

# MEMBERSHIP AGREEMENT

## IMPORTANT NOTICE

This is a membership form under which you agree to become a member of The Gym on Moseley. When you sign this form, you are entering into a legally binding agreement.

This agreement (**your membership**) is made up of the terms contained in this form including the membership details below (**details**) plus any special conditions and the attached Terms and Conditions (**Terms**).

This form sets out your rights to use our exercise facilities and services, 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. Accordingly, you should now read through this entire form carefully to make sure that it fully reflects your expectations and ask us or seek advice if you are unsure whether any particular statements that you have relied on are part of this agreement.

**If your membership is for a Fixed Term, it automatically terminates at the expiry of the Minimum Term and so a new agreement will be required if you require services after that time.**

**If 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 the 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 the health and fitness business cancels the arrangement by notifying your bank or credit provider. If you terminate the 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.**

**This agreement is subject to a 7 day cooling off period.**

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

# MEMBERSHIP AGREEMENT

## Parties to This Agreement

Health and fitness business (we, us, our)	Mailing address: 8 Moseley St, Glenelg, South Australia 5045  Contact Number: 0418 851 585  Email: <a href="mailto:support@thegymonmoseley.com.au">support@thegymonmoseley.com.au</a>	Our Facility is open 24/7, giving members the freedom to train anytime. Members receive a secure access pass for entry, with 24/7 monitoring in place.
Member (you, your)		

## Membership Details and Conditions

Cooling Off Period	Ends 7 days after the day on which this Membership Form is signed.
Minimum term	Your membership may be either for a Fixed Term or Ongoing as indicated in the Important Notice box above
Start date	The date the membership is activated
Membership type	<b>Ongoing</b> - 24/7 gym access with no lock in contract
Facilities and services	The premises of the health and fitness business including all areas such as exercise areas, change rooms and car park, as well as all equipment including cardiovascular and weights machines, benches, free weights, exercise mats, fitness accessories and any other products, programs, classes and services that you can use according to your Membership Type (excluding services provided by outside providers described in clause 10 or other services described in clause 11).

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### Schedule of Fees

Joining fee	\$59.95
Membership fees	\$16.95 per week
Cancellation fee	As specified in clause 9.3
Exercise consultation	Refer to personal trainer for specific fees
Fitness assessment	Refer to personal trainer for specific fees
Guest pass	\$20 per visit
Suspension fees	A maximum of \$2.50 per week, or part of a week, for the duration of the suspension
Transfer fees	\$59.95
Credit card surcharge	1.6%
Other fees	Tailgate fee: \$60 (maximum) Ezypay Failed payment fee for each failure: \$8.90

**Direct Debit Provider**

Direct debit services are provided by Ezypay [www.ezypay.com](http://www.ezypay.com)

**State/territory**

South Australia

**Special conditions**

# MEMBERSHIP AGREEMENT

## Terms and Conditions

### 1. Plain terms

These Terms use plain language, so we want to make sure that some of the words and concepts used are easily understood. For instance, we have included clause headings as a guide but these do not form part of this agreement. Certain recurring words are defined in the details and elsewhere in this agreement and other forms of those words have equivalent meaning.

### 2. Cooling off

If you change your mind shortly after applying for membership, you may have an opportunity to cancel. To do so, you must let us know in writing within the time specified in the details for it to be effective. Your written notice must include your full name, date of birth, proof of identification, and the reason for cancellation. Alternatively, you may submit a completed official The Gym on Moseley Cancellation Form.

We will charge the joining fee if the facilities have been used, as well as other fees for any 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 these Terms.

If we make a mistake in completing any details on your membership form, we can fix the mistake within 7 days after the date of your membership form. We will contact you advising you that this has been done. If we reasonably believe that the subject matter of the mistake was not clearly discussed with you at the time you signed the membership form, we will reinstate any applicable cooling off period.

### 3. Responsibility for members under 18

This section 3 applies where the member is under 18.

