



Service Agreement

Employee Assistance Program for
Christ Church Grammar School Old Boys Association

prepared by

Assure Programs

(01 September 2023)

Commercial in Confidence

Version: November 2021

Standard Terms and Conditions

Background

- A. Assure provides employee assistance services including a broad range of psychological support services and programs to organisations and individuals including counselling, coaching, critical incident response and manager/leader support.
- B. The Client requires a service provider to provide the EAP Services, as described in this Agreement, and wants to engage Assure to provide them.
- C. Assure has the necessary skills, qualifications, and experience to provide the EAP Services to the Client.
- D. Assure agrees to provide the EAP Services to the Client on the terms and conditions set out in this Agreement.

Operative provisions

1 Definitions

In this Agreement except so far as the context otherwise requires:

Additional Services means the EAP Services described as additional services in Schedule 1, if any, and includes any other EAP Services that are not Included Services.

Agreement means this agreement between the parties and includes its Schedules and any attachments and annexures, as amended from time to time in accordance with its terms.

Associated Entities means

- (a) in case of Assure, all its associated entities including its Related Bodies Corporate, which Assure uses as part of its operating business model to ensure coverage of all locations from time to time; and
- (b) in the case of the Client includes the organisations or partnerships of Christ Church Grammar School Old Boys Association and each of the Service Users, agents, officers, directors, advisers, partners, consultants, contractors, and associated entities of Christ Church Grammar School Old Boys Association which are entitled to request EAP Services from Assure pursuant to this Agreement.

Assure Marks means the Assure trademarks nominated by Assure from time to time.

Assure Material means any material provided by or to which access is given by Assure to the Client for the purposes of this Agreement including documents, equipment, reports, technical information, studies, plans, charts, drawings, calculations, tables, schedules, and data stored by any means.

Business Day means a day other than a Saturday, Sunday, or public holiday in the place where an act is to be performed or a notice is received.

Claims means any claims, Losses, proceedings, damages, punitive damages, penalties, demands, fines, and liabilities whether criminal, civil, in tort, in contract or otherwise.

Client means the entity stated as such in the Parties details.

Client Material means any material provided by or to which access is given by the Client to Assure for the purposes of this Agreement including documents, equipment, reports, technical information, studies, plans, charts, drawings, calculations, tables, trademarks, logos, schedules, and data stored by any means.

Commencement Date means the date stated in clause 3(a).

Confidential Information means all information relating to a party which is by its nature confidential or identified as being confidential or information that the other party knows or ought to know is confidential and includes:

- (a) information and Personal Information about the Eligible Parties;
- (b) counselling records and files, matters discussed by Eligible Parties in counselling sessions;

- (c) information of whatever nature relating to the business activities, practices, and finances of a party;
- (d) comprised in or relating to Intellectual Property Rights;
- (e) customer lists, names of any client or business associate of a party and any other information relating to the business affairs of a party, the business activities of a party or its Associated Entities including financial information, business plans, marketing information, client or customer lists or other information relating to the business affairs of a party; and
- (f) any information derived from any other information which falls within this definition of Confidential Information,

but excluding information to the extent that:

- (g) such information is publicly available, other than as a result of a breach of this Agreement; or
- (h) already known by, or rightfully received, or independently developed, by that party free of any obligation of confidence.

EAP Services means Employee Assistance Program services and includes the Included Services and Additional Services (if any) described in Schedule 1.

Early Access means EAP Services accessed before the Commencement Date of this Agreement.

Eligible Party means:

- (a) each employee of the Client or its Associated Entities;
- (b) that employee's Immediate Family Members; and
- (c) any other person as requested by the Client and agreed to by Assure.

Fees means:

- (a) The Annual Fees for the EAP Services payable by the Client to Assure set out in Schedule 1, as adjusted from time to time in accordance with Schedule 1;
- OR
- (b) The Annual Retainer Fee and the Fee-for-Service services payable by the Client to Assure set out in Schedule 1, as adjusted from time to time in accordance with Schedule 1.
- OR
- (c) Such other fees as to be agreed by the parties from time to time and as set out in Schedule 1.

