



**This Patient Agreement sets out the key terms and conditions for your participation in the EX-MED Cancer Program. It is important that you have read and understood all of the terms and conditions contained in this document. If you have any questions, please feel free to ask us.**

## 1. THE AGREEMENT BETWEEN YOU AND US

This Patient Agreement (**Agreement**) is entered into between EX-MED Cancer Ltd (ABN 82 629 190 389) of Unit 6, 651 Victoria Street, Abbotsford, Victoria 3067 ('us', 'we' or 'our') and you. In this Agreement, "**you**" means the person who completes and submits and electronic enrolment form OR completes the below:

### (YOUR DETAILS)

Name (printed): \_\_\_\_\_ ('you')  
of (insert address): \_\_\_\_\_

Date: \_\_\_\_\_

Contact phone number: \_\_\_\_\_

Please sign here: \_\_\_\_\_

1.1 This Agreement sets out the terms and conditions for your participation in the Program. By signing this Agreement or submitting an electronic enrolment form, you agree to be bound by all terms and conditions set out in this document.

1.2 This Agreement commences on the Date you sign this Agreement or submit an electronic enrolment form (or otherwise indicate your acceptance, for example, by phone) (**Commencement Date**) and continues for a period of 15 weeks from your first Session.

## 2. PROGRAM

2.1 During the Program, you will receive access to the following:

- (a) one (1) individual initial consultation Session including relevant assessments;
- (b) one (1) individual exercise Session;
- (c) 36 group-based exercise Sessions (3 Sessions per week for 12 weeks);
- (d) one (1) individual post-program consultation Session including relevant assessments; and
- (e) a 16 week membership to the Host Gym.

2.2 During the initial consultation Session, we will prepare a Personalised Exercise Prescription that is specifically individualised for you to complete as part of the Program.

2.3 The Program has been developed by us based on scientific and clinical evidence. However, you acknowledge that we make no representations, and give no guarantees or warranties, about the effectiveness or likelihood of success of the Program in treating your cancer or condition. Subject to clause 12.2, your participation in the Program is at your own risk.

2.4 A detailed description of the Program can be found on our website at <https://www.exmedcancer.org.au/>.

## 3. PROGRAM FEES AND PAYMENT

3.1 The Program Fee is due and payable on the Commencement Date.

3.2 Subject to cancellation within the Cooling Off Period (described in clause 4.1) or termination of the Agreement by you under clause 13.1, the Program Fee is non-refundable. If you terminate the Program and you subsequently wish to recommence the Program, you will need to pay the entirety of the Program Fee applicable at that time.

3.3 The Program Fee will be debited from your preferred payment method as nominated by you on the EX-MED Cancer Website. We accept MasterCard, Visa and Direct Debit. If you wish to make payment of the Program Fee by way of cash, cheque or by phone, please contact us through the EX-MED Cancer Website or by phone so that we can make appropriate arrangements.

3.4 If we do not receive payment of the Program Fee, you will not be able to commence the Program.

3.5 The Program Fee is fixed for the duration of the Program.

## 4. COOLING OFF PERIOD

4.1 You may notify us in writing that you wish to cancel this Agreement in writing, within 14 days of the Commencement Date (**Cooling Off Period**). If you do so, we will refund the Program Fee that you have paid to us. However, if you have attended any Sessions we will refund the Program Fee, less:

- (a) \$85 (incl. GST) for each individual Session attended; and
- (b) \$15 (incl. GST) for each group-based Session attended.

## 5. SESSIONS

5.1 All Sessions are conducted by our trained Exercise Physiologists and must be booked, rescheduled and/or cancelled by calling and/or emailing EX-MED in advance.

5.2 We require 48 hours' notice of cancellation of an individual Session. Notice must be provided by calling and/or emailing EX-MED Cancer. If you provide us with at least 48



hours' notice, you can reschedule the individual Session to another time. If you do not provide us with 48 hours' notice, that Session will be debited from the total number of Sessions for the Program, and you will not be able to reschedule it.

5.3 You are required to complete the group-based Sessions at the specific time and days as scheduled by EX-MED and communicated to you. Group-based Sessions cannot be cancelled and any group-based sessions you miss will not be replaced or refunded.

5.4 If you plan on being away for a period of at least 2 weeks you may put your EX-MED Cancer Program on hold. You may put your Program on hold for a period of 2 to 6 weeks. We require 72 hours' notice of request to place your Program on hold. Notice must be provided by calling and/or emailing EX-MED. No fees will be charged to place your Program on hold if you provide us with at least 72 hours' notice.

