

CONDITIONS OF MEMBERSHIP

Commonly used terms: Commonly used terms are explained at the end of these conditions of membership.

1. **Facilities:** We agree to make the fitness and health facilities at the local Club identified in the membership form available to you. Additionally, we agree to also make the fitness and health club facilities operated by other CityFitness Group Limited companies in New Zealand available to you if you elected this in your membership form. These facilities are available to you throughout the term of this agreement for so long as we shall operate them, except where the Club is unable to make the facilities available as a consequence of any circumstance (including a significant disruption) beyond the reasonable control of the Club.
2. **Public Health Measures:** It is important that we all play our part in managing the risks associated with public health issues, and to do our part, we may introduce new measures (**Public Health Measures**) in relation to our Clubs and where we do, we will give you notice of them and you must comply with these Public Health Measures as part of your membership. In relation to Public Health Measures:
 - (a) while we aim to minimize risks associated with public health issues, access to our Clubs is entirely at your own risk and we cannot guarantee that the Club will be (or will remain) free from communicable diseases;
 - (b) they may include addition of contact tracing measures, which includes, the ability to share relevant contact tracing information with the relevant public authorities should we be asked;
 - (c) they will be communicated to you separately, and the nature, extent and timing associated of those measures may change depending on our view of what is necessary to manage risks associated with any public health issues, government guidelines and changes in the different requirements under any orders published by relevant public authorities;
3. **Guest access:** If you have a "Black Card" or "Premium" membership, you are entitled to have one guest (at a time) accompany you to use the facilities and you may also provide your membership card to one family member (at a time and who will not be entitled to bring a guest) to use your membership, in each case free of charge, subject to:
 - (a) any use of the Club by your guests and/or family members being strictly limited to use of "Basic" membership privileges at the Club only (and not, for example, access to fitness classes, massage chairs and yoga studios);
 - (b) any use of the Club by your guests and/or family members being strictly limited to use during those hours in which the Club is staffed (which may vary by Club location);
 - (c) the guest being 18 years of age or older unless accompanied by a parent or guardian where the minimum age is 14 years;
 - (d) the family member using another family member's card being 16 years of age or older;
 - (e) you taking responsibility (and liability) for ensuring that your guests and/or family members comply with the conditions of this agreement relating to use of the Club (including all Rules) and you acknowledge that, if any of your guests or family members fail to comply, we may refuse access to (or expel from) the Club the non-compliant guest or family member; and
 - (f) you not trying to commercially gain from any use by your guests and/or family members.
4. **Under 18 access:** If you are under 18 years of age your access to the Club (together with any other fitness and health club facilities operated by CityFitness Group Limited in New Zealand) is strictly limited to use during those hours in which the Club is staffed (which may vary by Club location).
5. **Rules and conduct:** You agree to abide by all rules posted in and around the Club or otherwise notified to you which relate to use of equipment, health and safety (including hygiene), parking and the day to day operation of the Club and surrounding areas (**Rules**). In using the Club, you promise:
 - (a) to make sure you know how to exercise safely, and if you are not sure, that you ask for our assistance;
 - (b) to exercise in a way that is safe to you and others using the Club; and
 - (c) to act in a considerate and respectful manner towards the Club's staff and other members of the Club.

If we find you conducting yourself in a way that jeopardises the health and safety of you or others in the Club, or you breach any of the Rules (or other requirements in this clause 5) and that breach has a detrimental effect on the Club or any of its staff or other members (for example, you act in an offensive or disrespectful manner towards a staff member or persistently interfere with other members enjoyment of the facilities), we may (acting in good faith) expel you from the Club and/or terminate your membership in accordance with clause 21.

Unless you have obtained prior written agreement from us regarding commercial use of a Club, you must only access and use the Club for your personal purposes and not for any commercial gain (such as providing personal training services to other users of the Club).

6. **Health and other risks:** Our staff and contractors are not medically trained and cannot assess whether you can exercise without risking your health, safety or comfort. You promise to:
 - (a) notify us in writing if you have any risk injury, illness, disability or other condition that means you shouldn't be using the Club's facilities, and this includes any infections, or contagious illness; and
 - (b) not use the Club's facilities if you suffer from any injury, illness, disability or other condition which might cause additional injury or exacerbate your condition or pose a health risk to staff or others in the Club.

