

# TERMS AND CONDITIONS

## OPERATIVE CLAUSES

**Warning:** This is an important document which affects your legal rights and obligations. Before commencing your Membership with us you must read the following Terms and Conditions. By becoming a Member, you confirm you have read, fully understand and agree to abide by the following Terms and Conditions.

### 1. WELCOME

1.1 These Terms and Conditions, the Membership Application and the Rules govern your rights and responsibilities as a Member.

1.2 Each Member is responsible for complying with this Agreement and the Rules.

1.3 By submitting a Membership Application, you agree to be bound by this Agreement and the Rules.

1.4 You hereby authorise us to arrange, through our own financial institution, to debit your account with all Membership Fees and associated fees and other amounts due by you under this Agreement.

1.5 This Agreement may be amended by us from time to time. The most recent version will be accessible at [www.vivaleisure.com.au](http://www.vivaleisure.com.au).

1.6 You are responsible for advising us of any change of name, address, other contact details, payment details and method and change of circumstance through the Online Portal. Documentation verifying a name change is required. Your mailing address will be used to determine your eligibility for promotions and other offerings. You can opt out of receiving promotional material by selecting the opt out button within the Online Portal

1.7 We may communicate with you via telephone call, SMS/text message or email from time to time. Such communication may continue for up to 24 months after your Membership ends unless you opt out of such communication via the Online Portal.

### 2. LEGAL STUFF

#### Definitions

2.1 In this Agreement, words in the 'item' column of the Reference Schedule have the same meaning given adjacent to them.

2.2 In this Agreement:

- (1) **Activation Fee** means the fee you pay to activate or reactivate your Membership.
- (2) **Administration Fee** means the fee of that name provided for in the Schedule of Fees from time to time.
- (3) **Agreement** means these Terms and Conditions, the Schedule of Fees and the Membership Application as amended from time to time.
- (4) **Business Day** means a day that is not a Saturday, Sunday or any other day which is a public holiday or a bank holiday in the Australian Capital Territory.
- (5) **Cancellation Fee** means the fee of that name provided for in the Schedule of Fees from time to time.
- (6) **Change of Membership Fee** means the fee of that name provided for in the Schedule of Fees from time to time.
- (7) **Club** means the facilities owned or operated by us from time to time.
- (8) **Direct Debit Decline Fee** means the fee of that name provided for in the Schedule of Fees from time to time.
- (9) **Fixed Term** means a Membership with a predetermined fixed duration.

(10) **GROUNDUP** means a Club branded Ground Up offering services which include but are not limited to reformer pilates, mat pilates, barre and yoga.

(11) **GST** means any goods and services tax, value added tax or sales tax imposed on the sale or supply of goods, services and rights including but not limited to a tax imposed by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and the related imposition Acts of the Commonwealth.

(12) **Home Club** means the Club nominated as your Home Club as per your Membership Application and the Online Portal.

(13) **Including** means including without limitation.

(14) **Join Date** means the date you submit to us a Membership Application.

(15) **Junior Membership** means the Membership applicable to persons aged between 13 and 17 (inclusive).

(16) **Member** means the person entering into this Agreement with us and referred to throughout this Agreement as 'I', 'my', 'you' or 'your'.

(17) **Member ID Application** means the smart device app provided by us and its subsequent versions from time to time.

(18) **Membership** means your membership with us as governed by this Agreement.

(19) **Membership Application** means the paper or electronic form to provide us with details to activate the Membership.

(20) **Membership Fees** means the fees due to be paid by you to us under your Membership Plan.

(21) **Membership Plan** means the type of Membership you have elected in your Membership Application.

(22) **No Show Fee** means the fee of that name provided for in the Schedule of Fees from time to time.

(23) **Online Portal** means the Member's portal at [www.vivaleisure.com.au/members](http://www.vivaleisure.com.au/members), and/or <https://members.groundup.studio/members/> and/or the Member ID Application.

(24) **Orientation Manual** means the manual of that name available at the Website.

(25) **Parent/Guardian Approval Form** means the approval supplied by a parent and/or guardian of the holder of a Junior Membership.

(26) **Periodic Membership** means a Membership that is not a Fixed Membership.

(27) **Related Entities** has the meaning it has in the *Corporations Act 2001* (Cth).

(28) **Rules** means any Rules, in addition to this Agreement, that we reasonably deem to be necessary or convenient for the administration of the Clubs and that are notified to you and your guests, including any rules posted on the Website (if any) or in a Club.

