

Suncity Fitness PTY LTD

Agreement Terms and Conditions

for use and membership with
POWERPLAY Health & Fitness and
Awaken Pilates & Yoga Facilities

Unless otherwise agreed and stated in your Membership Form, this is an ongoing Membership Agreement. The agreement will continue until either you or we terminate it in accordance with this Membership Agreement.

Pursuant to the terms of your Direct Debit Authority, your Membership Fees will continue to be debited from your credit card or account until we cancel the arrangement by notifying the DD Provider following your termination of this Membership Agreement. If you terminate the Direct Debit Authority in a manner not described in this Membership Agreement, you may be liable to us for damages for breach of contract.

This agreement is subject to a 7-day Cooling-Off Period in accordance with clause 3.8(a). You understand that you can terminate this agreement in writing without reason within this 7-day period (use of a Cancellation Form in the form of Annexure 1 of this agreement is required), at which time you will be refunded all amounts paid pursuant to this agreement, less administration costs and other fees for any fitness services

POWERPLAY Health & Fitness and Awaken Pilates & Yoga Membership Agreement and Public Written Summary

When stated within this agreement, the Business 'Suncity Fitness Pty Ltd' refers to both 'Powerplay Health and Fitness' and 'Awaken Pilates and Yoga' unless specified.

MEMBERSHIP AGREEMENT SUMMARY

1 DESCRIPTION OF SERVICES

ACCESS TO POWERPLAY AND AWAKEN

Pursuant to this Membership Agreement, POWERPLAY Health and Fitness will provide access to our POWERPLAY Health and Fitness Facilities for the use by Members, 24 hours a day, 7 days a week.

Awaken ongoing members will be provided with access to both Awaken Pilates and Yoga during staffed hours and Powerplay Health and Fitness facilities for 24 hours a day, 7 days a week.

AWAKEN PILATES AND YOGA

- Subject to Your Membership Type including Awaken access, you acknowledge that Suncity Fitness Pty Ltd does not guarantee availability at the Awaken studio, it is your responsibility to book a place in the classes as and when you require that service.
- You acknowledge and agree that if a place is not available within the studio or you do not use the studio, Suncity Fitness Pty Ltd will not refund or credit your membership for non-use of the Awaken studio
- You acknowledge and agree to pay the Awaken Fees for use of the studio immediately and without offset. If you have elected for a direct debit, you authorise the Biller to deduct the Awaken Fees from Your nominated bank account.

2 TERM OF AGREEMENT

The Membership Agreement will be for an ongoing period of time until terminated in accordance with the provisions of this Membership Agreement.

The Membership Agreement is an Ongoing Agreement (rather than a fixed-term agreement basis) but Suncity Fitness Pty Ltd will not enter into a Membership Agreement for a term that exceeds the unexpired period of the longest lease term for the Suncity Fitness PTY LTD Facilities.

In this context, an Ongoing Agreement means a Membership that has an initial term, continues after the end of the initial term and ends only if and when the Member terminates the Membership Agreement in accordance with the provisions of this Membership Agreement.

3 COOLING-OFF PERIOD

The Membership Agreement is subject to a Cooling-Off Period and a Member may end the Membership Agreement at any time within 7 days after the day on which the agreement is signed (or 7 days after the day on which the fitness centre opens if it has not yet opened).

4 MEMBER FEES

The total amount of fees and charges payable is broken down as follows:

- (a) POWERPLAY Health and Fitness \$16.95 weekly Membership Fee charged at \$33.90 per fortnight or Awaken Pilates and Yoga \$54.95 weekly membership or another amount as specified in the Membership Form. This Membership Fee will be payable on an ongoing basis (debited from your account on a weekly or fortnightly basis on the Direct Debit Date) for the duration of your Membership with Suncity Fitness Pty Ltd and relates to the services provided by POWERPLAY Health and Fitness and Awaken Pilates and Yoga, as set out in the 'description of services' above.

- (b) \$30.00 Cooling-Off Administration Fee which reasonably reflects the administration costs incurred by Suncity Fitness Pty Ltd in administering this Membership Agreement in accordance with clause 3.8(a)(iv). This Cooling-Off Administration Fee will be payable (at the absolute discretion of Suncity Fitness Pty Ltd) if a member terminates their Membership Agreement during the Cooling-Off Period;
- (c) an Unpaid Fee for all fees in relation to the fitness services supplied by Suncity Fitness Pty Ltd under this Membership Agreement that a Member has not paid for at the termination of the Membership Agreement in accordance with clause 3.8 (including, but not limited to, amounts for all debts that the Member owes to Suncity Fitness Pty Ltd, which will continue to accrue until termination). This Unpaid Fee will be payable (at the absolute discretion of Suncity Fitness Pty Ltd) prior to this Membership Agreement being terminated for any reason whatsoever and will be calculated on a case-by-case basis;
- (d) \$10.00 Replacement Fee in the event we need to replace a Member's Swipe Card in accordance with clause 5.1(b);
- (e) \$250.00 Additional Person Fee for each additional person granted access to the Suncity Fitness Pty Ltd Facilities by the Member without P Suncity Fitness Pty Ltd's prior written consent in accordance with clause 5.2(b)(ii);
- (f) \$15.00 Dishonour Fee in the event that a Member dishonours any payment under the Membership Agreement in accordance with clause 6.2(b)(ii); and
- (g) 1.8% Credit Card Fee for each payment made by credit card in accordance with clause 6.

