the date of termination of these Terms.

### 8 INTELLECTUAL PROPERTY

- 8.1 The Company owns all right, title and interest in Intellectual Property developed, owned or acquired by the Company prior to the commencement of the Services, including any modification or improvement on that Intellectual Property.
- 8.2 The Client owns all right, title and interest in Intellectual Property developed, owned or acquired by the Client prior to the commencement of the Services.
- 8.3 The Client agrees that the Company will own all right, title and interest in Intellectual Property made, written or developed by the Company in the course of and for the purpose of providing the Services in accordance with these Terms.
- 8.4 To enable the Client to enjoy the benefit or end result of the Services, the Company grants to the Client a non-exclusive, perpetual, irrevocable, worldwide, royalty free licence to use, solely for that purpose, such of the Company’s Intellectual Property as is strictly necessary to enjoy that benefit or end result.
- 8.5 If necessary to enable the Company to undertake the Services, the Client grants to the Company a non-exclusive, perpetual, irrevocable, worldwide, royalty free licence to use, solely for that purpose, such of the Client’s Intellectual Property as is strictly necessary to undertake the Services.

### 9 CONFIDENTIALITY

- 9.1 Each party can use or disclose the other party’s Confidential Information only:
- 9.1.1 to perform the Services or obtain the benefit of the Services;
- 9.1.2 to professional advisors on a confidential basis for the purpose of obtaining advice;
- 9.1.3 if the disclosing party has consented in writing; or
- 9.1.4 if required by Law.

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**9.2** Upon demand from the disclosing party, the recipient of Confidential Information must:

- 9.2.1 at the disclosing party’s discretion, deliver to the disclosing party or destroy all Confidential Information in the recipient’s possession or under its control; and
- 9.2.2 delete all Confidential Information held electronically in any medium in the recipient’s possession or under its control.

## 10 COMPLAINTS AND DISPUTE RESOLUTION

**10.1** In the event the Client is dissatisfied with the Services, the Client may seek recourse directly to the Company in writing. In the first instance attempts to resolve issues should be addressed directly with the relevant Company representative providing the relevant course before lodging a complaint or appeal.

**10.2** Any other dispute or agreement in relation to or in connection with these Terms or the Services in any matter (“Dispute”) is to be resolved in accordance with the procedure provided in this clause 10.

**10.3** In the event of a Dispute, the party seeking to have it resolved must issue to the other Parties a notice setting out all details relevant to the Dispute (“a Dispute Notice”).

**10.4** Within fourteen (14) days of receipt of a Dispute Notice, the nominated representatives of the Parties to the Dispute respectively must meet in Melbourne, Victoria (or such other place agreed by the Parties) to negotiate resolution of the Dispute unless the Parties agree to hold such discussions by teleconference or via other electronic means. The Parties agree that those negotiations must be conducted in good faith.

**10.5** If the Dispute is not resolved in accordance with clause 10.4, either party will be entitled to take the matter to litigation in the courts of Victoria.

**10.6** Nothing contained in clause 10 will prevent a party from seeking urgent interlocutory relief.

## 11 FORCE MAJEURE

**11.1** A party will not be liable for its inability to perform its obligations under these Terms as a result of a Force Majeure Event. If a Force Majeure Event occurs, the party suffering it will notify the other party of the occurrence and expected duration of that event. The party suffering the Force Majeure Event must use all reasonable endeavours to prevent the force majeure occurrence.

**11.2** If a Force Majeure Event renders performance of these Terms impossible for a continuous period of at least thirty (30) days, either party may, by notice to the other, terminate these Terms.

## 12 GENERAL

### 12.1 Severability

Every provision of these Terms will be deemed severable as far as possible from the other provisions of these Terms. If any provision is found to be void, illegal or unenforceable for any reason, it will be deemed to be severed and omitted from these Terms. These Terms, with the offending provision severed and omitted and with any consequential amendment if necessary, will otherwise remain in full force.

### 12.2 Entire Agreement

12.2.1 These Terms and the Proposal contain the entire agreement between the Parties in respect of the subject matter of these Terms and the Proposal.

12.2.2 These Terms supersede any prior agreement or understanding (if any) between the Parties in relation to the subject matter of these Terms or the Proposal.

### 12.3 Amendments

Any amendment to these Terms must be made in writing executed by the Parties.

### 12.4 Assignment

The Company may assign its interest under these Terms at any time. The Client can only assign its interest under these Terms with the prior written consent of the Company, which must not be unreasonably withheld.

### 12.5 Relationship of Parties

The Parties are independent contractors. The Parties are not principal and agent, partners, trustee and beneficiary or employer and employee.

### 12.6 Use of subcontractors and agents

The Company may engage subcontractors or agents to deliver the Services without being required to notify the Client.

### 12.7 Governing Law

These Terms will be construed according to the laws of Victoria and the Parties submit themselves to the non-exclusive jurisdiction of the courts of Victoria and any competent appellate courts.

### 12.8 Privacy

By accepting the performance of the Services, the Client (‘you’) acknowledge that you consent to the Company (and its related bodies corporate) (collectively ‘we’, or ‘us’) collecting your personal information to perform our business functions and activities, including:

12.8.1 providing you with products and services and communicating with you;

12.8.2 answering your enquiries, providing information or advice about our products or services, and entering you into our competitions and promotions;

12.8.3 updating our records;

12.8.4 sending you marketing material from time to time (in both hard copy or electronic form); and

12.8.5 for our business processing, administrative, marketing and planning requirements.

You agree that you have read, understand and consent to the Company’s privacy policy and personal information collection statement, available through the ‘Privacy Statement at <http://transitioningwell.com.au/privacy-statement>.