Force Majeure means a circumstance beyond the reasonable control of the parties and which results in a party being unable to observe or perform on time an obligation under this Agreement, including:

- (a) acts of God, lightning strikes, earthquakes, floods, droughts, storms, tempests, mud slides, washaways, explosions, fires and any natural disaster;
- (b) any government act relating to epidemics and quarantine restrictions;
- (c) acts of war, acts of public enemies, terrorism, riots, strikes and civil commotion, malicious damage, sabotage, and revolution; and
- (d) any acts of any governmental agency.

Immediate Family Members includes a person's:

- (a) spouse or partner (including a partner of the same sex, former spouse, or de facto spouse);
- (b) child over 13 years of age (including adopted child, stepchild, foster child, ex-nuptial child);
- (c) parent (including a foster parent or a legal guardian);
- (d) sibling;
- (e) any other relation who currently resides with the person; and
- (f) any other relation as mutually agreed between Assure and the Client.

Included Services means the EAP Services described as included services in Schedule 1 of this Agreement.

Initial Term means the term set out in clause 3(a).

Intellectual Property Rights means all rights, title, and interests in in relation to current and future registered and unregistered rights in respect of copyright, designs, trademarks, trade secrets, business know-how, developed methodology and techniques, get up, moral rights, business names, patents, inventions and discoveries, business systems, goodwill, patents, or other similar rights, or rights to apply for any of these rights.

Losses means any losses including but not limited to financial losses, expenses, damages, costs including legal fees, legal costs (on solicitor own client scale) and other expenses of any nature whatsoever.

Other Services means training, consulting, preventative services, return to work services, assessments and/or other services to be delivered by Assure's Related Bodies Corporate as described in clause 5.

Personal Information has the same meaning given to that term in the *Privacy Act 1988* (Cth).

Privacy Law means all legislation, regulations, principles, industry codes and policies which regulate the handling of Personal Information in Australia including the *Privacy Act 1988* (Cth) and the Australian Privacy Principles contained in that act.

Related Body Corporate has the meaning as defined in the *Corporations Act 2001* (Cth).

Service User means the individual Eligible Party receiving EAP Services in accordance with this Agreement.

Tax Invoice has the meaning given to that term in the GST Law.

Term means the duration of this Agreement as set out in clause 3.

2 Interpretation

In this Agreement, except so far as the context otherwise requires:

- (a) a reference to:
 - (i) a clause number, includes its subclauses;
 - (ii) the singular, includes the plural and vice versa;
 - (iii) a gender, includes any other gender;
 - (iv) a person, includes a body, whether corporate or otherwise, a partnership, a natural person, a government and a governmental and/or a local authority or agency;
 - (v) a party, is a reference to a party to this Agreement and includes that that party's personal representatives, executors, administrators, trustees, receivers, successors and permitted assigns including persons taking by way of novation and, in the case of a trustee, includes a substituted or an additional trustee;
 - (vi) an item in a clause, schedule, or annexure, is a reference to an item in a clause, schedule, or annexure to this Agreement;
 - (vii) a document or agreement, including this Agreement, includes a reference to that document or agreement as amended, novated, supplemented, varied, or replaced from time to time; and
 - (viii) writing, includes typewriting, printing, lithography, photography, and any other method of representing or reproducing words, figures, or symbols in a permanent and visible form;
- (b) where a word or phrase is given a particular meaning, other parts of speech or grammatical forms of that word or phrase have corresponding meanings;
- (c) where a word or phrase is given a particular meaning in the Schedules to this Agreement, that word or phrase will have a corresponding meaning elsewhere in this Agreement;

- (d) headings are for ease of reference only and do not form part of this Agreement or affect its interpretation;
- (e) the word "includes" in any format is not a word of limitation;
- (f) unless otherwise specifically provided, all monetary amounts contained in this Agreement are in Australian Dollars (AUD);
- (g) where a provision of this Agreement has the effect of requiring anything to be done on, or by, a date which is not a Business Day, that provision will be interpreted as if it requires that thing to be done on, or by, the next Business Day;
- (h) where a party comprises two or more persons, an agreement or obligation to be performed or observed by that party binds those persons jointly and severally and a reference to that party includes a reference to any one or more of those persons; and
- (i) a provision of this Agreement will 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 that provision in this Agreement.