You specifically acknowledge that it would be prudent for you to undertake a medical examination prior to joining to avoid inadvertent injuries or pressure on your body, but we leave this entirely at your discretion to do so.

- 7. Term:** The term of your membership will commence on the commencement date set out in your membership form and will continue until terminated in accordance with this agreement. Without taking away any termination rights in this agreement, your membership will automatically continue on past expiry of any Minimum Term unless you give us notice in writing prior to the end of your Minimum Term that you want the terms to end on expiry of the Minimum Term. Where you do give us such a notice, you will no longer be able to access the Club after the date it comes to an end and, if you wish to access the Club again, you will need to sign up for a new membership (to which another minimum term and upfront fees or annual fees may apply).
- 8. Termination:** Either party may terminate this agreement without reason by giving the other at least 4 weeks written notice of termination to the other (and, in the case of termination by you, on the prescribed form available from the Club or on our website). Where a Minimum Term applies and you terminate during the Minimum Term under this clause 8 an Early Termination Fee may apply (see clause 9). This right of termination is in addition to any other rights of termination you may have in this agreement (see clauses 19, 20 and 21).
- 9. Early Termination Fee:** If you have agreed to a Minimum Term and you terminate this agreement prior to the end of that Minimum Term under clause 8 or we terminate this agreement due to your default (see clause 21), you must pay to the Club (in one lump sum), liquidated damages (in the form of an early termination fee) equal to amount being the lesser of:
- (a) \$200; and
 - (b) the amount that you would have paid for the remainder of the Minimum Term had you not terminated this agreement,
- (the **Early Termination Fee**). The Early Termination Fee applies because we have priced your membership on the basis that you will not terminate your membership prior to the end of your agreed Minimum Term.
- 10. Administration and/or Joining Fees:** In addition to Membership Fees, if your membership form specifies:
- (a) a one off administration and/or a joining fee (**Upfront Fees**) then you must pay those fee(s) at the commencement of the term of your membership (at the same time as your first payment of Membership Fees); or
 - (b) an annual administration and/or joining fee (**Annual Fees**), then you must pay those fee(s) at the commencement of the term of your membership (at the same time as your first payment of Membership Fees) and on the anniversary of that date every year thereafter during the term of your membership.
- 11. Membership Fee changes:** Your Membership Fees may change from time to time during the term of your membership to include:
- (a) an annual CPI increase (of an amount equal to the increase in CPI during the most recent 12 month period for which figures are published and available), which increase shall (if applied by the Club) take effect on 1 January each year during the term of your membership; and
 - (b) any increases required to reflect changes in the law, including any change in the taxes applicable to your Membership Fees (for example, a change in the rate of GST).
- These Membership Fee changes shall not limit the Club's ability to exercise its rights to amend Membership Fees under clause 19.
- 12. Payment:** You agree to pay the Club in cleared funds either via a bank direct debit authority or a credit card direct debit authority:
- (a) the Membership Fees in advance for each Payment Cycle on and from the commencement date set out in the membership form; however adjustment shall be made by the Club to the first and last payments to allow for broken periods in those Payment Cycles; and
 - (b) any other payments incurred by you under or in connection with this agreement when specified in this agreement and after demand for payment by the Club, and these payments may include, but are not limited to, any Upfront Fees, Annual Fees, Early Termination Fee, late payment fees or charges, and default interest together with any GST on them.
- 13. Fee collection:** The administration of this agreement (including the collection of payments) is conducted by the Billing Agent on the Club's behalf. You accept that the Billing Agent collects your payments to the Club. The services provided by the Billing Agent are administrative and do not affect the status of any membership receipts issued by the Club. If you have any queries regarding payments, please direct them to us and we will promptly respond.
- 14. Direct debit:** If you have elected to pay by direct debit you irrevocably authorise the Billing Agent to debit, from your nominated bank account, payment of all Membership Fees owing under this agreement up to the effective date of termination of your membership, and if applicable, Upfront Fees, Annual Fees, late payment fees, on-hold fees and/or Early Termination Fees. You may change your nominated bank account at any time by completing a new direct debit authority in favour of the Billing Agent. If there are other payments (beyond those listed above) owing under this agreement, we will notify you in writing of such payments due and, within 7 days of such notification, notify the Billing Agent to deduct all such other payments from your nominated bank account, unless there is a genuine dispute relating to the payment and you notify us of that dispute in writing (including the full details of the dispute) within that 7 day period. If you do notify of a dispute in writing within the time required, we shall hold off on notifying the Billing Agent to deduct such amount until the dispute has been resolved between us or pursuant to clause 25(f).
- 15. Credit card:** If you have elected to pay via credit card, you irrevocably authorise the Billing Agent to deduct, from your nominated credit card, payment of all Membership Fees owing under this agreement up to the effective date of termination of your membership, and if applicable, Upfront Fees, Annual Fees, late payment fees, on-hold fees and/or Early Termination Fees. You may change your nominated credit card at any time by notifying us in writing. If there are other payments (beyond those listed above) owing under this agreement, we will notify you in writing of such payments due and, within 7 days of such notification, notify the Billing Agent to deduct all such other payments from your nominated credit card, unless there is a genuine dispute relating to the payment and you notify us of that dispute in writing (including the full details of the dispute) within that 7 day

