



## Membership Agreement: Flexible Membership

### 1. General

This is a membership agreement between you (the undersigned) and National Centre of Indigenous Excellence Ltd (“we”, “us”, “NCIE”) under which you agree to become a member of National Centre of Indigenous Excellence Fitness Centre (Fitness Centre).

Please note that your membership is personal to you and cannot be assigned or transferred.

This agreement shall be legally binding when signed by you.

This agreement sets out your rights to use our facilities and services provided within the Fitness Centre, and the obligations you have to comply with as a member. Your responsibilities under this agreement, including payment of membership fees, do not depend on how often you use the facilities and services. You promise to tell us if at any time you believe that you may not be able to comply with your obligations under this agreement including the payment of fees, so we can discuss your options with you.

What is set out in this agreement overrides any statements made by you or us before you signed the agreement.

Your membership starts on the date on which you sign this agreement (**Start Date**).

- Your membership is **Ongoing**, it is a periodic agreement that will continue after the Minimum Term until either you or we terminate it in the way described in this agreement. If an automatic direct debit arrangement is in place, membership fees will continue to be debited from your credit card or account until you or NCIE cancel the arrangement by notifying your bank or credit provider. If you terminate this agreement or stop the automatic debit arrangement in a manner not described in the agreement, then you may be liable for damages for breach of contract.

### 2. Direct Debit

Direct debit Services are supplied by Ezy pay (Direct Debit Provider). If you elect to pay your membership fees fortnightly via direct debit, you must agree to Ezy pay’s terms and conditions which shall be provided to you when you join.

If for whatever reason, an Ezy pay direct debit attempt from your account is unsuccessful, you will be notified by Ezy pay and will incur a \$5.00 failed payment fee. Ezy pay will then automatically attempt to re-bill your fortnightly payment plus the failed payment fee after seven (7) days.

Direct Debit Warning: Please ensure that you cancel any direct debit authorisation for payments under this agreement when your membership ends.



### **3. Cooling Off Period**

This agreement is subject to a Cooling off Period which ends 48 hours after the Start Date.

If you change your mind shortly after signing this agreement, you may have an opportunity to cancel. You will need to let us know in writing within the time specified above for it to be effective. We will charge the joining fee and fair amounts for fitness services we have already provided, but will otherwise refund you any other amounts you have paid to us within 7 days. If you wish to end your membership otherwise, different terms apply as set out in this agreement.

### **4. What you get when you join**

From the Start Date your membership entitles you to the use of the services and facilities offered within the Fitness Centre including all areas such as the pool, exercise areas and change rooms as well as all equipment including weights, benches, machines, mats, and any programs, products, classes and services during its usual opening hours. This is subject to prior facility bookings. We encourage you to check the availability of any particular facility prior to arrival either on our website or by telephoning us.

You must present your membership card for admittance to the Fitness Centre. Please note that an administration fee of \$10.00 will be charged to replace lost, stolen or damaged membership cards.

### **5. Safety first!**

The health and safety of members is important to us. This clause sets out some of the things we require of you to help achieve that objective.

#### *(a) Your physical condition*

A safe and effective exercise program is dependent upon accurate health and fitness profiling. It is therefore essential that you tell us in writing all relevant personal health and fitness information both before (through our pre-exercise questionnaire or otherwise) and during the course of any exercise program or other activity.

You promise that information you disclose to us will be true and accurate and not misleading in any way. You must not attend and use the facilities and services whilst you are suffering from any illness, disease, injury or other condition that could present a risk to the health or safety of other members and guests or yourself.

If you use the facilities and services before disclosing relevant health information to us, you promise that you are in good physical condition and you do not know of any reason why you may not be able to exercise safely. If you feel unsure that you can make this promise, we ask that you do not use the facilities and services until we have completed your health and fitness profile.



*(b) Proper use of equipment*

You promise to take care when using the facilities and services and make sure that you use the facilities and services including equipment appropriately and safely. If you are ever not sure how to operate any equipment properly, please ask a staff member before you use it.