5.5 If you there are medical reasons that prevent you from completing any individual or group-based session you may put your EX-MED Cancer Program on hold. We may require correspondence from your Health Professional to confirm the medical reason for being unable to exercise. We require 72 hours' notice of request to place your Program on hold. Notice must be provided by calling and/or emailing EX-MED. You can re-commence your Program anytime following resolution of the medical reason or your Health Professional deems exercise acceptable. No fees will be charged to place your Program on hold for medical reasons if you provide us with at least 72 hours' notice.

## **6. MEMBERSHIP TO HOST GYM**

6.1 The Sessions will be provided to you at your Host Gym. We will provide you with a standard membership to your Host Gym for the duration of your enrollment in the Program, subject to your payment of the applicable Program Fees.

6.2 To access your membership to your Host Gym and attend Sessions at the Host Gym, you will need to read and agree to the Host Gym's applicable membership terms (**Membership Terms**). We will provide you with a copy of the Membership Terms with this Agreement.

6.3 You agree to comply with the Membership Terms and any applicable policies or rules of the Host Gym, including all equipment operating and safety instructions on the Host Gym's equipment.

6.4 You acknowledge that your access to and use of the Host Gym is subject to the Membership Terms and that we are not responsible for any aspect of your relationship with the Host Gym (except for the procurement of the membership as part of the Program Fee).

6.5 To the extent of any inconsistency between the Membership Terms and this Agreement, this Agreement takes precedence.

## **7. YOUR HEALTH AND SAFETY**

7.1 During the Sessions, you will undertake physical activities as detailed in your Personalised Exercise Prescription, with the guidance of your Exercise Physiologist. You must comply with any reasonable directions of the Exercise Physiologist during the Session, including to cease any physical activity for the remainder of the Session if your Exercise Physiologist deems this is appropriate. If any unusual symptoms occur, please immediately stop what you are doing and notify your Exercise Physiologist.

7.2 You consent to us contacting your Health Practitioner, Referring Practitioner and/or other practitioners, as nominated by you, to discuss any health-related issues arising from your participation in the Program.

7.3 You consent to us contacting your emergency contact, as nominated by you, in the event of any relevant issues arising from your participation in the Program.

## **8. EX-MED CANCER WEBSITE**

8.1 You must only use the EX-MED Cancer Website in accordance with the Website Terms of Use, available on the Website.

## **9. YOUR PERSONAL INFORMATION**

During the Program, we may collect certain Personal Information to provide you with the Program. We take your privacy seriously, and will only collect, use, disclose and store your Personal Information in accordance with our Privacy Policy, available at [www.exmedcancer.org.au](http://www.exmedcancer.org.au).

9.1 We may also collect Personal Information, including Sensitive Information, from your Health Practitioner, your Referring Practitioner, and/or other practitioners, as nominated by you.

9.2 We may use Personal Information, including Sensitive Information, which we collect about you to prepare reports containing details of your participation in the Program, your health and fitness and your Personalised Plan. You consent to us providing these reports to your Health Practitioner, your Referring Practitioner or other practitioners, as nominated by you.

9.3 As noted in our Privacy Policy, we will only use your Personal Information for the purposes of providing the Program to you and as otherwise described in our Privacy Policy.

9.4 We use de-identified and aggregated data for EX-MED Cancer's internal business activities and research purposes. Your anonymity will at all times be safeguarded and if this data is published, your identity will not be revealed. All research activities will be conducted in line with the Australian Code for the Responsible Conduct of Research.

## **10. INTELLECTUAL PROPERTY**

10.1 You acknowledge that we own all Intellectual Property Rights in and to the Program and any other materials provided to you by us in connection with the Program (including the EX-MED Cancer Website).



10.2 You must not do anything that may infringe, encumber or otherwise prejudice our Intellectual Property Rights, our goodwill or our reputation.

## 11. CONFIDENTIALITY

11.1 You agree to keep any Confidential Information confidential and not use it except as required and permitted by this Agreement.

11.2 You may disclose Confidential Information:

- (a) as permitted under this Agreement;
- (b) to your professional advisors who are bound by obligations of confidentiality, or
- (c) if required by applicable law (in which case you must use your best endeavours to provide prior written notice to us so that we may have an opportunity to contest any such disclosure).