5 EXCLUSIONS, LIMITATIONS OR RESTRICTIONS

This Membership Agreement is subject to, among others, the following key exclusions, limitations or restrictions in relation to the fitness services provided by Suncity Fitness Pty Ltd:

- (a) access to the Suncity Fitness Pty Ltd Facilities is only provided to Members and you are not permitted to bring Non-Members into any Suncity Fitness Pty Ltd facilities and you accept full responsibility and liability on your behalf and agree to indemnify Suncity Fitness Pty Ltd from and against all claims and liabilities (see clause 5.2 of the Membership Agreement);
- (b) Members must be at least 12 years of age. If you are under the age of 18 years old, you are required to have authorisation from a parent/guardian to become a Member (see clause 3.4 of the Membership Agreement);
- (c) Members are entitled to suspend their Membership by completing a Suspension Form not less than 14 days prior to the proposed suspension date (see clause 3.6 of the Membership Agreement)
- (d) Your Membership applies solely to you and may not be sold, transferred to, or used by, any other person (see clause 3.7 of the Membership Agreement); and
- (e) Members may cancel their membership for medical reasons or other (see clause 3.8 of the Membership Agreement).

1. DEFINITIONS & INTERPRETATIONS

1.1 Definitions

In this Membership Agreement, unless the context requires otherwise:

- (a) Cancellation Form means the cancellation form you may use to cancel your Membership at Suncity Fitness Pty Ltd in accordance with clause 3.8, the form of which is contained in Annexure 1.
- (b) Club Rules means any applicable rules regarding conduct and use of the fitness equipment at each Suncity Fitness Pty Ltd Facility as amended from time to time.
- (c) Commencement Date means the date of this Membership Agreement as stated on the Membership Form.
- (d) Cooling-Off Period means the period during which you may terminate this Agreement pursuant to clause 3.8(a)(i), and in accordance with the Regulations.
- (e) Deceptive Practices means deceptive, misleading, false, or unfair advertising or marketing practices.
- (f) Direct Debit Authority means the direct debit payment method you authorise the DD Provider to establish for the purposes of paying your Membership Fees in accordance with clause 6.2(a).
- (g) Direct Debit Date means the date our Membership Fees are deducted from your account as specified in your Membership Form.

- (h) DD Provider means the direct debit service provider used by Suncity Fitness Pty Ltd and stated on the Membership Form and/or Direct Debit Authority.
- (i) False Representation means any false or misleading representations concerning the 'Suncity Fitness Pty Ltd' fitness services.
- (j) High-Pressure Selling Techniques means high-pressure selling techniques or harassment in relation to the supply of fitness services by Suncity Fitness Pty Ltd.
- (k) Home Club means the original Suncity Fitness Pty Ltd Facility at which you signed up your Membership or as otherwise nominated on your Membership Form.
- (l) Member means an individual holding a Membership with us.
- (m) Membership Fee means the amount stated in the Membership Form, to be debited to your account on a monthly basis on the Direct Debit Date.
- (n) Minor means a member under the age of 18 and includes the parent or guardian of that Member.
- (o) Non-Member means any person that is not a member.
- (p) OIP means a POWERPLAY Health and Fitness orientation and induction program.
- (q) Policies means our Privacy Policy, Club Rules (if applicable) and our other policies implemented from time to time and notified to you.
- (r) Regulations means the Fair Trading (Fitness Industry Code of Practice) Regulations 2020 (WA).
- (s) POWERPLAY Health and Fitness means POWERPLAY Health and Fitness a registered business name owned by Suncity Fitness Pty Ltd (ACN 638 059 695) and a reference to "we", "us" or "our", where the context permits, means POWERPLAY Health and Fitness. POWERPLAY Health and Fitness' business address is 158 Yanchep Beach Road, Yanchep, WA 6035 and its

email address is info@powerplayhf.com.au. Awaken Pilates and Yoga business address is Unit 2 156 Yanchep Beach Road, Yanchep, WA and its email address is info@awakenpilatesandyoga.com.au

- (t) Suncity Fitness PTY LTD Facility means each Suncity Fitness PTY LTD Facility as may be varied from time to time and provided at the following link <https://powerplayhf.com.au>.
- (u) Staffed Hours means the following staffed hours of the POWERPLAY Health and Fitness Facilities (the staffed hours are subject to change and will be notified at each POWERPLAY Health and Fitness Facility):

Monday - Friday: 8.30am - 11.30am.

Monday - Thursday: 4.00pm - 7.00pm

Saturday: 8.00am - 11.00am; and

Sunday/Public Holidays: Unstaffed

Awaken Pilates and Yoga will be open and staffed when the timetable states a class will be held. It will not be open to the members at any other time unless permitted by the owners.

- (v) Suspension Form means the suspension form you must complete in order to suspend your Membership at Suncity Fitness PTY LTD in accordance with clause 3.6, the form of which is contained in Annexure 2.
- (w) Swipe Card means the electronic card used to access the POWERPLAY Health and Fitness and Awaken Pilates and Yoga Facility.
- (x) Termination Date means the date you terminate your Membership in accordance with this Membership Agreement.

1.2 Interpretation

In this Membership Agreement, unless expressed to the contrary:

- (a) headings and bolding are for convenience only and do not affect the interpretation of this Membership Agreement;
- (b) the singular includes the plural and vice versa;
- (c) if a word or phrase is defined, cognate words and phrases have corresponding definitions;
- (d) a reference to:
 - (i) "you" refers to the person entering into this Membership Agreement;
 - (ii) a clause or sub-clause refers to a clause or sub-clause of this Membership Agreement;
 - (iii) a person includes a firm, unincorporated association, corporation, partnership or a government or statutory body or authority;
 - (iv) a person includes its legal personal representatives, successors and assigns;
 - (v) a party includes that party, its successors, permitted assigns, receivers, administrators, executors, substitutes

and liquidators;

- (vi) any document includes a reference to that document as amended, rectified or replaced from time to time and to any document so amending, rectifying or replacing the document; and
- (vii) a statute, ordinance, code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them; and
- (e) the meaning of a general word or phrase is not limited by specific examples introduced by "including", "for example" or similar expressions.

