

TERMS AND CONDITIONS - attached to Proposal**1. ACCEPTANCE**

- 1.1 These Terms are between Padma Menon t/as Moving Archetypes (ABN 13 767 892 531), her successors and assignees (referred to as “we” and “us”) and you, the person, organisation or entity described in the Proposal (referred to as “you”), each a “Party” and collectively the “Parties”. These Terms apply to all Services provided by us to you.
- 1.2 You have requested the Services set out in the attached Proposal. You accept the Proposal and these Terms by:
- (a) signing and returning the Proposal;
 - (b) confirming by email that you accept the Proposal;
 - (c) instructing us to proceed with the Services; or
 - (d) paying our first invoice.
- 1.3 **You agree that these Terms form the agreement under which we will supply Services to you. Please read these Terms carefully.** Purchasing Services from us indicates that you have had sufficient opportunity to read these Terms and contact us if needed, that you have read, accepted and will comply with these Terms, and that you are 18 years or older.
- 1.4 Normally, we will not commence performing the Services until you have paid our Fees.

2. SERVICES

- 2.1 We agree to perform the Services with due care and skill.
- 2.2 We reserve the right to refuse any request that we deem inappropriate, unreasonable or illegal.
- 2.3 Subject to these Terms, we will provide the Services to you for the Service Period stated in our invoice. At the end of that period the Parties may agree to continue the Services under these Terms for an additional period or periods which will be stated in our subsequent invoices.
- 2.4 We may provide the Services to you using our employees, contractors and third party providers, and they are included in these Terms.
- 2.5 If we are delayed in providing Services to you due to the illness or injury of our tutor or unavailability of the venue we will, at your election, credit so much of the Fees as relate to the cancelled class to the next course or refund the Fees to you.

3. PRICE, INVOICING AND PAYMENT

- 3.1 You agree to pay us the Fees, using the Payment Method, as set out in the Proposal. All amounts are stated in Australian dollars.

- 3.2 You agree to pay our invoices by the payment date set out on the invoice. If an invoice is unpaid after the payment date, we may cease to provide the Services to you until we receive payment.
- 3.3 Places in our classes and sessions are limited, will not be confirmed until receipt of payment and are not guaranteed unless confirmed by us.
- 3.4 If upon receipt of payment our classes/sessions are at capacity, we will (at your election) either refund the Fees to you or will credit the Fees towards a later scheduled block of classes/session.
- 3.5 You can reschedule your attendance at a scheduled session and/or group class by providing us with at least 48 hours written notice (including by email). If you do not provide us with at least 48 hours’ notice your attendance is deemed confirmed and so much of the Fees as relate to that attendance cannot be credited towards a later session/class.
- 3.6 These Terms may be amended from time to time at our discretion. The changes will apply to you for Services provided to you after the date of the change. You may terminate these Terms if you do not agree with the change and we will refund any unused Fees to you.

4. YOUR OBLIGATIONS AND WARRANTIES

- 4.1 You warrant that throughout the term of these Terms that:
- (a) there are no legal restrictions preventing you from agreeing to these Terms;
 - (b) in attending sessions and/or group classes forming part of the Services you will conduct yourself in a respectful, courteous and non-judgmental manner;
 - (c) the information you provide to us is true, correct and complete; and
 - (d) you will inform us if you have reasonable concerns relating to our provision of Services under these Terms, with the aim that the Parties will use all reasonable efforts to resolve your concerns.

5. OUR INTELLECTUAL PROPERTY

- 5.1 The Materials contain material which is owned by or licensed to us and is protected by Australian and international laws. We own the Intellectual Property rights in the Materials including but not limited to copyright which subsists in all creative and literary works incorporated into our Materials.
- 5.2 You agree that, as between you and us, we own all Intellectual Property rights in our Materials, and that nothing in these Terms constitutes a transfer of any Intellectual Property rights in our Materials, except as stated in these Terms or with our written permission.
- 5.3 Your use of our Materials does not grant you a licence, or act as a right to use any Intellectual