*(c) Rules of good behaviour*

We display rules that apply to everyone using the facilities and services in order to promote health and safety and the protection of property (our Rules). Our Rules are displayed on our website and on signage. Please make sure that you read our Rules carefully and ask us if there is anything you are not sure about.

We may occasionally update our Rules to further promote health and safety or to make other improvements. You must keep familiar with the current version of our Rules by reading our website and signage on a regular basis.

If you break our Rules, the response we take will be at our reasonable choosing and we will try to exercise this right fairly by giving you a warning if we consider the failure is less serious. In this regard however you acknowledge that health and safety of all users and protection of property is very important. Accordingly, if we reasonably consider the failure to follow our Rules is serious or persistent we may suspend or even cancel your membership with immediate effect.

*(d) We can refuse you entry*

We can refuse you entry to the facilities and services or cancel your membership immediately if you behave in a way that is seriously risky or inappropriate, such as if you threaten or harass others, deliberately or recklessly damage equipment or facilities or if you use or distribute illegal or performance enhancing drugs.

*(e) Please follow our directions*

You agree to follow any reasonable direction of a member of our staff relating to health and safety or any other matter.

**6. We take your privacy seriously**

*(a) Our privacy policy*

From when you apply for membership we will have access to personal information about you, such as information relating to your health and finances. We will protect this information and only use, disclose or deal with this information in accordance with our Privacy Policy. The latest version of the Privacy Policy will be available on our website.

*(b) Video monitoring*

We may use video monitoring in our facilities for health, safety and security reasons. If you have any queries in relation to the use of monitors operating in and around our facilities please contact us.



*(c) Please keep your contact details up to date*

You promise to tell us promptly if you change your address, phone number, email, bank account, credit card information for payment or if there is a change to any other personal information relevant to your membership with us. This includes any matters that affect the health or safety of you or others.

**7. When can you put your membership on hold?**

- a) You may suspend your membership up to once every six months if you are a paid up member.
- b) A suspension period must be a minimum of 7 days.
- c) A suspension period can be no longer than 28 days.
- d) You are not permitted to use the centre during a suspension period.
- e) You must complete a suspension request form and submit it to us in advance for our approval.

**8. Ending your membership**

For the purposes of any requirements in this agreement to tell us in writing or give us written notice, we will accept notification by email or post.

*8.1 On or after expiry of the Minimum Term*

If your membership is for a Fixed Term, you do not need to do anything, as it will automatically end when the Minimum Term expires. We will seek to remind you before the end of your membership in these circumstances in order that we can discuss renewal of your membership.

If your membership is Ongoing, it will continue after the Minimum Term unless you tell us in writing at any time before the expiry of the Minimum Term that you do not wish your membership to continue.

If your membership is Ongoing and you have not told us that you wish your membership to end at the expiry of the Minimum Term, you can terminate any time after the end of the Minimum Term by giving us at least 14 days prior written notice. Any unused membership fees after the required notice period will be refunded.

Where neither you nor we terminate this agreement, any unpaid fees will need to be paid by you and in addition to our other rights we may have including our taking action to recover the outstanding payments.

*8.2 Other ways that you can end your Membership*

You can also cancel your membership where:

(When no cancellation fee will apply)

- you become subject to medical incapacity (please see paragraph (a) below);



- we make changes to this agreement that adversely affect you;
- you otherwise become entitled to do so under consumer legislation;

(When a cancellation fee applies)

- you relocate or simply wish to cancel for any other reason (please see paragraph (b) below); or

*(a) You can cancel for medical reasons*

You can end your membership by telling us in writing if you cannot exercise for the remainder of Minimum Term due to an illness or a physical incapacity and you produce supporting documentation to our reasonable satisfaction.

In that event, you will only be charged the joining fee, membership fees for the time you have been a member calculated on a pro rata basis and any outstanding fees for other services already supplied to you.

