

# The Studio:

## Resident Membership Terms & Conditions

### 1. Terms and Conditions

a. These terms and conditions govern your membership and your use of the benefits provided by The Studio to you as a Resident Member.

b. In these terms and conditions:

i. The Studio is referred to as we, us and our;

ii. you as the Resident Member is referred to as you and your;

iii. a reference to a 'Resident Member' means any person who has applied to us for resident membership and has been granted resident membership status in accordance with the guidelines set by us. A Resident Member may also be a 'Founder Resident Member'. This is a designation given by us to the person who identifies as being the founder of the startup business described in their application to us for resident membership;

iv. a reference to 'Premises' means all premises occupied by us (and all equipment, fixtures and fittings located in these Premises) to which you are given access as part of your resident membership;

v. a reference to Guest means any person who is not a Resident Member who you invite onto the Premises to meet with you for business purposes (including an intern, agent, volunteer, supplier, customer or client);

vi. a reference to your business or your startup business includes a reference to the body corporate (for example the proprietary limited company) through which the business is undertaken;

vii. a reference to 'business hours' means 8.30am till 5.30pm during weekdays, excluding public holidays; and

viii. a reference to 'business days' means any day except a Saturday or a Sunday or other public holiday in New South Wales.

c. You must also ensure that any person who enters the Premises at your invitation who is not a Resident Member (including but not limited to an intern, agent, volunteer or guest) (Guest) complies with these terms and conditions.

### **Term of Resident Membership**

a. You become a Resident Member once your application has been accepted.

2. After you become a Resident Member there is a trial period of five business days during which:

i. you are free to terminate your membership if you do not think The Studio is a suitable location for your business or for you to work; and

ii. we are free to terminate your membership for any reason, including but not limited to when we do not think your business is suitable for the The Studio environment, or when you breach any of these terms and conditions or when we are of the opinion that any information you provided to us in the application is untrue or misleading.

c. After the trial period ends there will be a meeting between you and us and, if membership has not been terminated, your membership will continue until terminated in accordance with the Termination clause below.

### **3. Membership Benefits**

a. Your membership entitles you to the benefits offered by us from time to time.

b. The primary benefits comprise access to the Premises and use of the desk provided to you in accordance with the type of membership for which you applied. This will either be a fixed desk where you have a dedicated membership, or a hot desk where you have a community membership.

c. In addition there are ancillary benefits offered by us including:

i. access to meeting rooms;

ii. pro bono clinics;

iii. workshops;

iv. events;

v. tea and coffee;

vi. printing and

vii. kitchen and lounge facilities.

d. This list of ancillary benefits may vary and not all ancillary benefits are guaranteed to be available during the time of your membership.

e. Finally, we may make available discretionary benefits from time to time, including:

i. Friday drinks; and

ii. discounts and perks from various providers.

f. This list of discretionary benefits may vary. You have no contractual right to receive discretionary benefits, and they do not form part of your membership benefits.

g. We accept the business that you list in your membership application. If your business changes or pivots during your membership, or you start work on or with another business, you must notify us in writing immediately.

### **4. Resident Membership Fees**

a. The fees charged by us for membership are those shown on our website from time to time. We reserve the right to adjust these fees. We will give at least three months' notice for any increase in fees.

b. For dedicated resident membership, you must pay your membership fees at least two months in advance each month by direct debit.

c. For community membership, you must pay your membership fee prior to your annual renewal.

d. Membership fees are not refundable upon request in any circumstances. We will send you an invoice for your monthly membership fees. Unless otherwise specified the invoice will be sent to the email address specified in your application. Invoices are payable within 7 days of receipt unless otherwise stated on the invoice.

- e. We reserve the right to charge you a late payment fee not exceeding \$25 in respect of any invoice which we issue and which you do not pay by the due date. Please note late fees will be charged each time an automatic debit fails to debit.
- f. If you dispute any part of an invoice, then you must pay the amount not in dispute by the due date.

