



MEMBERSHIP AGREEMENT

1. INTERPRETATION

Throughout this Agreement:

- a) TBG will be referred to by using the words 'us', 'ours' and 'we'; and
- b) the Member will be referred to by using the words 'you' and 'your'.

2. DEFINITIONS

The following definitions apply to this Agreement:

- 2.1. **ACL** means the Australian Consumer Law contained in Schedule 2 of the CCA as amended, re-enacted or replaced, and includes any subordinate legislation.
- 2.2. **ADF** means the Australian Defence Force.
- 2.3. **Agreement** means this membership agreement made between you and us, incorporating the documents referred to in clause 3.2.
- 2.4. **Billing Account** means the bank account or credit card nominated by you to have your Membership Fees deducted from in accordance with this Agreement.
- 2.5. **Business Day** means a day on which banks are open for retail banking, other than a Saturday, Sunday or public holiday, in Brisbane, Australia.
- 2.6. **TBG** means the trustee for the Cross Family Trust ABN 18 715 303 260 as well as its successors and assigns.
- 2.7. **Consequential Loss** means loss of expected savings, loss of use, loss of opportunity, loss of profit, loss of revenue, increased financing costs, loss arising from delay, or any consequential, special or indirect loss or damage, whether or not the possibility or potential extent of the loss or damage was known or foreseeable, and whether arising from a claim under indemnity, contract, tort (including negligence), statute or otherwise.
- 2.8. **Corporations Act** means *Corporations Act 2001* (Cth).
- 2.9. **Event of Default** means any of the following:
 - a) you fail to pay any monies payable under this Agreement (including any Membership Fees) on the due date;
 - b) we reasonably suspect that you are engaging in illegal activities at the Gym; or
 - c) you fail to follow any of the Policies or Gym Rules, or violate any part of this Agreement.
- 2.10. **Financing Change Statement** has the meanings given to that term by the PPSA.
- 2.11. **Financing Statement** has the meanings given to that term by the PPSA.
- 2.12. **GST** has the meaning given by the GST Law.
- 2.13. **GST Law** has the meaning given to "GST law" in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- 2.14. **Gym** means the gymnasium operated by us at the location specified in your Membership Application, or any other such gym that your membership may be transferred to.
- 2.15. **Gym Rules** means the gym rules which are located on our website and which may be amended by us from time to time.
- 2.16. **Immediately Available Funds** means the electronic transfer of cleared funds, into an account nominated by us.
- 2.17. **Induction Program** means an initial two week group training program that is conducted at the Gym and that is purchased as part of the New Membership Pack.
- 2.18. **Initial Subscription Period** has the meaning given to that term in clause 9.2.
- 2.19. **Loss** includes any loss, liability, expense, cost or damage of any kind and includes Consequential Loss and a fine or penalty imposed by a statutory or other authority.
- 2.20. **Member** means the member specified in the Membership Application and who has entered into this Agreement with us.
- 2.21. **Membership** means your membership at the Gym, as specified in your Membership Application or as you may otherwise be nominated by you, being one of the following classes of membership:
 - a) a TTUE Membership;
 - b) a 3MC Membership;
 - c) a M2M Membership; or
 - d) an Online Membership.
- 2.22. **Membership Application** means the online application for your Membership, made available through our website and that is completed by you, requiring you to provide us with your relevant details (e.g. name, address, billing details) relating to your Membership.
- 2.23. **Membership Fees** means the fees that are due and payable by you for your Membership under this Agreement.
- 2.24. **Monies Owning** means any Membership Fees, costs, interest and duties due to us by you from time to time.
- 2.25. **M2M Membership** has the meaning given to that term in clause 5.2(c) of this Agreement.
- 2.26. **New Member Package** means the training package to be purchased by new members of the Gym (other than Online Members), which includes:
 - a) a 60 minute introduction training session; and



