

# **MAKING STRIDES**

| SERVICE AGREEMENT |  
| VERSION 1.0 |  
| FEB 2021 |

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## 1 Service Agreement

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- 1.1 This Agreement is entered into between:
- (a) Making Strides Pty Ltd ACN 165 965 917 (**Provider**); and
  - (b) the Participant, as detailed in any Client Registration Form.
- 1.2 This Agreement is binding on the parties and is made for the purpose of documenting the supports the Participant is engaging the Provider to supply.
- 1.3 Where a Participant's Representative entered into this Agreement, the Participant's Representative warrants to the Provider that it is an agent for the Participant. The Provider enters into this Agreement in reliance on this warranty.

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## 2 Schedule of Parties

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- 2.1 The Provider agrees to provide the Participant with exercise physiology and support services (**Services**) for the duration noted in the Client Registration Form (**Term**). Frequency of the Services during the Term will be at the Participants discretion.
- 2.2 The Services and their prices are set out in the Fee Schedule attached to the Client Registration Form.
- 2.3 This Agreement is conditional on the Provider assessing the Participants suitability for the Services and the Provider may decide in its absolute discretion to not provide the Services to the Participant. Acceptance by the Provider will only be deemed on the first in-person session for the Services. In all other respects, all actions, and omissions, including the Provider booking a session for the Participant, are not to be deemed or construed as an acceptance of the Participant or waiver of the condition in favour of the Provider under this clause.

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## 3 Responsibilities of the Provider

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- 3.1 The Provider agrees to:
- (a) review the provision of the Services at least three-monthly with the Participant during the Term;
  - (b) provide the Services outlined in the Client Registration Form;
  - (c) communicate openly and honestly in a timely manner;
  - (d) treat the Participant with courtesy and respect;
  - (e) consult the Participant on decisions about how the Services are provided;

- (f) give the Participant information about managing any complaints or disagreements and details of the Provider's cancellation policy;
- (g) listen to the Participant's feedback and resolve problems quickly;
- (h) give the Participant the required notice if the Provider needs to end this Agreement;
- (i) hold the Participant's personal information in accordance with the Privacy Policy of the Provider;
- (j) where the Participant is an NDIS participant as outlined on the Client Registration Form, provide the Services in a manner consistent with all relevant laws, including the *National Disability Insurance Scheme Act 2013* and rules, and the Australian Consumer Law; keep accurate records on the supports provided to the Participant; and
- (k) issue regular invoices and statements in relation to the Services delivered to the Participant during the Term.

#### **4 Responsibilities of the Participant**

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4.1 The Participant (and the Participant's Representative if applicable) agrees to:

- (a) inform the Provider about how they wish the Services to be delivered to meet the Participant's needs;
- (b) treat the Provider with courtesy and respect;
- (c) talk to the Provider if the Participant has any concerns about the Services being provided;
- (d) give the Provider a minimum of 24 hours' notice if the Participant cannot make a scheduled appointment and if the notice is not provided by then, the Provider's cancellation policy will apply;
- (e) give the Provider the required notice if the Participant needs to end the Agreement;
- (f) let the Provider know immediately if the Participant's funding approval/NDIS plan is suspended or replaced by a new approval/plan or the Participant stops receiving funding;
- (g) pay each invoice of the Provider in the manner and in the timeframe as noted on each invoice;

4.2 It is the responsibility of the Participant to manage and/or provide for their personal care during each visit.

4.3 The Provider and its staff cannot assist a Participant with any activities of personal care including toileting, eating and medication management.

#### **5 Participant Acknowledgment**

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5.1 By executing the Client Registration Form, the Participant acknowledges and agrees with the following statements:

- (a) at all times during the Term, the Participant must be satisfied that the exercises are appropriate and acceptable to the Participant and meets the Participants needs. There is no obligation on the Participant to agree to the exercises suggested by the Provider. By participating, the Participant acknowledges that the exercises are appropriate and acceptable to the Participant;
- (b) the Participant acknowledges it will be receiving an exercise physiology service or other such service as noted by the Provider from time to time. The Services do not constitute medical advice, a medical diagnosis, medical treatment and/or a medical opinion. Accordingly, the Participant should not and acknowledges that he or she will not take any recommendation provided by the Provider in substitution of seeking appropriate medical advice before implementing any recommendation in part or in full. It is the Participant's sole responsibility to obtain such medical advice the Participant thinks necessary in relation to the Services;
- (c) the Provider will take all reasonable steps to minimise risk to the Participant, however, the Participant acknowledges that participation in exercise therapy carries varying risks. The Participant acknowledges that as a person with a spinal cord injury, he or she is at an increased risk of osteoporosis, which places the Participant at an increased risk of fracture;
- (d) the Participant acknowledges that aspects of the Participant's participation may increase friction on the Participant's skin and may lead to skin breakdown if left untreated. The Participant acknowledges that it is his or her responsibility to conduct their own daily skin checks, including prior to each and every session for the Services, and inform the Provider immediately if he or she develops a skin breakdown;
- (e) the Participant consents to the Provider (and its related bodies corporate) using any photographs or videos of you taken by the Provider or supplied by the Participant to the Provider or its authorised representatives during any visit, for external purposes including (but not limited to) publication on promotional materials, social media and/or the internet;
- (f) the Participant will notify staff of any changes in medication and/or medical history;
- (g) the Participant will provide an updated bone density scan every two years; and
- (h) the Participant acknowledges the Provider may suspend providing the Services to the Participant where any invoices are not paid within the payment terms noted on the relevant invoice.

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## **6 Payments**

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- 6.1 The Participant agrees to pay the Provider the amounts set out in the Fee Schedule attached to the Client Registration Form (as amended from time to time) for the Services. The Provider reserves the right to increase the rates in the Fee Schedule at any time by prior notice to the Participant.
- 6.2 The Provider will seek payment for the Services as provided after each session during the Term.

- 6.3 The Participant is personally responsible to pay all fees for the Services rendered throughout the Term. Should the Participant exceed the funding allocation or engage the Provider to provide further or additional services outside of the Participants approved funding, the Participant will be personally responsible for and will indemnify the Provider for payment of the fees incurred with the Provider. Notwithstanding any disclosure in this Agreement, there is no positive obligation on the Provider to monitor the approved funding or allocation of sessions to the Participant.
- 6.4 If the Participant nominates a funding provider to manage the funding for the Services provided under this Agreement, the Provider will claim payment for the Services from the agreed funding manager.
- 6.5 Any invoice sent by the Provider to a nominated third party of the Participant is provided to that third party as agent for the Participant and for the convenience of the Participant and does not relieve the liability of the Participant to pay any fees charged for the Services provided in accordance with this Agreement. The Participant warrants that any nominated third party is an agent of the Participant until the Participant expressly provides notice to the Provider that any such arrangement has been revoked.

## **7 Changes to the Service Agreement**

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- 7.1 If changes to the Services or their delivery are required, the parties agree to discuss and review this Agreement. The parties agree that any changes to this Agreement must be in writing, signed, and dated by the parties.

## **8 Ending the Service Agreement**

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- 8.1 This Agreement shall automatically terminate:
- (a) on completion of the Services, if that occurs prior to the end of the Term;
  - (b) on expiry of the Term.
- 8.2 Either party may terminate this Agreement on giving 30 days' notice to the other party.
- 8.3 The Provider may terminate this Agreement if any one (1) invoice remains outstanding for more than 30 days.
- 8.4 If either party seriously breaches this Service Agreement the requirement of notice will be waived.
- 8.5 Termination of this Agreement does not affect any accrued rights or remedies of either party.
- 8.6 On termination of this Agreement for any reason, the Participant shall, on demand, pay the Provider for:
- (a) the Services already performed up to and including the effective date of termination;
  - (b) out of pocket expenses incurred or committed to be incurred by the Provider as a resulting entering into this Agreement;
  - (c) any other fees and/or liability incurred or committed to be incurred by the Provider as a result of the Provider entering into this Agreement; and

- (d) any outstanding or overdue fees payable to the Provider.

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## 9 GST

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- 9.1 Subject to clause 9.2, the parties agree that for the purposes of *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (**GST Act**), to the extent the Participant receives a medicare benefit for the Services and satisfies the criteria of Division 38 of the GST Act, then the fees as outlined in the Fee Schedule are supplied GST-Free. In all other respects, the fees as outlined in the Fee Schedule are supplied inclusive of GST.
- 9.2 Where the Participant is an NDIS participant, to the extent applicable and for the purposes of GST Act, the parties confirm that:
- (a) a supply of therapy services under this Agreement is a supply of one or more of the reasonable and necessary supports specified in the statement included, under subsection 33(2) of the *National Disability Insurance Scheme Act 2013* (Cth) (**NDIS Act**), in the participant's NDIS plan currently in effect under section 37 of the NDIS Act;
  - (b) the Participant's NDIS plan is expected to remain in effect during the period the therapy supports are provided; and
  - (c) the Participant or the Participant's Representative will immediately notify the Provider if the Participant's NDIS Plan is replaced by a new plan or the Participant stops being a participant in the NDIS.