## **5. Use of the Premises**

- a. You must only use them for office purposes unless you have obtained our prior written consent.
- b. While you have 24/7 access to the Premises and desk you must not sleep on the Premises.
- c. You must not conduct auction or sale on the Premises.
- d. You may use the Premises address as your business address and/or registered office.
- e. You must not smoke on the Premises at any time
- f. You must comply with our Code of Conduct. Without limiting this obligation you must:
  - i. not behave in an offensive manner to our staff or other members or their Guests;
  - ii. keep your desk and the adjacent area clean and free of rubbish;
  - iii. use the facilities available at the Premises for the intended purpose;
  - iv. not alter any part of the setup of the Premises;
  - v. take good care of all parts of the Premises;
  - vi. not put up any partitions or make any alterations or additions to the Premises;
  - vii. not bring any explosive or flammable or corrosive fluids or chemicals into the Premises; and
  - viii. not obstruct or prevent the use of the Premises by other Resident Members or their Guests.
- g. A swipe card is required by all members to access the Premises. These cards will be issued by us and will be subject to payment and a deposit. To ensure security in the space, you must not lend your swipe card to any other person, and must notify us immediately if it is lost or stolen.
- h. More details about the arrangements for the issue and replacement of swipe cards are available on request.
- i. No tenancy interest, leasehold estate or other real property interest is created in your favour with respect to the Premises.

## **6. Desk Usage**

- a. If you have a dedicated resident membership then you and members of your team will have an exclusive right to use the desk(s) allocated to you. However, we may change the desk(s) allocated to you from time to time in our absolute discretion. We will endeavour to give you as much notice as possible of a change, and at least five business days' notice.
- b. If you have a hot desk membership then you and members of your team will have a non-exclusive right to use the desk(s) identified as being hot desks.
- c. You must not allow any other person to use your desk without our prior written consent.
- d. You must not touch or remove anything from another Resident Member's desk without their expressed permission.
- e. We reserve the right to use all desks for events (excluding desks in dedicated offices). If we need your desk you will be notified in writing about the proposed date and nature of the event. You must remove your property from your desk in advance of the event.

## **7. Internet**

- a. We do not make any representations as to the security of The Studio network or the internet or of any information that the client places on it. You should adopt whatever security measures (e.g. encryption) you believe is appropriate to your circumstances.
- b. We cannot guarantee that a particular degree of availability will be attained in connection with your use of The Studio network or internet. Your sole and exclusive remedy shall be the remedy of such failure by The Studio within a reasonable time after notice by email or phone.
- c. Your network activity may be monitored from time to time to improve performance.
- d. All due care will be taken to ensure personal communications are not interrupted.
- e. You must not use the internet access provided for excessive downloads or for a purpose considered to be illegal in Australia. The use includes, and is not limited to, the use of any torrent client software.

## **8. Guests**

- a. You are entitled to invite Guests onto the Premises during Business Hours.
- b. Your Guests' visit must be for business purposes only.
- c. Your Guest may stay on the Premises for no longer than two hours.
- d. If your Guests' stay is longer than two hours they will need to purchase a Hot Desk Day Pass from us.
- e. You are responsible for your Guests. You must accompany them while they are on our Premises.
- f. If your Guest breaches any of these terms and conditions then you will be deemed to be in breach of these terms and conditions.

## **9. Founder Members**

- a. If you are a Resident Founder Member, then you:
  - i. must notify us about any new employees and/or contractors joining your business if they are going to be working on the Premises (in which case they will need to be accepted as a Resident Member by us and if successful you will need to pay an additional membership for them);
  - ii. you are responsible for any of our property provided to the employees and/or contractors of your business;
  - iii. must ensure each employee and contractor of your business complies with our Code of Conduct, OH&S Policy, Desk Use Policy and our other policies;
  - iv. must notify us of any employees and/or contractors who are leaving your business, if they have been working on the Premises, so we can cancel their membership with us; and
  - v. must ensure that any of our property (such as swipe cards, keys or access codes) provided to employees and/or contractors of your business is returned to us when no longer required.
- b. We will provide you and the employees and/or contractors working in your business with the number of desks for which you have agreed to pay and at the premises which you have nominated as your primary location.

## **10. Compliance**

- a. You must comply with our Code of Conduct, OH&S Policy, Desk Use Policy and our other policies relating to membership and use of the Premises and the facilities in the

Premises (Policies). The Policies do not form part of these terms and conditions. Copies of them are available on our website.

b. You must check our Policies regularly as they may be changed by us. We will endeavour to give you notice of any change but we do not guarantee to do so.

c. You must inform your Guests about the Policies and take all steps to ensure that your Guests comply with them.

d. You must comply with and ensure that your business complies with all Australian laws and regulations that govern the conduct of your business.

e. You must not do anything, in connection with your membership, that is illegal, that may interfere with the use of the Premises by us or by other Resident Members and their Guest, or that may cause any nuisance or annoyance, increase the insurance premiums we have to pay, or harm our reputation or that may cause us loss or damage.

## **11. Non-Solicitation**

a. At any time during your membership, and for a period of 6 months after your membership ends, you must not approach any of our employees and/or contractors, for the purpose of persuading that person to terminate his or her employment or contract with us.

b. You may employ a person who was previously one of our employees or contractors if:

i. that person ceased to be employed or engaged by us more than 6 months before being employed or engaged by you; or

ii. we consent to you doing so (a right we can exercise at our absolute discretion) and, if demanded, you promptly reimburse us for all reasonable costs and expenses that we incur in recruiting and training a replacement.

## **12. Termination**

a. We may terminate or suspend your membership, with immediate effect, by giving you written notice if:

i. you do not pay your membership fees in accordance with our terms of payment;

ii. you are in breach of any one or more of these terms and conditions provided that where the breach is capable of being remedied we have given you written notice of the breach, given you 14 days to remedy the breach and you have failed to remedy the breach in that 14 day period; or

iii. your conduct, in our reasonable opinion, is incompatible with your membership and the values to which we subscribe.

b. We may also terminate or suspend your membership:

1. for convenience, by giving you at least one month's written notice; or

2. with immediate effect if we no longer have the right to occupy the Premises or the Premises are damaged, contaminated or otherwise affected by a risk or event which prevents you from using the Premises.

3. If we terminate your membership under this clause 12.b we will refund to you any unused portion of your membership fees.

c. You may terminate your membership: for convenience, by giving us at least two months' written notice;

or

i. we are in material breach of these terms and conditions by giving us at least two months' written notice, provided that where the breach is capable of being remedied

you have given us written notice to remedy the breach and we have failed to do so within 14 days of receiving that notice.

### **13. After Termination**

- a. When you cease to be a Resident Member you cease to be entitled to the benefits of Resident Membership and you must vacate the Premises.
- b. On or before the last day of your membership, you must return all keys, swipe cards and other property belonging to us. A fee will be charged for any items that are not returned within 24 hours upon the agreed date your membership will be cancelled.
- c. When you vacate the Premises you must leave your desk and the adjacent area clean and free of any rubbish and in the same condition as it was when you took possession (fair wear and tear excluded).
- d. We reserve the right to charge additional fees for any repairs required to restore your desk and adjacent area to the condition it was when you took possession (fair wear and tear excluded).
- e. If you leave any property in the Premises, we may dispose of that property at your cost in any way we choose. We are not obliged to account to you for the proceeds we receive (if any) from the sale of your property.

### **14. Our Liability**

- a. We will not be in breach of our obligation to provide the primary membership benefits if the Premises are damaged, contaminated or otherwise affected by a risk or event which prevents you from using the Premises.
- b. Ancillary membership benefits do not include providing advice or recommendations. You represent that you and your business will not rely upon any advice or recommendations given to you by The Studio or any of our officers, employees, contractors, agents or visitors (including during any clinics or workshops), and we disclaim all responsibility for any such advice. You acknowledge that we are not licensed to give professional advice, including financial services advice, and you must rely upon your own enquiries and seek your own professional advice.
- c. You may have rights in relation to membership benefits as a “consumer” under the Australian Consumer Law, Schedule 2 of the Competition and Consumer Act 2010 (Cth). Nothing in these terms and conditions excludes or is intended to exclude those rights. Where it is lawful to do so, we exclude all guarantees, conditions, warranties and other rights imposed by law or implied by custom or other circumstance which relate to membership benefits. Where it is not lawful to exclude guarantees, conditions, warranties or other rights imposed by law which relate to membership benefits, including under the Australian Consumer Law, our liability to you for any breach of such guarantees, conditions, warranties or other rights will (but only the extent allowed by law) be limited (at our option) to:
  - i. the supplying of the benefits again; or
  - ii. the payment of the cost of having the benefits supplied again.
- d. Notwithstanding any other clause in these terms and conditions except clause c above, our liability to you, howsoever arising, for any loss or damage suffered by you (or any other person claiming through you) in connection with these terms and conditions is limited to an amount equal to one month’s membership fees.

### **15. Your Liability to Us**

- a. You must indemnify us against and pay on demand any and all loss, liability or costs (including third party claims for personal injury, death or tangible property damage) suffered or incurred by us or our officers, employees, contractors, agents and visitors arising out of or in connection with your actions or omissions or those of the staff of your business or your Guests, including:
  - i. fraud, unlawful conduct or wilful misconduct;
  - ii. fraudulent or innocent misrepresentation;
  - iii. breach of these terms and conditions or any Policy; and
  - iv. breach of any laws.
- b. In the event of any loss or damage to the Premises or property on the Premises (including equipment of other Resident Members) caused by you, the staff of your business or your Guests, you must pay invoices provided by The Studio to replace or repair the lost or damaged property within 30 days of issue.