- Property in the Materials, whether registered or unregistered, except as stated in these Terms or with our written permission.
- 5.4 You must not breach our Intellectual Property rights by, including but not limited to:
- altering or modifying any of the Materials;
 - creating derivative works from the Materials; or
 - using our Materials for commercial purposes such as on-sale to third parties.
- 5.5 We will license the Licensed Material to you for the duration of these Terms upon full payment of our invoices.
- 5.6 We grant you a non-perpetual, non-exclusive, revocable, worldwide and non-transferable licence to use the Licensed Material for your own personal non-business use and for no other purpose.
- 5.7 This clause will survive the termination of these Terms.
- 6. FEEDBACK AND DISPUTE RESOLUTION**
- 6.1 If there is a dispute between the Parties in relation to these Terms, the Parties agree to the following dispute resolution procedure:
- The complainant must tell the respondent in writing, the nature of the dispute, what outcome the complainant wants and what action the complainant thinks will settle the dispute. The Parties agree to meet in good faith to seek to resolve the dispute by agreement between them at an initial meeting.
 - If the Parties cannot agree how to resolve the dispute at that initial meeting, any Party may refer the matter to a mediator. If the Parties cannot agree on who the mediator should be, the complainant will ask the Law Society of the Australian Capital Territory to appoint a mediator. The mediator will decide the time and place for mediation. The Parties must attend the mediation in good faith, to seek to resolve the dispute.
- 6.2 Any attempts made by the Parties to resolve a dispute pursuant to this clause are without prejudice to other rights or entitlements of the Parties under these Terms, by law or in equity.
- 6.3 This clause will survive the termination of these Terms.
- 7. TERM AND TERMINATION**
- 7.1 This Agreement will begin on the Commencement Date and continue until the End Date, or the date on which these Terms are terminated in accordance with this clause, if earlier.
- 7.2 Either Party may terminate these Terms without cause by providing the other Party with notice, in writing, per the Notice Period.
- 7.3 Either Party may terminate these Terms if there has been a material breach of these Terms, subject to the dispute resolution procedure.
- 7.4 We may terminate these Terms immediately, at our sole discretion, if:
- we consider that a request for the Services is inappropriate, improper or unlawful;
 - you fail to provide us with clear or timely instructions to enable us to provide the Services;
 - we consider that our working relationship has broken down including a loss of confidence and trust; or
 - for any other reason outside our control which has the effect of compromising our ability to perform the Services within the required timeframe.
- 7.5 On termination of these Terms you agree that any payments made are not refundable to you, and you are to pay for all Services provided prior to termination.
- 7.6 On completion of the Services, we will retain your documents (including copies) as required by law or regulatory requirements. Your express or implied agreement to these Terms constitutes your authority for us to retain or destroy documents in accordance with the statutory periods, or on termination of these Terms.
- 7.7 The accrued rights, obligations and remedies of the Parties are not affected by the termination of these Terms.
- 8. CONSUMER LAW, LIMITATION OF LIABILITY AND DISCLAIMERS**
- 8.1 **ACL:** If you are a consumer as defined in the ACL, the following applies to you: *You are entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the services remedied if they are not rendered with due care and skill or they are not fit for purpose and the failure does not amount to a major failure.* To the extent we are able to exclude liability; our total liability for loss or damage you suffer or incur from our Services is limited to us re-supplying the Services to you, or, at our option, us refunding to you the amount you have paid us for the Services to which your claim relates.
- 8.2 **Delay:** Where the provision of Services depends on your information or response, we have no liability for a failure to perform the Services in the period set out in the Proposal where it is affected by your delay in response, or supply of incomplete or incorrect information.
- 8.3 **Warranties:** To the extent permitted by law, we exclude all express and implied warranties representations and guarantees and all material and work is provided to you without

- warranties, representations and guarantees of any kind, either express or implied. We expressly exclude all warranties including but not limited to implied warranties of merchantability and fitness for a particular purpose.
- 8.4 **Refund:** we do not provide refunds for change of mind.
- 8.5 **Disclaimer and releases:** You acknowledge and agree that you are aware of the inherent risks of injury or ill health resulting from use of the Services and from participating in meditative and reflective exercises and/or strenuous exercise and warrant that you have medical clearance to participate in and receive the Services. You acknowledge and agree to release us, our agents, affiliates, employees, members, sponsors, promoters and any person or body directly or indirectly associated with us against any liability (including liability for their negligence and the negligence of others), claims, demands, and proceedings arising directly or indirectly from a breach of that warranty. Any advice we provide to you in connection with the Services whether on our Site or otherwise is general, provided to you in good faith and relied on by you at your own risk and should not be used as a substitute for medical advice or treatment. You release us from any harm, loss and/or damage that you suffer whether directly or indirectly as a result of any advice that is inaccurate, incomplete, unsuitable or incorrect. In the event that you become aware of any medical, physical or psychological condition, injury or impairment that may; affect your proper and safe use of the Services; be detrimental to your health; reasonably endanger the health and well-being of third party Service recipient or reasonably affect third party Service recipients' use and enjoyment of the Services, if you continue to use the Services, you must immediately cease to use our Services and (if relevant) seek medical clearance before re-commencing to receive the Services. You are solely responsible for determining the suitability of any of our Services.
- 8.6 **Availability:** To the extent permitted by law, we exclude all liability for:
- the Services being unavailable; and
 - any Claims (whether direct, indirect, incidental, special, consequential and/or incidental) for loss of profits, revenue, production, opportunity, access to markets, goodwill, reputation or any loss or damage relating to business interruption or otherwise, suffered by you or made against you, arising out of or in connection with your inability to access or use the Services or the late supply of Services, even if we were expressly advised of the likelihood of such loss or damage.
- 8.7 **Limitation:** To the extent permitted by law our total liability arising out of or in connection with the Services, however arising, including under contract, tort, including negligence, in equity, under statute or otherwise, will not exceed the total fees paid by you to us in the 12 month period prior to the event giving rise to the liability, or \$100 if no such payments have been made.
- 8.8 This clause will survive the termination of these Terms.
- 9. INDEMNITY**
- 9.1 You are liable for and agree to indemnify, defend and hold us harmless for and against any and all Claims, liabilities, suits, actions and expenses, including costs of litigation and reasonable legal costs, resulting directly or indirectly from:
- any information provided by you that is not accurate, up to date or complete or is misleading or a misrepresentation;
 - any breach of these Terms by you;
 - any misuse of the Services by you, your employees, contractors or agents; and
 - your breach of any law or third party rights.
- 9.2 You agree to co-operate with us (at your own expense) in the handling of disputes, complaints, investigations or litigation that arise as a result of your use of the Services including but not limited to disputes, complaints, investigations or litigation that arises out of or relates to incorrect information you have given us.
- 9.3 This clause will survive the termination of these Terms.
- 10. GENERAL**
- 10.1 **Good faith:** The Parties must at all times act toward each other with good faith.
- 10.2 **Privacy:** We agree to comply with the legal requirements of the Australian Privacy Principles as set out in the *Privacy Act 1988* (Cth) and any other applicable legislation or privacy guidelines.
- 10.3 **Publicity:** We will ask for your consent before advertising or publically announcing that we have provided Services to you, including mentioning you on our Site and in our promotional material. If we want to use images of you in our advertising we will ask you to give us your verbal consent prior to taking the images and we will tell you the way in which we intend to use the images.
- 10.4 **Email:** You acknowledge that we are able to send electronic mail to you and receive electronic mail from you. You release us from