2 TERMS & CONDITIONS OF MEMBERSHIP

- (a) Your Membership at Suncity Fitness Pty Ltd is governed by this Membership Agreement. This Membership Agreement sets out the rights and obligations of Suncity Fitness Pty Ltd and the member in relation to the Membership.
- (b) By signing this agreement you acknowledge that you understand any Club Rules and accept and agree to comply with the terms of our Membership Agreement and Policies.
- (c) Unless otherwise stated on your Membership Form, the term of your Membership is for an indefinite period commencing on the Commencement Date and ending on the Termination Date.
- (d) We may change any provisions of this Membership Agreement from time to time with immediate effect, and you agree that such notice may be given by email to the email address provided by you to Suncity Fitness Pty Ltd or in any other manner Suncity Fitness Pty Ltd deems appropriate. If you do not agree to the new provisions, you may terminate this agreement in accordance with clause 3.8(c).
- (e) In the event of any conflict or inconsistency between this Membership Agreement, the Membership Form or any Policies, the documents will take priority in the order listed in this clause 2(e).
- (f) A Non-Member acknowledges and agrees that it has received and read a copy of this Membership Agreement and any proposed third party agreements (if applicable) prior to entry into this Membership Agreement.

- (g) Once a Member enters into this Membership Agreement, Suncity Fitness Pty Ltd will provide assigned copy of the Member's Membership Agreement (or the accompanying Membership Form) and any signed third party agreement (if applicable) that the Member has entered into within a reasonable timeframe upon receipt of a written request for this specific documentation from that Member.

3 MEMBERSHIP

During the term of your Membership, you are entitled to access the facilities and use the fitness equipment at any Suncity Fitness Pty Ltd Facility during Staffed Hours, and outside Staffed Hours in accordance with clause 5.4 (subject to clause 3.4).

This is an ongoing Membership Agreement which will continue until either you or we terminate it in accordance with this Membership Agreement.

The initial term of the Membership Agreement is ongoing unless Suncity Fitness Pty Ltd provides two months' notice of the end of the initial term, which will be provided where the unexpired period of the longest lease term of the various Suncity Fitness Pty Ltd Facilities (as may change from time to time upon entry into new or renewed leases by Suncity Fitness Pty Ltd) is concluding at the end of the two months' notice period or otherwise at the absolute discretion of Suncity Fitness Pty Ltd.

3.1 Member Acknowledgement

You acknowledge that:

- (a) your access to Suncity Fitness Pty Ltd Facilities including the gym and the fitness equipment is not exclusive and must be shared with other Members;
- (b) we do not give any representations or guarantees that you will have access to any particular fitness equipment at any given time;
- (c) we purchase or lease the fitness equipment from a third party and do not manufacture any of the fitness equipment or other equipment used in the Suncity Fitness Pty Ltd Facilities and accordingly do not give any warranties regarding the equipment that would usually be given by a manufacturer;
- (d) the Staffed Hours are subject to change without notice;
- (e) we may operate as an unstaffed facility at certain times. You are permitted to access and use the Suncity Fitness Pty Ltd Facilities outside of Staffed Hours only in accordance with clause 5.4; and
- (f) your Membership does not include access to personal trainers. Services of personal trainers can be obtained via separate contracts with our personal trainers. Any fees payable for these services will be in addition to your Membership Fees and will be payable directly to the personal trainers. You acknowledge and confirm the release given in clause 10(e) regarding the use of personal trainers.

3.2 Member Information Obligation

- (a) You warrant and represent to us that all information you have provided in your Membership Form is true, accurate and complete in all respects and is not misleading or deceptive in any way.
- (b) You agree to notify us of any changes to the details provided in your Membership Form as and when they occur.

3.3 Member's Physical Condition

You warrant that:

- (a) you are in good physical condition and have considered any necessary medical advice prior to embarking on a fitness program or exercise routine; fitness facility; and
- (b) if you are suffering from an illness, injury or long-term medical condition, or if you have not visited a fitness facility or gym in excess of 6 months as a result of an illness or injury, you will provide a medical certificate from your doctor permitting use of a
- (c) it is your responsibility not to use any equipment that may have an adverse effect on any medical or physical condition you may have.

You acknowledge that we do not provide medical advice in any way in connection with your use of the Suncity Fitness Pty Ltd Facilities.

By signing this Membership Agreement, you acknowledge and represent that to the best of your knowledge, you do not have any medical, physical or other disability or condition which may be affected or aggravated by, or which may result in any sickness, injury or death to you as a result of your use of a Suncity Fitness Pty Ltd Facilities.

3.4 Minimum Age

Members must be at least 12 years of age. If you are under the age of 18 years old, you are required to have authorisation from a parent/guardian to become a Member and your parent/guardian will be held responsible for your Membership Agreement.

Minors are governed by all terms and conditions of this Membership Agreement and additionally are subject to the following rules and restrictions:

- (a) Minors aged 12 - 13 years of age (inclusive) may only use the Suncity Fitness Pty Ltd during Staffed Hours. They must complete an induction before training commences and are not permitted to use free weights or weight machines.
 - (a) Minors aged 14 - 15 years of age (inclusive) may only use the Suncity Fitness Pty Ltd Facilities during Staffed Hours. They must complete an induction before training commences.
 - (b) Minors aged 16 - 17 years (inclusive) are permitted to access the Suncity Fitness Pty Ltd Facilities outside of Staffed Hours, once parents have granted permission and signed the required form, where the facility has 24/7 access.

3.5 Orientation & Induction Program

- (a) It is a condition of Membership at Suncity Fitness Pty Ltd that you complete an OIP prior to commencing your first exercise session.
- (b) The OIP focusses on, but is not limited to, access, layout, facilities and amenities, entry and exit areas and emergency procedures.



- (c) The OIP will be undertaken at a time convenient to Suncity Fitness Pty Ltd staff. You are responsible for arranging a suitable time with Suncity Fitness Pty Ltd staff to undertake your OIP prior to your first exercise session

- (d) We have the right to suspend or terminate your Membership if we are satisfied that the OIP has not been completed to a satisfactory standard prior to commencement of your use of the Suncity Fitness Pty Ltd Facilities.