3 Term

- (a) This Agreement will commence on **01 September 2023** ("the Commencement Date") and unless extended or terminated as provided in this Agreement, continues to **31 August 2024**, ("the Initial Term").
- (b) After the Initial Term, the Agreement may be renewed or extended by mutual agreement of the parties, with any changes as considered necessary or reasonable by the parties to be recorded in writing.

4 EAP Services

- (a) This Agreement entitles any of the Client's Associated Entities to request EAP Services, Included Services and/or Additional Services from Assure during the Term on the terms and conditions of this Agreement. A contract is formed between Assure and the Associated Entity when Assure accepts an offer for EAP Services from the Associated Entity. Any reference to the Client as the contracting party in this Agreement will be a reference to that Associated Entity.
- (b) Assure is engaged by the Client to provide EAP Services to Eligible Parties in **Australia** for the Initial Term on the terms and conditions of this Agreement. If this location includes a jurisdiction outside Australia, Annexure A applies and is incorporated into this Agreement.
- (c) Assure must provide the Included Services for the Initial Term.
- (d) From time to time the Client may request that Assure provides Additional Services. If Assure accepts the request for Additional Services, Assure will provide the Additional Services.
- (e) For Early Access purposes,
 - (i) Eligible Parties may be permitted early access prior to the Commencement Date and the same terms and conditions as set out in this Agreement will apply to any such Early Access services;
 - (ii) All Early Access cases are charged as detailed in the relevant Early Access form; and
 - (iii) For Annual Fee contracts, Early Access cases will not contribute to utilisation or be included in reporting numbers, as they fall outside the official Commencement Date.
- (f) Assure will provide the EAP Services in accordance with the Agreement and with due care and skill and in accordance with applicable laws.

- (g) Assure will provide no less than a reasonable standard of care and level of service and abide by the standards of professional conduct consistent with the Australian Psychological Society Code of Ethics in performing the EAP Services.
- (h) Assure warrants that all personnel involved in the provision of the EAP Services have the required qualifications and experience to perform the EAP Services. At the Client's request, Assure will provide full particulars of the qualifications and relevant experience of its personnel involved in performing the EAP Services.

5 Other Services

- (a) The Client may from time-to-time request Assure's Related Bodies Corporate to provide quotes for Other Services to the Client, which services are not expressly stated in Schedule 1.
- (b) The Other Services will be at the rates and times agreed to in writing between Assure's Related Bodies Corporate and the Client.
- (c) Unless otherwise agreed to between the Client and Assure's Related Bodies Corporate, the Other Services will be delivered by Assure's Related Body Corporate pursuant to clause 22(b) of this Agreement and Assure will invoice the Client directly for the Other Services agreed to in accordance with clauses 5(b) and 6(b).
- (d) The following cancellation policies apply to the Other Services:

For Communicorp Group Pty Ltd, FBG Group Pty Ltd and Management Consultancy International Pty Limited t/a MCI Solutions

Cancellation and/or reschedule of any Other Services:

- (i) 0 to 10 Business Days notice: 100% of the agreed fees remain payable; and
- (ii) 11 to 20 Business Days notice: 50% of the agreed fees remain payable.

For any other Related Body Corporate of Assure

- (iii) 0 to 2 Business Days notice: 100% of the agreed fees remain payable; and
- (iv) 3 to 5 Business Days notice: 50% of the agreed fees remain payable.

6 Fees

- (a) The Client will pay Assure the Fees for the Included Services and the Additional Services (if any) in accordance with this clause 6 and Schedule 1.
- (b) Assure will invoice the Client for the Fees from time to time in line with its billing practice.
- (c) The Client must make payment of the amount in the Tax Invoice within 30 days of receipt of the Tax Invoice.
- (d) In addition to the Fees, Assure will charge the Client the travel and other expenses set out in Schedule 1, if any, incurred in performing the EAP Services.
- (e) If the Client, acting in good faith, disputes that an amount in a Tax Invoice is correct, it must pay the undisputed portion of that Tax Invoice.
- (f) If the Client fails to pay any Fees in accordance with this Agreement, without limiting any other remedies available to Assure, Assure may defer performance of all EAP Services until the outstanding Fees are paid in full.