*(b) If your membership is no longer convenient*

Otherwise, you can end your membership during the Minimum Term with immediate effect at any time by simply telling us in writing. We understand that circumstances change and so you do not need to give any reason.

If your membership ends under this paragraph, you will be liable for the joining fee, membership fees for the time you were a member calculated on a pro-rata basis, any outstanding fees for other services already supplied to you and the cancellation fee.

*8.3 When can we end your membership?*

In addition to our other rights under this agreement, we can terminate your membership by written notice to you if you fail to act in accordance with any obligation under this agreement and if capable of remedy you do not remedy the failure within a reasonable time of us giving you written notice requiring you do so. If we cancel this agreement under this paragraph you will be liable for the joining fee, membership fees for the time you were a member, the cancellation fee and any other fees payable for further fitness services already supplied.

## **9. Fees you have to pay for your membership**

The fees you have to pay are specified in **Schedule of Fees and Charges** provided to you before you signed this agreement. This clause sets out some further rights and obligations that apply in relation to particular fees.

**If you fail to make any payment when due, we can suspend your membership and refuse you access to the facilities and services until all outstanding amounts have been paid in addition to our other rights under this agreement. Fees and charges continue to accrue during the suspension.**



*(a) Joining fee*

We charge you a joining fee to cover the set up costs for a new membership. The joining fee is not refundable.

*(b) Membership fees*

If your membership is for a Fixed Term you can pay your membership fees up front when you join, or you can elect to pay by equal fortnightly instalments.

If your membership is Ongoing, membership fees must be paid fortnightly in advance until your membership ends.

*(c) Cancellation fee*

The cancellation fee is based on a payout figure equal to the membership fees that you would have paid for the remainder of the Minimum Term as at the cancellation date less 50%.

*(d) Fee increases*

We will not increase the membership fees during the Minimum Term. However, we may increase your membership fees or any other fees with effect any time after that. We will make a fair effort to tell you at least 30 days before by writing to you at the last address you gave us (which may be an email address). Where we have done so, you authorise us to increase any debits from your nominated account in line with this increase. We will not use this right to vary the terms of any special offer which applies to you.

*(e) Refunds and the Credit Code*

We are entitled to deduct all fees and charges that you must pay under this agreement from any refund we give you. The National Credit Code does not apply to this agreement.

**10. When you pay by direct debit**

*(a) Authorisation to deduct fees*

By nominating a credit or debit account, you are authorising us to deduct from that account all fees and other charges for which you may be responsible under this agreement. Accordingly, it is essential that you keep your account details up to date.

*(b) If your payment is late or rejected*

You are responsible for making sure that there is enough money in your nominated account on the usual payment day or the next working day if that falls on a day when banks do not process payments.

Any bank fees charged to us because of a rejection when we attempt to collect payments from you may be charged directly to you by us (or by the Direct Debit Provider).



If a payment remains outstanding, you agree that we (or the Direct Debit Provider) may continue to debit the nominated account for the total amount due without notice to you.

#### **11. Other services**

There may be other services offered at the Fitness Centre that do not form part of your membership but are available for you to purchase separately. These are not part of the services provided under your membership and you will be advised at the time if any additional terms apply to these services.

Your membership does not entitle you to use the services of a personal trainer or any other service provider not authorised by us to provide services within the Fitness Centre.

#### **12. Changes to your membership agreement**

We may need to make changes to this agreement including our Rules during your membership. However, we will always try to do this in a way that is fair by giving you an opportunity to cancel your membership if you do not agree to the change.

We will tell you in writing of the proposed change in advance and tell you the date that it will come into effect. This effective date will be at least 30 days from the date of our notification unless it is impractical for us to do so. Your membership will be amended with effect from the effective date. If however, you are adversely affected by the change, you may cancel your membership without payment of the cancellation fee by telling us in writing before that date. Please note you cannot cancel under this clause if we are required to make the change in order to comply with a law or any direction of a competent authority.