By signing on behalf of a child, the parent or guardian accepts responsibility of ensuring the child exercises safely, pays their membership fees and otherwise follows these Terms.

The parent or guardian who signs this form also agrees to hold the health and fitness business harmless in respect of any claim made by or on behalf of the child against the health and fitness business to the extent that any such claim would have been excluded under this agreement, had the child been an adult and signed this agreement on their own behalf.

### 4. 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.

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## 4.1. Your physical condition

- (a) 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.
- (b) You promise that the 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.
- (c) If you happen to 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 not use the facilities and services until we have completed your health and fitness profile.

## 4.2. Proper use of equipment

You promise to take reasonable 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 not sure how to operate any equipment properly, please ask a staff member before you use it. Should you be unsure how to operate equipment properly during non-staffed hours, you should contact staff during staffed hours.

## 4.3. Rules of good behaviour

- (a) 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**). A copy of our Rules are displayed on our website and signage in the gym premises. Please make sure that you read and understand our Rules carefully and ask us if there is anything you are not sure about.
- (b) We may occasionally update our Rules to further promote health and safety or to make other improvements. We will seek to inform you of any changes as set out below, though we expect you to be familiar with the current version of our Rules by reading our website and signage in the gym premises on a regular basis.
- (c) 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 cancel your membership with immediate effect.

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## 4.4. Entry Refusal

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. This includes, but is not limited to:

- (a) threatening or harassing others;
- (b) deliberately or recklessly damage equipment or facilities; or
- (c) using illegal or performance enhancing drugs.

## 4.5. 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.

## 5. We take your privacy seriously

### 5.1. Our privacy policy

From when you apply for membership, we will have access to your personal information, 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 is available on our website, as will any future amendments.

### 5.2. 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.

### 5.3. Please keep your contact details up to date

You promise to promptly inform us 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.

## 6. What you get when you join

From the Start Date you are entitled to the membership benefits including use of the recreational (gym) facilities and services that apply to your Membership Type.

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

You may temporarily suspend your membership if all amounts payable for your membership are paid up to date. You will need to produce satisfactory supporting documentation when you apply for a suspension. You must apply for a suspension as soon as possible after you become aware of the relevant circumstances. We are entitled to charge you the suspension fee for processing your application. In any 12 month period, we are not obliged to suspend your membership on more than two occasions or for more than six weeks in total. While your membership is suspended, the term will be extended and we will freeze any direct debit payments that fall within the suspension period.

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## 8. Ending your membership

We will accept notification by email or post for any requirements in this agreement to provide us written notice. All written notices must include:

- your full name;
- proof of identification; and
- reason for cancellation.

Alternatively, you may submit a completed official The Gym on Moseley Cancellation Form. We will only accept notices that meet these requirements.

### 8.1. On or after expiry of the Minimum Term

- (a) 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)

- We do not fulfill our obligations under this agreement (please see paragraph (a) below);
- You become subject to medical incapacity (please see paragraph (b) below);
- We make changes to this agreement that adversely affect you (please see clause 12); or
- You otherwise become entitled to do so under consumer legislation;

(When a cancellation fee may apply)

- You relocate or simply wish to cancel for any other reason (please see paragraph (c) below)

(a) If we do not fulfill our obligation under this agreement

- (i) You can cancel your membership by written notice to us if we breach any of our obligations under this agreement and we have not remedied that breach within a reasonable time after you have given us a written request that we do so.
- (ii) No fees will be applicable for cancelling in accordance with this clause apart from, to the extent not impacted by our breach, 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) You may cancel for medical reasons

- (i) You can end your membership by telling us in writing if you cannot exercise due to an illness or a physical incapacity, provided you produce supporting documentation to our reasonable satisfaction.