7 Confidentiality

- (a) Each party agrees to maintain the confidential nature of the Confidential Information and must not disclose it to any person, except:
 - (i) to its service users, officers, agents and subcontractors and professional advisors and auditors on a need-to-know and confidential basis;
 - (ii) if required by law or a court order or government agency or by the rules of any relevant stock exchange or regulator; or
 - (iii) with the prior written consent of that party.
- (b) A party must take reasonable steps to establish and maintain effective security measures to safeguard the Confidential Information from misuse, loss, unauthorised access, modification, copying or disclosure and use.
- (c) If a party becomes aware of an unauthorised disclosure of the other party's Confidential Information, it must immediately notify that party.
- (d) This clause will survive termination or expiration of this Agreement.

8 Privacy

- (a) Each party will at all times comply with the Privacy Laws with respect to any act or practice under this Agreement.
- (b) This clause will survive termination or expiration of this Agreement.

9 Intellectual Property Rights

- (a) Nothing in the Agreement shall affect a party's pre-existing Intellectual Property Rights.
- (b) All Intellectual Property Rights in Assure Material remains the property of Assure and nothing in this Agreement grants the Client any Intellectual Property Rights in the Assure Material or other Intellectual Property Rights of Assure except as set out in this clause 9.
- (c) Assure grants to the Client a free, non-exclusive, revocable licence to use the Assure Marks for the Term for the sole purpose of implementing and promoting the EAP Services to Eligible Parties and solely in the manner approved by Assure from time to time.
- (d) The Client grants to Assure a free, non-exclusive, global licence to use the Intellectual Property Rights in any Client Material for the purposes of Assure providing EAP Services under this Agreement.
- (e) For any Other Services, the following provisions will apply:
 - (i) All Intellectual Property Rights in Material specifically developed or created by Assure's Related Body Corporate for the Client as part of this Agreement, remains vested in that Related Body Corporate and remains the exclusive property of Assure's Related Body Corporate.
 - (ii) Assure's Related Body Corporate grants the Client a royalty free licence to use the Intellectual Property Rights which belong to that Related Body Corporate and which are or may be contained in the Material developed pursuant to this Agreement, for the Client's internal purposes only. This licence expressly excludes the right to sublicense or transfer any of Assure's Related Body Corporate's Intellectual Property Rights.
 - (iii) The Client grants to the relevant Related Body Corporate of Assure, a non-exclusive, worldwide, royalty-free licence to use the Intellectual Property Rights in any Client Material for the purposes of that Related Body Corporate providing services under this Agreement.
 - (iv) The Client must not cause damage to or infringe Assure's Related Body Corporate's Intellectual Property Rights.

- (v) Assure's Related Body Corporate warrants that in providing the services, it will not breach any third-party Intellectual Property Rights.
- (f) Despite any other provision in this Agreement, a breach of this clause 9 is not subject to any liability cap provided for in this Agreement.
- (g) This clause will survive termination or expiration of this Agreement.

10 Publicity

- (a) Assure will not publicly advertise in any way its arrangements with the Client or the Client's Associated Entities or use the Client or its Associated Entities as a reference point in any written solicitation to be engaged to provide services to any person (including, without limitation, any tender or response to tender) without the prior written consent of the Client (which consent may be withheld in the Client's absolute discretion).
- (b) This clause will survive termination or expiration of this Agreement.

11 Insurance

- (a) Assure must effect and maintain as a minimum the following insurance cover with a reputable insurer:
 - (i) public liability insurance, with the limit of indemnity of \$20 million for any one occurrence; and
 - (ii) professional indemnity insurance, with the limit of indemnity of \$20 million any one occurrence.
- (b) The Client must have appropriate public liability insurance in place in respect of each site Assure may be required to attend, if any. Appropriate public liability insurance means public liability insurance with a reputable insurer with a limit of indemnity of at least \$20 million for any one occurrence.
- (c) Each party will provide to the other party its relevant certificates of insurance upon request.
- (d) Both parties must ensure they have workers' compensation insurance cover in place under the relevant law or scheme.