(29) **Schedule of Fees** means the schedule of fees which may apply from time to time as provided for on the Website and as amended by us from time to time.

(30) **Staff** means employees, consultants, contractors or agents engaged by us who work at the Clubs.

(31) **Start Date** means the date nominated in the Membership Application.

(32) **Surcharge Fee Rate** means the rate specified in the Schedule of Fees from time to time.

- (33) **Suspension Fee** means the fee of that name provided for in the Schedule of Fees from time to time.
- (34) **Termination Fee** means the fee of that name provided for in the Schedule of Fees from time to time.
- (35) **Terms and Conditions** means the terms and conditions contained in this document, as varied from time to time.
- (36) **Transfer Fee** means the fee of that name provided for in the Schedule of Fees from time to time.
- (37) **Unauthorised Entry Fee** means the fee of that name provided for in the Schedule of Fees from time to time.
- (38) **Us** means Viva Leisure Memberships Pty Ltd ACN 618 752 819 and its Related Entities and referred to throughout this Agreement as 'us', 'our' or 'we'.
- (39) **Website** means [www.vivaleisure.com.au](http://www.vivaleisure.com.au) or <https://www.groundup.studio/>.

### 3. **ARE THERE ANY RESTRICTIONS ON JOINING?**

#### **Fit for Exercise**

- 3.1 You must not undertake exercise within a Club:
- (1) unless you reasonably believe based on reasonable grounds known to you that you are fit and able to undertake active exercise;
  - (2) that is contrary to advice given to you from a doctor, Allied Health, any medical professional or from advisory papers supplied with any medicines you are taking; or
  - (3) whilst you are carrying an injury or have reasonable grounds to suspect you are carrying an injury.
- 3.2 If you are suffering from any injury or illness and wish to undertake limited exercise within a Club, you must notify Staff before commencing any exercise of that illness or injury and sign a disclaimer in favour of us in respect of any damage of injury you might suffer from exacerbating, complicating or suffering consequential injury flowing from that exercise or flowing from that illness or injury.
- 3.3 You agree to use our Clubs, products and services with due care and reasonable skill and on the condition that if you have any difficulty using any equipment, that you will cease using that equipment unless and until you have notified Staff and been given guidance on the use of that equipment and you have been given approval by Staff to continue using that equipment.
- 3.4 Should you injure yourself, or get hurt while utilising our Clubs, facilities, products and/or services, you will immediately cease exercise and notify Staff. It is a condition of entry into and use of a Club that you must take full responsibility for your actions, to exercise within your strength and conditioning and that you indemnify us against any costs, losses or damages we may suffer in relation to your actions or injury whilst attending a Club.
- Minimum Age**
- 3.5 A person must be 13 years or older to become a Member. Any Member under the age of 18 must have a parent or guardian provide approval for their Membership Application. Approval must be given via the Parent/Guardian Approval Form that will be sent via email following receipt of your Membership Application or by signing a hard copy of the Membership Application. All members under the age of 18 must abide by the Junior Membership conditions of entry (separately provided and which are incorporated herein in full for each such Member under the age of 18).
- 3.6 Junior Memberships are only available to Members between the age of 13 and 17 (inclusive). Once a Member turns 18 the Membership will automatically transfer over to the equivalent adult membership and Membership Fee increases may apply. If you do not want to continue your Membership under the new terms you must cancel your

Membership with at least 28 days' notice prior to your 18th birthday.

