

MEMBERSHIP AGREEMENT
Between
CITY OF FREMANTLE LEISURE CENTRE
And
(MEMBER)

Agreed terms

1. DEFINITIONS

Definitions

In this Agreement unless the context otherwise requires:

City of Fremantle - Fremantle Leisure Centre (FLC)

of PO Box 807, Fremantle, Western Australia 6959 Contact: Chief Executive Officer

Phone: 9432 9999

Email: leisure@fremantle.wa.gov.au

You means the member, as specified on the Membership Application form means any Member that has uses the facilities.

Membership Agreement means this document, including each Annexure, as varied, novated or replaced from time to time.

Business Day means any day except a Saturday, Sunday or a public holiday in Perth, Western Australia.

City means the City of Fremantle.

City of Fremantle Obligations means the City's obligations as specified in this agreement.

Commencement Date means the date that the last of the Parties signs this Agreement.

Loss means any loss, damage, liability, lawsuit, action, proceeding, cost or expense.

Member means any person who is currently a member of the Fremantle leisure Centre.

Membership Type means the membership type you have entered into agreement with.

2. YOUR MEMBERSHIP

- (1) During your Term, you may access and use the Facility in accordance with your Membership Type and this Membership Agreement.
- (2) Your Membership Type refers to the membership type you have selected and the conditions for that type found at www.fremantle.wa.gov.au/flc
- (3) Your membership of the Facility under this Membership Agreement:
 - (a) Is subject to the terms and conditions of this Membership Agreement;
 - (b) Is subject to any limitations and exclusions applicable to your Membership Type; and
 - (c) Does not entitle you to any access or use the Facility other than in accordance with clause 2.1 or any other goods or services from us or any third party (including any services provided by third parties at the Facility) – such as personal training services.
- (4) Is not transferrable to another person.
- (5) You acknowledge and agree that your membership access card, FOB or wristband cannot be shared with another person, friend or family member. If you breach this term you will be notified by us and and/or have your membership suspended or cancelled.
- (6) If you wish to use or access any part of the Facility or receive any goods or services from us outside the scope of this Membership Agreement, you will need to enter into a separate agreement with us. Please speak with our Customer Service Team to discuss this.

3. YOUR MEMBERSHIP ACCESS BAND

- (1) You will need your membership access card, FOB or wristband to access the Facility and must swipe this each time you use the facilities and services.
- (2) If you lose or forget your membership access band you may access the Facility during staffed operating hours by signing in at reception. You cannot ask or expect another person to let you into the Facility at any time.
- (3) You must not let anyone else into the Facility at any time or let anyone else use your membership access band.
- (4) If your membership access band is lost or stolen you must notify us immediately and get a replacement in 14 days or you may be refused access to the Facility; A replacement fee applies.

4. DURATION OF YOUR MEMBERSHIP

Commencement

- (1) This Membership Agreement will commence on the Start Date.

Expiry

- (2) If your Membership Type is 'Paid in Full / Upfront', this Membership Agreement will, unless terminated by you or us, expire at the end of the Paid in Full Term.
- (3) If your Membership Type is 'Direct Debit', this Membership will, unless terminated by you or us, not expire at the end of the Direct Debit Minimum Term but will automatically continue on an ongoing basis until cancelled by you or us.

Minimum Term

- (4) All memberships are ongoing with a 28 day minimum term.

Cooling Off Period

- (5) The cooling off period for memberships is seven (7) days from when the agreement is signed.
- (6) You may terminate this Membership Agreement at any time prior to the close of business on the last day of the Cooling off Period by giving us written notice. You must give us notice in accordance with clause 19.4.
- (7) If you terminate this Membership Agreement during the Cooling Off Period under clause 4.5:
 - (a) This membership agreement will be terminated on the date your written notice is received by us; and
 - (b) We will refund you any unused Fees you have paid to us under this Membership Agreement, not including joining fee
 - (c) If you do not terminate this Membership Agreement during the Cooling off Period under clause 4.5, this Membership Agreement will continue in accordance with clause 2.