3.6 Suspending of Membership

- (a) Except if you are a one month Member, you are entitled to suspend your Membership by completing a Suspension Form not less than 30 days prior to the proposed suspension date.
- (b) Membership suspensions are subject to the following conditions:
 - (i) you are entitled to suspend your Membership for up to 6 months at any onetime; and
 - (ii) your Membership suspension will cease on the date indicated in your Suspension Form, subject to the time limit conditions contained in sub-clause 3.6(b)(i) above.
- (c) During the suspension period you will not be charged a Membership Fee and the Suncity Fitness Pty Ltd Facilities will not be available for your use. Your Membership Fees will be charged on a pro-rata basis in accordance with clause 6 from the Direct Debit Date immediately prior to the recommencement of your Membership after completion of the suspension period.
- (d) Following completion of the suspension period you will be entitled to access the Suncity Fitness Pty Ltd Facilities as a Member in accordance with clause 5 and:
 - (i) (recurring Members) if you pay your Membership Fee on a recurring basis pursuant to clause 6.1, we will resume

charging your Membership Fee; and

- (ii) (advance payment Members) if you have paid your Membership Fee in advance pursuant to clause 6.3, we will extend the date your advance payment period ceases by the duration of the suspension period.

3.7 Transfer of Membership

Your Membership applies solely to you and may not be sold, transferred to, or used by, any other person.

3.8 Cancellation of Membership

Cooling Off Period

This Membership is subject to a Cooling-Off Period of 7 days which starts on the day when the Membership Agreement is signed and ends:

- (A) 7 days after the day on which your Home Club opens if your Membership Agreement relates to a Suncity Fitness Pty Ltd Facilities that is yetto open for trading to Members; or
 - (B) otherwise, 7 days after the day from when the Membership Agreement is signed.
- (ii) This Cooling-Off Period applies to new Memberships only and excludes renewals, renewals of cancelled memberships or additional Memberships.
 - (iii) To terminate your Membership during the Cooling-Off Period you must do so in writing, and where practicable complete a Cancellation Form, within the timeframe specified in 3.8(a)(i) and deliver the Cancellation Form in person at any Suncity Fitness Pty Ltd Facility during staffed hours, along with proof of your identity. If you are unable to attend a Suncity Fitness Pty Ltd Facility in person, you may email the Cancellation Form to us at from the email address provided on your Membership Form along with proof of your identity. from the email address

provided on your Membership Form along with proof of your identity.

- (iv) If you terminate your Membership during the Cooling-Off Period we will refund all monies (if any) paid by you prior to termination, and Suncity Fitness Pty Ltd reserves the right to charge a Cooling Off Administration Fee that reasonably reflects the administration costs incurred by Suncity Fitness Pty Ltd in administering this Membership Agreement that may be charged in our discretion in accordance with the Regulations and/or an Unpaid Fee in relation to the Membership Agreement.
- (v) The termination will take effect immediately if it occurs in accordance with this clause 3.8(a).

(b) Permanent Sickness or Physical Incapacity

If you suffer a permanent sickness or physical incapacity preventing you from using the Suncity Fitness Pty Ltd Facilities you may request immediate cancellation of your Membership by completing a Cancellation Form and providing a medical certificate from a qualified medical practitioner stating that you cannot use the fitness services supplied by Suncity Fitness Pty Ltd under this Membership Agreement because of your permanent sickness or physical incapacity.

Upon receiving the Cancellation Form and medical certificate, we will cancel your Direct Debit Authority and refund any payments (if applicable) made in advance from the date we received the Cancellation Form on a pro-rata basis on any outstanding pre-paid period within 7 days after the day on which termination takes effect (noting that termination may occur at any time within 30 days of receipt of the Cancellation Form as determined by Suncity Fitness Pty Ltd at its complete discretion). Suncity Fitness PTY LTD reserves the right to charge an Unpaid Fee in relation to the Membership Agreement.

(c) Cancellation Due to Other Reasons

Cancellation of your No-Lock in Membership for reasons other than those described in clauses 3.8(a) and 3.8(b) is subject to the following conditions:

- (i) you may terminate this Membership Agreement by completing the Cancellation Form and, where practicable, delivering the Cancellation Form in person at a Suncity Fitness Pty Ltd Facility, along with proof of your identity. If you are unable to attend a Suncity Fitness PTY LTD Facility in person, you may email the Cancellation Form to us at info@Powerplayhf.com.au or info@awakenpilatesandyoga.com.au from the email address provided on your Membership Form along with proof of your identity. We will respond to the termination request within 7 days and confirm the amount of the last payment under the Membership Agreement and the date that the termination takes effect;
- (ii) your Membership will be cancelled 30 days after you provide a signed Cancellation Form to a Suncity Fitness Pty Ltd staff

member in accordance with clause 3.8(c)(i), or 30 days after a Suncity Fitness Pty Ltd Facility receives your Cancellation Form where sent via email. We recommend you contact us by phone to let us know if you have emailed your Cancellation Form. We are not responsible for lost Cancellation Forms;

- (iii) your Membership Fees will be due and payable throughout the 30-day notice period (in addition to any outstanding Membership Fees and Unpaid Fees that you owe to Suncity Fitness Pty Ltd;
- (iv) you will have the same access rights to Suncity Fitness Pty Ltd Facilities under this Membership Agreement for the full 30-day period.
- (v) Suncity Fitness PTY LTD will cease any deductions under the Membership Agreement upon receipt of the last payment due under this Membership Agreement as specified by Suncity Fitness PTY LTD in accordance with clause 6.3(c); and
- (vi) Suncity Fitness PTY LTD must treat a notice of termination by the Member as a notice of any third-party agreement and, on receipt of the last payment due by the Member under the Membership Agreement, will immediately instruct any third party (if applicable) to cease deductions under any third party agreement. This provision does not cancel vitiate the Members obligations under clause 6.2.