### 4. **WHEN DOES MY MEMBERSHIP COMMENCE?**

#### **Fixed Term and Periodic Membership**

- 4.1 Your Membership commences on the Start Date.
- Before commencing exercise**
- 4.2 Before your first attendance at a Club to use its facilities and at any other time reasonably requested by Staff, you will be required to complete a pre-exercise form. In completing that form, you represent that:
- (1) the information you provide us is:
    - i. accurate and complete in all material respects;
    - ii. based on actual grounds known to you; and
  - (2) you have not received advice that would indicate to a reasonable person that there are grounds to suspect any of the information you have given to us is not accurate or complete in all material respects.
- 4.3 You agree to follow all instructions provided to you in the Orientation Manual and by Staff.
- ### 5. **CAN I CHANGE MY MIND?**
- 7 Day Cooling Off Period**
- 5.1 You may cancel your Membership any time before 5.00pm on the 7<sup>th</sup> Day following the Join Date.
- 5.2 Cancellation must be completed through the Online Portal.
- 5.3 If you exercise your cooling-off rights under clause 5.1, we will refund any fees already paid by you excluding the Activation Fee and Administration Fee.
- ### 6. **WHEN DO I PAY?**
- Fixed Term**
- 6.1 If your Membership Plan is for a Fixed Term then you pay your Membership Fees either:
- (1) on the Join Date in full; or
  - (2) by instalments paid in advance by direct debit for the duration of the Fixed Term commencing on the date specified in the Membership Application.
- Periodic**
- 6.2 If your Membership Plan is a Periodic Membership, you agree to pay your Membership Fees fortnightly in advance via direct debit commencing on the Start Date.
- General**
- 6.3 At the expiry of the Fixed Term direct debit Membership Plan, unless you apply for another type of Membership Plan, your Membership Plan will be automatically transferred to a Periodic Membership and you will be liable to pay your Membership Fees for the Periodic Membership fortnightly in advance by direct debit. You acknowledge those Membership Fees and associated terms and conditions may be varied in accordance with this Agreement.
- 6.4 At the end of the Periodic Membership term, your Membership Plan will be automatically renewed for a further Periodic Membership and you will be liable to pay your Membership Fees fortnightly in advance via direct debit commencing on the date your Periodic Membership term ends.
- 6.5 If your Membership Plan requires you to meet certain eligibility criteria (e.g. a Student Membership) and you become ineligible to hold that Membership Plan, your Membership Plan will be automatically renewed for a similar Membership Plan which you are eligible for, using the existing payment methods provided to us. We will provide you with 14 days' notice prior to this change.
- 6.6 If you do not want your Membership Plan to be automatically transferred or renewed then you must provide us with

notification of cancellation in accordance with these Terms and Conditions via the Online Portal.

#### **Direct Debit**

- 6.7 You must complete a Direct Debit Authority (**DDA**) when submitting your Membership Application for your Membership. By ticking and submitting the DDA you authorise us to debit all Membership Fees and any other fees that may be outstanding from the nominated account or credit card via instalments in advance.
- 6.8 You agree that it is your responsibility to have sufficient credit in the nominated account/s so that payment is made to us on time and in full at the time the payment is processed. A Direct Debit Decline Fee will apply should your payment be declined.
- 6.9 We accept no liability to you for drawing funds under your DDA to meet liabilities under this Membership Agreement, including without limit, any additional charges imposed by your financial institution due to insufficient funds or credit in your nominated account/s.
- 6.10 If the payment date falls on a day that is not a Business Day then the direct debit may occur on the first Business Day immediately following the day the payment was to be made.
- 6.11 Failure to provide a DDA and set up a direct debit may result in the immediate termination of this Agreement by us.

#### **Increases in Membership Fees**

- 6.12 Fees payable by you in accordance with this Agreement increase in cost by 2% as of 1 July each year. This will only apply to Memberships active prior to 1 July.
- 6.13 If you choose to pay your Membership Fees with a credit card, you will be charged surcharge fees at the Surcharge Fee Rate.
- 6.14 In addition to the above, we reserve the right to change the Membership Fees from time to time.
- 6.15 We will provide you with at least 14 days written notice of the changes before any proposed change takes effect. We will email or post you any such notice to the last known address in our records.
- 6.16 If you do not wish to accept the proposed changes, you may cancel your Membership without additional penalty provided that you notify us in writing within 14 days of receiving our notice. Ordinary cancellation fees continue to apply in accordance with clause 7.
- 6.17 If you do not cancel your Membership then your Membership will be varied and continue in accordance with any changes notified to you from the expiry of the period of the notice to you or the effective date notified, whichever is the later.

#### **GST**

- 6.18 All Membership Fees are inclusive of any applicable GST. The Member is responsible for any additional costs, charges, taxes, claims or other liabilities (including any applicable fringe benefits tax) arising from their use of the Clubs or any other goods or services offered or provided in connection with their Membership.

#### **Schedule of Fees**

- 6.19 The fees payable in accordance with this Agreement and listed in the Schedule of Fees (not including Membership Fees) will change from time to time, as deemed necessary by us. Refer to the Website for the latest Schedule of Fees.