12 Indemnity – Not Used

- ~~(a) A party ("the wrongdoer") hereby indemnifies and keeps the other party and any of that other party's service users, agents, subcontractors, representatives, or affiliates (each being an "Indemnified Party") indemnified against any and all Claims suffered and incurred by the Indemnified Party in relation to:

 - ~~(i) a breach of this Agreement;~~
 - ~~(ii) the EAP Services;~~
 - ~~(iii) personal injury or death; or~~
 - ~~(iv) damage or destruction to any property of the Indemnified Party, caused or contributed to by the wrongdoer's acts or omissions.~~~~
- ~~(b) A party shall not be liable under the indemnity given under this clause to the extent where a court of competent jurisdiction, giving a final judgment, holds that any loss, damage, or liability is the result of the gross negligence, wilful misconduct, or bad faith of an Indemnified Party.~~
- ~~(c) This clause will survive the termination or expiration of this Agreement.~~

13 Limitation of liability

- (a) To the maximum extent permitted by law, a party's total cumulative liability in contract, tort or otherwise arising from or in connection with this Agreement shall be limited in the aggregate to the amount of the Fees paid by the Client to Assure in the 12 months before the most recent Claim, determined by reference to the date the Claim arose.
- (b) Neither party shall be liable for any loss, damage, costs, or expenses of any nature whatsoever incurred or suffered by the other party of an indirect or consequential nature including any economic loss, data loss, loss of actual or anticipated savings, loss of goodwill, or other loss of turnover, profits, or business opportunity.
- (c) The Client acknowledges that the limitation of liability in this clause 13 is intended to operate and apply to any of the Client's Associated Entities that may use the services pursuant to this Agreement and any Claim brought against Assure by any of the Client's Associated Entities is in the aggregate limited as set out in clauses 13(a) and (b).
- (d) This clause will survive the termination or expiration of this Agreement.

14 Termination

- (a) Either party may terminate this Agreement at any time for convenience by giving 90 days written notice to the other party, when the Term exceed 12 months.
- (b) Either party may immediately terminate this Agreement by written notice to the other party if the other party:
 - (i) commits a serious breach of the Agreement which is not capable of being remedied;
 - (ii) breaches its obligations under this Agreement and fails to remedy such breach within 14 days of receiving written notice of the breach;
 - (iii) considers that a conflict or potential conflict of interest has arisen between the parties which cannot appropriately be managed; or
 - (iv) becomes subject to any form of insolvency administration or arrangement with creditors generally or becomes unable to pay its debts as and when they fall due.
- (c) If the Agreement is:
 - (i) terminated after the Initial Term; or
 - (ii) if the Client terminates the Agreement pursuant to clause 14(b),
 then Assure will refund any portion of the Fees paid in advance by the Client and which Assure has not delivered the services as at the termination date. For clarity, no amount is refundable by Assure to Client if this Agreement is terminated by Assure under clause 14(b) or by Client during the Initial Term.
- (d) Any part of this Agreement which is meant to continue after termination, either expressly or by implication, or which is meant to come into force at or after termination shall not be affected by this clause.

15 Force Majeure

- (a) Assure will not be liable for any delay or failure to perform its duties and obligations pursuant to this Agreement if such a delay is due to Force Majeure.
- (b) If the Force Majeure event exceeds 60 days, then either party may terminate this Agreement on providing notice in writing to the other party.
- (c) If this Agreement is terminated pursuant to this clause, Assure will refund moneys previously paid by the Client, for any EAP Services not yet provided by Assure to the Client.

16 Representatives of each party

Each party will nominate the principal points of communication and co-ordination for all matters pertaining to this Agreement.