(d) Cancellation of 12 Month Lock-in (Ongoing) Membership

Cancellation of your 12-month lock-in (Ongoing) Membership after the 12-month minimum term is complete will require notice in writing, any overdue payments must be paid in full before your cancellation request is actioned.

- (i) Your Membership contract is designated as an 'ongoing membership' on the front page you acknowledge that unless you provide notice of termination of your membership prior to the end of the minimum period your membership fees will continue to be deducted until you give us notice of your intent to end your membership.
- (ii) The notice period will exclude freeze or payment break time applied to your membership.
- (iii) Should you require to cancel prior to the completion of your 12-Month Minimum term, a one-off payment of \$250 or total fees remaining due within the minimum term, whichever is less in value, will allow your membership to be cancelled down as soon as payment is received.,

If you have paid in advance under clause 6.3 you may not cancel your Membership under this clause 3.8(c).

(e) Cancellation and Restriction of Membership by Suncity Fitness Pty Ltd

- (i) We reserve the right to terminate your Membership at any time upon 30days' written notice, or immediately if we determine in our absolute discretion that:
 - (A) you have not complied with clauses 5 or 6 of this Membership Agreement.
 - (B) we reasonably suspect you have engaged in any illegal activity at a Suncity Fitness Pty Ltd Facility.
 - (C) we have formed a genuine concern for your health and/or safety based on reasonable grounds; or
 - (D) you are in breach of any part of this Membership Agreement.
- (ii) If we cancel your Membership pursuant to this clause 3.8(d);
 - (A) (Recurring Members) if you pay your Membership Fee on a recurring basis pursuant to clause 6.1, your Membership Fees will be due and payable until the next Direct Debit Date;



- (B) (advance payment Members) if you have paid your Membership Fee in advance pursuant to clause 6.3, we will refund your Membership Fee on a pro-rata basis on any outstanding pre-paid period within 7 days after the day on which termination takes effect; and
- (C) (one month memberships) if you are a one month member who has paid their Membership Fee in advance, you will not be entitled to any refund

- (iii) Notwithstanding any provision in clause 3.8(d)(iii), if we cancel your Membership pursuant to this clause 3.8(d), Suncity Fitness Pty Ltd reserves the right to charge the member an Unpaid Fee in relation to the Membership Agreement (which, for the sake of clarity, includes may include all debts that the Member owes to Suncity Fitness Pty Ltd, which will continue to accrue until termination).
 - (iv) You will cease to have any access to any Suncity Fitness Pty Ltd Facility from the date we cancel your Membership in accordance with this clause.
- (f) Member may be liable for breach of contract

A Member may be liable for damages for breach of contract if the Member terminates this Membership Agreement in a manner not described in this Membership.

3.9 Novation

We reserve the right to transfer, assign, sell or novate your Membership, including this Membership Agreement, to another gym service provider where the gym facilities provided by the new owner of your Membership are:

- (a) on the same or substantially similar terms to your existing Membership under this Membership Agreement; and
- (b) are within a 6km radius of your Home Club.

4 Paid Up Front MEMBERSHIP

If you have agreed to a Paid-Up Front Membership in your Membership Form, all terms and conditions contained in the Membership Agreement apply to you, except for the following:

- (a) your Membership Fee must be paid in full and up-front, in person at a Suncity Fitness Pty Ltd Facility through our point-of-sale system;
- (b) your Paid-Up Front Membership fee is non-refundable, subject to the Cooling-Off Period, and the conditions provided in clause 3.8(d)(ii)(C); and
- (c) your Membership ceases on the date that is agreed upon following the Commencement Date. If you wish to continue your Membership following cessation of your Paid Up Front Membership you will need to re-apply for Membership in accordance with this Membership Agreement.

In the event of any inconsistency between the terms of this clause 4 and any other provisions of this Membership Agreement, the terms of this clause will prevail to the extent of any inconsistency if you hold a 5-Week Membership with us.

5 ACCESS AND CONDITIONS OF ENTRY

5.1 Acces

- (a) We agree to provide a Swipe Card system for entry and exit to the Suncity Fitness Pty Ltd Facilities and you agree that:
- (i) you must use your own Swipe Card to enter and exit a Suncity Fitness Pty Ltd Facility; and
 - (ii) your Swipe Card is non-transferrable and may not be used by any other person at any time, except in an emergency situation.
- (b) Swipe Cards are provided to you on sign up at no cost upon becoming a Member. If your Swipe Card is lost or stolen, you must report this to your Home Club immediately upon it coming to your attention. A Replacement Fee will be charged to you in the event we need to replace your Swipe Card.
- (c) Any misuse of the Swipe Card system may result in us suspending, cancelling or terminating your Membership in accordance with clause 3.8(d).

5.2 Access by Non-Members

- (a) Access to the Suncity Fitness Pty Ltd Facilities is only provided to Members and you are not permitted to bring Non-Members into any Suncity Fitness Pty Ltd Facility.

- (b) If we determine you have breached clause 5.2(a);
- (i) you accept full responsibility and liability on your behalf and agree to indemnify, hold harmless and release Suncity Fitness Pty Ltd from and against all claims, liabilities, injury, illness, loss or damage attributed to the Non- Member or the Non-Member's access, whether or not caused by any negligence of Suncity Fitness Pty Ltd.
 - (ii) you agree to pay to Suncity Fitness Pty Ltd is a \$250 noncompliance fee and an Additional Person Fee for each day, and for each person, granted access to the Suncity Fitness Pty Ltd Facilities by you, it being agreed that this amount represents a genuine pre-estimate of the loss suffered by Suncity Fitness Pty Ltd due to the breach of your obligations in this clause 5.2(a); and
 - (iii) we reserve the right to terminate your Membership in accordance with clause 3.8(d) if you breach this clause 5.2.