- b) the Induction Program.
- 2.27. **Online Membership** has the meaning given to that term in clause 5.2(d) of this Agreement.
- 2.28. **Other Property** means all of your present and after-acquired property that is not PPSA Personal Property, including any interest in real property.
- 2.29. **Payment Cycle** means the weekly or fortnightly payment cycle for the direct debit of your Membership Fees, as specified in your Membership Application or as you may otherwise be nominated by you.
- 2.30. **Policies** means our membership policies as published and amended from time to time, which are located on our website and available at the Gym on request.
- 2.31. **PPSA** means the *Personal Property Securities Act 2009* (Cth) and where applicable includes all regulations made pursuant to it.
- 2.32. **PPSA Personal Property** means:
- all present and after-acquired property in which you can be a grantor of a Security Interest, including property in which you have, or may in the future have, rights or the power to transfer rights;
 - proceeds of the sale of any PPSA Personal Property; and
 - PPSA retention of title property (as that term is defined in the Corporations Act).
- 2.33. **PPS Register** means the Personal Property Securities Register established under the PPSA.
- 2.34. **Privacy Policy** means our privacy policy, which is available on our website.
- 2.35. **QFES** means the Queensland Fire and Emergency Services.
- 2.36. **QPS** means the Queensland Police Service.
- 2.37. **Security Agreement** has the meaning given to that term by the PPSA.
- 2.38. **Security Interest** has the meaning given to that term by the PPSA.
- 2.39. **Staffed Hours** means:
- on Monday – Friday:
 - 6:00am to 7:00am;
 - 9:30am to 10:30am;
 - 4:10pm to 5:10pm;
 - 5:15pm to 6:15pm; and
 - on Saturday, 7:00am to 8:30am,
- or that is otherwise published on our website from time to time.
- 2.40. **TTUE Membership** has the meaning given to that term in clause 5.2(a) of this Agreement.
- 2.41. **3MC Membership** has the meaning given to that term in clause 5.2(b) of this Agreement.
- ### 3. AGREEMENT
- 3.1. Your Membership is governed by this Agreement.
- 3.2. This Agreement incorporates these terms, your Membership Application, the Policies, the Gym Rules and the Privacy Policy.
- 3.3. No further terms and conditions will be deemed to form part of this Agreement unless those further terms and conditions are agreed to between the parties in writing as forming part of this Agreement.
- 3.4. We reserve the right, in our sole discretion, to amend this Agreement.
- ### 4. INDUCTION
- 4.1. Unless we agree otherwise, it is a condition of your Membership (other than an Online Membership) that you purchase a New Member Package from us and partake in the Induction Program.
- 4.2. You must pay us the price for the New Member Package in Immediately Available Funds before commencing any training at the Gym. The price for the New Member Package is non-refundable.
- 4.3. On or before the time of purchasing your New Member Package, you must book with us your start date for the Induction Program by you.
- 4.4. Each Induction Program commences on a Monday. You may reschedule your start date for a maximum of two months after the original booking date of your Induction Program.
- 4.5. We may, at our discretion, terminate this Agreement in the event of unsatisfactory completion of the Induction Program by you.
- 4.6. You may terminate this Agreement for any reason prior to the completion of the Induction Program.
- ### 5. GYM MEMBERSHIPS
- 5.1. Subject this Agreement not being terminated under clauses 4.5 or 4.6, your Membership will automatically commence with us after completion of the Induction Program.
- 5.2. We offer the following classes of Membership.:
- a Train Til You Enlist membership as detailed in clause 6 (**TTUE Membership**);
 - a 3 Month Commitment membership, as detailed in clause 7 (**3MC Membership**);
 - a Month to Month membership, as detailed in clause 8 (**M2M Membership**); and
 - an online exclusive membership, as detailed in clause 9 (**Online Membership**).



- 5.3. Subject to the terms of this Agreement, Membership (other than Online Membership) permits you to:
- use the Gym's premises, facilities, equipment and services; and
 - participate in the group training sessions offered at the Gym.

5.4. Your Membership is non-transferable by you unless deemed appropriate by us.

5.5. You must provide us with any changes to your details, which are relevant to your Membership in writing.

6. TTUE MEMBERSHIP

6.1. A TTUE Membership is an ongoing membership which continues with us until you join the ADF, QPS or QFES.

6.2. To be eligible for a TTUE Membership, you must provide us with evidence that you have applied to enlist in the ADF, QPS or QFES.

