

# **Terms and Conditions**

## **Imaging Vets**

These Terms and Conditions form the Contract between IMAGING VETS and its Clients in providing the Services to its Clients. The Client will be asked to click to accept the Terms and Conditions when submitting cases on the IMAGING VETS website at [www.imagingvets.com](http://www.imagingvets.com).

### **1. Definitions**

In these Terms and Conditions:

"Authorised Users" means any employee, contractor, affiliate or other third party of the Client authorised to receive the Services on behalf of the Client;

"Background Materials" means all work, materials, software and access to software, and information provided or made available by IMAGING VETS to the Client, relating to the Services which existed prior to the Contract or which were created or arose independently of the Contract;

"Client" means the person, firm or company purchasing the Services;

"Client Materials" means the work, materials and information provided by the Client relating to the Services;

"Confidential Information" means any information provided or otherwise made available by either Party (whether before, on or after the commencement of the Contract) to the other Party and which is marked as "confidential", or is stated to be confidential, or is reasonably understood in the circumstances of disclosure to be confidential;

"Contract" means this contract for Services entered into between the Client and IMAGING VETS, incorporating these Terms and Conditions;

"Deliverables" means the work and materials to be created or developed by or on behalf of IMAGING VETS for the Client in the course of the Services as set out in the Request for Services;

"Expenses" means any third party expenses (if any) additionally payable to IMAGING VETS by the Client as set out in the Request for Services;

"Fees" means the fees payable to IMAGING VETS by the Client as agreed in writing between the Parties (as may be increased from time to time, pursuant to clause 3.7 below);

"Key Dates" means the dates (if any) set out in the Request for Services for the provision of some or all of the Services;

"Parties" means both IMAGING VETS and the Client (and "Party" means either one of them);

"Payment Schedule" means the schedule for payment of the Fees as set out in the Request for Services;

"Registration" means online registration by the Client on IMAGING VETS' website;

"Request for Services" means a request from the Client for Services to be provided by IMAGING VETS;

"Services" means the services to be provided to the Client by IMAGING VETS while providing written Veterinary Diagnostic Imaging reports based on information provided by the Client to IMAGING VETS, together with any other services that IMAGING VETS provides or agrees to provide to the Client;

"IMAGING VETS" means ANIMAL ULTRASOUND SERVICES PTY LTD, ACN 096 172 440, which has its postal address at PO Box 3055, Putney NSW 2112, Australia; and

"IMAGING VETS Information" means any and all data and other information collected,

summarised and/or produced by or on behalf of IMAGING VETS and delivered to the Client by IMAGING VETS as part of the Services.

## **2. Supply of Services**

2.1 These Terms and Conditions are the only terms and conditions upon which IMAGING VETS is prepared to provide its Services to the Client and they shall govern the Contract to the exclusion of all other terms and conditions (including, without limitation, any terms and conditions contained in any purchase order, specification or other document supplied by the Client), except to the extent that any exclusion is prohibited by law.

2.2 The Contract is formed at the earlier of:

(a) the date on which the Client accepts these Terms and Conditions (whether online or otherwise); or

(b) the date on which the Client requests or instructs IMAGING VETS to commence the Services.

2.3 IMAGING VETS shall provide the Services to the Client with reasonable care and skill reasonably expected of professional persons providing these Services upon the terms of the Contract.

2.4 Unless otherwise stated in the Request for Services, the amount of time which IMAGING VETS devotes to the Services and the manner in which it provides the Services, shall be a matter for IMAGING VETS' own professional judgment.

2.5 Deliverables comprising reports are an interpretation of imaging findings only. The Client shall be responsible for the application of the report in its practice and IMAGING VETS shall not be responsible for such application or any determination made on the basis of such reports in respect of the Client's practice.

2.6 IMAGING VETS shall use all reasonable endeavours to meet the Key Dates and any other dates for the provision of the Services which may be agreed on between the Parties from time to time, but these are all estimates only and time shall not be of the essence for the provision of any of the Services.

2.7 IMAGING VETS reserves the right to charge additionally, at its usual consultancy rates from time to time, for any additional services requested by the Client which IMAGING VETS reasonably believes do not fall within the scope of the Services and which IMAGING VETS agrees (at its absolute discretion) to provide. However, no such charges will be made, or additional services provided, without the prior agreement of the Client.

2.8 IMAGING VETS shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, and IMAGING VETS shall notify the Client in such an event.

2.9 Each Party shall nominate a person from time to time to be the main point of contact for the other, in relation to the provision of the Services.

