

TERMS & CONDITIONS (TERMS)

1. TERM OF AGREEMENT

1.1 Term

(a) This Agreement will start on the Commencement Date and end on the Termination Date, unless it is terminate earlier in accordance with this Agreement.

(b) The parties may renew or extend this Agreement for a further term by agreement in writing.

1.2 Early Termination

In the event that our Services are no longer needed due to a loss or miscarriage of the baby, then:

(a) if the loss of the baby occurred prior to 12 weeks, a full refund will be provided including the deposit; or

(b) if the loss of the baby occurred after 12 weeks, a pro-rata refund will be given based on the time and Services that have been provided to date. The deposit will not be refunded.

2. YOUR OBLIGATIONS TO US

2.1 Comply with Requests

You must comply with this Agreement and all of our reasonable requests or requirements, including obtaining and providing to us all things reasonably necessary to enable us to provide the Services.

2.2 Access Client Portal

For the term of this Agreement, we will provide you with access to your own online portal with us through a third party platform (Dubsado). It is your responsibility to check the portal to:

(a) book in visits and appointments with us. You acknowledge that no refunds will be provided for missed visits if you have failed to make a booking;

(b) receive and pay invoices; and

(c) access resources provided by us (including courses and affirmations).

2.3 Consent and Release Form

Where required by us, you must sign and return to us a consent and release form. failure to do so may mean that we cannot provide our services and result in termination of this agreement by us.

2.4 Agreement only between birth person and us

You acknowledge that this Agreement is made between you and us only. We cannot act on instructions from your partner or family members unless you have provided prior written authority that you wish for us to do so.

2.5 Covid-19 Acknowledgment

You acknowledge and agree that our doula, Jessie McGarry, has verbally disclosed her COVID-19 vaccination status to you.

3. OUR OBLIGATIONS TO YOU

3.1 Specification of Services

We will provide the Services at the times nominated by you from time to time.

3.2 Professional manner

We agree to behave and perform the Services in a professional, timely and competent manner using reasonable care, skill and diligence including without limitation, in accordance with a high standard of honesty and integrity, and at a standard as reasonably expected of a doula of our level of experience.

3.3 Unwell

If we are unwell, we will notify you with as much notice as reasonably possible and reschedule any visits in the interest of keeping you and your family healthy.

3.4 Back Up Doula

We must do all things possible to attend your birth in accordance with this Agreement. If we are unable to attend the birth, and you have consented, we may provide a Back Up Doula to provide the Services in accordance with this Agreement.

3.5 Maintenance of records

We may maintain records detailing Services provided pursuant to this Agreement at our discretion. All records kept are kept confidential in accordance with Clause 9.

3.6 Compliance with Agreement and laws

We must observe and comply with the provisions of this Agreement and all applicable laws in the performance of the Services.

3.7 Doula's Rights

We have the right to:

- (a) redirect or refuse service on justifiable grounds, provided you are redirected to appropriate support safety in professional practice;
- (b) to have a break every 3 hours at minimum, including to eat, hydrate, nap and use the rest room;
- (c) be protected from the effects of fatigue and adrenal fatigue, including calling in a Back Up Doula in labours and births that exceed 12 hours in length;
- (d) feel physically and emotionally safe;
- (e) decline carrying out any action that may feel uncomfortable or is outside the scope of Services.

4. Limitation of Services

4.1 Medical, Clinical and Health Care

(a) We do not perform any services of a Medical Professional or a Healthcare Practitioner. We do not perform any clinical tasks including, but not limited to measuring blood pressure, internal and external examinations, foetal assessments, general health assessments, vaginal exams, ultrasounds, injections, procedures associated with delivery or provide advice in the capacity of a Medical Professional or Healthcare Practitioner.

(b) In the event you choose not to contract the services of a Medical Professional or Healthcare Practitioner for any part of the birth process, including pre-labour, post labour and during labour, you do so at your own risk. We cannot and will not substitute the services, or assume the liability of a Medical Professional or Healthcare Practitioner, regardless of which Premises the birth takes place at and whom is present at the birth.

(c) A contravention of the above clauses (a) and (b) is unlawful. You acknowledge that placing, or attempting to place us in circumstances where we are expected to breach this clause or any part of this Agreement, will be considered a material breach of the Agreement and we may immediately withdraw our care and terminate this Agreement in accordance with clause 12.3.

4.2 Birth Attendance

Provided we took all reasonable steps to prevent it, we cannot be held liable for non-attendance at your birth in the following circumstances:

- (a) you failed to provide reasonable and sufficient notice at the first instance of labour and in accordance with our instructions;
- (b) you have an extremely swift birth which falls outside the general standards of expected labour times; or
- (c) if any unforeseen circumstances beyond our control occur.

