

DEFINITIONS IN AGREEMENT

"Agreement" means this agreement as amended, supplemented or varied from time to time.

"Club" means Active8 Fitness, Health & Leisure.

"Business Day" means a day other than a Saturday, Sunday or Public Holiday in the State or Territory in which this Agreement is executed

"You/Your" from hereon in the Agreement means the member.

1. INTERPRETATION

- 1.1. A reference to an act of parliament includes a reference to a regulation made under that act and any amendment to or re-enactment of that act with regulations for the time being in force.
- 1.2. A reference to a party includes that party's executor's administrators, personal representatives, successors and assigns.
- 1.3. Headings in this agreement are for convenience and identification of clauses only and do not otherwise affect its interpretation.
- 1.4. Membership entitles You to use the standard Services for the Term. Any additional facilities, Services or privileges shall only be included as a Membership service without further cost to You at the sole discretion of the Proprietor. The standard Services available to You include use of the facilities of the Club, including attendance at rostered classes, use of weight training and cardio vascular equipment, one free fitness assessment and program upon joining.
- 1.5. You agree to abide by the rules of conduct, dress and use of equipment and Services that are displayed in the Club from time to time. Failure to do so could result in the cancellation of Your membership. You agree that the membership for the Term is non-refundable, and non-suspendable.
- 1.6. a) You hereby indemnify and agree to hold harmless the Proprietor, and all its officers, agents and employees in respect to any event which may occur whilst You are present at or utilising the Services or any facilities of the Club or pursuant to this agreement and which may arise from the negligence of the Proprietor, its officers, agents, employees or instructors or, without derogating from the foregoing, from whatsoever other cause and which event result in any damage to property or any accident, injury or loss being suffered by or occasioned to You or any person in Your care and control.
b) You provide the above mentioned indemnity with the knowledge of and in recognition of possibility of injury or other damages connected with any form of physical activity usually undertaken by members utilising facilities and Services similar to those provided by the Proprietor at the Club.
- 1.7. The Proprietor shall have the sole responsibility of providing the Services. Membership of the Club entitles You to use the Services. However, any failure by You to use the Services does not absolve You from Your responsibilities under this Agreement and in particular (but without limitation) from the obligation to pay membership fees.
- 1.8. The rights of the members under the present contract are not transferable notwithstanding the Club reserves the right to offer transfers to Members under special circumstances at a fee to be advised from time to time and further transfers to existing Members or recent expiries are not permitted under and circumstances or events.
- 1.9. The Member represents and warrants to the proprietor (as a fundamental condition of this agreement) that she is medically able to participate in and undertake physical exercise and to use the Club and further represents and warrants that she is not aware of having any physical, medical, mental or health disability condition or disease which might be aggravated or worsened by physical exercise or which might or could result in deterioration of health if physical exercise is undertaken. The member agrees to take a fitness test if requested by the Proprietor. The member acknowledges that the Proprietor and its employees and agents offer no guarantee or warranty whatsoever that the program advice or facilities offered to the Member will have a beneficial effect or have been approved by any medical or other authority
- 10.10. The Company does not act as a bailee of any property of Members the Proprietor shall not be liable for the loss or damage to any property of the member arising out of any cause including the negligence of the Proprietor, its employees or agents
- 10.11. If You do not, within three (3) Business Days following the Due Date for a payment, make any payment due under this agreement then You shall pay to the Proprietor, in addition to the amount then due:
 - (ii) a sum equal to five (5%) of the unpaid or late paid instalment as liquidated damages which is a true indication of the loss which will be incurred by the Proprietor as a result of such late payment and;
 - (iii) all any further costs of collection incurred by the proprietor or its representatives, including (without limitation) collection agency costs, court costs, solicitors costs on a solicitor /client basis, together with interest on the outstanding amounts at the rate allowed by the court from time to time and all other reasonable costs of recovery of the outstanding amount.
- 10.12. When any payment due under this agreement has been agreed to be paid by way of direct debit. You hereby agree:
 - 10.12.1.1 that You will not close any bank account whilst it is the nominated account;
 - 10.12.1.2 You will maintain an appropriate level of funds in Your account
- 10.13. The Proprietor may elect to treat any situation where arrears of instalments continue for more than fourteen (14) consecutive days, as a cancellation by You or Your membership and to notify You accordingly. If Your membership is so cancelled then any sums paid to the date of cancellation shall be non-refundable and all payments still outstanding shall become immediately due and payable without the necessity for any formal notice or demand.
- 10.14. This Agreement shall be interpreted and enforced pursuant to the laws of the State or Territory in which this Agreement is executed and the Commonwealth of Australia.
- 10.15. Each party agrees to submit any disputes or claims under the Agreement to the jurisdiction of the courts of NSW and any courts that may hear appeals there from.
- 10.16. This agreement represents the entire agreement between You and the Proprietor in respect of Your Membership and supersedes all prior representation, agreements or understandings whether written or oral in respect of the subject matter hereof. You acknowledge that the use of the word "Club" in this agreement is not to be construed as creating any association of like interest with the Proprietor or any right to any voting rights in Your favour.
- 10.17. The Proprietor may assign its respective rights under and the benefit of this Agreement.
- 10.18. To the extent that any terms of this agreement may be inconsistent with the provision of the Trades Practices Act of the Fair Trading Act of the State or Territory where this agreement is executed, those terms shall be excluded from this Agreement.
- 10.19. Save where may otherwise be provided in this Agreement, the Proprietor's liability for any breach of this Agreement is, capable of limitation hereby limited to:
 - 10.19.1.1 the supply of the Services again: or
 - 10.19.1.2 the payment of the costs of having the Services supplied again; at the discretion of the Proprietor
 - 10.19.1.3 All implied warranties, terms and conditions shall, except where otherwise provided by statute, be excluded from this Agreement.
- 10.20. If any part of this Agreement is or becomes void or unenforceable, that part is or will be severed from this Agreement so that all parts that are not or do not become void or unenforceable remain in full force and effect and are unaffected by the severance.
- 10.21. No alteration to this Agreement or cancellation thereof nor alteration to the payment terms or billing arrangements contained herein can be made without the prior written notice of the Proprietor.
- 10.22. Notices required to be furnished by one party to another shall be in writing and addressed to the address of the addressee appearing in this Agreement.
- 10.23. You acknowledge that the Club is closed on Public Holidays.
- 10.24. You acknowledge that any lost and stolen property is at Your own risk.
- 10.25. You acknowledge that class times, and opening hours can be changed at the Proprietors discretion.