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- (ii) 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.
- (c) If your membership is no longer convenient
  - (i) Otherwise, you can end your membership during the Minimum Term by providing written notice to us at least 14 days in advance, or by submitting a completed official The Gym on Moseley Cancellation Form. Any written notice must include your full name, proof of identification, and the reason for cancellation.
  - (ii) Please note we will consider any request to transfer your membership and may agree to the transfer at our choosing subject to satisfaction of eligibility considerations and your payment of the Transfer fee. We will never charge you a cancellation fee if we agree to a transfer to someone who is not currently a member and they have paid the Joining fee at that time.
  - (iii) In any case if your membership ends under this paragraph (c), 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, except as mentioned above, the cancellation fee.

### 8.3. When can we end your membership?

- (a) 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 (a), 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.
- (b) On rare occasions we may cancel a membership by written notice to the member without the need to give a reason. If we cancel your membership under this paragraph (b), you will only be liable for the Joining fee, Membership fees for the time you were a member and any other fees for other fitness services already provided. No cancellation fee will apply. You agree that this payment waiver is your sole entitlement to compensation for cancellation of your membership under this paragraph (b).
- (c) You promise that you are not insolvent at the time of signing and that you will tell us promptly if you believe you will be insolvent and unable to pay your membership fees for an extended period of time. If we become aware of these circumstances, we may end your membership.

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

The fees you must pay are specified in the details. This clause 9 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 these Terms. Fees and charges continue to accrue during the suspension.

### 9.1. Joining fee

We will charge you a Joining fee to cover the set-up costs for a new membership. The joining fee is not refundable except in limited circumstances relating to clause 8.3 (b).

### 9.2. Membership fees

We charge weekly Membership fees payable for your access to the fitness facility, equipment and amenities.

### 9.3. 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, provided 14 days written notice has been given.

### 9.4. Fee increases

We may increase your membership fees or any other fees from time to time. We will make a fair effort to tell you at least 30 days before by writing to you by post or by email. Where we have done so, you authorise us to increase any debits from your nominated account in line with this increase. If you wish to cancel your membership as a result of this increase, you can do so via written notice (post or email) with no Cancellation fee and we will also waive the 14 day notice period normally required.

### 9.5. 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. Issues with outside providers

- (a) We will seek to make sure those franchisees, contractors and other authorised persons who provide services at the facilities (**outside providers**) are appropriately qualified before granting them access. Examples of outside providers include, but are not limited to, personal trainers, physiotherapists, dieticians and masseurs who may offer additional services from the facilities that are not included with your Membership Type. Please note that outside providers are neither employed by us nor are they our agents, even if they happen to be wearing clothes displaying our name and logo. You will know that they are outside providers because they will require payment of their fee directly from you when you engage them.

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- (b) This is important because we are not liable for any injury, loss or other claims arising from breach of contract, negligence or otherwise that are suffered by you in connection with any outside provider services, other than to the extent caused by our negligence. In addition, you release us and hold us harmless in relation to any such claims.
- (c) We have no responsibility in respect of the fees that you must pay directly to outside providers nor for any associated costs or refunds. However, please advise us if you have a problem with an outside provider and we will try to help if we can. Nothing in this clause limits our liability for the actions of our employees or agents.

### 11. Other services

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

### 12. Changes to your membership agreement

- (a) 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 as described in this clause below.
- (b) 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. However, if you are adversely affected by the change, you may cancel your membership without payment of a 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

#### 13.1. Statutory guarantees

- (a) 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 (where no time is set).

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(b) 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 this paragraph (b), "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.

(c) 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).

### 13.2. State based notices

Please refer to the ACL Exclusion Notice in this agreement which contains complementary information about the statutory guarantees and the limitations that we are allowed to place on them. These are without prejudice to the limitations contained in this clause.

### 13.3. General exclusions

- (a) 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.
- (b) 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 (a), 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.

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### 13.4. Loss of property

- (a) You promise that you will not unnecessarily bring valuables into the facilities. We provide unsecure storage lockers and we are not responsible if someone takes your property, other than to the extent we have not complied with our obligations in respect of this service under a statutory guarantee.
- (b) 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 to 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 willful act or negligence.

