



### IMPORTANT NOTICE AND SUMMARY OF KEY TERMS

#### IMPORTANT NOTICE

Words that are capitalised in this Notice have the meaning set out below.

98 Gym is comprised of a network of gyms that are independently owned and operated. This document sets out the terms and conditions that apply when You become a member of Your Gym, and includes the Membership Form, the Membership Terms and Conditions below and any other document attached or referred to within, including the Gym Rules, Privacy Policy, Terms of Use and other Policies, as updated from time to time. Copies of those documents are available [98gym.com](http://98gym.com).

When You become a member of the Gym, You are entering into a legally binding contract with us. This Agreement sets out Your rights to use our Facilities and Services and the Member Benefits, and Your obligations which You must comply with as a Member.

What is set out in this Agreement overrides any statements made by You or us so You should read through it carefully to make sure You understand Your rights and obligations, and it reflects Your expectations.

If You have any queries regarding this Agreement, please ask us before You purchase Your Membership.

#### SUMMARY OF KEY TERMS

Some of the key terms of this Agreement are summarised below. You must refer to the Agreement for full details.

**Cooling Off:** If You change Your mind after joining, You can cancel Your Membership by notifying us in writing within 7 days. If You cancel Your Membership during that time, We will refund You any Fees You have paid.

**Access:** Depending on the type of Membership You purchase, You may only be able to access the Gym during certain times / attend in a limited number of Classes.

**Fees:** The Fees You are required to pay include Your Membership Fees (as set out in the Membership Form), an Early Termination Fee if You cancel your Membership within the Minimum Term, any Cancellation Fees that may be payable if You cancel a Class late or miss a Class You have booked, or such other Fees we may introduce from time to time. If You do not make a payment when it is due, Your Membership may be suspended and You may be refused access to the Gym, Facilities and Services and Member Benefits until all outstanding amounts have been paid. Your Membership and this Agreement may also be terminated if any Fees remain unpaid, but You will still be required to pay all unpaid Fees up to the date of termination.

**Putting Your Membership On Hold:** You may temporarily freeze Your Membership for any reason for a minimum of 1 week and a maximum of 4 weeks, a maximum of 2 times per year provided all Fees payable by You are up to date. You must give us at least 2 weeks' notice in writing. We may agree to freeze Your Membership for longer periods / more often for travel, medical or hardship reasons but You must provide us with any supporting documents we request.



**Membership Transfer:** Your Membership is personal to You and You cannot assign, gift or transfer Your Membership to any other person. You also cannot transfer Your Membership between 98 gyms – if You would like to access or use another 98 gym, You must purchase a separate membership to that gym.

**Cancelling Your Membership:** You can cancel Your Membership at any time, but You must give us at least 28 days' prior written notice. If You cancel Your Membership within the Minimum Term, You will be required to pay an Early Termination Fee. You will be required to pay all Fees up to the date of cancellation. You may also cancel Your Membership immediately at any time if we breach this Agreement and have not fixed that breach within a reasonable time, You become bankrupt, we change this Agreement in a way that causes a material detriment to You or You are entitled to cancel Your Membership under the Australian Consumer Law.

**When we can cancel Your Membership:** We may cancel Your Membership if any Fees remain unpaid, Your conduct is improper, harmful, illegal or contrary to the best interest of Us and / or Our members, You breach any obligation under this Agreement that can't be fixed or You breach an obligation under this Agreement that can be fixed, but You do not fix it within the time specified by Us.

**Changes to this Agreement:** We may sometimes make changes to this Agreement (for example, the Fees You are required to pay) and documents that form part of this Agreement (for example the Gym Rules, Privacy Policy, Terms of Use and other Policies). If We consider that any change is likely to benefit You or be of no material detriment to You, we can make the change immediately (but will notify You). For all other changes, we will give You at least 30 days' notice of the change. We may provide notice of any changes by publishing them on the Website, placing a notice in the Gym and/or writing to the address (post or email) You last gave us.