5. CHANGES TO YOUR MEMBERSHIP

- (1) We may amend the terms of this Membership Agreement from time to time, including:
 - (a) the Membership Terms and Conditions; and/or
 - (b) the Facility Rules.
- (2) We will give at least 10 Business Days' notice of any changes to this Membership Agreement and the date they are to take effect.
- (3) If we change this Membership Agreement under clause 5.1 and you are adversely affected by the change, you may terminate this Membership Agreement by giving us written notice of the adverse effect prior to the changes taking effect.
- (4) If you terminate the Membership Agreement under this clause 5.1, the Membership Agreement will be terminated on the date we give you written notice that we have accepted that the change adversely affects you.
- (5) Unless and until we give you notice that we have accepted that the change adversely affects you, this Membership agreement will continue in accordance with clause 2.1.

If you terminate this Membership Agreement under clause 5.3;

- (a) you must pay us all outstanding Fees for the period up to and including the date of termination;
 - (b) we will refund to you any Membership Fees you have already paid for the period after the date of termination; and
 - (c) we will not refund you the Joining Fee or any other Fees paid for the period up to and including the date of termination.
- (6) If you do not seek to terminate your membership in accordance with clause 5.3 you will be deemed to have accepted any change we have made to this Membership Agreement.

6. CHANGES TO FACILITIES

- (1) We may change all or part of the Facility at any time, including by;
- (a) Adding, removing or replacing equipment (whether available for use by your Membership Type or not);
 - (b) Change the name of the Facility; and
 - (c) Temporarily or permanently closing parts of the Facility (including the circumstances described in clause 13.
- (2) Any change to the Facility as described in clauses 6.1a and 6.1b, without limiting clause 13, does not constitute a change to this Membership Agreement and does not entitle you to terminate this Membership Agreement under clause 5.3.

7. CHANGES TO YOUR MEMBERSHIP TYPE

- (1) A notice period of ten (10) working days prior to your next scheduled membership payment is required in order to make changes to your membership which includes altering payment details, upgrading or downgrading your membership and applying a corporate discount.

8. Payments

Fees

- (1) If your Membership Type is Paid in Full, you must pay all relevant Fees up front for the Paid in Full Term by the Payment Method.
- (2) If your Membership Type is Direct Debit, you must pay;
 - (a) the joining fee upfront;
the pro rata amount upfront and;
 - (b) the Membership Fees and any Suspension Fees, as varied in accordance with clause 8.18, fortnightly in advance by the Payment Method for the Direct Debit Minimum Term and any ongoing period.

Direct Debit

- (3) Direct debit payment for Fees is managed by us. If your Membership Type is Direct Debit, we will debit your nominated bank account or credit card throughout the Term for the Membership Fees and any Suspension Fees, as varied in accordance with clause 8.18 in accordance with the Direct Debit Request Service Agreement.
- (4) If the due date for payment of any Membership Fees or Suspension Fees falls on a day which is not a Business Day, we will direct debit your nominated bank account or credit card on the next Business Day.

Membership Access Card / Band Fee

- (5) Your membership access card, FOB or wristband fee is payable at sign up, is required for your membership access and is non-refundable. If you need a replacement membership access band a replacement fee is applicable, outlined in the Fees and Charges for the current financial year.

Changes to Payment Method and payment details

- (6) If you wish to change the details relating to your Payment Method, you must give us written notice of the new Payment Method details prior to your next scheduled payment date and do everything we reasonably require to ensure that we continue to receive payment of your Fees.

Payment Method Fees

- (7) If you have chosen to pay by a Payment Method that causes us to incur any merchant or transaction fees, we may pass these fees on to you by deducting the fees via your Payment Method.

Other charges

- (8) Your Membership Fees payable under this Membership Agreement only entitle you to use the facilities and equipment available at the Facility in accordance with your Membership Type.
- (9) Any charges for other services, facilities or equipment will be as agreed between you and us. This may be recorded in a separate agreement between you and us, such as

for the hire of equipment at the Facility.

- (10) Joining fees are applicable to all new memberships, unless you rejoin with a new membership within 14 days of the end date of previous membership.

Refunds

- (11) We are under no obligation to refund money you have paid to us, except as expressly set out in this Membership Agreement.

Dishonoured payments

- (12) If your payment method fails for any reason;
- (a) We will suspend your account from facility access as soon as your bank has informed us that a payment has dishonored. We will notify you by SMS and/or email when a payment has dishonored.
 - (b) You will be charged an administration fee for each time a payment dishonors. This is in addition to your outstanding fees. The administration fee is outlined in the Fees and Charges for the current financial year.
- (13) You must pay us on demand all resulting fees and charges; and
- (14) You authorise us to charge you via your Payment Method for any such resulting fees and charges.

GST

- (15) Your fees are inclusive of goods and services tax (GST).
- (16) If the rate at which GST is calculated changes during the Term, your Membership Fees and any Suspension Fees will be adjusted to account for any change in the rates of calculating GST. You authorise us to change any debit from your Payment Method to account for the change in the rate of calculating GST. This clause only applies if your Membership Type is Direct Debit.

Adjustment to Fees

- (17) We may adjust your fees by no more than 10% on any one occasion in any one given financial year by giving you at least 10 Business Days' notice of the date from which the adjusted Fees take effect. You are required to:
- (a) pay any adjusted Fees from the date the adjustment takes effect; and
 - (b) authorise us to change any debit from your Payment Method to accord with any adjustment to your Fees under clause 8.16.
- (18) An increase of your Fees under clause 8.16 will not constitute a change with an adverse effect for the purpose of clause 5.3.

9. YOUR MEMBERSHIP OBLIGATIONS

Facility Rules

- (1) You must:
 - (a) comply with the Facility Rules at all times;
 - (b) comply with instructions given by our staff in relation to the Facility;
 - (c) not interfere with the use of the Facility by any other period (including any Facility members and hirers of equipment or areas in the Facility); and
 - (d) not behave in a way which is inappropriate, risky or detrimental to the safe enjoyment of the Facility by others.

Access

- (2) All or part of the Facility and any equipment of the Facility may be unavailable on a temporary basis, including for maintenance, repairs, private functions, community group programming, exclusive use and Facility programming;
- (3) In addition to our rights under clause 14.4a and 14.4b, we may deny you access to the Facility or direct you to leave the facility if we decide that your behaviour;
 - (a) Is inconsistent with the Facility Rules;
 - (b) Is inappropriate, risky or detrimental to the safe enjoyment of the Facility by yourself or others.
 - (c) Exercise of our rights under clause 9.3 will not entitle you to a refund of any Fees or grant you any right to terminate this Membership Agreement.

10. FITNESS PROGRAMS AND RECOMMENDED ACTIVITIES

- (1) Our employees or contractors may, on your request, develop a fitness program and/or recommended activities for you at the Facility. You acknowledge and agree that:
 - (a) Our employees and contractors, unless we give you written notice otherwise, hold no medical qualifications; and
 - (b) You follow the program and/or recommendations at your own risk and we are not liable to you for any claim (including any action, proceeding, debt, demand, cost or expense) resulting from you following the program and/or recommendations.

11. MEDICAL

- (1) You authorise us to obtain medical/ambulance assistance for you in the case of an accident or emergency involving you, and agree to reimburse us on demand for all costs we incur in obtaining such assistance.

12. PROGRAMS AND ACTIVITIES RUN BY THIRD PARTIES

- (1) From time to time third parties may, at your request, provide goods or services to you at the Facility, such as personal training. You acknowledge and agree that:
 - (a) We are not responsible for any such goods or services;

- (b) You must pay these providers directly for any such goods or services; and
- (c) We are not liable to you for any claim (including any action, proceeding, debt, demand, cost or expense) resulting from the provision of such goods or services to you.

13. EMERGENCIES AND NATURAL DISASTERS

- (1) We may be required to use all or part of the Facility during emergencies or natural disasters, including providing and coordinating support to those affected by bushfire or heatwaves. You may not be able to access or use all or part of the Facility during these periods.
- (2) We will use reasonable endeavours to provide you with notice of any Emergency Period in accordance with clause 19.5.

14. SUSPENSION OF YOUR MEMBERSHIP

Suspension by you

- (1) You may voluntarily suspend your membership (other than any Swimming Lessons to be provided under this Membership Agreement) from time to time for one or more periods for a minimum of seven (7) days, by giving us written notice. Suspension requests may take up to five (5) days to process. Suspension periods can be found under your membership type, and suspension periods reset each calendar year;
- (2) We may agree that a Suspension Period will commence up to one month prior to the date you give us written notice, if you provide us with a certificate from a qualified medical practitioner stating that you could not exercise during that period.
- (3) You may not suspend your membership if either you or we have given written notice terminating this Membership Agreement.
- (4) Unused suspension periods do not roll over

Suspension by FLC

- (5) We may suspend your membership from time to time for a period chosen by giving you written notice:
 - (a) If you fail to pay the Fees (or any instalment of the Fees), or part thereof, when due;
 - (b) If we decide that you have behaved in a way which is inappropriate, risky or detrimental to the safe enjoyment of the Facility by others;
 - (c) If we consider your use or access of the Facility poses a health risk to you or any other person and you have not provided us with the evidence as we reasonably require (including a medical certificate) to the contrary;
 - (d) If you breach any term of this Membership Agreement, and either;
 - (e) You do not remedy the breach within 10 Business Days of written notice from

- us; or
- (f) The breach is incapable of being remedied; or
- (g) If the facility is unavailable or unfit for use, including during an Emergency Period.

Effect of Suspension

- (6) During any Suspension Period
 - (a) You must not use the Facility under this Membership Agreement;
 - (b) You will not pay the Membership Fees for the Suspension Period; and
 - (c) You will pay the Suspension Fees for the Suspension Period.
- (7) We will make a pro-rata adjustment to your Membership Fees and, if applicable, credit you any part of the Membership Fees applicable for the Suspension Period.

15. TERMINATION OF YOUR MEMBERSHIP

Termination by you

- (1) You may terminate Membership Agreements:
 - (a) if your Membership Type is Direct Debit – at any time after the end of the minimum Term and giving us at least 28 Days' notice by providing us with written notice;
 - (b) If your membership type is 12 Months Upfront – by giving us at least 28 Days' notice by providing us with written notice. Membership will be terminated and refund of unused period, less associated cancellation and administration fees, via the City's refund means. Refunds can take up to six (6) weeks for reimbursement.
 - (c) All other upfront membership types cannot be terminated prior to end of term.
- (2) If you give Written notice, if we breach a material term of this Membership Agreement (other than during a Suspension Period) and do not remedy the breach within 20 Business Days after written notice from you;
- (3) If you have become sick or incapacitated and you provide us with a certificate from a qualified medical practitioner stating that you cannot exercise for a period of at least 3 months; or
- (4) Otherwise with our agreement in writing, which we may provide in our absolute discretion.

Termination by FLC

- (5) We may terminate Membership Agreement giving your written notice:
 - (a) If you fail to pay the Fees (or any instalment of Fees) when due;
 - (b) If we decide that you have behaved in a way which is inappropriate risky or

- detrimental to the safe enjoyment of the Facility by yourself or others;
- (c) If you breach any term of this Membership Agreement, and either;
 - (d) If you do not remedy the breach within 10 Business Days on written notice from us, or;
 - (e) If the breach is incapable of being remedied, or;
 - (f) If the Facility is unavailable or unfit for use.

Effect of termination

- (6) By you under clause 15.1 – this Membership Agreement will be terminated 28 days from date written confirmation has been received by the City. You must pay us any outstanding Fees for the period up to and including the date of termination;
- (7) By you under clause 15.2 or 15.3 – this Membership Agreement will be terminated on the date we receive written notice from you. You must pay all outstanding Fees up to and including the date of termination. We will refund any Fees you have already paid for the period after the date of termination;
- (8) By you under clause 15.4 – this Membership Agreement will be terminated on the date as agreed by you and us in writing. You may pay us any amount as agreed by you and us in writing;
- (9) By us under clause 15.5a, 15.5b and 15.5c – this Membership Agreement will be terminated on the date nominated by us in our written notice to you. You must pay us the total of all outstanding Fees for the period up to and including the date of termination plus the Early Exit Fee.
- (10) If your Membership Type is Paid in Full, we will not refund to you any Fees you have already paid for the period after the date of termination unless in accordance of clause 15.3 or 15.4 If your Membership Type is not Paid in Full, we will not refund to you any Fees you have already paid for the period after the date of termination, or;
- (11) By us under clause 15.5d – this Membership Agreement will be terminated on the date nominated by us in our written notice to you. You must pay us all outstanding Fees for the period up to and including the date of termination. We will refund to you any Fees you have already paid for the period after the date of termination. We will not refund to you the Joining Fee or any other Fees paid for the period up to and including the date of termination.

16. LIABILITY

- (1) By signing this Membership Agreement, you:
 - (a) Are declaring that you are medically and physically able to participate in physical activity, and understand and accept the inherent risks of undertaking exercise.
 - (b) Acknowledge and agree that you enter the Facility and surrounds and/or

participate in programs, utilise the equipment and/or take advantage of services offered by us absolutely at your own risk.

- (c) Acknowledge and agree that you release and discharge us from all liability for loss, damage or injury that you may sustain.
- (d) You indemnify us to the extent permitted by law in respect of any claim by any person as a result of or in connection with your Membership Agreement and/or participation in any of our activities.
- (e) This release and indemnity shall not apply to the extent that the loss, damage or injury which is the subject of the claim is caused, or contributed to, by the neglect act of omission by us.

17. DISPUTES AND COMPLAINTS

- (1) If a dispute arises concerning this Membership Agreement or you have any complaints about the Facility or us, please give us written notice of the dispute or complaint.
- (2) We will contact you as soon as possible to discuss and endeavour to resolve the dispute or your complaint.

18. PRIVACY

- (1) We will have access to personal information about you, such as your name and address.
- (2) We will only use, disclose and deal with your personal information in accordance with our privacy policy.
- (3) We may sometimes film or photograph the facilities. It is possible you may appear in the background. You agree to allow us to use your image in promotion and other business related materials.

19. NOTICES

Your contact details

- (1) Your contact details are set out in the Membership Form under Membership Details.
- (2) You must give us written notice of any changes to your contact details.
- (3) If we do not receive written notice from you and your contact details change, notice given by us to the email or other address we have on record for you will constitute valid notice under this Membership Agreement.

Notices from you to FLC

- (4) You may serve notices on us under this Membership Agreement by any of the following methods:
 - (a) By hand delivery to the Facility; or
 - (b) By email to leisure@fremantle.wa.gov.au

Notices from FLC to you

- (5) We may serve notices on you under this Membership Agreement by any of the following methods:
 - (a) By publishing the notice on our website and/or social media channels;
 - (b) By publishing signage in the centre;
 - (c) By email, to the address listed in the Membership Details (or to any email address you have notified us of in accordance with clause 18.2;
 - (d) By SMS, to the mobile number listed in the Membership Details (or to any mobile number you have notified us of in accordance with clause 18.2; and
 - (e) By post or delivery, to the address listed in the Membership Details (or to any postal or physical address you have notified us of in accordance with clause 18.2.

20. MISCELLANEOUS

Governing Law

- (1) This Membership Agreement is governed by the law applying in Western Australia. You and we submit to the non-exclusive jurisdiction of the Courts of Western Australia.

Membership Identification

- (2) A photo is required at the time of joining to verify the identity of the membership holder.
- (3) We reserve the right to refuse entry to the centre in the case you refuse to have your photo taken.

21. SERVICE DISRUPTIONS

Gym Closures

- (1) In the event of a planned facility closure or disruption to service, for example closure of the Gym for detailed cleaning and maintenance, we will always tell you in advance.
- (2) We may close off areas of the Gym for refurbishment for extended periods of time.
- (3) In the event of an unforeseen facility closure or disruption to service of more than 4 days without prior written notification, we may issue credits to memberships for lost time.
- (4) We will try, but cannot promise we will be able to tell you about any Gym closure in advance, such as unexpected Events.
- (5) We are not responsible if members cannot use our Gym because of an event caused by a natural force (such as a fire or a flood) or a road or building closure or something similar beyond our reasonable control. If this continues for more than 30 days, then either you or we may cancel this agreement immediately by written notice.

22. VISIT PASSES

- (1) A replacement card fee applies if the card becomes lost or damaged as outlined in the Fees and Charges for the current financial year
- (2) Multi visit passes are non-refundable;
- (3) Multi visit passes expire 12 months from the date of activation;
- (4) Parents accompanying children to the facility will be required to pay the appropriate entry fee;
- (5) Patrons are required to comply with the Leisure Centres' Conditions of Entry, including Watch around Water and Crèche Conditions of Use.

23. MEMBERSHIP SUSPENSION PERIODS

- (1) If your Membership Type is 'Direct Debit', 56 days per calendar year.
- (2) If your membership Type is 'Fly in Fly Out, 112 days per calendar year.
- (3) If your membership Type is 'Upfront';
 - (a) 1 month = Zero (0) days
 - (b) 3 months = Fourteen (14) days
 - (c) 6 months = Twenty-Eight (28) days
 - (d) 12 months = Sixty-Six (56) days
- (4) Unused suspension days do not roll over