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## 10 Intellectual Property Rights

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- 10.1 The Provider will retain all intellectual property rights in any materials and deliverables provided as a result of providing the Services in accordance with this Agreement (including any improvements or knowledge developed while performing the Services).

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## 11 Confidentiality

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- 11.1 Except as otherwise permitted by this Agreement, neither party may disclose to any third party any information provided by or on behalf of the other party that ought reasonably to be treated as confidential and/or proprietary of the disclosing party. Either the Provider or the Participant may disclose such information to the extent that it:
- (a) is or becomes public other than through a breach of this Agreement;
  - (b) is subsequently received by the recipient from a third party who, to the recipient's knowledge, owes no obligation of confidentiality to the disclosing party with respect to that information was known to the recipient at the time of disclosure or is thereafter created independently;
  - (c) is disclosed as necessary to enforce the recipient's rights under this Agreement;
  - (d) is disclosed to a legal advisor of a party;
  - (e) is disclosed to a nominated third party of the Participant, as advised by the Participant throughout the Term, including the Participant's Representative; or
  - (f) must be disclosed under applicable law or as order by a Court.

- 11.2 The parties consent to the use of electronic media to correspond or transmit information and such use will not constitute a breach of any confidentiality obligations under this Agreement.

## **12 Limitation of Liability**

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- 12.1 The Participant releases the Provider, its employees, contractors and agents, from all liability, claims, losses, costs and expenses (including legal fees, costs and disbursements on the higher of a full indemnity basis and a solicitor own client basis, determined without taxation, assessment or similar process) that the Participant may have or claim to have, or but for this release, might have had against the Provider (including any of which the Participant is not aware, or could not have been aware, at the date of this Agreement) arising from or in connection with this Agreement or the Participant's participation in the Services delivered by the Provider.
- 12.2 The Participant indemnifies the Provider against all liability, claims, losses, costs and expenses (including legal fees, costs and disbursements on the higher of a full indemnity basis and a solicitor own client basis, determined without taxation, assessment or similar process and whether incurred by or awarded against the Provider) arising from or incurred in connection with this Agreement or the Participant's participation in the Services.
- 12.3 Except as expressly and specifically provided in this Agreement:
- (a) the Participant assumes sole responsibility for the results obtained from the Services. The Provider shall have no liability for any damage or injury caused by errors or omissions in any information or instructions provided to the Participant by the Provider in connection with the Services, or any actions taken by Provider at the Participant's direction and/or instruction; and
  - (b) all warranties, representations, conditions, and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this Agreement.
- 12.4 In no case shall the Provider, its directors, officers, employees, agents, contractors, suppliers, service providers or licensors be liable for any injury, loss, claim, or any direct, indirect, incidental, punitive, special, or consequential damages of any kind, including, without limitation lost profits, lost revenue, lost savings, replacement costs, or any similar damages, whether based in contract, tort (including negligence), strict liability or otherwise, arising from the Participant's participation in the Services or for any other claim related in any way to the Participant's participation in the Service including, but not limited to, any errors or omissions in any content, or any loss or damage of any kind incurred as a result of the Services.
- 12.5 The Provider may from time to time, remove or not offer the Service for indefinite periods of time or discontinue the Service or any part thereof, at any time, by prior written notice to the Participant.
- 12.6 Nothing in this Agreement is intended to exclude, restrict or modify the rights which the Participant may have under Schedule 2 to the *Competition and Consumer Act 2010* (Cth) (the **Australian Consumer Law**). If you are a Consumer, as defined in Section 3 of the Australian Consumer Law (**Consumer**), the Provider acknowledges that the Consumer Guarantees in Division 1 of Part 3-2 of the Australian Consumer Law will apply to the supply of goods or

services (or both) under this Agreement. The liability of the Provider for a breach of a Consumer Guarantee is governed by clause 12.7 of this Agreement.

12.7 Where the Participant is a Consumer, the liability of the Provider for a breach of a Consumer Guarantee is limited to (at the election of the Provider):

- (a) in the case of a supply of goods:
  - (i) replacing the goods or supplying equivalent goods;
  - (ii) repairing the goods;
  - (iii) paying the cost of replacing the goods or acquiring equivalent goods; or
  - (iv) paying the cost of having the goods repaired; and
- (b) In the case of a supply of services:
  - (i) resupplying the services; or
  - (ii) paying the cost of having the services supplied again.