**Not Enough Money in Account When Fees Are Due:** If there is not enough money in / available on Your Billing Account on the usual payment day, or there is another reason your Billing Account was unable to be debited /charged, the Biller may charge You a fee as per their terms and conditions. Your bank or credit card provider may also charge You a fee for overdrawing Your Billing Account if You do not have enough money in Your account or available as credit when payment is due. You authorise the Biller to deduct any unpaid arrears outstanding on Your account.

**Our Liability to You:** You use the Gym, Facilities and Services and Member Benefits at Your own risk and acknowledge that use of the Gym, Facilities and Services and Member Benefits may involve risk of injury, whether caused by You or another party. By entering into this Agreement and/or using the Gym, Facilities and Services or Membership Benefits, to the extent permitted by law, We and the 98 Group exclude any liability to the You for any injury, damage or loss of any kind whatsoever sustained by You and/or any other person. You also agree not to bring any claim or proceeding against Us and 98 Group, and release Us and 98 Group from all liability to You and/or any other person. If Your Club is in Victoria, you agree to exclude certain statutory rights under the Australian Consumer Law as set out in Attachment 1.



### 1 DEFINITIONS AND INTERPRETATION

1.1 In this Agreement:

**98 Group** means 98 Franchise Pty Limited (ACN 645 028 333), 98 Capital Pty Limited (ACN 639 004 032), 98 Training Pty Limited (ACN 639 004 452) and 98 Administration Pty Ltd (ACN 658 043 924), each 'related body corporate' (as defined in the *Corporations Act 2001 (Cth)*), and their agents, representatives, officers, directors, shareholders, employees, contractors, successors, affiliates and assigns.

**98 Gym App** means the '98 Gym' mobile application available through the Apple App Store and Google Play Store.

**98 Training App** means the '98 Training' mobile application made available through the Apple App Store and Google Play Store.

**ACL** means the Australian Consumer Law, as set out in the *Competition and Consumer Act 2010 (Cth)* and the equivalent legislation in each State and Territory.

**Agreement** means the agreement between Us and You regarding Your Membership of the Gym which incorporates:

- (a) the Membership Form;
- (b) these Membership Terms and Conditions;
- (c) any other document attached or referred to within, including the Gym Rules, Privacy Policy, Terms of Use, Cancellation Policy and other Policies, as updated from time to time.

**Billers** means MindBody Online or such other biller or direct debit provider as We notify You of in writing from time to time.

**Billing Account** means the bank account or credit card nominated by You to have Your Membership Fees deducted from by direct debit.

**Cancellation Policy** means the cancellation policy adopted by Us, as updated from time to time and available on the Website or by contacting the Gym.

**Classes** means a group fitness class conducted at the Gym.

**Complaints Policy** means the complaints policy adopted by Us and the 98 Group, as updated from time to time and available on the Website or by contacting the Gym.

**Cooling Off Period** means the period commencing on the Start Date and ending seven (7) calendar days after the Start Date.

**Early Termination Fee** means an amount equal to 50% of the Membership Fees that would have been payable for the remainder of the Minimum Term, on and from the date cancellation of Your Membership and termination of this Agreement takes effect. *For example only, if Your Minimum Term is six months, Your Membership Fee is \$50 per week and You cancel Your Membership after three months, the Early Termination Fee will be 12 weeks x \$25 = \$300.*

**Facilities and Services** means the Gym premises and all exercise areas, bathrooms, equipment, weights, benches, machines, mats and other equipment, and any programs, Classes, products and services that You may use.

**Fees** means the fees payable by You further to this Agreement, including but not limited to Membership Fees, Early Termination Fees and Cancellation Fees.

**Gym** means the 98 gym specified in the Membership Form.

**Gym Rules** means the rules which govern the use of the Gym, as updated from time to time and available on the Website or by contacting the Gym.

**Membership** means Your membership to the Gym, and ability to access the Facilities and Services and utilise the Member Benefits.