### 15. Direct debit payment

#### 15.1. 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.

#### 15.2. If your payment is late or rejected

- (a) 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.
- (b) 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).
- (c) If a payment remains outstanding, you agree that, unless we are in breach of our obligations under these Terms, we (or the Direct Debit Provider) may continue to debit the nominated account for the total amount due without notice to you. If the amount owing is more than one periodic membership fee we will seek to contact you first.

#### 15.3. Direct debits

- (a) If you choose to pay fees by direct debit, then this will be through the Direct Debit Provider named in the details. The Direct Debit Provider may be us (if we are authorised) or a third party provider who is not a party to this agreement and whose only role is to provide direct debit services.
- (b) We will provide you with a copy of the terms and conditions that apply to the direct debit services. Those terms and conditions are entirely separate to this agreement and you may have rights and obligations under those terms and conditions. As such, the Direct Debit Provider acting in its capacity as such has no liability to you in connection with your involvement in exercise activities under this agreement.
- (c) You may at any time contact the Direct Debit Provider if you have any queries or to verify your direct debit authorisation details.
- (d) Membership fees may include fees payable for the Direct Debit Provider's services.

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## 16. General terms

### 16.1. 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.

### 16.2. 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.

### 16.3. Transferring this agreement

We can transfer the rights and/or benefits under this agreement or subcontract our obligations under this agreement to a third party at any time without notice to you. In doing so, we will make sure that the transferee agrees to honour the terms of your membership.

### 16.4. 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.

### 16.5. Applicable law

The law of the State/Territory specified in the details applies to this agreement.

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## **ACL Exclusion Notice (South Australia Only) Recreational Services Exclusion, restriction or modification of rights under the Australian Consumer Law (SA)**

### **Your rights**

Under sections 60 and 61 of the Australian Consumer Law (SA), if a person in trade or commerce supplies you with services (including recreational services), there is:

- a statutory guarantee that those services will be rendered with due care and skill; and
- a statutory guarantee that those services, and any product resulting from those services, will be reasonably fit for the purpose for which the services are being acquired (as long as that purpose is made known to the supplier); and
- a statutory guarantee that those services, and any product resulting from those services, will be of such a nature, and quality, state or condition, that they might reasonably be expected to achieve the result that the consumer wishes to achieve (as long as that wish is made known to the supplier or a person with whom negotiations have been conducted in relation to the acquisition of the services).

### **Excluding, restricting or modifying your rights**

Under section 42 of the Fair Trading Act 1987, the supplier of recreational services is entitled to ask you to agree to exclude, restrict or modify his or her liability for any personal injury suffered by you or another person for whom or on whose behalf you are acquiring the services (a third party consumer).

If you sign this form, you will be agreeing to exclude, restrict or modify the Fitness Business' liability with the result that compensation may not be payable if you or the third party consumer suffer personal injury.

### **Important**

You do not have to agree to exclude, restrict or modify your rights by signing this form.

The supplier may refuse to provide you with the services if you do not agree to exclude, restrict or modify your rights by signing this form.

Even if you sign this form, you may still have further legal rights against the supplier. A child under the age of 18 cannot legally agree to exclude, restrict or modify his or her rights.

A parent or guardian of a child who acquires recreational services for the child cannot legally agree to exclude, restrict or modify the child's rights.

### **Agreement to exclude, restrict or modify your rights:**

I agree that the liability of the Fitness Business for any personal injury that may result from the supply of the recreational services that may be suffered by me (or a person for whom or on whose behalf I am acquiring the services) is-

- (a) excluded;
- (b) ~~restricted as:~~
- (c) ~~modified as:~~

# MEMBERSHIP AGREEMENT

## Definitions

**Recreational services** are services that consist of participation in:

- > a sporting activity or similar leisure-time pursuit; or
- > any other activity that involves a significant degree of physical exertion or risk and is undertaken for the purposes of recreation, enjoyment or leisure.

**Personal injury** is bodily injury and includes mental and nervous shock and death

**Further information:** about your rights can be found at [www.ocba.sa.gov.au](http://www.ocba.sa.gov.au)