period. If you do notify of a dispute in writing within the time required, we shall hold off on notifying the Billing Agent to deduct such amount until the dispute has been resolved between us or pursuant to clause 25(f).

16. Payment processor: Credit card transactions are securely processed by Windcave New Zealand Limited (Windcave), each a third party payment processor, and are subject to Windcave's terms of service (available on its website). Windcave is solely responsible for such transactions and we exclude all liability for such transactions to the extent not restricted by law. Windcave maintain administrative, technical, and physical procedures to protect information stored on its servers, as outlined within its own privacy policy on its website.

17. Late or failed payments: If payment of any fees has not be made within three days following the relevant due date (including where a payment has been dishonoured by your bank) (**Late Fees**), in addition to the Late Fees, the following amounts shall become payable by you on demand from the Billing Agent:

- (a) with respect to each Late Fee a late payment administration fee of no more than \$10.00 may be applied;
- (b) an amount equal to all costs of collection (both prior to and after any legal action) incurred by the Billing Agent in connection with collection of your Late Fees (including collection agency costs, court costs, and solicitor's fees), all of which may be paid or incurred by the Billing Agent; and/or
- (c) default interest at the rate of 1% per month (12% p.a.) on all outstanding amounts between the relevant due date of such amount and the date on which such amount is paid in full.

The obligation to make payment of amounts under this clause 17 shall not detract from your obligation to make payment of any Early Termination Fees payable by you under this agreement or any amounts you become liable for under clause 23 (if applicable).

Without limiting our rights in respect of Late Fees under this clause 17, if any of your payments is dishonoured by your bank, we will notify you electronically of such failure and will retry the dishonoured payment as part of your next Payment Cycle (together with your fees for that next Payment Cycle).

18. Freezing your membership: If you know in advance that you will not be able to attend the Club for a period, you may put your membership on-hold at reduced fees for a minimum period of one month through to a maximum period of three months (although this shall not apply to any personal training services). To place your membership on-hold, you must complete the on-hold request form (available on our website at www.cityfitness.co.nz) and provide the completed form to the Club at least 5 days before placing your membership on-hold. The fees that will apply to the on-hold period are set out on the on-hold request form. On-hold periods will not be counted by the Club in any notice period required for the termination of your membership, nor will they count towards the Minimum Term.

19. Amendments to your membership terms: In order to run the Club efficiently (as part of our wider group), we reserve the right to amend this agreement, the Club rules, club operating hours (including hours that our clubs are staffed), and our policies (including the on-hold policy). Our ability to amend extends to Membership Fees (outside of the Minimum Term). We will provide at least 14 days' notice to you of any such amendment (unless a change is needed for health and safety reasons, in which case such change may have immediate effect). Where a notified amendment will have a material negative effect on your membership rights or your Membership Fee is to be amended (other than as a result of any Membership Fee change under clause 11), you may terminate this agreement by providing us with written notice of your wish to terminate. Any termination by you under this clause 19:

- (a) must be notified to us within 7 days of us giving you notice of an amendment and the effective date of such termination will be the date of the relevant variation;
- (b) will not be effective if we decide not to go ahead with the amendment and let you know this before termination; and
- (c) if not accepted by us must be resolved under the dispute resolution procedures.