**Membership Form** means the form You completed and submit to Us (through MindBody Online) to join the Gym, a copy of which was emailed to You along with these Terms and Conditions.

**Member Benefits** means the benefits available to You, depending on Your Membership Type, as follows:

- (a) 'All Access Membership': access to the Gym during the Opening Hours; ability to participate in unlimited weekly Classes at the Gym; access to and use of the 98 Gym App and 98 Training App.



- (b) 'Class Membership': ability to participate in unlimited weekly Classes at the Gym; access to and use of the 98 Gym App and 98 Training App.
- (c) 'Foundation Membership': access to the Gym during the Opening Hours; ability to participate in unlimited weekly Classes at the Gym; access to and use of the 98 Gym App and 98 Training App.
- (d) 'Part-Time Membership': ability to participate in two (2) Classes per week (Monday to Sunday) at the Gym; access to and use of the 98 Gym App and 98 Training App.
- (e) 'Open Gym Membership': access to the Gym during the Opening Hours; access to and use of the 98 Gym App and 98 Training App.
- (f) 'Off Peak': Classes Monday to Saturday from 7.30am onwards; access to and use of the 98 Gym App and 98 Training App.
- (g) Any other Membership Type we may make available to You, and which You elect to purchase, from time to time.

**Membership Fees** means the fees that are payable by You pursuant to this Agreement (as set out in the Membership Form).

**Membership Type** means the membership type (eg. 'All Access', 'Class', 'Part-Time') identified in Your Membership Form.

**Minimum Term** means the period of time specified in the Membership Form, commencing on the Start Date.

**Minor** means a person under the age of 18.

**Opening Hours** means the days and hours the Gym is open, as specified on the Gym's website and/or displayed in the Gym from time to time.

**Policies** means the policies applicable to members of the Gym, as updated from time to time and available on the Website or by contacting the Gym.

**Pre-Exercise Questionnaire** means the health questionnaire We may ask that You complete and provide to Us on or before the Start Date.

**Privacy Policy** means the '98 Privacy Policy', as updated from time to time and available on the Website.

**Special Conditions for Minors** means the special conditions for Minors We and/or the Gym may adopt, as updated from time to time and available on the Website.

**Start Date** means the 'Start Date' date specified in the Membership Form.

**Terms of Use** means the terms of use that govern Your use of the Website, App and Social Pages, as updated from time to time and available on the Website or by contacting the Gym.

**We, Us or Our** means 98 Gym.

**Website** means the website at 98gym.com, or such other address as updated from time to time.

**You or Your** means the person named in the Membership Form, which at times may differ to the party paying for the Membership, and includes Your parent or guardian if You are a Minor.

- 1.2 Any reference in this Agreement to the singular includes the plural, to persons includes all bodies and associations both incorporated and unincorporated, to a party includes the party's successors and permitted assigns, to any legislation or regulations includes all amending and succeeding legislation and regulation, to conduct includes an omission, statement or undertaking whether or not in writing, to AUD, dollars or \$ is to Australian currency, to clauses or schedules is to clauses or schedules in this Agreement and headings are for reference purposes only.

- 2.1 Your Membership of the Gym is governed by this Agreement.
- 2.2 You must provide Us with all of the information in the Membership Form and, if requested, complete and provide to Us the Pre-Exercise Questionnaire before using the Facilities and Services.
- 2.3 Subject to You providing the information and documents required under clause 2.2, on and from the Start Date, You will be able to access the Facilities and Services, and Member Benefits, applicable to Your Membership Type.