## **16. Insurance**

- a. Our insurance does not provide cover to anyone other than The Studio Limited and our staff. You are responsible for taking out your own insurance to cover your equipment and other property.
- b. You must take out and maintain, or ensure that your business takes out and maintains, during your membership:
- c. a comprehensive public liability insurance policy, for an insured sum of not less than \$20 million, covering amounts which you or your business may become legally liable to pay consequent upon:
  - i. injury to a person; and
  - ii. loss of, or damage to, real or personal property (including the loss of use thereof); and
- d. a workers compensation insurance policy that is effective in the location(s) in which you or your business conducts business in respect of all claims and liabilities, whether at common law or under statute, relating to your liability or the liability of your business as an employer in respect of any accident or injury to any person employed by you or your business for such amount that is required under the applicable workers compensation legislation.
- e. You must comply with, and ensure that your business complies with, all of the terms and conditions of any insurance policy taken out under this Insurance clause.
- f. You must on request being made by us, promptly provide to us copies of any insurance policy taken out under this Insurance clause together with a certificate of currency for that insurance policy.

## **17. Equipment**

- a. Notwithstanding that we may operate an entry access system or otherwise take steps to maintain the Premises in a safe or secure manner, we do not give any representations that the Premises are safe or secure for your equipment or other property, nor that the electricity supply will not damage your equipment. We are not liable for any theft, loss or damage to your equipment or other property.
- b. It is your responsibility to check that any equipment you bring onto the Premises is not faulty and is not a safety risk to other Resident Members.
- c. We reserve the right to inspect and test any equipment you bring onto the Premises. We may prevent you from using the equipment and require you to remove it from the Premises if we decide it is necessary.

- d. You must not use any equipment in the Premises that is likely to create a noise level that is unreasonable for other Resident Members.
- e. You must not install or connect any electrical equipment on the Premises that may overload the available electricity supply or the facilities through which that supply is made available to you.
- f. Except for computers, displays, peripherals and chargers, you must not install any electrical or electronic equipment without our prior written consent. We reserve the right to withhold consent in the case of surveillance equipment, heaters and other equipment that might interfere with other Resident Members safe use and enjoyment of the Premises.
- g. Use of The Studio's facilities or studio's cannot be sub-leased to anyone by a Studio resident at any time (for financial gain or no financial gain).

#### **18. Notices**

- a. Any notice under these terms and conditions must be in legible writing and in English.
- b. We will send notices to you either by giving the notice to you or by sending the notice to you by email to the email address provided by you to us.
- c. You must send any notice to us by email to the email address provided by us to you.
- d. Any notice under these terms and conditions is regarded as being given by: if by delivery in person, when delivered to the addressee; or
- i. if by email, on the Business Day after the day on which the notice was sent provided that the sender has not received an automated message to the effect that delivery of the email failed.

#### **19. The Studio Ltd - brand, logo and identity**

You may not use or make use of our name or logo without our permission. The Studio will generally not withhold permission where use is intended for promotional purposes. For further information please refer to our Trademark Policy.

#### **20. General Law**

- a. These terms and conditions supersede all prior arrangements, understandings or agreements between us and you.
- b. We may change these terms and conditions by giving you written notice as the day on which the change will take effect and what action taken by you will be deemed to be acceptance.
- c. A right in favour of a party under these terms and conditions can only be waived by a document signed by that party. No other act, omission or delay of that party constitutes a waiver binding, or estoppel against, the Investor.
- d. A single or partial exercise or waiver by a party of a right relating to these terms and conditions does not prevent any other exercise of that right or the exercise of any other right.
- e. We and you must use reasonable efforts to do all things necessary or desirable to give full effect to these terms and conditions.
- f. If any provisions of these terms and conditions is held void or unenforceable under the applicable law, the other provisions shall remain in force.
- g. These terms and conditions are governed by the laws of the State of New South Wales. Each of us submits to the non-exclusive jurisdiction of courts exercising jurisdiction there in connection with all matters concerning these terms and conditions.

Terms and conditions as at 12<sup>th</sup> of February 2019  
With thanks to Fishburners