12.8 If the Consumer Guarantees apply, the liability of the Provider is limited in accordance with clause 12.7 of this Agreement. In all other respects and to the maximum extent permitted by law:

- (a) In no event shall the Provider, its processors, service providers, suppliers, or licensors (or its or their respective subsidiaries, affiliates, agents, directors or employees) (collectively, the **Excluded Parties**) be liable for any direct, indirect, punitive, incidental, special, consequential or exemplary damages, or for any damages for loss of profits, goodwill, use or other intangible losses, that result from the use of, inability to use or unavailability of the Services, except to the extent arising from fraud or wilful misconduct of the Provider or its directors or officers. In all cases, the Excluded Parties will not be liable for any loss or damage that is not reasonably foreseeable.
- (b) Under no circumstances will the Excluded Parties be responsible for any damage, loss, or injury resulting from the Services that was not undertaken in accordance with the directions or instructions of the Provider, including in any information provided by the Provider to the Participant, except to the extent arising from fraud or wilful misconduct of the Provider or its directors or officers.
- (c) In no event shall the Excluded Parties be liable to the Participant for any claims, proceedings, liabilities, obligations, damages, losses or costs in an amount exceeding the greater of:
  - (i) the amount of fees paid by the Participant to the Provider in connection with the Services during the Term; and
  - (ii) \$10,000.

12.9 This limitation of liability section applies whether the alleged liability is based on contract, tort, negligence, strict liability or any other basis, even if the Excluded Parties have been

advised of the possibility of such damage. The foregoing limitation of liability shall apply to the fullest extent permitted by applicable law.

- 12.10 Each indemnity in this Agreement is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of this Agreement.
- 12.11 It is not necessary for a party to incur expense or to make any payment before enforcing a right of indemnity conferred by this Agreement.

### 13 General

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- 13.1 The Provider shall have no liability to the Participant under this Agreement if it is prevented from or delayed in performing its obligations under this Agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including epidemic, pandemic, strikes, lock-outs or other industrial disputes (whether involving the workforce of the Provider or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors, provided that the Participant is notified of such an event and its expected duration.
- 13.2 No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 13.3 This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter, other than any indemnity or release provided in a previous agreement for Services or services similar to the Services.
- 13.4 Each party acknowledges that in entering into this Agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement.
- 13.5 This Agreement is personal to the Participant. The Participant shall not, without the prior written consent of the Provider assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.
- 13.6 The Provider may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.
- 13.7 The Provider is committed to complying with the *Privacy Act 1988* (Cth) and Australian Privacy Principles when collecting, holding or disclosing personal and sensitive information as a result of providing the Services (**Personal Information**) and the Participant consents to the Provider holding the Personal Information to deliver the Services. The Participant warrants that it has obtained all necessary consents and taken all required actions to enable the Personal Information to be disclosed to the Provider. Subject to applicable law, the Provider

may provide Participant's information and Personal Information to its related bodies corporate, internal and external service providers, other medical providers to the Participant and contactors (**Service Providers**) who may collect, use, transfer, store or otherwise process such in the provision of the Services.

- 13.8 The Participant acknowledges and agrees that during the provision of the Services, and for a period of 12 months thereafter, not to make any offer of employment or service, solicit directly or indirectly, or endeavour to solicit, in any way any director, officer or employee of the Provider or its related bodies corporate involved in the provision of the Services, without the Provider's prior written consent.

## 14 Notices

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- 14.1 Any notice under this Agreement must be in writing, in English and:
- (a) given to the Provider at: [info@makingstrides.com.au](mailto:info@makingstrides.com.au); or
  - (b) given to the Participant at the email address provided with this Agreement or otherwise notified to the Provider throughout the Term.
- 14.2 Any notice given under clause 14.1 will be deemed as served on the Business Day after successful transmission from the server of the sender.
- 14.3 The parties agree that all agreements, notices, disclosures and other communications that are provided electronically, satisfy any legal requirement that such communications be in writing, including for the purposes of clause 14.1.

## 15 Governing Law

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- 15.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of the jurisdiction in which the Services are provided.
- 15.2 Each party irrevocably agrees that the courts of the jurisdiction in which the Services are provided shall have non-exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).