#### **7. HOW DO I CANCEL MY MEMBERSHIP?**

- 7.1 If your Membership Plan is Fixed Term (paid in full) or Periodic Membership, then you may cancel this Agreement at any time however:
- (1) you must give a minimum of 28 days notice (in advance) of your intention to cancel via the Online Portal;
  - (2) you are not entitled to a refund of any Membership Fees paid; and

- (3) no cancellation fees apply.

- 7.2 If your Membership Plan is Fixed Term (paid by instalments), then you may cancel this Agreement at any time before the expiry of the Fixed Term, however:

- (1) you must give a minimum of 28 days notice (in advance) of your intention to cancel via the Online Portal;
- (2) all payments due as at the date of cancellation must be paid in full; and
- (3) you must pay the then applicable Cancellation Fee.

#### **Ongoing**

- 7.3 Your Membership is otherwise ongoing and expires at the earliest of:

- (1) the termination of your Membership by us in accordance with this Agreement; or
- (2) the date 28 days after you provide notice in accordance with this clause 7.

#### **8. CAN I CHANGE MY MEMBERSHIP?**

- 8.1 You may change your Membership (excluding GROUNDUP Memberships), including changing your:

- (1) Membership Plan; or
- (2) Home Club,

by notice to us through the Online Portal. Any change to your Membership may occur a Change of Membership Fee (as well as the applicable increase or decrease in Membership Fees), as may be applied by us in our sole discretion from time to time.

- 8.2 You may change your GROUNDUP Membership, including changing your:

- (1) Membership plan; or
- (2) Home Club,

by notice to us in writing. Any change to your Membership may occur a Change of Membership Fee (as well as the applicable increase or decrease in Membership Fees), as may be applied by us in our sole discretion from time to time.

#### **CAN I SUSPEND/PAUSE MY MEMBERSHIP?**

- 8.3 You can suspend your Membership at any time on the following terms:

- (1) providing no notice of cancellation has been provided;
- (2) for a minimum period of seven (7) days;
- (3) any suspension will incur the Suspension Fee which must be paid upfront and prior to commencement of suspension; and
- (4) all Membership Fees must be paid up to date at the time of your notice of suspension.

- 8.4 During any suspension made in accordance with this Agreement, the Fixed Term is extended for the length of the suspension. You are not able to cancel your Membership during a suspension.

#### **9. WHAT HAPPENS IF I GET SICK?**

- 9.1 If you are unable to use our Clubs by reason of temporary physical incapacity, for a period of more than seven (7) consecutive days, you may suspend your Membership for up to three months within any 12 month period by notice to us through the Online Portal accompanied by a verifiable medical certificate. You will not be charged Suspension Fees under clause 9.

- 9.2 You must provide a medical certificate if you wish to reactivate your Membership prior to the expiration of a medical suspension.