17 Modern Slavery

- (a) Assure will comply with the Modern Slavery Act and will take reasonable steps to identify, assess and address risks of Modern Slavery practices in its operations and supply chains, used in the provision of the services under this Agreement.
- (b) If required, Assure will provide the Client with information reasonably requested by the Client to assist the Client with its obligation under the *Modern Slavery Act 2018* (Cth).
- (c) Assure confirms it has not been convicted of any offence involving Modern Slavery practices.
- (d) In this clause 17 Modern Slavery has the same meaning as in the *Modern Slavery Act 2018* (Cth).

18 Dispute resolution

- (a) Either party may give written notice of a dispute to the other party, setting out the particulars of the dispute ("Dispute Notice").
- (b) Within 10 Business Days of a party receiving a Dispute Notice, the parties, through their nominated representatives specified in the Parties details, must meet to try and resolve the dispute in good faith. If the parties are unable to resolve the dispute within that period, a senior executive of each party must meet and try to resolve the dispute in good faith within 10 Business Days or such other agreed period.
- (c) If the grievance or dispute remains unresolved after the steps in clause 18(b) have been complied with, either party may refer the grievance or dispute to a mediator nominated by the Australian Chamber of Commerce and Industry.
- (d) The costs of any third party mediator shall be borne by the parties equally.
- (e) Assure can elect to suspend provision of the services to the Client until the grievance or dispute is resolved.

19 Warranty

- (a) Each party warrants to the other party that:
 - (i) it has the power and authority to enter into and perform its obligations under this Agreement;
 - (ii) it has not entered into any agreement with any person which might conflict with the terms of this Agreement or create a conflict or potential conflict of interest between the parties; and
 - (iii) by entering into and performing its obligations under this Agreement, it will not breach any laws or contractual obligations it owes to any other person;
- (b) The parties agree that in entering into this Agreement, they did not do so in reliance on any representations, warranties, or other provisions except for those which are expressly provided in this Agreement.
- (c) The parties agree that any warranties, conditions, or other terms implied by law are expressly excluded from this Agreement to the maximum extent permitted by law.

- (d) The Client represents and warrants, that:
- (i) all information provided by the Client or on the Client's behalf to Assure is accurate and is not, whether by omission of information or otherwise, misleading;
 - (ii) the Client has not withheld from Assure any document, information, or other fact material to the decision of Assure to enter into this Agreement; and
 - (iii) the Client will not bring Assure into disrepute or do or omit to do anything that is likely to bring Assure into disrepute.
- (e) This clause will survive termination or expiration of this Agreement.

20 Nature of relationship

- (a) Nothing in this Agreement constitutes an employment relationship between the Client and Assure or between the Client and Assure's workers (such as the service users, agents, or subcontractors of Assure). No relationship of employer and employee is created by this Agreement.
- (b) Nothing in this Agreement creates a partnership, joint venture, fiduciary relationship, agency, or other relationship between the Client and Assure except for the contractual relationship which is provided in this Agreement.
- (c) Assure's appointment is non-exclusive and in no way limits Assure's right to enter into similar arrangements to this Agreement, either directly or indirectly with other persons or entities.

21 Notices

- (a) Notices under this Agreement will be in writing and may be delivered by hand, mail or by email to the addresses specified for the parties at the Parties details, as updated from time to time.
- (b) Notices will be deemed given:
 - (i) in the case of hand delivery, upon delivery;
 - (ii) in case of prepaid mail, four Business Days after posting; or
 - (iii) in the case of email, at the time sent (as recorded on the sender's information system) unless the party sending the email receives an automated message that the email has not been delivered.

22 Assignment and subcontracting

- (a) Neither party will assign or novate or otherwise transfer any of its rights or obligations under this Agreement without the prior written consent of the other party.
- (b) Despite clause 22(a), the Client acknowledges that Assure may from time to time subcontract some or all of the services to suitably qualified and registered psychologists and other Associated Entities of Assure, appointed by Assure, at Assure's sole discretion and Assure is not required to obtain the Client's consent for this subcontracting.

23 GST

- (a) In this clause 23:
 - (i) GST means Goods and Services Tax imposed on a supply of goods or services in Australia, pursuant to the GST Law;
 - (ii) GST Law means the same as in the A New Tax System (Goods and Services Tax) Act 1999 (Cth); and
 - (iii) words and expressions that are not defined in this Agreement have the meaning given in the GST Law.
- (b) Unless expressly stated otherwise, all moneys or other sums payable or consideration to be provided under this Agreement are exclusive of GST.

