

### 1. Definitions and Interpretation

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#### Definitions

1.1. The following definitions apply to this Release and Waiver:

- (a) **Agreement:** means the agreement for the provision of goods and services as modified by this document.
- (b) **Australian Consumer Law:** has the meaning given to it under the *Competition and Consumer Act 2010* (Cth).
- (c) **Claim:** includes any claim, action, demand, application, proceeding, judgment, injunction, court order, enforcement hearing and enforcement order.
- (d) **Goods:** means goods supplied under our Agreement with you.
- (e) **Inherent Risk:** means a risk that cannot be avoided by the exercise of reasonable care and skill.
- (f) **Loss:** includes any personal injury, death, aggravation or acceleration of injury or disease, psychological harm, economic loss, consequential loss, liability, tax, prohibition, penalty, fine, expense or cost.
- (g) **Obvious Risk:** means a risk to a person that suffers harm which, in the circumstances, would have been obvious to a reasonable person in the position of that person, and may include:
  - (i) matters of common knowledge;
  - (ii) things that may have a low probability of occurring; or
  - (iii) things that are not prominent, conspicuous, or physically observable.
- (h) **Services:** means any past, present, or future services (including recreational activities) that are supplied under our Agreement with you which carry Inherent Risks and Obvious Risks.
- (i) **We/us/our:** means Insert Legal Name and ACN/ABN and as the context requires, includes our employees, officers, agents, contractors, subcontractors, and invitees.
- (a) **You/your:** means:
  - (i) the person who has engaged us to provide the Goods and Services under this Agreement;
  - (ii) any other person for whom you are legally responsible who is to receive the benefit of Goods and Services supplied; or
  - (iii) any other person who is not a party to this Agreement but whom is to receive the benefit of Goods and Services supplied.

#### Interpretation

1.2. In this Agreement unless the context otherwise requires:

- (a) any other defined terms have the corresponding meaning given to it in other parts of this Agreement;
- (b) words importing a gender include any other gender;
- (c) words in the singular include the plural and vice versa;
- (d) all dollar amounts refer to Australian currency;
- (e) a reference to any legislation includes any subordinate legislation made under it and any legislation amending, consolidating, or replacing it;
- (f) a reference to an individual or person includes a corporation or other legal entity;
- (g) clause headings have been included for convenience only and are not intended to affect the meaning or interpretation of this Agreement;
- (h) if any expression is defined, other grammatical forms of that expression will have corresponding meanings;
- (i) if a party includes two or more persons, this Agreement will bind them jointly and each of them severally;
- (j) if there is inconsistency between the different parts of this Agreement, this release and waiver will prevail to the extent of any inconsistency; and
- (k) if any part of this release and waiver is found to be invalid, unlawful, or unenforceable for any reason:
  - (i) the offending term, clause or subclause will be severed; and
  - (ii) the remaining terms, clauses and subclauses will continue to be valid and enforceable.

### 2. Warning of Risk

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2.1. To the extent that it is necessary, clause 2 is a warning under the *Civil Liability Act 2003* (Qld) and equivalent legislation in other jurisdictions.

## Services and Consultancy Agreement

- 2.2. You acknowledge that there are Obvious Risks and Inherent Risks connected with:
- (a) any form of physical exercise or physical exertion;
  - (b) the normal, correct, safe, incorrect, accidental, or reckless use of our exercise facilities and equipment;
  - (c) the normal, correct, safe, incorrect, accidental, or reckless use or completion of any obstacle, object or apparatus that is on our Ninja Warrior Course;
  - (d) any other form of parkour, boxing, martial arts, climbing, swinging, trampolining, dodgeball, swimming, water activity, class made available by us as part of the Goods and Services provided to you under the Agreement; or
  - (e) any other recreational or adventure activities.
- 2.3. These activities may result in:
- (a) physical harm or personal injury including broken bones, soft tissue injuries, joint injuries, organ damage, permanent injury, permanent disability, or death; and
  - (b) psychological harm or injury.
- 2.4. Injury may occur through:
- (a) you or others causing or being involved in an accident involving yourself and/or other invitees;
  - (b) you or others observing someone else causing or being involved in an accident;
  - (c) damage to equipment or facilities made available in connection with the Goods and Services;
  - (d) any failure to maintain equipment or facilities made available in connection with the Goods and Services;
  - (e) the incorrect use of equipment or facilities;
  - (f) a failure by you or others follow our reasonable instructions or directions;
  - (g) your negligent acts and omissions;
  - (h) our negligent act and omissions;
  - (i) the negligent actions, omissions of other invitees or third parties;
  - (j) any loss or damage arising through a failure avoid other people or hazards;
  - (k) any failure to use appropriate protective equipment;
  - (l) any failure to observe or obey all signs, warnings, and other rules (including those rules that relate to height and weight that may otherwise affect the safe use of any facilities or equipment); or
  - (m) the use of alcohol, tobacco, recreational drugs, or any other prescribed or legal drug that adversely affect cognitive or motor function – all of which are strictly prohibited while using our facilities and equipment.
- 2.5. The list of potential injuries in clause 2.4 is not exhaustive and there are other unknown or anticipated risks that may result in injury, illness, or death.
- 2.6. While every attempt is made to ensure that the Goods and Services provided under this Agreement are safe, there are Obvious Risks and Inherent Risks involved.
- 2.7. You acknowledge and agree that:
- (a) you are participating voluntarily at their own risk;
  - (b) an adequate warning has been provided with respect to those risks;
  - (c) those risks are being voluntarily assumed by you;
  - (d) you are physically fit and have no condition or injury that could be affected by the Goods and Services supplied under the Agreement;
  - (e) we may administer or coordinate the administration of medical treatment which may be considered necessary by us in the event of injury or illness that arises during the receipt of Goods and Services under the Agreement; and
  - (f) you will indemnify us for the cost of any medical treatment to which paragraph 2.7(e) applies.

