

# **LICENCE AGREEMENT**

*“Evolution to Wellbeing”*

## **PARTIES**

**MIMIKA SOLUTIONS PTY LIMITED**  
**(ACN 074 906 264) T/AS EVOLUTION TO WELLBEING**  
(Licensor)

**AND**

**<Licensee Name>**  
**<Licensee ACN>**  
(Licensee)

**Peter Condon & Associates**  
**Solicitors**  
Level 1, 308-310 Darling Street  
Balmain NSW 2041  
T: 02 9818 8776  
F: 02 9818 8779  
[www.condonlaw.com.au](http://www.condonlaw.com.au)

## LICENCE AGREEMENT

**BETWEEN:** **MIMIKA SOLUTIONS PTY LIMITED (ACN 074 906 264) T/AS EVOLUTION TO WELLBEING** (the “Licensor”), a company duly incorporated in the State of New South Wales with its registered office located at:

Level 10, 2 Bligh Street, Sydney NSW 2000

**AND:** <Licensee Name> (the “Licensee”), an individual with his main address located at OR a company duly incorporated in the State of New South Wales with its registered office located at:

<Licensee Office Address>

WHEREAS the Licensor operates the business “Evolution To Wellbeing” in New South Wales and provides fitness training sessions; and

WHEREAS the Licensor owns the registered trademark “Evolution To Wellbeing” throughout Australia; and

WHEREAS the Licensor has agreed to grant the Licensee a license to use the registered trademark “Evolution to Wellbeing” for fitness training; and

WHEREAS the Licensor and the Licensee agree to enter into the Services Agreement concurrent with the Licence Agreement.

NOW THEREFORE based on the above premises and in consideration of the covenants and agreements contained herein, and intending to be legally bound, the parties agree hereto as follows:

### 1. DEFINITIONS AND INTERPRETATION

#### 1.1 Definitions

In this Agreement:

- (1) **Agreement** means this document and includes the schedules;
- (2) **Agreement Date** means the date of this Agreement;
- (3) **Agreement Review** means the date on which the Parties shall review the Agreement to determine a further grant of the Licence by the Licensor;
- (4) **Business Day** means a day that is not a Saturday, Sunday or any other day which is a public holiday or a bank holiday in the place where an act is to be performed or a payment is to be made;
- (5) **Calendar Day** means a day of the year including Saturday, Sunday or any other day which is a public holiday or a bank holiday in the place where an act is to be performed or a payment is to be made;
- (6) **Confidential Information** means all information provided by the Disclosing Party to the Receiving Party or any of its representatives, or otherwise obtained and/or created by the Receiving Party or any of its representatives, whether obtained before or after execution of this Agreement, and all

information in any way relating to the Disclosing Party, its business, products, customers, contractors and employees whether furnished in writing, orally or in physical configuration including, without limitation, all patent applications, technical data, know-how, concepts, specifications and diagrams, designs, procedures, unpublished financial reports, sales information, unpublished information regarding products, services and proposed products and services and customer lists, other than information which:

- a. was, and can be demonstrated to have been, known to the Receiving Party prior to its communication by the Disclosing Party; or
  - b. is in or comes into the public domain otherwise than through any default of the Receiving Party or through any disclosure by any person acquiring the same from the Receiving Party;
  - c. is disclosed to the Receiving Party by a Third Party having no obligations of confidence to the Disclosing Party in respect thereof, and has not been disclosed to that Third Party in consequence of a breach of confidence; or
  - d. is developed independently by the Receiving Party without reference to information disclosed by the Disclosing Party;
- (7) **Contract Year** means each year measured from the date of the Agreement and subsequently, the date measured from the renewal of the Agreement;
  - (8) **Defaulting Party** means the Party in default of its obligations under this Agreement pursuant to Clause 6 or 7;
  - (9) **Disclosing Party** means the Party which discloses the Confidential Information;
  - (10) **GST** means any tax on goods, services or goods and services under the GST Legislation;
  - (11) **GST Legislation** has the meaning given in the *A New Tax System (Goods and Services Tax) Act 1999* or any other Commonwealth, State or Territory legislation imposing or relating to the imposition of the GST;
  - (12) **Intellectual Property** means all copyright, inventions, patents (including patent applications), trademarks (whether registrable or not), designs (whether registrable or not), rights in relation to know-how and other confidential information, and all other Intellectual Property as defined in Article 2 of the Convention Establishing the World Intellectual Property Organisation of July 1967;
  - (13) **Licence** means the licence to use the registered trademark, "Evolution To Wellbeing";
  - (14) **Licence Renewal** means the renewal of the Licence;
  - (15) **Notice** means a notice or other communication connected with this Agreement;
  - (16) **Parties** means the parties to this Agreement collectively and **Party** means each of them individually;
  - (17) **Provisional Licence Period** means the four (4) blocks of four (4) weeks from commencement of training clients;
  - (18) **Programs** means the fitness training sessions conducted by the Licensee;
  - (19) **Receiving Party** means the party which receives Confidential Information;
  - (20) **Reports** means the record of activities and income earned by the Licensee by conducting the Programs;
  - (21) **Services Agreement** means the agreement for services entered into concurrently with this Agreement;
  - (22) **Supply** means any form of supply and includes any supply within the meaning of the GST Legislation;
  - (23) **Term** means one (1) year from the Agreement Date expiring on the day before the anniversary of the Agreement Date;

- (24) **Territory** means the locality areas where the Licensee will conduct fitness training sessions;
- (25) **Evolution To Wellbeing Trademark** means Australian trademark no. (registration pending at August 2013) for Evolution to Wellbeing and the equivalent now or in the future in overseas territories and any other equivalent trademark obtained by Mimika Solutions Pty Limited.

## **1.2 Interpretation**

In this Agreement, unless contrary intention appears:

- (1) a reference to:
  - (a) one gender includes the others;
  - (b) the singular includes the plural and the plural includes the singular;
  - (c) a clause, annexure or schedule is a reference to a clause in or annexure or schedule to this Agreement;
  - (d) a document (including this Agreement) includes any variation or replacement of it;
  - (e) a statute; ordinance, code or other law includes regulation or other statutory instrument made or issued under it and consolidations, amendments, re-enactments or replacements of any of them;
  - (f) a person includes a partnership, body corporate, unincorporated association or authority;
  - (g) a Party includes the Party's executors, administrators, successors and permitted assigns;
  - (h) dollars, Australian dollars, A\$ or \$ is a reference to the lawful currency of Australia; and
  - (i) time is a reference to Sydney time;
- (2) if a period of time dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- (3) if an act must be done on a given day which is not a Business Day, it must be done instead on the next Business Day;
- (4) the words, "include, including, for example" or "such as", when introducing an example, do not limit the meaning of the words to which the example relates to the example or to examples of a similar kind;
- (5) where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning;
- (6) headings and any index are for convenience only and do not form part of this Agreement or affect its interpretation; and
- (7) a provision of this Agreement must not be construed to the disadvantage of a Party merely because that party was responsible for the preparation of this Agreement or the inclusion of the provision of this Agreement.

## **1.3 Parties**

- (1) If a Party consists of more than one (1) person, this Agreement binds each of them separately and any two (2) or more of them jointly.
- (2) An obligation, representation or warranty in favour of more than one (1) person is for the benefit of them separately and jointly.
- (3) A Party which is a trustee is bound both personally in its capacity as a trustee.

## **2. AGREEMENT TERM**

The initial Term of this Agreement shall be for a period of one (1) year, commencing as of the date of this Agreement. Each year of the Term, as measured from the date of renewal of this Agreement, is a Contract Year.

## **3. TERRITORY**

The Licensor grants the Licensee licence to conduct fitness training sessions within the locations and at the times listed in Schedule A to this Agreement. The Licensee acknowledges that the Licensor reserves the right to operate the fitness training sessions itself under circumstances contained in Clause 8.

## **4. PROMOTION**

Solely at its own discretion the Licensor will undertake promotional activities for its fitness training sessions including but not limited to advertising, events, media campaigns and collateral. The Licensor will introduce to the Licensee new clients generated from such promotional activities.

## **5. NO REPRESENTATION**

The Licensor makes no express or implied representation as to income that the Licensee may gain from operating the fitness training sessions within the Territory. The Licensee acknowledges that they also will solicit their own clients within the Territory in addition to any clients introduced by the Licensor under clause 4 above.

## **6. LICENSOR COMMITMENTS**

The Licensor agrees that concurrent with entering into this Agreement, it will enter into a Services Agreement with the Licensee. That Services Agreement provides the operational relationship between the Licensor and the Licensee. Under the Services Agreement the Licensor will provide the following:

**6.1 Training**

**6.2 Product Marketing**

**6.3 Equipment**

**6.4 Timetabling**

**6.5 Evo Software**

**6.6 Invoicing and Accounting**

## **7. LICENSEE COMMITMENTS**

The Licensee agrees that concurrent with entering into this Agreement, it will enter into a Services Agreement with the Licensor. That Services Agreement provides the operational

relationship between the Licensor and the Licensee. Under the Services Agreement the Licensee will provide the following:

**7.1 Insurances, Workers Compensation and Licences**

**7.2 Certification**

**7.3 Equipment**

**7.4 Uniforms**

**7.5 Vehicle**

**8. NON-COMPLIANCE WITH LICENSEE COMMITMENTS**

Should the Licensee fail to comply with its commitments under Clause 7 the Licensor shall be entitled to give written notice to the Licensee of such failure and suspension of the Licensor's Commitments under Clauses 4 and 6.

Notwithstanding the Licensor's rights to termination under Clause 15, in the event that the Licensee remains non-compliant with their commitments under Clause 7, the Licensor may exercise its right to conduct the fitness training sessions itself in the Territory.

**9. INDEPENDENT CONTRACTOR**

The Licensee shall always identify itself to be an independent contractor by using such wording as may be specified by the Licensor from time to time. The Licensee will include notices stating that they are an independent contractor on such forms, business cards, stationery, advertising, signs and other materials as the Licensee requires from time to time.

**10. EVOLUTION TO WELLBEING TRADEMARK**

The Licensor owns the trademark in the name, "Evolution to Wellbeing", and its logo. The Licensee is granted a non-exclusive right to use the trademark subject to the provisions of this Agreement for the following specific purposes:

- (a) to make a representation to any person that the Licensee conducts the Evolution to Wellbeing fitness training sessions; and
- (b) in promotion of Evolution To Wellbeing,

for the term of this Agreement.

**11. WARRANTIES**

### ***11.1 Licensor warranties***

The Licensor warrants to the Licensee that:

- (a) it has all the necessary rights, power and authority to enter into this Agreement;
- (b) it is entitled to license the trademark, "Evolution to Wellbeing", in accordance with this Agreement;
- (c) there are no outstanding encumbrances or other matters affecting its capacity to licence the trademark, "Evolution to Wellbeing";
- (d) the licence of the trademark, "Evolution to Wellbeing", will not constitute a breach of another agreement with any person; and
- (e) to the best of its knowledge, at the Agreement Date the licence of the trademark, "Evolution to Wellbeing", does not infringe the rights of any Third Party.

### ***11.2 Licensee warranties***

The Licensee warrants to the Licensor that:

- (a) it has all the necessary rights, power and authority to enter into this Agreement;
- (b) it will use its commercially appropriate endeavours to market the fitness training session;
- (c) it will ensure that the conduct and presentation of the fitness training session complies with all applicable laws; and
- (d) it will not represent that it has any rights to the trademark, "Evolution to Wellbeing", other than those the subject of this Agreement;
- (e) that at all times it will not infringe the Licensor's intellectual property rights not limited to the Licensor's trademark, Programs, advertising and marketing material and products.

## **12. FEES**

### ***12.1 Licence Fee***

On execution of this Agreement the Licensor grants to the Licensee a provisional licence until conclusion of the Provisional Licence Period. Such provisional licence converts to a licence following satisfactory completion of that initial period. An annual Licence Fee of five hundred dollars (\$ 500.00) plus GST is payable by the Licensee on the commencement date of the Agreement and on the commencement date of any annual renewal of the Agreement.

### ***12.2 Administration Fee***

A one off "Administration Fee" of two thousand and five hundred dollars (\$ 2,500.00) excluding GST is payable on execution of this Agreement by the Licensee.

## **13. REVIEW AND RENEWAL OF THE AGREEMENT**

Within one (1) month prior to the end of each Contract Year, the parties shall meet and in good faith review the Agreement. Renewal of the Agreement is subject to the Licensee meeting the requirements of the Agreement and the requirements of the Services Agreement. The Licensor shall advise the Licensee of its intention to grant renewal of the licence to the Licensee within ten (10) calendar days of the end of each Contract Year. Such renewal is at

the discretion of the Licensor alone. In the event that the Licensor refuses to renew the Agreement the parties agree that no liability shall be attributed to the Licensor for damages (liquidated or consequential); loss of future earnings or any other monetary compensation.

## **14. TERMINATION BY CONVENIENCE**

### ***14.1 Termination by Licensor***

The Licensor may terminate the Agreement within the Provisional Licence Period by giving a minimum of one (1) week's notice to the Licensee. No refund of fees will be made by the Licensor to the Licensee.

### ***14.2 Termination by Licensee***

The Licensee may terminate the Agreement within the Provisional Licence Period by giving a minimum of four (4) weeks' notice to the Licensor. No refund of fees will be made by the Licensor to the Licensee.

### ***14.3 Termination by Licensee following Provisional Term***

Should the Licensee terminate this Agreement after completion of the Provisional Licence Period, for any reason, no refund of fees will be made by the Licensor to the Licensee.

### ***14.4 No Rights Following Termination***

All rights and obligations the Licensee may have under the Services Agreement and all rights and obligations the Licensor may have under the Services Agreement cease on termination of the Licence Agreement.

## **15. TERMINATION BY DEFAULT**

### ***15.1 Material Breach***

A material breach by a party of any material covenant, material warranty or material representation contained herein, where such defaulting party fails to cure such breach within seven (7) calendar days after receipt of written notice thereof, or within such specific period as is expressly provided for elsewhere in this Agreement; or

### ***15.2 Insolvency and/or Bankruptcy***

A party makes an attempt to make any arrangement for the benefit of creditors or a voluntary or involuntary bankruptcy, insolvency or assignment for the benefit of creditors of a party or in the event any action or proceeding is instituted relating to any of the foregoing and the same is not dismissed within one (1) month after such institution.

### ***15.3 No Rights Following Termination***

All rights and obligations the Licensee may have under the Services Agreement and all rights and obligations the Licensor may have under the Services Agreement cease on termination of the Licence Agreement.

## **16. RESTRAINT AFTER TERMINATION**

### ***16.1 Period of Restraint***

The Licensee acknowledges that should the Agreement be terminated by either party for any reason the Licensee is restrained as follows:

- (a) for a period of twelve (12) months from training a former client of the Licensor; and
- (b) for a period of twelve months (12) months from operating fitness training sessions within any and all of the Territories whereby fitness training sessions are conducted by the Licensor.

### ***16.2 Breach of Restraint***

The Licensee acknowledges that should they be in breach of sub-paragraph 16.1 they will pay to the Licensor a sum equivalent to the amount that the Licensor would otherwise have received under the Agreement should the Agreement have not been terminated.

### ***16.3 Additional Remedy***

The parties acknowledge that the remedies contained above are additional to any remedy the Licensor may seek in law or in equity for breaches of this Agreement including but not limited to Clause 10.

## **17. PUBLIC DISCLOSURE AND CONFIDENTIALITY**

### ***17.1 Public Disclosure***

Each party agrees that no press release or public announcement relating to the existence or the terms of this Agreement (including within the context of a trade press or other interview or advertisement in any media) shall be issued without the express prior written approval of the Licensor.

### ***17.2 Confidential Information***

During the Term and for a period of two (2) years thereafter, the Licensee and the Licensor shall hold and shall cause each of their directors, officers, employees and agents to hold in confidence the terms of this Agreement (including the financial terms and provisions hereof and all information received pursuant to, or developed in accordance with, this Agreement) specifically including but not limited to the Licensor. The Licensee and the Licensor hereby acknowledge and agree that all information contained in, relating to or furnished pursuant to this Agreement, not otherwise known to the public, is confidential and proprietary and is not to be disclosed to third parties without the prior written consent of the Licensor. Neither the Licensee nor Licensor shall disclose such information to any third party (other than to officers, directors, employees, attorneys, accountants and agents of the Licensee and Licensor or the affiliates of either who have a business reason to know or have access to such information and only after each of whom agrees to be bound by this paragraph) except:

- (a) To the extent necessary to comply with any law or the valid order of a governmental agency or Court of competent jurisdiction or as part of its normal reporting or review procedure to regulatory agencies or as required by the rules of any major stock exchange on which either party's stock may be listed provided however that the party making such disclosure shall seek and use reasonable efforts to obtain confidential treatment of said information and shall promptly, to the greatest extent practicable, notify the other party in advance of such disclosure.
- (b) As part of the normal reporting or review procedure by the Licensor.
- (c) To actual or potential successors in interest provided however that such person or entity shall have first agreed in writing to the confidential treatment of such information.

## **18. NO ASSIGNMENT OR SALE WITHOUT APPROVAL**

This Agreement and the rights and licences granted hereunder are personal and the Licensee shall have no right to sell, assign, transfer, mortgage, pledge nor hypothecate any such rights or licences in whole or in part without the prior written consent of the Licensor nor will any of said rights or licences be assigned or transferred to any third party by operation of law, including without limitation, by merger or consolidation or otherwise unless prior approval has been granted by the Licensor.

Any sale or assignment of the Licensee's rights under the Services Agreement are subject to the Licensor granting a Licence Agreement on the same conditions as this Agreement. Any such grant is at the sole discretion of the Licensor.

## **19. DISPUTE RESOLUTION**

### ***19.1 Form of Complaint***

If a dispute or difference arises out of or in connection with this Agreement then the Party making the complaint ("the complainant") may send a notice in writing to the other Party ("the respondent"). This notice must detail:

- (a) the nature of the dispute; and
- (b) what outcome the complainant wants; and
- (c) what action the complainant thinks will settle the dispute.

### ***19.2 Resolution of Complaint***

The Parties must within three (3) weeks from the date of receipt of the letter resolve the dispute. In the event that the Parties do not come to a resolution of the dispute either Party may send a notice to the other Party requesting that the matter be referred to mediation.

### ***19.3 Referral to Mediation***

- (a) If the dispute is referred to mediation and the Parties are unable to agree on a mediator and the rules of the mediation, then the mediator will be chosen and the

rules of the mediation will be in accordance with The Institute of Arbitrators & Mediators Australia Mediation and Conciliation Rules.

- (b) If the dispute or difference is not settled within thirty (30) days of the submission to mediation (unless such period is extended by agreement of the Parties), it shall be and is hereby submitted to arbitration in accordance with, and subject to, The Institute of Arbitrators & Mediators Australia for the Conduct of Commercial Arbitrations.
- (c) The costs of the mediation and or arbitration shall be borne equally between the Parties.

Notwithstanding the existence of a dispute or difference each party shall continue to fulfil their obligations under this Agreement.

## **20. NOTICES**

### ***20.1 Legal Effect***

A Notice or other communication connected with this Agreement has no legal effect unless it is in writing.

### ***20.2 Requirements of Notice***

A Notice must be:

- (a) sent by prepaid post to the address for service of the addressee, if the address is in Australia and the Notice is sent from within Australia;
- (b) sent by prepaid airmail to the address for service of the addressee, if the address is outside Australia or if the Notice is sent from outside Australia;
- (c) sent by facsimile to the facsimile number of the addressee; or
- (d) delivered at the address for service of the addressee.

### ***20.3 Receipt of Notice***

If a Notice is sent or delivered in a manner provided by Clause 20.2, it must be treated as given to and received by the Party to which it is addressed:

- (a) if sent by post from within Australia to an address in Australia, on the second Business Day (at the address to which it is posted) after posting;
- (b) if sent by post to an address outside Australia or sent by post from outside Australia, on the fifth Business Day (at the address to which it is posted) after posting;
- (c) if sent by facsimile before 5 p.m. on a Business Day at the place of receipt, on the day it is sent and otherwise on the next Business Day at the place of receipt; or
- (d) if otherwise delivered before 5 p.m. on a Business Day at the place of delivery, upon delivery, and otherwise on the next Business Day at the place of delivery.

### ***20.4 Details for Service***

The Licensor's details for service are:

#### Registered Office

Name: Mimika Solutions Pty Ltd t/as Evolution to Wellbeing  
Address: Level 10, 2 Bligh Street  
Sydney NSW 2000

#### Principal Place of Business.

Name: Mimika Solutions Pty Ltd t/as Evolution to Wellbeing  
Address: 3/36 Darling Point Road  
Darling Point NSW 2027

The Licensee's details for service are:

Name: <Licensee Name>  
Address: <Licensee Address>  
<Licensee Address>

#### **20.5 Change in Details**

A Party may change its details for service by giving written Notice of that change to the other Party.

#### **20.6 More than One Party**

If the Party to which a Notice is intended to be given consists of more than one (1) person then the Notice must be treated as given to that Party if given to any of those persons.

### **21. COSTS AND EXPENSES**

Each Party must pay its own legal costs and other expenses connected with the negotiation, preparation and execution of this Agreement.

### **22. SEVERABILITY**

If anything in this Agreement is unenforceable, illegal, void or inoperative as a matter of law then it is severed and the remaining provisions hereof shall not be affected and shall continue in effect as though such unenforceable provision(s) have been deleted herefrom.

### **23. VARIATION**

An amendment or variation to this Agreement is not effective unless it is in writing and executed by the Parties.

### **24. WAIVERS AND CONSENTS**

Except as expressly stated in this Agreement, each Party acknowledges that:

- (1) a waiver or consent under this Agreement is not effective unless it is in writing and signed by the Parties entitled to give the waiver or consent;
- (2) a waiver or consent may be given conditionally or unconditionally or withheld at the absolute discretion of the Party entitled to give the waiver or consent;
- (3) a waiver or a power or right or the giving of consent is effective only in respect of the specific instance to which it relates and for the specific purpose for which it is given;
- (4) a Party's failure or delay to exercise a power or right does not operate as a waiver of that power or right; and
- (5) the exercise of a power or right does not preclude either its exercise in the future or the exercise of any other power or right.

## **25. RELATIONSHIP OF PARTIES**

Nothing in this Agreement creates a relationship between the Parties of partnership, employment, principal and agent or of trustee and beneficiary.

## **26. GOVERNING LAW AND JURISDICTION**

This Agreement is governed by the Law of New South Wales and subject to Clause 19, the Parties submit to the non-exclusive jurisdiction of the Courts of New South Wales and any Courts which are entitled to hear appeals from them.

The above represents the total and exclusive agreement as regards the licence between **Mimika Solutions Pty Ltd t/as Evolution to Wellbeing** AND <Licensee Name>.

## **SIGNED AS AN AGREEMENT**

.....  
Signature of Witness

.....  
**Director**  
**MIMIKA SOLUTIONS PTY**  
**LIMITED (ACN 074 906 264)**  
**T/AS EVOLUTION TO**  
**WELLBEING**

.....  
Name of Witness

.....  
Signature of Witness

.....  
**Director**  
**<Licensee Name>**  
**<Licensee ACN>**

.....  
Name of Witness

## **SCHEDULE A**

### **TERRITORY**

#### **1. Locations**

- 1.1**   <State and Suburb>
  - a.   <Details of park etc>
  - b.   <Details of park etc>
- 1.2**   <State and Suburb>
  - a.   <Details of park etc>
  - b.   <Details of park etc>
- 1.3**   <State and Suburb>
  - a.   <Details of park etc>
  - b.   <Details of park etc>

#### **2. Dates and Times**

- 1.1**   **Monday - Friday**
  - a.   6:00am;
  - b.   7:15am; and
  - c.   8:45am or 9:00am
- 1.2**   **Saturday**
  - a.   7:00am