## Membership Terms and Conditions

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- 2.4 If You join under an offer (for example, a corporate offer), You will also need to provide proof that You are eligible for that offer to Our reasonable satisfaction.
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### 3 COOLING OFF

- 3.1 If You change Your mind after joining, You may cancel Your Membership and terminate this Agreement by providing written notice to Us during the Cooling Off Period. You may provide Your written notice to Us personally, by post or by e-mail.
- 3.2 If You cancel Your Membership under clause 3.1 within the Cooling Off Period, We will refund any Membership Fees You have paid.
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### 4 FEES

- 4.1 The Membership Fees You are required to pay are set out in the Membership Form.
- 4.2 Some rights and obligations that apply in relation to particular Fees are set out in this clause 4.
- 4.3 If You do not make a payment when it is due, Your Membership may be suspended and You may be refused access to the Gym, Facilities and Services and Member Benefits until all outstanding amounts have been paid. This is in addition to Our other rights under this Agreement, including Our rights under clause 18.
- 4.4 Fees and other charges continue to accrue during any suspension.
- 4.5 Your Membership and this Agreement may also be terminated if any Fees remain unpaid (see clause 18.1), but You will still be liable for all unpaid Fees up to the date of termination.
- 4.6 If You cancel Your Membership and this Agreement is terminated during the Minimum Term, We will charge You an Early Termination Fee.
- 4.7 If You cancel Your Membership and this Agreement is terminated in the middle of a billing period, We will charge You a pro-rata amount of the Membership Fee payable for that period.
- 4.8 You must pay Your Membership Fees in advance until Your membership is cancelled and this Agreement is terminated.
- 4.9 We may vary any Fees, including Membership Fees, at any time in accordance with clause 19. If the Fees are varied, You authorise any debits from Your Billing Account to be varied accordingly.
- 4.10 All Fees include goods and services tax (GST).
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### 5 DIRECT DEBIT

- 5.1 By entering into this Agreement, You authorise our Biller to deduct from the Billing Account all Fees and other charges You are responsible for under this Agreement.
- 5.2 You must keep Your Billing Account details up to date and notify Us and the Biller if Your account or credit card details change.
- 5.3 You must ensure there is enough money in / available on Your Billing Account on the usual payment day, or next working day if that falls on a day when banks do not process payments.
- 5.4 If there is not enough money in / available on Your Billing Account on the usual payment day, or there is another reason that Your Billing Account was unable to be debited /charged (except an event within the Biller's control), the Biller may charge You a fee.
- 5.5 Your bank or credit card provider may also charge You a fee for overdrawing Your Billing Account if You do not have enough money in Your account or available as credit when payment is due.
- 5.6 You authorise the Biller to deduct any unpaid arrears outstanding on Your account.
- 5.7 All queries and concerns about deductions by the Biller must be directed to the Biller.



### 6 CLASSES

- 6.1 If Your Membership Benefits include access to Classes, You must book in for each class using the 98 Gym App.
- 6.2 The Cancellation Policy applies to Your access to Classes and if You do not comply with the Cancellation Policy, You may be charged a non-attendance fee or cancellation fee ("**Cancellation Fees**") as specified in the Cancellation Policy.
- 6.3 You authorise our Biller to deduct from the Billing Account all Cancellation Fees (and other charges You are responsible for under this Agreement).

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### 7 YOUR HEALTH

- 7.1 We reserve the right to restrict, suspend or terminate Your Membership and this Agreement if We are of the reasonable opinion that You are unfit to utilise the Facilities and Services and/or any Member Benefits. If Your Membership is restricted or suspended for this reason, Your Membership will not be reinstated until You provide Us with such documentation as we require confirming that You are fit to train.
- 7.2 When You enter into this Agreement, and each time You use the Facilities and Services and any Member Benefits, You must ensure You are in good physical condition and know of no medical or other reason why You should not exercise. If unsure, You should not use the Facilities and Services and/or Member Benefits until You have sought appropriate medical guidance and been given the go-ahead.
- 7.3 You agree to give us all relevant personal health and fitness information both before and during the course of any exercise program or other activity.
- 7.4 You also agree to complete Our Pre-Exercise Questionnaire if requested. In some cases, responses You give will require that You get medical guidance before exercise.
- 7.5 You acknowledge that pre-exercise or other screening is no substitute for medical advice and does not guarantee against injury or death.
- 7.6 You promise that information You give Us will be true and accurate, and not misleading in any way.
- 7.7 You must not use the Facilities and Services if You are suffering from any illness, disease, injury or other condition that could be a risk to Your health or safety, or that of other members or persons.