4.3 Inability to provide Services

(a) We will not be in breach of this Agreement in the circumstances where we are unable to provide the Services or any part of the Services due to:

- (i) you having to undergo surgery, emergency procedures, a caesarean birth;
- (ii) the event of a stillbirth; or

(iii) our inability to attend the hospital or other birthing facility relating to COVID-19 orders, including government mandated public health orders, hospital birth support/visitor restrictions or the hospital's COVID-19 vaccination policy, noting the acknowledgement at clause 2.5.

(b) In the event that we are unable to provide the Services at your birth due to Clause 4.3(a)(iii), we will provide you with your choice of either additional prenatal or postpartum home care instead at no additional charge, provided such home care occurs within the Maximum Postpartum Visit Period as noted in 4.4.(b) from the date of birth.

4.4 Postpartum Services

Where we have agreed to provide postpartum services as part of the Services, the dates for postpartum visits must be booked by you. Our postpartum visits are subject to:

- (a) our availability; and
- (b) any limitations that have been specified in the Scope of Work, including limitations with regards to when the last postpartum visit may occur (**Maximum Postpartum Visit Period**). If you wish to schedule postpartum visits that are after the Maximum Postpartum Visit Period as stated in the Scope of Work, you must advise us of this prior to the commencement of our Services and we may agree or refuse at our absolute discretion.

5. Procedures, standards, directions

We will comply at all times, including while on-site at any Premise, with all relevant policies, rules and standards of conduct which apply from time to time (including those relating to health, safety, security, business ethics or methodology, or contact with Healthcare Professionals, Healthcare Practitioner or staff). If you are aware of any such policies and procedures, you will endeavour to provide us with reasonable prior notice.

5.1 Directions

We will use best endeavours to respect and comply with your reasonable directions (consistent with the scope of the Services and the terms and conditions of this Agreement) and provide reasonable cooperation with your Medical Professionals, Healthcare Practitioner guardians, agents, contractors.

5.2 Other business

We will not, while on the Premises or performing the Services, engage in or be involved in any other business activity apart from the provision of the Services.

5.3 Disruption

We will not act in any manner which could disrupt or adversely affect your birth processes or procedures.

6. Status as contractor

6.1 Independent contractor

You acknowledge that we enter into this Agreement as an independent contractor to you and not an employee, partner or agent of you.

6.2 Third parties

No party can bind the other to any agreement with a third party.

7. Fees and invoices

7.1 Payment of Fees and expenses

In consideration of our provision of the Services under this Agreement, you must pay us the Fees in accordance with the Payment Terms set out in the Schedule.

7.2 Interest

If any payment has not been made in accordance with the Payment Terms, we may (at our absolute discretion) immediately cease providing the Services and/or charge you interest at a rate equal to the Reserve Bank of Australia's cash rate, from time to time, plus 8% per annum, calculated daily and compounding monthly

7.3 GST

(a) Words defined in the GST Law have the same meaning in this clause, unless the context makes it clear that a different meaning is intended.

(b) In addition to paying the Charges and any other amount payable or in connection with this agreement (which is exclusive of GST), you will:

(i) pay to us an amount equal to any GST payable from any supply of Services by us in respect of which the Charges or any other amount is payable under this agreement; and

(ii) make such payment either on the date when the Charges are due or within three (3) days after you are issued with a tax invoice, whichever is the later.

8. Equipment

We will provide all necessary equipment and material required to perform the Services.

9. Confidential Information

9.1 Confidential Information

We acknowledge that during the term of this Agreement, we may receive or have access to Confidential Information, including but not limited to medical records or information which relates to you or your family's health, or other information which may be considered sensitive or private.

9.2 Obligations regarding Confidential Information

We will:

(a) use the Confidential Information only for the purposes of performing the Services pursuant to this Agreement;

(b) maintain the confidentiality of the Confidential Information and ensure that, without your prior written consent (which you may withhold in your absolute discretion), the Confidential Information is not disclosed to or used for the benefit of us or any third party;

(c) take all steps and do all things as may be necessary, prudent or desirable in order to safeguard the confidentiality of the Confidential Information;

(d) not make or allow to be made copies or extracts of all or any part of the Confidential Information except with your prior written consent; and

(e) upon the expiration or termination of this Agreement, hand over immediately to you and not retain any record, representation or reproduction (written, electronic, photographic or otherwise) of the Confidential Information other than as required for the purpose of maintaining our business records or as required by any law.

9.3 Production of documents

You may request the destruction of or delivery to you of all Material in our possession or control containing Confidential Information. Unless we are required to keep any Material by law, we will comply with your request.

10. Intellectual Property Rights

10.1 Intellectual Property Right

As between the parties, all intellectual property rights (including copyright) developed, adapted, modified or created by us (including in connection with this Agreement or the provision of the Services) will at all times vest, or remain vested, in us. Your use of and access to our Material (whether through a third-party platform or provided by us through other means) does not grant or transfer to you any rights, title or interest in relation to our Material.

You must not, without our prior written consent or the consent of the owner of the Material (as applicable):

- (a) copy or use, in whole or in part, any Material;
- (b) reproduce, retransmit, distribute, disseminate, sell, publish, broadcast or circulate any Material to any third party; or
- (c) breach any intellectual property rights connected with our Material, including (without limitation) by:
 - (i) altering or modifying any of the Material;
 - (ii) causing any of the Material to be framed or embedded in another website; or
 - (iii) creating derivative works from the Material.

10.2 Grant of License

Subject to the terms of this Agreement, we grant you a limited, non-exclusive, non-transferable, non sub-licensable license to download, use and install a copy of the Materials made available to you solely for the purpose of the Services or as otherwise agreed.

10.3 Return of Material

On expiration or earlier termination of this Agreement, you must return to us any and all Material that we request which belongs to us in your possession.

11. Limitation of liability

By engaging our Services and to the maximum extent permitted by law:

- (a) you agree that this Agreement excludes all terms, conditions and warranties implied by statute, in fact or on any other basis, except to the extent such terms, conditions and warranties are fully expressed in this Agreement;
- (b) our maximum aggregate Liability arising from or in connection with this Agreement will be limited to, and will not exceed, the portion of the Price paid by you to us for the Services the subject of the relevant claim;
- (c) we will have no Liability, and you release and discharge us from all Liability, arising from or in connection with any:
 - (i) event or circumstance beyond our reasonable control;
 - (ii) acts or omissions of you, your Medical Professional or Healthcare Provider;
 - (iii) loss or damage to your personal property or effects;
 - (iv) injury or death to you or your baby, whether born or unborn; or
 - (v) any other loss, physical damage or injury sustained by you, in respect of any act, omission or event occurring during the term of this Agreement.
- (d) you indemnify us for and against all Liability arising from or in connection with any wrongful act or omission by you, your Medical Professional or Healthcare Provider.

12. Termination

12.1 Termination by you

You may terminate this Agreement by written notice with immediate effect, if:

- (a) we breached the terms or conditions of this Agreement, and the breach:
 - (i) is not capable of remedy (other than by payment of damages); or
 - (ii) is capable of remedy but we have not remedied it within 7 days of being requested to do so in writing by you;
- (b) we become bankrupt;
- (c) we cease to carry on the business.

12.2 Notice of termination

When we receive a notice of termination under clause 12.1, we will:

- (a) cease performing the Services;
- (b) immediately minimise any losses caused by the termination; and
- (c) co-operate fully in assisting any new doula.

12.3 Termination by us

We may terminate this Agreement by written notice with immediate effect if you:

- (a) fail to pay any Fees in accordance with this Agreement;
- (b) breach or disrespect our rights at Clause 3.7; or
- (c) if you breach this Agreement in any other way.

12.4 No entitlement to compensation

- (a) If you terminate this Agreement, except as expressly provided in this Agreement, we will not be entitled to any compensation, but will be entitled to any Fees and expenses payable under this Agreement.
- (b) If we terminate this Agreement, except as expressly provided in this Agreement, you will not be entitled to any compensation.

13. Conflict of interest

Should we become aware of the existence or the possibility of a conflict of interest, we will immediately notify you, provide details of the conflict of interest or potential conflict of interest, and provide details of the steps that we propose to take to resolve or deal with the conflict.

14. Notices

Any notice, or other communication given or served under this Agreement by a party must be:

- (a) in writing;
- (b) if sent by prepaid ordinary post, addressed and sent to the receiver's address;
- (c) taken to be received:
 - (i) if delivered personally, on the date of delivery;
 - (ii) if sent by prepaid ordinary post within Australia, upon the expiration of two working days from the date it is posted; or
- (d) if transmitted electronically, upon receipt by the sender of an acknowledgment that the communication has been properly transmitted to the recipient.

15. General

15.1 Assignment and subcontracting.

Neither party can assign their rights under this Agreement without the prior written consent of the other.

15.2 Disputes.

Where a dispute arises between the parties to this Agreement, the parties will in good faith and acting reasonably, use best efforts to resolve such dispute. If a dispute cannot be resolved by the parties using their best efforts, the parties may appoint a mediator appointed by the Law Society of Western Australia to mediate a resolution of the dispute. Nothing in this clause shall prevent a party from seeking urgent equitable relief before an appropriate court.

15.3 Severability.

If any provision or part of this Agreement is void or unenforceable for any reason, then that provision or part will be severed from this Agreement and the rest of this Agreement shall be read as far as possible as if the severed provision or part had never existed.

15.4 Entire agreement and variation.

The parties agree that:

(a) this Agreement is the entire agreement between the parties in respect of this arrangement and supersedes any other communication or understandings (whether written or oral) between the parties in that regard; and

(b) any changes to this Agreement must be agreed in writing between the parties prior to the changes coming into effect.

15.5 Governing law.

This Agreement shall be governed by and construed according to the laws of Western Australia.

15.6 Waiver.

Failure by a party to exercise or delay in exercising a right under this Agreement does not prevent its exercise or operate as a waiver.

15.7 Survivorship.

Clauses 4.1, 4.2, 4.3, 9, 10, 11 and 12.4 survive any expiration or termination of this Agreement and will have effect for the benefit of the parties.

16. Definitions and interpretation

16.1 Definitions

In this Agreement unless expressed or implied to the contrary:

Confidential Information means information that:

(c) is by its nature confidential;

(d) is designated by you as confidential; or

(e) we know or ought to know is confidential, including information about you or your family such as about your health acquired by us solely by virtue of the performance of the Services pursuant to this Agreement; and

(f) any other information classifiable in equity as confidential information;

Consent and Release Form means the document provided by us to you to provide consent, and to release and indemnify us in accordance with what is outlined in the form;

Back Up Doula means a doula that we will provide as a replacement in accordance with clause 3.4;

Fees means the fees specified in the Schedule;

GST means:

(a) the same as in GST Law;

(b) any other goods and services tax, or any tax applying to this agreement in a similar way; and

(c) any additional tax, penalty tax, fine, interest or other charge under a law of such a tax.

GST Law means the same as "GST law" in A New Tax System (Goods and Services Tax) Act 1999 (Cth).

Healthcare Professional means a person who provides services in the health industry as categorised and regulated by the Australian Health Professional Regulation Agency (**AHPRA**) and any relevant National Codes or Legislation;

Intellectual Property Rights means all intellectual property rights at any time protected by statute or common law, throughout the world, including:

(a) patents, copyright, rights in circuit layouts, designs, moral rights, trade and service marks (including goodwill in those marks), domain names and trade names, knowhow, methodologies and trade secrets, and any right to have confidential information kept confidential;

(b) any application or right to apply for registration of any of the rights referred to in paragraph (a); and

(c) all rights of a similar nature to any of the rights in paragraphs (a) and (b) that may subsist anywhere in the world, whether or not such rights are registered or capable of being registered.

Liability means any expense, cost, liability, loss, damage, claim, demand or proceeding (whether under statute, contract, equity, tort, indemnity or otherwise), howsoever arising, whether direct or indirect and/or whether present, unascertained, future or contingent.

Material means any or all materials created by us including but not limited to digital presentations, audio and video recordings, templates, documents, workbooks, physical goods and all other resources created by us and provided to you for the purpose of or in the course of providing the Services.

Medical Professional means a doctor, surgeon, nurse or any other certified or qualified professional in the medical industry.

Premises means a hospital, medical centre, birthing centre or a private place of residence.

Services means the services specified in the Schedule;

16.2 Interpretation

In this Agreement, unless the context otherwise requires:

(a) words importing the singular include the plural and vice versa;

(b) references to any document (including this Agreement) are references to that document as amended, consolidated, supplemented, novated or replaced from time to time;

(c) references to paragraphs, clauses, recitals and schedules are references to paragraphs and clauses of, and recitals and schedules to, this Agreement;

(d) references to any law are references to that law as amended, consolidated, supplemented or replaced from time to time and include any order, regulations, instruments or other subordinate legislation made under that law;

(e) references to \$ or dollars are references to the lawful currency of the Commonwealth of Australia for the time being;

(f) a provision binding on two or more persons binds them jointly and severally;

(g) a reference to a person includes a reference to the person's executors, administrators, legal personal representative, successors and permitted assigns;

(h) a reference to any one gender includes each other gender (as the case may require);

(i) a reference to a party means a person who is named as a party to, and is bound to observe the provisions of, this document; and

(j) "includes" or "including" means includes or including without limitation.