General Conditions of Entry

5.3 Dress Code

- (i) You must wear appropriate clothing while using the Suncity Fitness Pty Ltd Facilities, in the discretion of the Suncity Fitness Pty Ltd staff. Work clothes, boots and casual clothes that are not sportswear are not permitted.
 - (ii) You must wear appropriate enclosed sport shoes at all times while using the equipment or fitness area.
 - (iii) If you do not wear appropriate clothing or shoes, we may ask you to leave the Suncity Fitness Pty Ltd Facilities.
- (b) Use of equipment and facilities
- (i) You must complete an OIP in accordance with clause 3.5 prior to undertaking your first exercise session or using any equipment at a Suncity Fitness Pty Ltd Facility.
 - (ii) You must at all times follow the safe operating procedures and instructions on the equipment and/or as directed by Suncity Fitness Pty Ltd staff.
 - (iii) You must only use the equipment for its intended purpose/s.
 - (iv) If you cause any damage to the gym, the fitness equipment or any item of property at a Suncity Fitness Pty Ltd Facility,

you must notify us immediately and we are entitled, at our discretion, to charge you for the costs of repairing the damaged items or, if repair is not possible, replacement of the damaged items.

(c) Refusal of Entry

You may be refused entry or asked to leave if you:

- (i) act or engage in any activity which could cause damage to the gym, the fitness equipment or any item of property at a Suncity Fitness Pty Ltd Facility.
- (ii) do not follow any instruction or direction given to you by Suncity Fitness Pty Ltd staff concerning use of the equipment or personal conduct.
- (iii) act or engage in any activity which causes or threatens harm against Suncity Fitness Pty Ltd staff or other Members.
- (iv) act or engage in any activity which constitutes sexual harassment against Suncity Fitness Pty Ltd staff or other Members.
- (v) are under the influence of, or suspected to be under the influence of, any intoxicating substance or illicit substance while at any Suncity Fitness PTY LTD Facility; and/or consume, or are in possession of, any intoxicating substance or illicit substance while at any Suncity Fitness Pty Ltd Facility.

5.4 24 Hour Operation

If you attend a Suncity Fitness Pty Ltd Facility offering 24-hour operation, and you use a Suncity Fitness Pty Ltd Facility outside of Staffed Hours, you accept and acknowledge that:

- (a) you will not allow any Non-Members into the Suncity Fitness Pty Ltd Facility pursuant to clause 5.2 of this Membership Agreement; and
- (b) you will not inappropriately use the emergency system. You accept and agree to indemnify us for all costs associated with deliberately using the emergency system in an inappropriate manner.

5.5 Safety, Maintenance and Changes to Operations

We will at times be required to make changes to our operations and the operations of our Suncity Fitness Pty Ltd Facilities for the purposes of safety, maintenance and service demand. This may include:

- (a) closing part or all of a Suncity Fitness Pty Ltd Facility due to safety or maintenance requirements.
- (b) closing off part of the Suncity Fitness Pty Ltd Facility and equipment areas due to safety of maintenance requirements; or
- (c) changing operating hours to suit demand.

Where this occurs, we will endeavour to provide you with adequate and reasonable advance notice.

6 PAYMENT

6.1 Payment

- (a) You agree to, and must pay, the Membership Fees and other applicable fees in the amounts and frequency set out in your Membership Form:
 - (i) by using the DD Provider Direct Debit Authority payment method pursuant to clause 6.2, or
 - (ii) with our approval, by payment in advance pursuant to clause 6.3.

- (b) You acknowledge that at any time, we may change the DD Provider. You acknowledge, agree and consent to Suncity Fitness Pty Ltd assigning or novating all existing payment agreements to a new payment provider and providing your personal information, including but not limited to your payment details, to the new payment provider in accordance with this Membership Agreement and our Privacy Policy which is available on our website.
- (c) Suncity Fitness Pty Ltd will not charge a member a fee unless it has been disclosed to the Member in the Agreement Summary to this Membership Agreement and the fee may be charged under the Regulations.

6.2 DD Provider

- (a) Your Obligations
 - (i) Unless you pay the Membership Fee in advance pursuant to clause 6.3, you must sign a Direct Debit Authority with the DD Provider in favour of Suncity Fitness Pty Ltd which enables direct debit payments from an approved credit card or bank account in the amounts and frequency set out in your Membership Form. The Direct Debit Authority will set out any amounts payable by a Member to the DD Provider on top of any fees contemplated under this Membership Agreement.
 - (ii) You must ensure that your nominated credit card or bank account is able to accept direct debits and have sufficient funds available to pay the Membership Fees and any other applicable fees on each applicable Direct Debit Date.

- (iii) You acknowledge that the contract that you enter into with the DD Provider (or such other direct debit service provider in accordance with clause 6.1(b) as applicable) is a separate contract to this Membership Agreement and that any problems or issues that you have with the Direct Debit Authority should be raised directly with DD Provider. The DD Provider contract can be accessed electronically on the Suncity Fitness Pty Ltd website during the sign-up process.
- (iv) You must keep the Direct Debit Authority in place until 30 days after you have given us written notice to terminate your Membership pursuant to clause 3.8(c).
- (v) You acknowledge that we will continue to debit Membership Fees under the Direct Debit Authority until you or we cancel your Membership (and any Membership Fees and/or Unpaid Fees will continue to be owing regardless of your use of the fitness services).
- (vi) It is your responsibility to ensure the Direct Debit Authority is cancelled upon termination or expiry of your Membership.

(b) Dishonoured Payments

- (i) We will endeavour to notify you of any dishonoured or overdue payments by informing you via the contact information provided by you in your Membership Form or pursuant to clause 3.2.
- (ii) A Dishonour Fee will be charged to you in the event a payment is dishonoured.
- (iii) The rejected payment and Dishonour Fee remains due and payable by you and, if not settled within 2 days in person at your Home Club, will be re-debited to your account, until such time as any outstanding fees is paid.
- (iv) Additional fees and charges may be incurred by you for any dishonoured payments by DD Provider or your financial institution pursuant to your agreements with them.
- (v) Your Membership and access to the Suncity Fitness Pty Ltd Facilities will be suspended until such time as any outstanding fees are paid.
- (vi) If you fail to pay any amounts owing under this Membership Agreement on the due date for payment and this amount remains outstanding for more than 14 days, we will be entitled to contact a debt collection agency to collect the funds owing.