- (c) If GST is payable on any supply made under this Agreement, the recipient will pay to the supplier an amount equal to the GST payable on the supply at the same time that the consideration for the supply is to be provided under this Agreement.
- (d) The supplier must deliver a tax invoice, or an adjustment note to the recipient before the supplier is entitled to payment of an amount under clause 23(c). The recipient can withhold payment of the amount until the supplier provides a tax invoice or adjustment note as appropriate.
- (e) If an adjustment event arises in respect of a taxable supply made by a supplier under this Agreement, the amount payable by the recipient under clause 23(c) will be recalculated to reflect the adjustment event and a payment will be made by the recipient to the supplier or by the supplier to the recipient as the case requires.
- (f) Where a party is required under this Agreement to pay or reimburse an expense or outgoing of another party, the amount to be paid or reimbursed by the first party will be the sum of:
 - (i) the amount of the expense or outgoing less any input tax credits in respect of the expense or outgoing to which the other party, or to which the representative member for a GST group of which the other party is a member, is entitled; and
 - (ii) if the payment or reimbursement is subject to GST, an amount equal to that GST.

24 No waiver

- (a) A right created by this Agreement may only be waived in writing by the party giving the waiver, and the failure to exercise or any delay in exercising a right or remedy provided by this Agreement or by Law does not waive the right or remedy. A waiver of a breach of this Agreement or any other instrument does not waive any other breach.
- (b) Any rights or remedies provided in this Agreement are cumulative and are in addition to any rights or remedies provided by law.

25 Applicable law

This Agreement is governed by the laws of Queensland, Australia, and each party submits to the jurisdiction of the courts of Queensland, Australia.

26 Severability

If any clause or subclause of this Agreement is held to be invalid or unenforceable, it is to be read down or severed such that the remaining clauses and subclauses will be enforced to the maximum extent possible. In such circumstances, the remaining provisions of this Agreement shall continue in full force and effect.

27 Survival of obligations

At the termination or expiration of this Agreement, any provisions of this Agreement which would by their nature be expected to survive termination or expiration shall remain in full force and effect, including any provisions which explicitly state that they will survive termination or expiration.

28 Entire Agreement

- (a) This Agreement constitutes the entire Agreement, understanding and arrangement (express and implied) between the parties relating to the subject matter of this Agreement, and supersedes and cancels any previous agreement, understanding or representation relating thereto, whether written or oral.
- (b) This Agreement may only be varied by written agreement between the parties.

29 Counterparts

This Agreement may be signed in counterparts which, when taken together, constitute one document.

Annexure A

Overseas Services Addendum

If the Client has requested that Assure provide it with EAP Services in one or more jurisdictions outside Australia then in these circumstances, the following additional conditions apply:

1. Assure may either elect to subcontract these services to a local provider or, at Assure's discretion, provide such sessions via telehealth, using standard video conferencing technology.
2. Where providing services internationally from Australia, Assure will always seek express consent of the Service User for their personal information to be transferred out of the jurisdiction from which the Service User is based to Australia. If no such consent is provided, then Assure will not be able to continue with the appointment to ensure compliance with foreign data privacy laws.
3. The Client acknowledges that Assure's psychologists in Australia do not have foreign registrations equivalent to AHPRA registration requirements. Assure shall not be required to seek professional registration of staff in any jurisdiction other than Australia.
4. While Assure will use all reasonable endeavours to assist Service Users based overseas, the Client acknowledges that Assure personnel may not be able to communicate in local language with emergency services or others in that jurisdiction and / or may not have appropriate contact details, and consequently may not be able to provide the same level of support as would be provided to Service Users based in Australia. To the extent permitted by law, the Client waives all rights to claim against Assure in the event that such services are not of the same professional standard as if they were delivered and received in Australia.
5. Notwithstanding performance of the services is received overseas, all performance shall be deemed to have occurred within Australia, and will be billed and subject to GST and any other applicable taxes as if performed completely within Australia.