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### 8 SAFETY AND GUESTS

- 8.1 You may be required to participate in an orientation to familiarise Yourself with the Facilities and Services before You use them.
- 8.2 You promise to use the Facilities and Services safely, properly and in accordance with any instructions or directions given by Our staff. If You are unsure about how to use any Facilities or Services, You agree to ask Our staff first.
- 8.3 You may bring a guest into the Gym but only if they register with the Gym, pay the relevant guest fee and meet any other reasonable conditions (for example, they must be over 18 years of age, show photo identification, complete the Pre-Exercise Questionnaire and any other forms required by Us).

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### 9 GYM RULES

- 9.1 The Gym Rules apply to everyone using the Facilities and Services.
- 9.2 The Gym Rules form part of this Agreement so You must make sure You read, understand and follow them at all times.



- 9.3 If You breach any of the Gym Rules, We will respond in a way We consider fair and appropriate which may include, but is not limited to, a warning, suspension of Your Membership or cancellation of Your Membership.
- 9.4 If You breach the Gym Rules and it causes Us or another person to incur a cost, loss or damage, You agree that you will be responsible for such cost, loss or damage.
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### 10 CONDUCT

- 10.1 You acknowledge that the use, possession and/or distribution of illegal or performance enhancing drugs is prohibited and You must not use, possess, distribute or be under the influence of these substances in or near the Gym.
- 10.2 You acknowledge that engaging in any commercial or business activities in the Gym, such as offering training services or selling goods in the Gym, is prohibited unless We grant You written permission to do so (and if We do give You written permission, We can amend or revoke it at any time).
- 10.3 If You behave in a risky or inappropriate way, for example You threaten or harass others, damage equipment, distribute, possess or use illegal or performance enhancing substances, or train persons without Our prior written consent, appropriate action will be taken (for example, Your Membership may be cancelled, this Agreement may be terminated, You may be banned from joining any other 98 gym and/or We may refer the matter to the relevant authorities).
- 10.4 If Your conduct causes Us or another person to incur a cost, loss or damage, You agree that you will be responsible for such cost, loss or damage.
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### 11 MINIMUM AGE

- 11.1 For safety and security reasons, You must be at least 18 years old as at the Start Date to become a member of the Gym.
- 11.2 However, You may join the Gym if You are between 14 and 18 years old as at the Start Date provided that:
- (a) You and Your parent or guardian agree to, and comply with at all times, the terms of this Agreement, and the Special Conditions for Minors;
  - (b) You are supervised by Your parent or guardian, or a person authorised by Your parent or guardian in writing, at all times while at the Gym.
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### 12 SECURITY

- 12.1 You acknowledge and understand that the Gym may have closed-circuit television (CCTV) security cameras recording in appropriate areas within the Gym and surrounds for team member, member and contractor safety, and crime and misconduct prevention. The Gym may also have remote guarding services.
- 12.2 By entering the Gym, You consent to being filmed for these purposes and understand that We will only use and store Your image in accordance with our Privacy Policy.
- 12.3 The Gym has an emergency or crisis response procedure which must be followed in emergencies.
- 12.4 You agree to follow any reasonable direction of Gym staff relating to health, safety or security matters or related matters.
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### 13 PRIVACY AND USE OF YOUR IMAGE

- 13.1 When You apply for Membership, You must provide Us with, and We will have access to, personal information about You, including information relating to Your health and fitness.



- 13.2 By entering into this Agreement, You consent to Us collecting, using, disclosing and dealing with Your personal information in accordance with Our Privacy Policy.
  - 13.3 You must tell Us promptly if You change Your contact or payment details, or if there is a change to other relevant personal information, including anything that may affect health or safety.
  - 13.4 You understand that photos, films, videos or audio recordings are sometimes taken of Members, including for promotional purposes. By entering into this Agreement and/or using the Gym, You agree to allow Your image, recording or likeness to be used for any legitimate purpose by Us or any member of the 98 Group, and You assign Your rights in any of these materials to Us.
  - 13.5 Members and guests are not permitted to take photos, films, videos or audio recordings in the Gym unless We have agreed in advance in writing.
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### 14 TRANSFER

- 14.1 Your Membership to the Gym cannot be assigned, gifted or transferred to any other person.
  - 14.2 You cannot transfer Your membership between 98 gyms – if You would like to access or use another 98 gym, You must purchase a separate membership to that gym.
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### 15 PUTTING YOUR MEMBERSHIP ON HOLD

- 15.1 You may temporarily freeze Your Membership for any reason for a minimum of one (1) week and a maximum of four (4) weeks a maximum of two (2) times per year, provided all Fees payable by You are up to date.
  - 15.2 You must give us at least 2 weeks' notice in writing to temporarily freeze Your Membership.
  - 15.3 We may agree to freeze Your Membership for more than the period noted in clause 15.1 for travel, medical or hardship reasons but You must provide us with proof (such as supporting documents) to Our reasonable satisfaction.
  - 15.4 We will not charge a Fee to freeze Your Membership.
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### 16 WHEN YOU CAN END THIS AGREEMENT

- 16.1 If You need to notify or tell Us anything in writing under this clause:
  - (a) You can give notice to us in person, by e-mail or post; and
  - (b) Your notice must include Your name, Gym, address, phone, email and signature.
- 16.2 Your Membership and this Agreement will continue unless You tell us in writing by providing written notice in accordance with clause 16.1 that You wish to cancel Your Membership and terminate this Agreement.
- 16.3 You must give us at least 28 days' notice in writing of Your wish to cancel Your Membership and terminate this Agreement.
- 16.4 If You cancel during the Minimum Term, You agree and acknowledge that We will charge You, and You will be required to pay Us, an Early Termination Fee.
- 16.5 You will be liable for Fees incurred, including the Membership Fees, for the time You were a Member (calculated on a pro rata basis).
- 16.6 You can cancel Your Membership immediately at any time by providing written notice to Us if:
  - (a) We breach an essential term of this Agreement and have not fixed this within a reasonable time of You asking us in writing;
  - (b) You become bankrupt and give us proof (such as supporting documents) to our reasonable satisfaction;





- (c) You suffer a permanent sickness or physical incapacity (in which case You must provide a current certificate from a qualified medical practitioner stating that You cannot utilise any fitness services or facilities because of Your permanent sickness and/or physical incapacity);
  - (d) where this Agreement is varied in accordance with clause 19 and the variation causes material detriment to You (for the avoidance of doubt however, changes to timetables, equipment, Opening Hours and Fees (provided the change to Fees is in accordance with clause 18.4) do not permit You to terminate this Agreement under this clause); or
  - (e) You become entitled to cancel Your Membership under the ACL.
- 16.7 If You terminate the Agreement or stop the automatic debit arrangement in a manner not described in the Agreement, then You may be liable to Us for any unpaid Fees, or fees incurred by Us.
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### 17 WHEN WE CAN END THIS AGREEMENT

- 17.1 In addition to our other rights under this Agreement, we may cancel Your Membership if:
- (a) Your conduct is improper, harmful, illegal or contrary to the best interest of Us and / or Our members (in our sole opinion, acting reasonably);
  - (b) You breach any obligation under this Agreement that can't be fixed; or
  - (c) You breach an obligation under this Agreement that can be fixed, but You do not fix it within the time We require.
- 17.2 If We cancel Your Membership under clause 17.1, You will be liable for Fees incurred, including the Membership Fees for the time You were a member (calculated on pro-rata basis).
- 17.3 We may also recover costs, loss or damages caused by Your breach.
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### 18 CHANGES TO THIS AGREEMENT

- 18.1 We may sometimes make changes to this Agreement, including but not limited to the Gym Rules, Privacy Policy, Terms of Use, other Policies, Facilities and Services, Member Benefits, Membership Fees, other Fees and/or Opening Hours.
- 18.2 If we reasonably consider that any change is likely to benefit You, or cause no material detriment to You, we can make the change immediately but will notify You of the change in accordance with clause 18.5.
- 18.3 For all other changes, we will give You at least 30 days' notice of the change in accordance with clause 18.5.
- 18.4 For the avoidance of doubt, a change to a Fee payable under this Agreement will only be considered to cause material detriment to You if the Fee is increased:
- (a) by more than 10%; or
  - (b) more than once in any 12-month period.
- 18.5 We may provide notice of any changes by:
- (a) publishing them on the Website;
  - (b) placing a notice in the Gym; and/or
  - (c) writing to the address (post or email) You last gave us.
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### 19 RISK WARNING

- 19.1 By using the Gym, Facilities and Services and Member Benefits, You are at risk of suffering physical and/or psychological harm or personal injury including but not limited to broken bones, soft tissue injuries, joint injuries, permanent disability or death.
- 19.2 You acknowledge that any such harm and/or injury may result not only from Your actions but from the action, omission or negligence of others.



- 19.3 You acknowledge and agree that the above mentioned injuries and potential causes of injuries are not exhaustive, and there are other unknown or anticipated risks that may result in injury, illness or death.
- 19.4 You acknowledge that whilst every attempt is made to ensure that the recreational services and facilities provided by Us are safe, there are some significant and inherent risks involved, and You agree that You are participating voluntarily at Your own risk and responsibility, thereby exposing Yourself to certain risks.
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### 20 OUR LIABILITY TO YOU

- 20.1 You use the Gym, Facilities and Services and Member Benefits at Your own risk and acknowledge that the use of the Gym, Facilities and Services and Member Benefits may involve risk of injury, whether caused by You or another party.
- 20.2 To the extent permitted by law:
- (a) We and the 98 Group exclude any liability to the You in contract, 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/or 98 Group (including but not limited to the Facilities and Services and Member Benefits), and/or any act or omission of Ours and/or 98 Group;
- (b) You agree not to bring any claim or proceeding against Us and 98 Group or their employees, directors, officers and contractors for any damage, loss, injury or liability You and/or any other person may suffer arising out of or in connection with this Agreement; and
- (c) You forever discharge and release Us and 98 Group from all liability to You and/or any other person for acts or omissions of Us and 98 Group and their employees, directors, officers and contractors arising out of or in relation to this Agreement.
- 20.3 You hold us harmless against any claims, proceedings losses, liabilities, costs or other expenses (including legal costs) incurred by you in connection with, whether directly or indirectly, your breach of this Agreement, your use or access of the Facilities and Services and Member Benefits, or any violation by you of any applicable law.
- 20.4 If Your Membership is for a gym located in Victoria, the relevant clauses set out in Attachment 1 are incorporated into this Agreement and apply to You.
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### 21 WARRANTIES

- 21.1 To the extent permitted by law, all statutory and implied guarantees, warranties and conditions of any kind in connection with the Facilities and Service and Member Benefits are expressly excluded.
- 21.2 If We breach a non-excludable term, condition or guarantee, We will be liable for that breach. However, if We are allowed to limit Our liability for that breach under the relevant law, Our liability will be limited to supplying the same services again or paying the cost of having the services supplied by someone else (at Our option).
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### 22 OUTSIDE PROVIDERS

- 22.1 Third-parties may from time to time provide services such as personal training, physiotherapy and massage in the Gym ("**Outside Providers**"). Unless we advise otherwise, You must pay fees directly to the Outside Providers and We are not responsible for those fees or for any associated costs or refunds.
- 22.2 Any service provided by an Outside Provider is a contract between the Outside Provider and You and, to the extent permissible by law, We do not accept any liability 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 an Outside Provider.



### 23 GYM CLOSURE

- 23.1 If we are required by a state or federal government to temporarily close the Gym (“**Closure Period**”), we will freeze Your membership during that Closure Period. You are also entitled to request cancellation of Your Membership during the Closure Period however, clause 16.3 will still apply.
- 23.2 If the Gym is closed for any other reason for a period of more than one week (for example due to refurbishment), You may request that Your membership be frozen until the Gym re-opens.

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### 24 COMPLAINTS AND FEEDBACK

- 24.1 If You have any concerns about the Facilities and Services or anything else in relation to Your Membership, You should first raise it with the Gym staff.
- 24.2 If You are uncomfortable about approaching, or do not wish to approach Gym staff, or are not happy with the response given, You may send a complaint to [info@98training.com](mailto:info@98training.com).
- 24.3 Complaints will be dealt with in accordance with the Complaints Policy.

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### 25 GENERAL

- 25.1 We are not responsible if You cannot use the Gym because of an event caused by a natural force (such as fire or a flood), road or building closure, epidemic or pandemic or any other event beyond Our reasonable control. If this continues for more than 30 consecutive days, then either You or We may cancel this Agreement immediately by written notice and no Fee will be payable.
- 25.2 You agree to pay for any loss or damage the Gym or the Facilities and Services caused by You or Your guests through a wilful, wrongful or negligent act or as a result of Your, or their, breach of this Agreement.
- 25.3 If a court decides that any part of this Agreement is or becomes illegal, void or unenforceable, that part is deleted and does not invalidate the rest of this Agreement.
- 25.4 We may sub-contract, assign, transfer or novate Our rights and obligations under this Agreement at any time without Your prior consent.
- 25.5 If We do not enforce Our rights under this Agreement at any time, it does not mean that We may not do so in future.
- 25.6 This Agreement constitutes the entire agreement, understanding and arrangement (express and implied) between the You and Us relating to the subject matter and supersedes and cancels any previous agreement, understanding and arrangement relating thereto whether written or oral. You agree that We have not made any presentations or promises that You have relied on that are not in this Agreement.
- 25.7 The law of the State/Territory in which the Gym is located applies to this Agreement, and the courts of that State/Territory will have exclusive jurisdiction to hear any disputes arising under this Agreement.



**Attachment 1 – Applicable to Victorian Gyms Only**

**WARNING UNDER THE AUSTRALIAN CONSUMER LAW AND FAIR TRADING ACT 2012 (VIC)**

If You sign this form or enter into this Agreement, You will be agreeing that Your rights to sue the supplier under the *Australian Consumer Law and Fair Trading Act 2012* are excluded, restricted or modified in the way set out in this form, if You are killed or injured because the services provided were not in accordance with the statutory guarantees outlined below.

Under the Australian Consumer Law (Victoria), several statutory guarantees apply to the supply of certain goods and services. These guarantees mean that the supplier named on this form is required to ensure that the recreational services it supplies to You-

- are rendered with due care and skill; and
- are reasonably fit for any purpose which You, either expressly or by implication, make known to the supplier; and
- might reasonably be expected to achieve any result You have made known to the supplier.

Under section 22 of the *Australian Consumer Law and Fair Trading Act 2012*, the exclusion of these statutory guarantees is brought to Your attention by this form.

NOTE: The change to Your rights, as set out in this form, does not apply if Your death or injury is due to gross negligence on the supplier's part. Gross negligence, in relation to an act or omission, means doing the act or omitting to do an act with reckless disregard, with or without consciousness, for the consequences of the act or omission. See regulation 5 of the *Australian Consumer Law and Fair Trading Regulations 2012* and section 22(3)(b) of the *Australian Consumer Law and Fair Trading Act 2012*.