6.3 Payment in Advance

You may request to pay your Membership Fees in advance. We, at our sole discretion, reserve the right to accept or deny your request.

If we accept your request for advance payment, the following conditions apply.

- (a) you must provide full payment of one (1) year of Membership Fees; it being acknowledged that we are not permitted to accept prepayment of Membership Fees for a period greater than 12 months;
- (b) you are entitled to a Cooling-Off Period in accordance with clause 3.8(a) (where you are a new Member who has never previously held a Membership with us).
- (c) your advance payment is non-refundable after expiration of the Cooling-Off Period (if any) subject to the conditions provided in clause 3.8(d)(ii)(B); and

- (d) your Membership will automatically terminate after the agreed advance payment period ceases unless otherwise agreed by Suncity Fitness Pty Ltd.

6.4 Change of Payment Details

- (a) If you close the credit card account or bank account which is subject to the DirectDebit Authority, it is your responsibility to provide the DD Provider with a replacement Direct Debit Authority over another approved credit card or bank account prior to the next applicable Direct Debit Date.
- (b) Failure to provide a replacement Direct Debit Authority will constitute a breach of this Membership Agreement, the provisions of clause 3.8(d) will apply, and you will be liable to us for any unpaid fees, or fees we incur in connection with such breach.

6.5 Increased Charges

- (a) We reserve the right to increase your Membership Fees at any time. We agree to provide you with written notice of the changes either in person at a Suncity Fitness Pty Ltd Facility, or via email.
- (b) Any changes to your Membership Fees will be effective 30 days from the date we provide notice under clause 6.5(a). After this period, you authorise us and the DD Provider to debit the new Membership Fee amount from your account. If you do not agree to the new Membership Fees, you may terminate this Membership Agreement in accordance with clause 3.8(c).

7 Suncity Fitness Pty Ltd GENERAL RULES OF CONDUCT

7.1 High Pressure Selling Techniques Suncity Fitness Pty Ltd will:

- (a) not engage in High-Pressure Selling Techniques; and
- (b) take reasonable steps to ensure Suncity Fitness Pty Ltd staff do not engage in High-Pressure Selling Techniques.

7.2 Deceptive Practices and False Representations

Without limiting the Australian Consumer Law (WA), Suncity Fitness Pty Ltd must:

- (a) not use any Deceptive Practices.
- (b) not make any False Representation.

- (c) take reasonable steps to ensure that Suncity Fitness Pty Ltd employee's do not use Deceptive Practices; and
- (d) ensure that sufficient information is available to enable a member to make an informed decision in relation to the supply of fitness services by Suncity Fitness Pty Ltd.

8 PRIVACY

8.1 Personal Information

In this clause 8.1, a word or expression defined in the *Privacy Act 1988* (Cth) which is not otherwise defined in this Membership Agreement has the meaning given to it in that Act.

- (a) Suncity Fitness Pty Ltd must not use or disclose to another person (Suncity Fitness PTY LTD employees do not use or disclose to another person) personal information about a member obtained through Suncity Fitness Pty Ltd' business of supplying a fitness service to the Member unless authorised in writing by the Member or authorised or required under a written law.
- (b) You acknowledge that during the process of entering into a Membership Agreement with us, we will obtain access to your personal information. You authorise Suncity Fitness Pty Ltd to use and disclose your personal information for the purposes of giving effect to the fitness services contemplated by this Membership Agreement and in accordance with our Privacy Policy (subject to any applicable privacy law).
- (c) You acknowledge that in entering into the Direct Debit Authority

agreement with DDProvider in accordance with clause 6.2 (or any other direct debit service provider as applicable) you agree to provide DD Provider with your personal information which will be handled in accordance with the Privacy Policy of DD Provider.

8.2 Surveillance

For safety and security reasons we implement video and audio surveillance to monitor Suncity Fitness Pty Ltd Facilities. Surveillance is limited to the Suncity Fitness Pty Ltd Facility entry and floor areas only.

By signing this Membership Agreement, you acknowledge that when accessing a Suncity Fitness PTY LTD Facility you will be subject to video and audio surveillance and consent to such surveillance being taken and held by Suncity Fitness Pty Ltd.

9 LIABILITY OF PROPERTY

- (a) We will not be liable for any loss, theft or damage occurring to your personal items, vehicles or their contents. Any personal items left or stored at Suncity Fitness Pty Ltd Facilities are left or stored at your own risk.
- (b) Vehicles parked in or around the vicinity of our Suncity Fitness PTY LTD Facilities are parked at your own risk and we will not be liable for the theft or any damage occurring to the vehicle.

10 RELEASE AND INDEMNITY

- (a) You acknowledge and accept that while on the premises of any Suncity Fitness Pty Ltd Facility and while undertaking exercise and using the equipment, you are at risk of sustaining injury, permanent disability or death. Such risks may arise from:
- (i) slipping on wet flooring.
 - (ii) being struck by weights.
 - (iii) colliding with equipment, or other Members.
 - (iv) engaging in strenuous exercise and activities; and/or
 - (v) incorrect use of equipment or the Suncity Fitness Pty Ltd Facilities.
- (b) You acknowledge that any such injury may result not only from your actions but from the action, omission or negligence of others.
- (c) You acknowledge and agree that the risks contained in clause 10(a) are not exhaustive, and there are other unknown or anticipated risks from your use of the Suncity Fitness Pty Ltd Facilities that may result in injury, permanent disability or death.
- (d) You acknowledge that while every attempt is made to ensure that our Suncity Fitness PTY LTD Facilities are safe, there are some significant

and inherent risks involved in your use of the Suncity Fitness Pty Ltd Facilities. You assume all such risks and agree that you are attending and using the Suncity Fitness Pty Ltd Facilities voluntarily and entirely at your own risk.

- (e) You acknowledge that we are not liable to you for any injuries sustained while you are under the supervision of a personal trainer who is not an employee of Suncity Fitness Pty Ltd. If you engage your own private personal trainer, any liability for injuries sustained under the supervision of that personal trainer remains with that personal trainer and not Suncity Fitness Pty Ltd.

- (f) You agree to indemnify, hold harmless, and release Suncity Fitness Pty Ltd and all employees, volunteers, agents and officers thereof from and against all claims, liabilities, injury, loss or damage you may suffer or incur, including to a third party (including any minor or other person for whom you are responsible), arising from or connected in any way with your participation or attendance at or near any Suncity Fitness Pty Ltd Facility. Further, you agree not to bring or assert or allow to be brought or asserted any claim, demand, cause of action, proceeding, action or the like against Suncity Fitness Pty Ltd or any employee, volunteer, agent or officer thereof in contravention of this clause.

This clause 10 survives termination of the Membership Agreement.

11 COMPLAINTS

If you have any complaints regarding our service or any other issue regarding a Suncity Fitness Pty Ltd Facility you must complete a complaint form obtainable from Suncity Fitness Pty Ltd staff at any Suncity Fitness Pty Ltd Facility (or an electronic copy obtainable from Suncity Fitness PTY LTD by providing written request to Suncity Fitness Pty Ltd to receive such a complaint form). We will:

- (a) make a record of your complaint and inform you that we have received and recorded your complaint as soon as reasonably practicable after receiving a complaint; and
- (b) undertake every reasonable effort to resolve your complaint quickly and fairly.

12 REGULATIONS

The Regulations apply to this Membership Agreement and Suncity Fitness Pty Ltd will provide any document or information required to be provided by Suncity Fitness Pty Ltd or available under the Regulations (including a copy of the Regulations themselves) to a member free of charge in electronic form and/or in paper form on written request from the Member to provide any such document or information.

13 GOVERNING LAW

This Membership Agreement is governed by and construed in accordance with the laws of the State of Western Australia and the parties agree to submit to the non-exclusive jurisdiction of its courts.

14 SEVERABILITY

Any term or any part of this Membership Agreement that is or becomes illegal, void or unenforceable may be severed from this Membership Agreement and the remaining terms or parts of the terms of this Membership Agreement continue in force.

15 ENTIRE AGREEMENT

The terms of this Membership Agreement constitute the entire agreement between the parties.



CANCELLATION FORM

PERSONAL DETAILS

First Name: _____

Last Name: _____

Date of Birth: _____

Address: _____

Suburb: _____ Postcode: _____

Mobile No.: _____

Email: _____

CANCELLATION REASON

- 7 day cooling off period
- Permanent sickness/disability
- Other (Why are you cancelling?)
- Moving Area
- Requires Classes
- Not Satisfied
- Motivation
- Changing Gym
- Not Using Facility
- Financial
- Holiday

CONFIRMATION OF CANCELLATION

MEMBER SIGNATURE:

Signed: _____

Date: _____

Completing this Cancellation Form entitles you to cancel your Membership in accordance with clause

3.8 of the Membership Agreement.

You are entitled to cancel your Membership by completing this form:

- (a) within the 7-day Cooling-Off Period pursuant to clause 3.8(a);
- (b) at any time if you have suffered a permanent sickness or physical incapacity pursuant to clause 3.8(b); or
- (c) following the completion of a 30-day notice period pursuant to clause 3.8(c).

If you are cancelling your Membership on the basis of the Cooling-Off Period, your Membership will terminate immediately and you will no longer be entitled to use the Suncity Fitness Pty Ltd Facilities.

If you are cancelling your Membership by providing 30 days' written notice, your Membership will remain active for that 30-day period and you will be entitled to full use of the Suncity Fitness Pty Ltd Facilities during that time.

Cancellation of your Membership is subject to the terms and conditions contained in the Membership Agreement. In the event of any inconsistency between the terms of the Membership Agreement and the contents of this form, the terms of the Membership Agreement prevail to the extent of any inconsistency.

SUSPENSION FORM

PERSONAL DETAILS

First Name: _____
 Last Name: _____
 Date of Birth: _____
 Address: _____
 Suburb: _____ Postcode: _____ Mobile
 No.: _____
 Email: _____
 Home Club: _____

SUSPENSION DATES

Start Date: _____
 End Date: _____

PLEASE NOTE: The suspension end date is when your Membership will be reactivated, giving you access to all Suncity Fitness Pty Ltd Facilities. This also reactivates your direct debiting arrangement in accordance with the Membership Agreement.

CONFIRMATION OF SUSPENSION MEMBER SIGNATURE:

Signed: _____ Date: _____

OFFICE USE ONLY
Date 1 st Debit: _____
Date 2 nd Debit: _____
Gym Access End Date: _____
Actioning staff: _____
Staff Signature: _____
Date Signed: _____

Completing this Suspension Form entitles you to suspend your Membership in accordance with clause 3.6 of the Membership Agreement.

You may suspend your Membership by completing this form not less than 30 days prior to your proposed suspension date. You may suspend for up to one calendar year at any one time, in accordance with clause 3.6(b) of the Membership Agreement.

During the suspension period you will not be charged a Membership Fee and you will not be entitled to access the Suncity Fitness Pty Ltd Facilities. Use of the Suncity Fitness Pty Ltd Facilities during the suspension period constitutes a breach of your Membership Agreement.

Following completion of the suspension period you will regain access to the Suncity Fitness Pty Ltd Facilities and payment of your Membership Fees will resume as normal.

Suspension of your Membership is subject to the terms and conditions contained in the Membership Agreement.