2.10 The Client shall send Client Materials and instructions to the person nominated by IMAGING VETS and shall not instruct or provide materials to any other consultants or employees of IMAGING VETS directly.

## **3. Fees and Expenses**

3.1 In consideration of the Services to be provided by IMAGING VETS, the Client shall pay the Fees and any Expenses to IMAGING VETS.

3.2 IMAGING VETS will ordinarily invoice the Client for the Fees and Expenses in accordance with the Payment Schedule. Notwithstanding the Payment Schedule, IMAGING VETS may invoice the Client:

(a) for the Fees at any time after the earlier of:

(1) the date on which the Client accepts these Terms and Conditions; and

(2) the date on which IMAGING VETS commences the provision of the Services; and

(b) for the Expenses at any time after they are incurred by IMAGING VETS.

3.3 The Client shall pay IMAGING VETS' invoices in full, within seven (7) days of the date of invoice, without any set-off or deduction. Time for payment of IMAGING VETS' invoice(s) shall be of the essence of the Contract.

3.4 If any payment of IMAGING VETS' invoice(s) is not made by the due date, then without prejudice to any other right or remedy to which IMAGING VETS may be entitled, IMAGING VETS may claim interest at the Reserve Bank of Australia cash rate from time to time, plus six per cent (6%) and/or may suspend their Services until payment is made in full (in which case the Client shall be liable for any additional resultant costs and expenses incurred by IMAGING VETS in recovering unpaid invoices and interest).

3.5 Notwithstanding any other provision of this Contract, all payments due to IMAGING VETS under this Contract shall become due immediately upon its termination.

3.6 The Fees, Expenses and any other sums payable to IMAGING VETS under this Contract are exclusive of GST, which the Client shall additionally pay to IMAGING VETS at the applicable rate, from time to time.

3.7 IMAGING VETS may, from time to time and at any time, increase the Fees for the Services provided.

#### **4. Intellectual Property rights**

4.1 All intellectual property rights and other rights in the Background Materials shall (as between IMAGING VETS and the Client) remain the property of IMAGING VETS.

4.2 All intellectual property rights and other rights in the Deliverables and IMAGING VETS Information shall (as between IMAGING VETS and the Client) be owned by IMAGING VETS.

4.3 Any suggested modifications or improvements to the Services submitted to IMAGING VETS by the Client or any Authorised Users of the Client shall be the exclusive property of IMAGING VETS to exploit or to not exploit as IMAGING VETS solely deems appropriate.

#### **5. Obligations of the Client**

5.1 Subject to clause 5.2, it is a condition of this Contract that the Client is fully licensed as a veterinary surgery in every jurisdiction in which it examines, diagnoses and/or treats animals and it is a further condition of this Contract that the Client at all times complies with all relevant laws and regulations in such jurisdictions pertaining to the examination, diagnoses and treatment of animals. The Client undertakes and warrants to IMAGING VETS that it shall maintain such licensing and observe all such laws and regulations for the duration of the Contract.

5.2 Where the Client is not a licensed veterinary surgery, IMAGING VETS may agree in writing to waive the condition at clause 5.1 above, provided that it shall be a condition of this Contract that the Client maintains a veterinary surgeon as an employee or consultant of the Client who is fully licensed in every jurisdiction in which he or she examines, diagnoses and/or treats animals and who is nominated by the Client as the sole recipient to receive and analyse reports from IMAGING VETS. It is a further condition of this Contract that such a veterinary surgeon shall, at all times, comply with all relevant laws and regulations in such jurisdictions pertaining to the examination, diagnoses and treatment of animals. The Client undertakes and warrants to IMAGING VETS that it shall maintain the employment or consultancy of such a veterinary surgeon throughout the period of this Contract and covenants and that such a veterinary surgeon shall observe all such laws and regulations for the duration of the Contract.

5.3 The Client shall, at its own expense, provide IMAGING VETS with all the cooperation and with all the Client Materials which IMAGING VETS may reasonably require to provide the Services. The Client is solely responsible for obtaining and maintaining all telephone, computer hardware and other equipment needed to access or use the Services and all related charges.

5.4 The Client undertakes to IMAGING VETS that the Client Materials it provides to IMAGING VETS shall be of sufficient detail and of sufficient quality to allow IMAGING VETS to perform its obligations under this Contract.

5.5 The Client shall maintain primary copies of all Client Materials and the Client confirms that IMAGING VETS shall not be responsible for maintaining, storing or returning Client Materials.

5.6 The Client warrants that the Client Materials shall be accurate in all material respects and that their use by IMAGING VETS for the purposes of providing the Services shall not infringe the intellectual property or any other rights of any third party. The Client shall indemnify and keep indemnified IMAGING VETS against any losses, damages, costs or expenses (including reasonable legal expenses) which arise out of, or in connection with, any breach of either or both of these warranties.

5.7 If IMAGING VETS' performance of its obligations under this Contract is prevented or delayed by any act or omission of the Client, its agents, sub-contractors, consultants or employees, IMAGING VETS shall not be liable for any costs, charges or losses sustained or incurred by the Client that arise directly or indirectly from such prevention or delay.

5.8 The Client covenants with IMAGING VETS that it shall not, at any time from the commencement of this Contract until six (6) months after the completion of the Services, solicit or seek to entice away from IMAGING VETS any person who is, or has been, engaged as an employee, consultant or sub-contractor by IMAGING VETS in the provision of the Services.

## **6. Storage and Publicity**

6.1 IMAGING VETS shall be entitled to name the Client in its published lists of clients, and to use anonymised copies and images of the Deliverables in IMAGING VETS' own publicity materials as examples of IMAGING VETS' work for the Client.

6.2 IMAGING VETS shall be entitled to maintain and store Client Materials and shall have the right to publish anonymised Client Materials for publicity, lecturing, training or other purposes.

## **7. Confidentiality**

7.1 Each Party agrees to use the other Party's Confidential Information solely for the purposes of the Contract and not at any time during the term of the Contract or for a period of three (3) years thereafter, to disclose the same whether directly or indirectly, to any third party (other than, in the case of IMAGING VETS, to its sub-contractors who are under equivalent obligations of confidentiality as are contained herein) without the other Party's prior written consent.

7.2 The restriction in clause 7.1 shall not apply to Confidential Information which (a) was public knowledge or already lawfully known to the receiving Party at the time of disclosure to it, or (b) subsequently becomes public knowledge other than by a breach of duty owed to the first disclosing Party, or (c) subsequently comes lawfully into the possession of the receiving Party from a third party, or (d) has to be disclosed by law.

7.3 The Client agrees that the information in any report arising from the Services provided by IMAGING VETS, together with any attachment provided by IMAGING VETS to the Client,

is confidential and is intended only for the use of the Client. In certain cases, it is also legally privileged.

## **8. Liability**

8.1 The Client agrees with IMAGING VETS that the conclusions described in any report provided by IMAGING VETS to the Client are based on available information at the time of reporting. If additional images or other information are obtained, then the study interpretation might change. Each IMAGING VETS' report must be interpreted, in conjunction with the physical examination and laboratory results, by the veterinarian with primary patient care responsibility for the animal.

8.2 This clause 8 sets out the responsibility of IMAGING VETS, as well as the setting out the entire financial liability of IMAGING VETS (including any liability for the acts or omissions of its employees, agents, consultants and sub-contractors) to the Client under or in connection with the Contract, whether arising in contract, tort, negligence, breach of statutory duty or otherwise.

8.3 Except as expressly set out in the Contract or that which cannot be excluded by law, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this Contract.

8.4 Nothing in this Contract shall exclude or limit the liability of IMAGING VETS for death (of a natural person) or personal injury (of a natural person) resulting from negligence, or for fraud or fraudulent misrepresentation, or for any other liability that cannot be excluded or limited by law.

8.5 Subject to clause 8.4:

(a) IMAGING VETS shall have no liability for any loss of profits, loss of business, loss of reputation, loss of anticipated savings, loss of or corruption of data, or for any special, indirect, consequential or pure economic loss suffered by the Client, and

(b) IMAGING VETS total liability for all other losses (other than as set out in 8.4) shall not exceed the total Fees paid by the Client to IMAGING VETS to that date.

## **9. The Client's rights to cancel and applicable refund**

9.1 Before IMAGING VETS begins to provide any Request for Services, the Client has the following rights to cancel a Request for Services, including where it chooses to cancel because IMAGING VETS is affected by a Force Majeure Event or if IMAGING VETS change these Terms and Conditions under clause 12.4 to the Client's material disadvantage:

(a) The Client may cancel any Request for Services at any time before the start of the Services being performed by contacting IMAGING VETS. IMAGING VETS will confirm the cancellation in writing.

(b) If the Client cancels a Request for Services under clause 9.1 (a) and has made any payment in advance for Services that have not been provided, IMAGING VETS will refund these amounts to the Client.

(c) However, if the Client cancels a Request for Services under clause 9.1 (a) and IMAGING VETS has already started work on that Request for Services by that time, the Client must pay IMAGING VETS any costs IMAGING VETS reasonably incurred in starting to fulfil the Request for Services, and this charge will be deducted from any refund that is due to the Client or, if no refund is due, invoiced to the Client. IMAGING VETS will inform the Client what these costs are when the Client advises IMAGING VETS of the termination. However, where the Client cancels a Request for Services because of IMAGING VETS' failure to comply with these Terms and Conditions (except where IMAGING VETS have been affected by a Force Majeure Event), the Client does not have to make any payment to IMAGING VETS.

9.2 Once IMAGING VETS has begun to provide the Services, the Client may cancel the Request for Services at any time by providing IMAGING VETS with at least thirty (30) calendar days' notice in writing. Any advance payment made for Services that have not been provided by IMAGING VETS will be refunded to the Client.

9.3 Once IMAGING VETS has begun to provide the Services, the Client may cancel the Request for Services with immediate effect by giving IMAGING VETS written notice if:

- (a) either of the events specified in clause 10.2 (b) apply to IMAGING VETS;
- (b) these Terms and Conditions are changed pursuant to clause 12.4 to the Client's material disadvantage;
- (c) IMAGING VETS is affected by a Force Majeure Event.

## **10. Term and Termination**

10.1 Subject to earlier termination in accordance with clause 10.2, this Contract shall remain in force until the completion of the Services.

10.2 Either Party may, by notice in writing to the other Party, terminate this Contract without incurring liability to the other Party:

- (a) for any reason on thirty (30) days' written notice; or
- (b) immediately if the other Party:
  - (1) is in material breach of any term of the Contract and fails to remedy such breach (if capable of remedy) within twenty-eight (28) days of having received written notice of such a breach from the complaining Party; or
  - (2) goes into liquidation, becomes bankrupt, has a receiver appointed, makes a composition or voluntary arrangement with its creditors or enters administration, or ceases (or threatens to cease) trading, or takes or suffers any similar or analogous action in consequence of debt.

10.3 Termination (however caused) or expiry of this Contract shall be without prejudice to any rights, obligations or liabilities accrued at the date of termination or expiry. The provisions of this Contract which expressly or impliedly have effect after termination shall continue to be enforceable notwithstanding termination or expiry, including without limitation, all the provisions of these Terms and Conditions.

## **11. Force Majeure**

11.1 IMAGING VETS shall have no liability to the Client under, or in connection with, the Contract for any delay or failure in performance, in whole or in part, if such delay or non-performance is due to any cause beyond IMAGING VETS's reasonable control ("Force Majeure Event").

## **12. General**

12.1 All notices under the Contract shall be in writing by email (provided the sender does not receive notice of delivery failure) to the other Party at its email address provided at Registration or such other address as may at the relevant time have been notified to the other Party.

12.2 This Contract constitutes the entire agreement between the Parties with regard to its subject matter and supersedes and replaces any prior arrangement, understanding or statement between them relating to it. The Client acknowledges that, in entering the Contract, it does not rely on any statement, representation, assurance or warranty of any person (whether a Party or not) other than as expressly set out in the Contract. However, nothing in this clause shall limit or exclude any liability for fraud or fraudulent misrepresentation.

12.3 Subject to clause 12.4, no variation to these Terms and Conditions shall be valid unless agreed in writing by IMAGING VETS.

12.4 IMAGING VETS reserves the right to vary these Terms and Conditions from time to time and at any time. Any variation or variations shall apply as from the date of posting or publication of the variation or variations on the website of IMAGING VETS. The Amended T & Cs shall constitute the Terms and Conditions from the date of publication or posting, provided that the Amended Terms and Conditions shall not apply to any Services instructed on or before the date of publication, or posting on the website for IMAGING VETS.

12.5 Nothing in this Contract shall constitute or be deemed to constitute a partnership or relationship of agency between the Parties and neither Party shall have any authority to bind the other in any way.

12.6 No failure or delay by IMAGING VETS to exercise any right under the Contract shall be deemed to be a waiver of that right, nor preclude the exercise or enforcement of it at any later time.

12.7 If any provision of the Contract shall be held to be illegal or unenforceable, the enforceability of the remainder of the Contract shall not be affected.

12.8 Nothing in the Contract shall give any third party any benefit or any right to enforce any term of the Contract, except as expressly set out herein.

12.9 The Contract (including, without limitation, non-contractual disputes or claims relating to the Contract and its subject matter or formation) shall be governed by and construed in accordance with the law of New South Wales and, by entering into the Contract, each Party irrevocably submits to the exclusive jurisdiction of the New South Wales Courts of Australia.