11.3 The obligations in this clause 11 do not apply to information that:

- (a) is or becomes generally known to the public without breach of any obligation of confidentiality; or
- (b) was independently developed without use of or access to that information.

## 12. LIABILITY

12.1 Subject to clause 12.2:

- (a) to the maximum extent permitted by law, we are not liable for any loss, cost, expense or damage (including, without limitation any direct, indirect, special or consequential loss, loss of profits, loss of anticipated savings, loss of use, loss of reputation or loss of opportunity) suffered or incurred by you in connection with this Agreement and the Program; and
- (b) to the extent our liability cannot be excluded by law, our liability is limited to the minimum allowable by law.

12.2 The exclusions set out in clause 12.1 do not apply to the extent that any loss or damage suffered by you is caused by our gross negligence in providing the Program to you.

12.3 We acknowledge that the *Competition and Consumer Act 2010* (Cth) and similar State and Territory legislation in Australia may confer rights, guarantees and remedies on you in relation to the provision by us of the Program, which cannot be excluded, restricted or modified. We do not exclude these rights but, if we do become liable for a breach of any consumer guarantees which cannot be excluded, then to the extent permitted by law, we limit our liability at our option to either supplying the Program to you again or refunding you the Program Fee.

12.4 To the extent that any loss, cost, expense or damage suffered by you is caused by the Host Gym, the Host Gym will

be liable for such loss in accordance with the Membership Terms.

## 13. TERMINATION

13.1 You may terminate this Agreement at any time if:

- (a) we or the Host Gym discontinue offering the Program at the Host Gym; or
- (b) we enter into bankruptcy, liquidation or any other type of insolvency, administration or receivership and are no longer able to provide you with the Program.

13.2 Notwithstanding clause 3.2, you will be entitled to a refund for the remaining number of Sessions in the Program (on a pro rata basis) where you terminate this Agreement in accordance with clause 13.1.

13.3 We may terminate this Agreement at any time if:

- (a) you commit a serious or repeated breach of this Agreement or the Membership Terms; or
- (b) you act in a manner that poses a serious risk to your own health and safety, or the health and safety of other EX-MED Cancer participants or our Exercise Physiologists.

## 14. GENERAL

14.1 We will not be liable for any delay or failure to perform our obligations under this Agreement if caused by any event beyond our reasonable control, including any act of God, strikes, industrial disputes, acts of war, terrorism, riots, civil disorder, governmental action, telecommunications failure, equipment failure, inability to access a Host Gym, traffic congestion, technical malfunction or any failure by subcontractors to provide services.

14.2 EX-MED may assign or novate this Agreement to any other person on written notice to you. You must not assign, novate or sub-licence any of your rights under this Agreement to any person without our prior written consent.

14.3 This Agreement is governed by and is to be construed in accordance with the laws of Victoria, Australia. The parties will submit to the non-exclusive jurisdiction of the courts there and the courts of appeal from them in the case of any dispute under or in connection with this Agreement.

14.4 This Agreement contains the entire understanding between the parties as to the subject matter of this document.

14.5 A single or partial exercise or waiver by a party of a right relating to this Agreement does not prevent any other exercise of that right or the exercise of any other right.

14.6 This Agreement may only be varied by written agreement between the parties.



## 15. INTERPRETATION

15.1 The following terms as used in this Agreement are defined as follows.

- (a) **Confidential Information** means any information disclosed by us in connection with this Agreement which is designated as confidential or which is, by its nature, confidential.
- (b) **Exercise Physiologist** means a practitioner or other personnel engaged by us to provide the Program to you at the Host Gym.
- (c) **GST** has the meaning given to it in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- (d) **Host Gym** means the exercise facility that you have chosen for the purposes of participating in the Sessions, from the list of facilities listed on our Website.
- (e) **Intellectual Property Rights** means all intellectual property rights including existing and future copyright, rights in designs, trade marks, patents, inventions, data and databases, whether registered or unregistered, anywhere in the world.
- (f) **Personal Information** has the meaning given to it in the Privacy Act and includes Sensitive Information (as defined in the Privacy Act).
- (g) **Privacy Act** means the *Privacy Act 1988* (Cth).
- (h) **Program** means the EX-MED Cancer exercise medicine program, including all services described in clause 2.1.
- (i) **Program Fee** for the Initial Program is \$500 (incl. GST) unless otherwise notified to you.
- (j) **Session** means a Program session of 1 hour duration.
- (k) **Website** means [www.exmedcancer.org.au](http://www.exmedcancer.org.au)