#### **13. Our liability to you**

##### *(a) Statutory guarantees*

ACL: The Australian Consumer Law (ACL) contained in the *Competition and Consumer Act 2010 (Cth)* (CCA) provides certain guarantees in sections 60 to 62 (statutory guarantees) which generally require that services supplied to you:

- are rendered with due care and skill,
- are reasonably fit for any purpose which you, either expressly or by implication, make known to the supplier and might reasonably be expected to achieve any result you have made known to the supplier and
- are supplied within a reasonable time (when no time is set).

**Permitted exclusion:** However, the CCA permits a supplier of recreational services to ask you to accept some limitations on those statutory guarantees. Accordingly, to the extent permitted by section 139A of the CCA, you acknowledge and agree that we exclude all liability to you for death or injury resulting from a failure by us to comply with any statutory guarantee.

In the previous sentence, “injury” means:



- physical or mental injury (including the aggravation, acceleration or recurrence of such an injury);
- the contraction, aggravation or acceleration of a disease; or
- the coming into existence, the aggravation, acceleration or recurrence of any condition, circumstance, occurrence, activity, form of behaviour, course of conduct or state of affairs in relation to you that is or may be harmful or disadvantageous to you or the community, or that may result in harm or disadvantage to you or the community.

**Reckless conduct:** This exclusion of liability does not apply if you have suffered any significant personal injury that is caused by our reckless conduct (within the meaning given to those terms by the CCA).

*(b) General exclusions*

Please note that nothing in this agreement excludes, restricts or modifies any term, condition, warranty, guarantee, right or remedy (including under a statutory guarantee) which cannot lawfully be excluded, restricted or modified.

Otherwise, and except as expressly included in this agreement, all implied terms, conditions, warranties, rights or other additional obligations that can be lawfully excluded are excluded from this agreement. In particular, but subject to the preceding paragraph, we are not liable for:

- negligence; or
- breach of terms implied that services will be provided with reasonable care and skill, at common law that in either case results in your death or injury (as defined in paragraph (a) above) in connection with or under this agreement, but to avoid doubt we do not exclude liability for our reckless conduct.

*(c) Loss of property*

You promise that you will not unnecessarily bring valuables in to the facilities and that if lockers are available you will use the lockers to store any valuable property that you bring with you. If we provide secure storage lockers, then this is part of our service to you. However, we are not responsible if someone breaks into your locker and takes your property, other than to the extent we have not complied with our obligations in respect of this service under a statutory guarantee.

Other than as described above, maintaining the security of unattended property in the facility is not part of the service we provide under this agreement.

Accordingly, if you choose not to use a locker to securely store your property and leave it unattended in the facilities, we will not be responsible for any loss or damage to your property that occurs.

**14. Your responsibility for damage**

You agree to pay for any damage to the facilities caused by you or your guests through a wilful act or negligence.





**15. Other legal matters**

*(a) Unexpected events*

We are not liable if you cannot use your membership due to anything beyond our reasonable control. If that failure or delay continues for more than 30 days, then either you or we can cancel this agreement with immediate effect by telling the other in writing. We are entitled to make part or all of the facilities unavailable for up to two weeks during each calendar year to undertake maintenance, repairs or improvements, in which case we will extend your membership by the time you are unable to use the facilities.

*(b) Our logo and intellectual property*

No rights in relation to our logo, trademarks or any other intellectual property rights associated with our business, techniques, exercise programs or classes are granted to you under this agreement, except that any exercise program created for you may be used while you are a member for the purpose of your exercise activities.

*(c) Severability and waiver*

If a court finds that any part of any term of this agreement is or becomes illegal, void or unenforceable, that part is deleted and this does not invalidate the rest of this agreement. If we do not enforce our rights under this agreement at any time, it does not mean that we may not do so on future occasions.

*(d) Applicable law*

The law of the State of New South Wales applies to this agreement.