### 3. Limitation of Liability

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#### Limitation of Liability

- 3.1. To the extent allowed by law, we exclude and you hereby release and waive, any right to make any actual or contingent Claim against us, for all or any Loss that arises from:
- (a) any Obvious Risks that are directly or indirectly connected with the Goods and Services;
  - (b) any Inherent Risks that are directly or indirectly connected with the Goods and Services;
  - (c) any negligence by us or our employees, officers, agents, contractors, and subcontractors in connection with the Goods and Services;

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- (d) the negligence of any other invitees or third party;
- (e) any breach of any express or implied term of this Agreement;
- (f) any failure to follow our instructions or directions in connection with the Goods and Services;
- (g) any damage, fault or defect connected with any equipment or facilities made available under this Agreement;
- (h) any failure to maintain equipment or facilities made available under this Agreement;
- (i) any failure to notify you of any damage, fault or defect connected with any equipment or facilities made available under this Agreement;
- (j) any loss or damage to any personal property belonging to you;
- (k) any loss or damage that arises through a failure to avoid other people or hazards;
- (l) any failure to use appropriate protective equipment;
- (m) any failure to observe or obey all signs, warnings and other rules;
- (n) the use of alcohol, tobacco, recreational drugs, or any other prescribed or legal drug that adversely affect cognitive or motor function by you while using the Goods and Services;
- (o) any willful damage;
- (p) any unlawful act or omission by you; or
- (q) any unlawful act or omission by us.
- (r) I grant the Released Parties the right of publicity to own and use any image collected of the Participant while participating in the Activity.

### Consumer Liability

- 3.2. If this Agreement is a supply of Goods and Services under Australian Consumer Law, then under section 139A of the *Competition and Consumer Act 2010 (Cth)*, sections 64 of the Australian Consumer Law is excluded with respect to the supply of recreational services, but the exclusion is limited to liability for:
- (a) death;
  - (b) physical or mental injury of an individual (including aggravation, acceleration, or recurrence of such an injury of the individual);
  - (c) the contraction, aggravation, or acceleration of a disease of an individual (including Covid-19);
  - (d) the coming into existence, the aggravation, acceleration or recurrence of any other condition, circumstances, occurrence, activity, form of behaviour, conduct, or situation in relation to an individual that:
    - (i) may be harmful or disadvantage to the individual or community; or
    - (ii) may result in harm or disadvantage to the individual or community.
- 3.3. To the extent that is Agreement involves a supply of any other Goods and Services that are not recreational services:
- (a) nothing contained in this Agreement excludes or modifies any condition, warranty, or other obligation in relation to this Agreement where it is unlawful to do so; and
  - (b) if allowed by law, our sole liability for breach of any such condition, warranty or obligation is limited to:
    - i. the replacement of the goods or the supply of equivalent goods, or payment of the cost of replacing or acquiring equivalent goods;
    - ii. the repair of the goods or payment of the cost of having the goods repaired;
    - iii. the supply of the Services again; or
    - iv. the payment of the cost of having the Services supplied again.
- 3.4. If this Agreement is not a supply of Goods or Services to a consumer under Australian Consumer Law then if allowed by law, our liability in connection with:
- (a) the supply; or
  - (b) any failure to supply,
- the Goods and Services is limited to the amount (or the aggregate of the amounts) payable by you under the Agreement.
- 3.5. You also acknowledge that this clause 3 is reasonable and designed to protect our legitimate interest.

# Ninja Gym (Release and Waiver)



# Services and Consultancy Agreement



## 4. Acknowledgment and Acceptance

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I acknowledge and accept on the terms set out in this document.

Signature:  
(Guardian)

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Print name:  
(Guardian)

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Print name:  
(Participants  
List all)

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Date:

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