9.3	If you wish to suspend your Membership for longer than three months within any 12 month period then clause 9 applies.	10.5	If we suspend or cancel your Membership, you must pay all your Membership Fees up to the date of the suspension or cancellation and you must pay the applicable Suspension Fee or Cancellation Fee.
9.4	If you are unable to use our Clubs by reason of permanent physical incapacity, you may cancel your Membership by requesting it via the Online Portal and uploading a verifiable medical certificate. If:	10.6	You agree to pay us any costs we incur (including our legal costs on a solicitor and own client basis) incurred by us in enforcing any rights we have under this Agreement.
	(1) your Membership Plan is Fixed Term (paid in full) you will be entitled to a refund of any unused prepaid amount less an Administration Fee;	<b>11.</b>	<b><u>HOW DO I ACCESS THE CLUB FACILITIES?</u></b>
	(2) your Membership Plan is Fixed Term (payable by instalments) we will put a stop to the direct debit payments as soon as possible after notice is received through the Online Portal, but you will be required to pay the Membership Fees to the date of notification; or		<b>General</b>
	(3) the Membership Plan is a Periodic Membership, we will put a stop to the direct debit payments as soon as possible after notice is received through the Online Portal, but allowing us to deduct your Membership Fees to the date of notification.	11.1	Your Membership entitles you to access to and use of the Clubs and their facilities in accordance with this Agreement and the entitlements of your Membership Plan during their advertised opening times which may change from time to time at our discretion. To gain entry into one of the Clubs:
9.5	Your Membership will terminate automatically on your death. We will terminate your account on receipt of notification of your death, providing we receive reasonable evidence of the same. You will not be charged fees in the event of your death.		(1) you must have a valid access pass or Member ID Application and present it for admission;
<b>10.</b>	<b><u>WHEN CAN WE CANCEL YOUR MEMBERSHIP?</u></b>	11.2	Entry to a Club is subject to availability and we reserve the right to refuse entry to any Member if it would result in the Club exceeding any patron limits set for the venue by any government or regulatory authority.
10.1	Your Membership is conditional on your compliance with the terms of this Agreement (including the prompt payment of the Membership Fees) and your compliance with the Rules.	11.3	We (and our Staff) have the discretion to refuse entry to any Member at any time if, in our reasonable opinion, the Member has not or will not comply with this Agreement or the Rules, or the refusal is necessary or convenient for the orderly operation of the Club or the safety or comfort of other Members, guests and Staff.
	<b>Failure to pay Membership Fees</b>		
10.2	If you do not fully pay your Membership Fees on the due date, we may:	11.4	If your access pass is lost, stolen or otherwise missing, then you must report that to your Home Club as soon as practical after learning of the fact. We will replace a lost, stolen or otherwise missing access pass for the Activation Fee. There is no cost to replace your access pass by using the Member ID Application instead.
	(1) immediately suspend your Club access until your payments are up to date; and		<b>Personal Training</b>
	(2) continue to debit your nominated account without notice along with any dishonour fees that apply, until we have received the total amount you owe us;	11.5	Personal trainers operate separately to us under a licence agreement between us and them to utilise the Clubs to undertake personal training services. Members must not utilise personal training at a Club provided by any person other than a personal trainer licensed by us.
	or		
	(3) terminate your Membership, along with charging you any Termination Fee that may apply.	11.6	Personal training sessions are an opt-in service for an additional fee, and are subject to additional terms and conditions and costs as agreed between you and the personal trainer.
	<b>Bad Behaviour</b>		
10.3	We reserve the right to suspend or cancel your Membership immediately:	11.7	We take no responsibility at all for any personal trainer's:
	(1) if, in our opinion, you do not behave in a correct and orderly manner, respecting the entitlement of all patrons to use the Clubs in peace and without disturbance or disruption by you;		(1) actions or omissions; or
	(2) if you do not comply with the reasonable directions of our Staff;		(2) services,
	(3) if you misuse our products, services, or facilities or use them for purpose other than the use for which they were designed or intended;		or any injury or loss you may suffer as a result of the same.
	(4) if you are within the premises of a Club or its surrounds under the influence of drugs or alcohol;	11.8	<b>Group training sessions</b>
	(5) if you are abusive or aggressive to Staff or other patrons or act in a manner that is lewd or provocative;		You will incur a No Show Fee for any pre-booked classes (excluding GROUNDUP classes) to which you do not attend as booked by you or do not cancel with at least 24 hours notice.
	(6) if you do not adhere to the terms of this Agreement; or	11.9	You will incur a No Show Fee for any pre-booked GROUNDUP classes to which you do not attend as booked by you or do not cancel with at least 4 hours notice.
	(7) if any declaration you make concerning your age, health or proclivity to injury is false, misleading or otherwise deceptive.		<b>Access during certain times</b>
10.4	For the purposes of clause 11.3, a Staff's statement that you have acted in a way mentioned in clause 11.3, is evidence of you doing so.	11.10	Individual Clubs may vary their opening hours, but you acknowledge that Clubs can be closed due to public holidays, general or urgent maintenance or upgrades.
	<b>General</b>	11.11	So far as is practical, these dates and times will be displayed within the Clubs or on our Website for your attention.
		11.12	We reserve the rights to vary or change classes and services, including for reasons of seasonal conditions,

participation rates, Staff availability and maintenance requirements of the building. There are no refunds or credits issued for such days.