If you do not exercise your right to terminate within the required 7 day period, the amendment notified by us will apply to your agreement (and in the case of a change to your Membership Fee, we will notify the Billing Agent of the fee change and instruct the Billing Agent to change the Membership Fees direct debited to your bank account).

20. Termination for medical reasons: If You become medically incapacitated, provided you supply the Club with supporting documentation to the Club's reasonable satisfaction (from a qualified medical practitioner certifying that you are permanently sick or incapacitated from undertaking any exercise regime for a period of three months or the remaining term of your membership, whichever is shorter. You must give us at least 2 days' notice.

21. Event of default: Either party (**Terminating Party**) may terminate this agreement by written notice to the other (**Defaulting Party**) where the Defaulting Party materially breaches this agreement and does not remedy that breach after being given 7 days' notice in writing by the Terminating Party (setting out the material breach and how the Defaulting Party must remedy the breach). If the material breach of the Defaulting party is one that cannot be remedied, the Terminating Party does not have to give time to the Defaulting Party to remedy that breach. Any breach any of the Club's policies and procedures or non-payment of fees due for a period of more than 7 days or more will constitute a material breach and the Club will be entitled to terminate this agreement.

22. Disputed termination: If a party has a genuine dispute of whether a termination notice given under clause 21 is effective, the relevant party may seek to resolve that dispute directly with the other party or pursuant to clause 25(f).

23. Liability and indemnity:

- (a) You shall be responsible for loss or damage which is caused by your use of the Club. You understand the possibility of injury or other dangers connected with any form of physical activity including the activity

- (b) Without limiting (a) above, neither we (nor any of our employees, contractors, agents or representatives) will be responsible for any damage caused by you failing to follow any rules or reasonable directions given in relation to use of the Club's facilities.
- (c) To the extent we do become liable to you in connection with this agreement or your use of the Club, our liability to you shall be limited to an amount equal to your Membership Fees for a 12 month period (in total in respect of all claims).
- (d) You are solely responsible for your property (including any property you bring into the Club or onto its premises) and the security of that property. You should not take any valuables into the Club, even if you plan to store them in a locker as the Club will not be responsible for any loss or damage to valuables brought into the Club or onto its premises.
- (e) To the extent permitted by law, neither we (nor any of our employees, contractors, agents or representatives) nor you will be liable for any loss of profits, or any consequential, indirect or special damage or damage or injury of any kind suffered by the other party to this agreement.
- (f) Nothing in this agreement is intended to have the effect of limiting or reducing your rights against us under the Consumer Guarantees Act 1993 (CGA). As a consumer, you are entitled to certain guarantees under the CGA. If we breach any of these guarantees, your rights of redress are set out in the CGA.

24. Provision of Information:

- (a) It is your responsibility to ensure that you update (by way of written notice to the Club) all personal information held by the Club about you, including any contact details the Club may hold for you.
- (b) You must ensure that all personal information you provide to the Club (as part of the application process or otherwise) is true and accurate and you must not knowingly provide any false information to the Club.
- (c) You authorise any person or company to provide the Club or the Billing Agent with such information as the Club or Billing Agent may require in response to its credit and/or membership enquiries.
- (d) You also authorise the Club and Billing Agent to use information for any subsequent dealings that you may have with the Club or Billing Agent as a result of your application being accepted, including the provision of information to third parties regarding any failure to make any payment when due.
- (e) By executing this agreement you consent to the Club's privacy policy provided together with this agreement and otherwise available on our website at www.cityfitness.co.nz.