- any claim you may have as a result of any unauthorised copying, recording, reading or interference with that document or information after transmission, for any delay or non-delivery of any document or information and for any damage caused to your system or any files by a transfer.
- 10.5 **GST:** If and when applicable, GST payable on the Fee for the Services will be set out on our invoices. You agree to pay the GST amount at the same time as you pay the Fee.
- 10.6 **Force Majeure:** We will not be liable for any delay or failure to perform our obligations under these Terms if such delay is due to any circumstance beyond our reasonable control. If we are delayed from performing our obligations due to such a circumstance for a period of at least 2 months, we may terminate these Terms with you by giving you 5 Business Days' notice in writing.
- 10.7 **Notices:** Any notice required or permitted to be given by either Party to the other under these Terms will be in writing addressed to the relevant address in the Proposal. Any notice may be sent by standard post or email, and notices will be deemed to have been served on the expiry of 48 hours in the case of post, or at the time of transmission in the case of transmission by email.
- 10.8 **Jurisdiction & Applicable Law:** These terms are governed by the laws of the Australian Capital Territory and the Commonwealth of Australia. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts operating in the Australian Capital Territory.
- 10.9 **Entire Agreement:** These Terms and any document expressly referred to in them represent the entire agreement between the Parties and supersede any prior agreement, understanding or arrangement between the Parties, whether oral or in writing.
- 11. DEFINITIONS**
- 11.1 **ACL** means the Australian Consumer Law.
- 11.2 **Business Day** means a day which is not a Saturday, Sunday or bank or public holiday in the Australian Capital Territory, Australia.
- 11.3 **Commencement Date** is set out in the Proposal.
- 11.4 **Claim/Claims** includes a claim, notice, demand, right, entitlement, action, proceeding, litigation, prosecution, arbitration, investigation, judgment, award, damage, loss, cost, expense or liability however arising, whether present, unascertained, immediate, future or contingent, whether based in contract, tort or statute and whether involving a third party or a Party to this Agreement or otherwise.
- 11.5 **End Date** is set out in the Proposal.
- 11.6 **Fees** are set out in the Proposal.
- 11.7 **GST** means GST as defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) as amended from time to time or any replacement or other relevant legislation and regulations.
- 11.8 **Intellectual Property** includes any and all present and future rights to intellectual and industrial property throughout the world, and includes all copyright and analogous rights, all rights in relation to inventions (including patent rights), patents, improvements, registered and unregistered trademarks, designs, any corresponding property rights under the laws of any jurisdiction, discoveries, circuit layouts, trade names, trade secrets, secret processes, know-how, concepts, ideas, information, processes, data or formulae, business names, company names or internet domain names, and any confidential information.
- 11.9 **Invoice Terms** is set out in the Proposal.
- 11.10 **Licensed Material** means the Materials.
- 11.11 **Materials** means work and materials that we provide to you in carrying out the Services including but not limited to choreography and movement techniques.
- 11.12 **Moral Rights** means the right of attribution of authorship, the right not to have authorship falsely attributed and the right of integrity of authorship, as defined in the *Copyright Act 1968* (Cth).
- 11.13 **Notice Period** is set out in the Proposal.
- 11.14 **Payment Method** is set out in the Proposal.
- 11.15 **Proposal** means the Proposal to which these Terms are attached.
- 11.16 **Services** are set out in the Proposal and particularised in our invoice to you.
- 11.17 **Service Period** is set out in the Proposal.
- 11.18 **Site** means our website at www.movingarchetypes.com.au.
- 11.19 **Terms** means these terms and conditions.
- 11.20 **Variation** means amended or additional services, including but not limited to changes to the Proposal, scope, individual sessions or group classes.
- 11.21 **Variation Fee** means the additional cost for a Variation.

Last update: 30 March 2017