### **Lockers and Possessions**

- 11.13 You agree that the premises of each Club is a physical training facility, within which areas dedicated to physical training (including any pool, sauna, spa or like area) are not areas into which it is appropriate to take bags or anything of value, and that anything of value you bring onto the premises of any Club is at risk and that risk is yours alone. You are to ensure that all your personal items are stored in a safe place.
- 11.14 We strongly recommend that you do not take bags or anything of value onto the premises of any Club. We have no responsibility to provide you with a secure place to leave any such items and do not accept responsibility for items which are lost, misplaced or stolen from within or outside of the lockers or any other area of a Club.
- 11.15 Lockers are provided for the convenience of Members and guests within some of the Clubs and whilst some lockers have locks and keys, you agree that those lockers are not secure and that we do not represent them as being secure.
- 11.16 All bags brought onto Club premises are at your own risk and must be kept in a locker (unless you are at a service area outside the dedicated exercise areas).
- 11.17 Under no circumstance can bags be taken onto areas dedicated to exercise.
- 11.18 Lockers are only supplied for you to store your personal items whilst using the facilities of the Club. This is done at your own risk absolutely. These lockers under no circumstances are to be used as storage outside of the hours that you are using the facilities of the Club.
- 11.19 You must not bring onto any Club premises any hazardous items including flammable goods, gas cylinders, acids and poisons, lithium batteries, bleaches, paints and sharp objects (metal cutlery, letter openers, razor blades) or anything that can be used as a weapon.

### **Access by Non-Members when Club is unstaffed**

- 11.20 No Member is permitted to bring or allow a non-member into a Club without Staff permission or during any period when there are no Staff present or hours when the Club is not formally open. If you breach this clause then:
- (1) you accept responsibility and liability for any injury, loss or damage attributed to the non-member;
  - (2) the act of bringing a non-member into a Club constitutes an automatic acceptance by you of an Unauthorised Entry Fee for the non-member. The Unauthorised Entry Fee, in addition to the relevant transaction fees, will be charged to you by a deduction from your nominated payment method as part of the next instalment; and
  - (3) we may decide to cancel your Membership.

### **12. CHANGES TO THIS AGREEMENT OR CLUB RULES**

- 12.1 We reserve the right at all times to vary this Agreement and the Rules, in any way including by:
- (1) opening new gyms or other facilities;
  - (2) closing or ceasing to operate Clubs or other facilities;
  - (3) changing the way Clubs or other facilities are operated, including contracting any third party to provide such facilities or any goods or services;
  - (4) varying the hours of operation of any Club or other facility;
  - (5) varying the offering of any Club including changing classes or fitness activities offered by us;
  - (6) varying the layout, location or other aspects of the Club including the types of facilities that are available and the times during which they are available; and

- (7) imposing restrictions on the use of Clubs, facilities, goods or services by a Member or group of Members as may reasonably be deemed by us to be necessary or convenient for the orderly administration of the Club.

12.2 We will use reasonable endeavours to advise you of any material changes including by publishing the changes on the Website and/or through the Online Portal.

12.3 If we close any or all Club facilities or gyms, or amend this Agreement or the Rules in a way that deprives you substantially of the intended use of a Fixed Membership (paid in full), you will have the option of cancelling your Membership and receiving a pro-rata refund of your Membership Fee for the remaining period of the Membership.

12.4 You are not entitled to cancel your Membership or receive a refund for any closures for a period of up to and including four (4) weeks.

### **13. LIABILITY**

13.1 Subject to clause 17 and to the extent permitted by law, we exclude any liability to you or any other person in tort, statute, or in any other way for any injury, damage or loss of any kind whatsoever (including, without limitation, any liability for direct, indirect, special or consequential loss or damage) sustained by you and/or any other person, or for any costs, charges or expenses incurred by you, arising from or in connection with this Agreement and/or the services/products provided by us and any act or omission by us.

13.2 You agree that you will be liable for any injury, loss, or damage suffered by any person resulting from your use of our Clubs, facilities, products, services, or premises, and you agree to indemnify us against any costs, losses, damages or claims brought against us by any person in relation to such injury, loss, or damage.

### **14. CREDIT AND DEBIT REPORT AGENCIES**

14.1 If paying by direct debit, you authorise us to notify any debt collection or credit reporting agency of your default upon default by you regarding any obligation under this Agreement and any failure to remedy such default after notification.

### **15. ASSIGNMENT OF MEMBERSHIP**

15.1 We may assign or novate your Membership to a third party without your consent.

15.2 If we assign your Membership, we will provide you with 28 days written notice.

15.3 An assignment of your Membership does not void the terms of your Membership.

### **16. CONSUMER GUARANTEES**

16.1 The Australian Consumer Law gives you certain guarantees, including that our services will be rendered with due care and skill, and that the services will be reasonably fit for purpose.