25. General:

- (a) If written notice is required to be provided to either party under this agreement, it may be provided by post, SMS or email at the addresses given on the membership form or as otherwise updated by you by way of written notice to the Club.
- (b) The Club may be prevented from meeting its obligations under this agreement as a consequence of any cause or circumstance, including significant disruption, beyond the reasonable control of the Club. In these circumstances, the Club can suspend your use of the facilities and your Membership Fees will be suspended until the facilities are restored.
- (c) All clauses which should, by their nature, survive the termination or expiry of this agreement, shall survive the termination or expiry of this agreement (including clauses 9, 12, 17, 22 and 23). Termination of this agreement by either party does not relieve you from making all payments due up to the date of termination.
- (d) This agreement is exclusive to you. The Club shall be entitled to assign this agreement, in circumstances where the Club's business is being sold or restructured. If an assignment by us has a material negative effect on your membership rights, notice of the assignment may be treated as an amendment and clause 19 will apply.
- (e) This agreement shall be interpreted and enforced pursuant to the laws of New Zealand.
- (f) If a dispute arises between the parties under or in connection with this agreement, the parties must follow the dispute resolution process set out below:
 - (i) The parties will use their best endeavours to promptly resolve any dispute or difference between them by way of good faith negotiations.
 - (ii) If the dispute is not resolved by negotiation within 14 days of either party notifying the other of the dispute (or such longer period agree by the parties), either party may require the other to submit to mediation with assistance of a qualified mediator.
 - (iii) If the dispute is not resolved by way of negotiation or mediation within 21 days of notification of the dispute, either party may take steps to seek relief before an appropriate court.
- (g) The failure of a party to enforce any provision of this agreement shall not be treated as a waiver of that provision, nor shall it affect that party's future right to enforce that provision.
- (h) If any provision of this agreement is or becomes unenforceable, illegal or invalid for any reason it shall be deemed to be severed from this agreement without affecting the validity of the remainder of the agreement and shall not affect the enforceability, legality or application of any other provision of this agreement.

- (i) For the purposes of part 2 subpart 1 (contractual privity) of the Contract and Commercial Law Act 2017, the parties acknowledge that the terms and provisions of this agreement confer a benefit on and shall be enforceable by, the Billing Agent, and each of our and the Billing Agent's employees contractors, agent and representatives as if such persons or entities were a party to this agreement.

26. Commonly used terms:

Agreement means your agreement with the Club, consisting of your executed membership form, these conditions of membership and any other forms, policies and/or rules of the Club (including the Rules) referred to in these conditions of membership;

Annual Fees has the meaning given to it in clause 10.

Billing Agent means CityFitness Group Ltd, Private Bag 12002, Nelson or any other third party appointed by us to collect fees payable to us under this agreement, as notified to you in writing from time to time;

Club, us, our and we means CityFitness Group Limited and its fitness and health facilities. To avoid any misunderstanding, Club does not construe an association of like interests and no concept of equity participation is implied nor are any voting rights implied*;

CPI means the Consumer Price Index (All Groups) as published by Statistics New Zealand (or any equivalent index in the event the Consumer Price Index (All Groups) ceases to exist).

Early Termination Fee has the meaning given to it in clause 9 of this agreement;

Member, you and your means the member named on your membership form*;

Membership Fees means the membership fees and any transaction fees specified in your membership form and includes GST, if any;

Minimum Term means the minimum length of time you have committed to, for being a member in your membership form (if any); and

Payment Cycle means the frequency of payment of Membership Fees as specified on your membership form.

Upfront Fees has the meaning given to it in clause 10.

**any references in this agreement to a party include that party's successors and permitted assigns.*

- 27. Members under 18:** If you are under 18 years of age you must have your parent or legal guardian sign the below consent and indemnity before your membership will be accepted. If this is an on-line application, online acceptance by your parent or legal guardian will not suffice. You will need to come into the Club with your parent or legal guardian and have them sign the below consent and indemnity as part of the application process.

Parent/Legal Guardian: I am the parent/legal guardian of the Member. I have read this agreement and consent to the Member entering into this agreement. In consideration of the Club accepting the Member as a member, I accept responsibility for the obligations of the Member under this agreement (including payment of any fees payable under this agreement) if these are not enforceable against the Member because of his or her age or lack of capacity, or if the Member does not have sufficient financial resources to cover his or her obligations under this agreement.

Signed: (Parent/Guardian)

Name:

Address:

Phone Number: