

Services Agreement

Mimika Solutions Pty Ltd
(ACN 074 906 264)
t/as Evolution to Wellbeing

and

<Evolutionary Name>
<Evolutionary ACN>

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Parties

Mimika Solutions Pty Ltd (ACN 074 906 264) t/as Evolution to Wellbeing (Company)

and

<Evolutionary Name> (Evolutionary)

Background

- A The Company operates a fitness training business known as “Evolution to Wellbeing”.
- B The Evolutionary conducts fitness training sessions as an independent contractor.
- C The Company and the Evolutionary agree to provide the services on the terms and conditions contained in this Agreement.

1 Definitions and interpretation

Definitions

- 1.1 The following definitions apply:

Bank Accounts means the bank accounts held by the Company from time to time.

Business Day means a day other than a Saturday or Sunday or a public holiday in the Territory.

Change in Control means (for a proprietary company):

- (a) more than one director resigns and is replaced by another director; or
- (b) a member of the company transfers the beneficial or legal ownership of their shares to a person not being an existing shareholder of the company;
- (c) the company allots new shares in the company to a person not being an existing shareholder of the company; or
- (d) there is a change in the voting rights or classes of the shares.

Claim means a claim, action, proceeding or demand made against the person concerned, however it arises and whether it is present or future, fixed or unascertained, actual or contingent.

Client means a client of the Company whether enrolled by the Company or the Evolutionary.

Client Fees means the fees set out in Schedule 2.

Client Records means the records of the clients held and maintained by the Company.

Commencement Date means the date in Schedule 1.

Company Services means the services to be provided by the Company as listed in Schedule 3.

Confidential Information means confidential information of a party and includes information whether verbal, written or in some other form, including but not limited to electronic form relating to:

- (a) the Company Services;
- (b) the Evolutionary Services;
- (c) knowledge or information regarding the business transactions, affairs, property, policies, procedures or activities of the Company;
- (d) any document which is marked confidential;
- (e) any document or information which a party advises the other party is confidential; and
- (f) the Client Records.

Disclosing Party means the party disclosing Confidential Information.

Evolutionary Services means the services to be provided by the Evolutionary as listed in Schedule 4.

Force Majeure Event means any occurrence or omission as a result of which a party relying on it is prevented or delayed in performing any of its obligations under this document and which is beyond the reasonable control of that party, including but not limited to forces of nature, industrial action, terrorism, action or inaction by a government agency.

GST means:

- (a) the same as in the GST Act;
- (b) any other goods and services tax, or any Tax applying to this transaction in a similar way; and
- (c) any additional tax, penalty tax, fine, interest or other charge under a law for such a Tax.

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

Insolvency Event includes:

- (a) in relation to a natural person, becoming bankrupt, dying, ceasing to be of full legal capacity or otherwise becoming incapable of managing his/her own affairs or being able to pay his/her debts when due; or
- (b) in relation to a corporation, failing to comply with a statutory demand, becoming subject to receivership, winding up proceedings, having a controller or analogous person appointed to its affairs, entering into a compromise or arrangement with its creditors or unable to pay its debts when due.

Intellectual Property Rights include all present and future rights conferred by statute, common law or equity (and all moral rights) in or in relation to business names, circuit layouts, computer software, Confidential Information, copyright, designs, domain names, formulas, inventions, know how, patents, plant varieties, recipes, trade marks, and other

results of intellectual activity in the industrial, commercial, scientific, literary or artistic field, the benefit of any application to register such a right and the benefit of any renewal or extension of such a right.

Invoice means a tax invoice under the GST law.

Licence Agreement means the agreement entered into concurrently with this agreement whereby the Company grants a licence to the Evolutionary to use the registered trademark “Evolution to Wellbeing”.

Receiving Party means the party receiving the Confidential Information.

Related bodies corporate has the same meaning as under s 50 of the Corporations Act 2001 (Cth).

Service Fees means the fees set out in Schedule 2.

Shared Costs means a costs set out in Schedule 2.

Term means the period set out in Schedule 1.

Territory means locations in <State/Territory Name>

Interpretation

1.2 The following rules of interpretation apply unless the context requires otherwise:

- 1.2.1 headings are for convenience only and do not affect the interpretation of this document;
- 1.2.2 words importing the singular include the plural and vice versa;
- 1.2.3 a reference to one gender includes the other genders;
- 1.2.4 an expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body corporate and any governmental agency;
- 1.2.5 a reference to a document or agreement, or a provision of a document or agreement is to that document, agreement or provision as amended, supplemented, replaced or novated;
- 1.2.6 a reference to any statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws varying, consolidating or replacing them and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute; and
- 1.2.7 a reference to a subclause in a clause is a reference to a subclause in that clause unless specified otherwise.

2 Term

2.1 The rights and obligations of the parties under this Agreement will commence on the Commencement Date, and continue for the Term subject to the terms and conditions of this Agreement.

3 Services and facilities to be supplied by the Company

- 3.1 The Company must provide, supply and maintain to and for the Evolutionary the Company Services particularised in Schedule 3.

4 Specific Accounting duties of the Company

- 4.1 The Evolutionary authorises the Company to invoice clients in respect of all services rendered by the Evolutionary and to accept payment of such accounts, issue receipts and bank all money into the Company's Bank Accounts.
- 4.2 The Company may take all necessary action, including legal proceedings, to recover outstanding fees due by clients or other third parties.
- 4.3 The Company must keep proper accounts and records of client fees received.
- 4.4 The Company will provide to the Evolutionary each four (4) week block a financial statement setting out:
- 4.4.1 the fees charged by the Company to the clients trained by the Evolutionary;
 - 4.4.2 the moneys transferred to the Evolutionary during the preceding four (4) week block; and
 - 4.4.3 outstanding fees.

5 Evolutionary services

- 5.1 The Evolutionary must provide, supply and maintain to and for the Company the Evolutionary Services particularised in Schedule 4.

6 Relationship

- 6.1 The parties agree that:
- 6.1.1 the Company and the Evolutionary are not partners, nor is the Evolutionary an employee of the Company, and the Evolutionary, in rendering services to the company (and doing other things), is at all times not doing so as the servant or agent or otherwise on behalf of the Company but as an independent contractor.

7 GST

Application of clause

- 7.1 This clause applies if a party is or becomes liable to pay GST in relation to any Supply under this document (**Taxable Supply**).

Right to pass on GST

- 7.2 The party providing the Supply (**Supplier**) must issue an Invoice or Invoices to the payee for the amount of GST referable to any Taxable Supply, such amount to be calculated by multiplying the Value of the Taxable Supply by the rate of the GST.

Payment of GST

- 7.3 In addition to the other consideration payable by the payee to the Supplier, the payee must pay the amount of GST specified in an Invoice under clause 7.2 (without deduction or set-

off of any other amount) to the Supplier at the same time as the other consideration under this document is payable. GST shall be payable by the payee to the Supplier on the same basis as the other consideration payable by the payee under this document. The payee will not make payment until an Invoice is issued.

Failure to Pay

- 7.4 If the payee makes default in the payment on the due date of any amount payable pursuant to clause 7.3 then, without prejudice to any other remedies of the Supplier, the payee shall pay to the Supplier upon demand an amount equal to the amount of any additional GST that shall become chargeable to the Supplier.

8 Insurance

- 8.1 The Company is responsible for the insurance requirements of the Company, including workers compensation.
- 8.2 The Evolutionary is responsible for the insurance requirements of the Evolutionary, including workers compensation.

9 Confidentiality and privacy

- 9.1 A party to this document must not disclose to any third party, without the prior written consent of the other party, any Confidential Information provided from the other. This obligation does not extend to information which:
- 9.1.1 is, or becomes public knowledge without the fault of the receiving party;
 - 9.1.2 is, or becomes available to the receiving party from a source other than the disclosing party; or
 - 9.1.3 is, independently developed by the receiving party.
 - 9.1.4 Is, provided by force of law.
- 9.2 No party to this document may, without the prior written consent of the other party, provide to any other person a copy of this document or any provision hereof or disclose the contents of this document or any provision of it to any other person except as is necessary for the performance of this document or required to obtain legal or financial advice.
- 9.3 Notwithstanding clause 9.2, a party may release information necessary to conform to all applicable laws and regulations.
- 9.4 The obligations of confidentiality referred to in this clause 9 shall survive the termination of this document.
- 9.5 The Evolutionary will comply with the Company's privacy policy in connection with the provision of the Company Services and all applicable laws which apply to the Client Records, including laws of confidentiality and privacy.
- 9.6 The Evolutionary must upon the expiration or termination of this Agreement deliver up to the Company all of the Company's property and all documents which in any way relate to the business carried on by the Company.

10 Intellectual property and client records

- 10.1 The parties acknowledge that:

- 10.1.1 all Intellectual Property Rights in works created by the Evolutionary are owned by the Company.

11 Disputes

- 11.1 If the parties are unable to agree on any matter under this document either of them may give written notice to the other stating details of the matter in dispute and requiring that the matter be resolved by a meeting between the parties.
- 11.2 The parties must meet in good faith to seek to resolve any area of dispute. The parties must meet together within seven (7) days of the serving of notice of a dispute under this document.
- 11.3 If the parties cannot resolve the dispute within seven days of the initial meeting as set out in clause 11.2 above, the parties agree to refer the dispute to mediation established in accordance with the rules of the Australian Commercial Dispute Centre Limited.
- 11.4 The parties to the dispute are entitled to be represented by a qualified legal practitioner at any such mediation.
- 11.5 The parties agree to meet equally the costs of their own representation and to share equally in the costs incurred by the mediation being conducted.
- 11.6 Pending determination of any dispute under this document the parties agree to continue to perform all their obligations under this document.
- 11.7 This clause shall not prohibit a party from seeking urgent interlocutory relief from the Courts if that party will incur irreparable harm if not permitted to do so.

12 Force Majeure

- 12.1 If a party to this document is affected, or likely to be affected by a Force Majeure Event:
- 12.1.1 that party must immediately give the other notice of that fact including:
- (a) full particulars of the Force Majeure Event;
 - (b) an estimate of its likely duration;
 - (c) the obligations affected by it and the extent of its affect on those obligations; and
 - (d) the steps taken to rectify it; and
- 12.1.2 the obligations under this document of the party giving the notice are suspended to the extent to which they are affected by the relevant Force Majeure Event as long as the Force Majeure Event continues.
- 12.2 A party claiming a Force Majeure Event must use its reasonable endeavours to remove, overcome or minimise the effects of that Force Majeure Event as quickly as possible. This does not require a party to settle any industrial dispute in any way it does not want to.
- 12.3 During any period in which a party to this document is not performing its obligations because of a claimed Force Majeure Event, the other party may (but need not) make alternative arrangements for the performance, whether by another person or otherwise, of any obligation which the party claiming the Force Majeure Event is not performing without incurring any liability to that party.

- 12.4 If the Force Majeure Event continues for more than one month either party may terminate this document by giving five Business Days notice to the other party.

13 Default

- 13.1 Any one or more of the following events is a default (**Default**):
- 13.1.1 either party breaches any of its obligations under this document and fails to remedy the breach within twenty eight (28) Business Days of written notice being given by the other party requiring that the breach be remedied or such longer period as agreed;
 - 13.1.2 the Company or the Evolutionary suffers an Insolvency Event;
 - 13.1.3 any representation or warranty made in this document or in any certificate, statement or other document delivered in connection with the execution, delivery or performance of this document, is or proves to have been incorrect in any material respect when made or at any time thereafter;
- 13.2 Each party must forthwith notify the other party upon becoming aware of the occurrence of any Default, or the existence of circumstances which with the giving of notice or lapse of time would constitute a Default.

14 Termination by Default

- 14.1 A party may terminate this Agreement if:
- 14.1.1 the other party commits any serious breach of any provision of this Agreement and the defaulting party has failed to remedy that breach within 7 days of receiving a notice from the party calling for that breach to be remedied; or
 - 14.1.2 the other party suffers an Insolvency Event.
- 14.2 The Company may terminate this Agreement on the happening of any of the following events:
- 14.2.1 the Evolutionary has committed an act which, in the reasonable opinion of the Company, adversely affect the reputation or business of the Company.
 - 14.2.2 the Evolutionary is in breach of the Licence Agreement for whatever reason.
- 14.3 This Agreement will automatically terminate on the death or permanent disability of the Evolutionary.

15 Termination by Convenience

- 15.1 The Company may terminate this Agreement within the Provisional Term of the Licence Agreement by giving a minimum period of one (1) weeks notice to the Evolutionary
- 15.2 The Evolutionary may terminate the Agreement within the Provisional Term of the Licence Agreement by giving a minimum period of four (4) weeks' notice to the Company.

16 Miscellaneous

Assignment, subcontracting and change in control

- 16.1 A party must not assign or sub-contract its rights or obligations under this document, without the prior written consent of the other party.

Costs and stamp duty

- 16.2 Each party must pay their own legal costs associated with the preparation and execution of this document.
- 16.3 The Company must pay stamp duty (if any) on this document.

Discretion in exercising rights

- 16.4 A party may exercise a right or remedy or give or refuse its consent in any way it considers appropriate (including by imposing conditions), unless this document expressly states otherwise.

Partial exercising of rights

- 16.5 If a party does not exercise a right or remedy fully or at a given time, the party may still exercise it later.

Variation and waiver

- 16.6 Any variation to any term or provision to this document or a right created under it must be in writing and signed by both parties. A waiver of any breach of this document or of any right arising out of this document must be in writing and signed by the party granting the waiver.

Approvals and consent

- 16.7 A party may give conditionally or unconditionally or withhold its approval or consent in its absolute discretion unless this document expressly provides otherwise. By giving its approval or consent a party does not make or give any warranty or representation as to any circumstance relating to the subject matter of the consent or approval.

Remedies cumulative

- 16.8 The rights and remedies provided in this document are in addition to other rights and remedies given by law independently of this document.

No merger

- 16.9 Any warranties, undertakings and indemnities in this document do not merge on completion.

Further steps

- 16.10 Each party must do anything (including execute any document) and must ensure that its employees and agents do anything (including execute any document) that the other party may reasonably require to give full effect to this document.

Inconsistency with other documents

- 16.11 If this document is inconsistent with any other document or agreement between the parties, this document prevails to the extent of the inconsistency.

Precedence

- 16.12 To the extent of any inconsistency between these terms and conditions and the Schedules, these terms and conditions prevail.

Entire agreement

- 16.13 This document constitutes the entire agreement of the parties about its subject matter and supersedes all previous agreements, understandings and negotiations on that subject matter.

Construction

- 16.14 No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of, or seeks to rely on, this document or any part of it.

Counterparts

- 16.15 This document may consist of a number of copies, each signed by one or more parties to the document. If so, the signed copies are treated as making up one document and the date on which the last counterpart is executed will be the date of the document.

Notices

- 16.16 Any notices or invoices to be sent pursuant to this document must be sent to the addresses for notices stated in Schedule 1.
- 16.17 Any notice required to be served under this document will be regarded as being sufficiently served if:
- 16.17.1 served personally or left addressed to the party at the above address or such other address as the party may notify to the other in writing;
 - 16.17.2 sent by facsimile machine to the facsimile number noted in Schedule 1 or as notified from time to time to the other party. A facsimile notice will be deemed to be served at the time and on the normal business day in the Territory that the whole of the said notice has been transmitted from the sending facsimile machine and the answer back of the receiving machine has been received by the sending machine. However, if such a transmission and answer back occurs after 5.00 pm on a normal business day in the Territory then it will be deemed to be sent at 9.00 am the next Business Day;
 - 16.17.3 forwarded by prepaid certified mail addressed to the party at the address stated in subclause 16.16 above. Prepaid certified mail will be deemed to have been served one Business Day after the date of posting.

Severability

- 16.18 Any provision of this document which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this document enforceable, unless this would materially change the intended effect of this document.

Governing law

- 16.19 This document is governed by the law in force in New South Wales. Each party submits to the jurisdiction of the Courts of New South Wales.

Execution and date

Executed as an agreement.

Date:

Executed by **Mimika Solutions Pty Ltd**
(ACN 074 906 264) t/as Evolution to Wellbeing
acting by the following persons or, if the seal is
affixed, witnessed by the following persons:

.....
Signature of director

.....
Signature of director/company secretary

.....
Name of director (print)

.....
Name of director/company secretary (print)

Executed by **<Evolutionary Name>** and
witnessed by the following person:

.....
Signature of witness

.....
Signature of Evolutionary/Evolutionary Director

.....
Name of witness (print)

.....
Name of Evolutionary/Evolutionary Director
(print)

SCHEDULE 1

AGREEMENT DETAILS

Evolutionary: <Evolutionary Name>

Commencement Date: <Day> <Month> 2013

Term The Term commences on the Commencement Date and continues for twelve months (12) unless terminated in accordance with this Agreement.

Addresses for Notices: **Evolutionary:**
Attention: <Evolutionary/Evolutionary Director>
<Evolutionary Name>
<Address>
<Address>
Tel: (0) <Telephone Number>
Fax: (0) <Facsimile Number>

Company
Attention: The Directors
Mimika Solutions Pty Ltd t/as
Evolution to Wellbeing
Level 10, 2 Bligh Street
Sydney NSW 2000
Tel: (0) <Telephone Number>
Fax: (0) <Facsimile Number>