16.2 If we breach those guarantees and you suffer reasonably foreseeable loss or damage, to the extent allowed by the Australian Consumer Law, we limit our liability to any one or more of the following (in our absolute discretion):

- (1) the replacement of any products supplied;
- (2) the repair of any products supplied;
- (3) a refund of the Membership Fees paid; or
- (4) payment of the cost of you obtaining equivalent services elsewhere.

16.3 The consumer guarantees may not be applicable in circumstances:

- (1) where you simply change your mind after the 7 day cooling off period;
- (2) if you cause the problem yourself by misusing our products or services; or

- (3) if you request a service to be done in a certain way against our advice or you are unclear about what you want,

and no refunds or compensation will be given in these circumstances.

16.4 We acknowledge that certain consumer protection legislation implies conditions or warranties into contracts for the supply of goods or services to consumers that cannot be excluded. Nothing in this Agreement is intended to exclude or restrict the application of such laws.

16.5 You agree that implied terms under consumer protection laws will not apply to this Agreement where the Membership has been obtained for business purposes, provided that the relevant provisions may by law be excluded.

## 17. **YOUR ACKNOWLEDGEMENTS AND ASSUMPTION OF RISK**

17.1 You understand and acknowledge that:

- (1) during such times that you frequent a Club or participate in an activity, be it internal or external, that you are doing so at your own risk;
- (2) the risk of injury from using equipment in a Club or participating in activities is significant, and may include permanent paralysis or death and you knowingly and freely assume all such risks;
- (3) we purchase or lease the fitness and exercise equipment from third parties and therefore do not manufacture any of this equipment, and we are providing recreation services and may not be held liable for defective products or equipment;
- (4) you will not hold us liable for any personal injury, damage to or loss of belongings which may arise from ours, or our Staff, members, clients, contractors or associates, negligence;
- (5) whilst at a Club you may at times be unsupervised and you assume all risks associated with using any fitness and exercise equipment and exercising alone without the aid and presence of any Staff;
- (6) subject to this Agreement, you are not otherwise entitled to bring any guests to a Club without our prior written consent, and if you do so, we may, at our sole discretion, suspend or cancel your Membership and the remainder owing on the Membership will be a debt due and payable to us;
- (7) we have the right to cancel or suspend your Membership and exclude you from the any Club (in each case, temporarily or permanently at our sole and absolute discretion) if you do not behave in an orderly manner, are under the influence of alcohol or drugs, are abusive to Staff and/or other members, use equipment improperly, dangerously or in a way that may lead to personal injury (whether to you or others) or you cause property damage of any kind,

or do not adhere to any of the terms of this Agreement; and

- (8) by becoming a Member, you understand that this Agreement is legally binding whether your use is limited to one visit (casual) or you are on a Membership Plan.

## 18. **RELEASE AND INDEMNITY**

18.1 You hereby release and indemnify us, our respective officers, affiliates, agents, Staff, employees, contractors, and other participants, with respect to any and all injury, disability, death or loss or damage to person or property, whether arising from our negligence or otherwise, that may arise out of or in connection with your use any of the equipment or the facilities provided by us, your participation in any activity, or any incident that occurs while using the Club or participating in any activity.

18.2 To the extent permitted by law, we hereby exclude any liability to you for any injury, loss or damage to you or your property sustained by you or any other person for any costs, charges and expenses incurred by you arising from or in connection with this Agreement and/or the services provided by us and including any act or omission by us.

18.3 You expressly agree that this release is intended to be as broad and inclusive as permitted by law. If any part of this Agreement is void, unenforceable or illegal in a jurisdiction it is severed for that jurisdiction. You acknowledge that the remainder of this Agreement has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected.

## 19. **PRIVACY**

19.1 You agree that the information which we collect and retain about you can be used in accordance with our Privacy Policy and that those terms are incorporated herein by reference.

19.2 Our Privacy Policy is available at: [www.vivaleisure.com.au](http://www.vivaleisure.com.au) (**Privacy Policy**).

## 20. **GENERAL PROVISIONS**

### **Governing Law**

20.1 This Agreement is governed by the law in force in the Australian Capital Territory and each party submits to the exclusive jurisdiction of the courts of the Australian Capital Territory.

### **Entire Agreement**

20.2 But for any additional agreement for private classes or personal training you may have entered into, this Agreement constitutes the entire agreement between you and us regarding your Membership, and its subject matter and supersedes all previous agreements, understandings and negotiations on that subject matter.