6.3. You may cancel your TTUE Membership at any time by providing us with four weeks' notice and evidence that one of the following has occurred:

- your application to join the ADF, QPS or QFES is refused or cancelled (for whatever reason);
- you are moving interstate; or
- you have withdrawn your application to join the ADF, QPS or QFES.

6.4. You will be required to pay all Membership Fees for the TTUE Membership for the four weeks' notice period following your cancellation.

7. 3MC MEMBERSHIP

7.1. A 3MC Membership is an ongoing membership which continues with us for a minimum of three months (**Initial Period**). After the expiry of the Initial Period, the 3MC Membership will operate on a month to month basis.

7.2. Any person is eligible for this type of Membership.

7.3. You may cancel your 3MC Membership:

- during the Initial Period – by providing us with notice until the end of the Initial Period; or
- after the Initial Period – by providing us with at least 4 weeks' notice;

7.4. You will be required to pay us all Membership Fees for the 3MC Membership for the relevant notice period set out in clause 7.3 following your cancellation.

8. M2M MEMBERSHIP

8.1. A M2M Membership is an ongoing membership which operates on a month to month basis.

8.2. Any person is eligible for this type of Membership.

8.3. You may cancel your M2M Membership at any time by providing us with at least 4 weeks' notice.

8.4. You will be required to pay all Membership Fees for the M2M Membership for the four weeks' notice period following your cancellation.

9. ONLINE MEMBERSHIP

9.1. An Online Membership is a membership in which you subscribe for an online training program that are offered by us.

9.2. Any person is eligible for this type of Membership.

9.3. An Online Membership is an ongoing membership which continues with us for a minimum of eight weeks months (**Initial Subscription Period**). After the expiry of the Initial Subscription Period, the Online Membership will operate on a month to month basis.

9.4. You may cancel your Online Membership at any time:

- during the Initial Subscription Period – by providing us with notice until the end of the Initial Period; or
- after the Initial Subscription Period – by providing us with at least 2 weeks' notice.

9.5. You will be required to pay all fees for your Online Membership for the relevant notice period set out in clause 9.4 following the cancellation of your Subscription.

10. MEMBERSHIP FEES

10.1. You agree to pay all Membership Fees:

- in accordance with this Agreement, and
- for the duration of your Membership with us (including any required cancellation notice period).

10.2. You must pay your Membership Fees by way of a direct debit to us on the first Monday of each Payment Cycle. By agreeing to the terms of this Agreement, you agree for us (or our nominated payment provider) to debit your Membership Fees for each Payment Cycle from your Billing Account.

10.3. All Membership Fees are payable in Australian dollars.

11. VARIATIONS TO MEMBERSHIP FEES

11.1. We reserve the right, at any time, to change the Membership Fees charged to you for your Membership and your use of the Gym facilities.

11.2. We agree to use reasonable endeavours to provide you with notice of any changes to the Membership Fees. Any changes will take effect 30 days after the notice has been received by you.

11.3. At the end of the 30 days' notice period, you authorise us to debit the new amount from your Billing Account for each Direct Debt Period.



12. PERSONAL TRAINING

- 12.1. Any personal training services (being one on one training sessions) that are offered at the Gym do not form part of your Membership.
- 12.2. Should you wish participate in a personal training session at the Gym, you must:
 - a) book the relevant session at least 24 hours in advance through our client management system phone application (unless otherwise directed by us); and
 - b) sign any and all documentation required by the relevant personal trainer.
- 12.3. You must provide us with at least 24 hours' notice should you wish to cancel or reschedule a scheduled personal training session. Should you fail to cancel a personal training session within 24 hours, you will still be charged for the relevant personal training session.
- 12.4. Should you wish participate in regular personal training sessions at the Gym, we may agree (at our discretion) to add the costs of your personal training sessions into your Membership Fees.

13. MEMBERSHIP FREEZE

- 13.1. You may put your Membership on hold with us, for a minimum of 2 weeks. You may only put your Membership on hold for a maximum of 8 weeks in any 12 month period.
- 13.2. You must provide us with at least 2 weeks' notice prior to putting your Membership on hold. Any freeze request issued to us must state both the freeze start date and reactivation date.
- 13.3. You will not be billed for Membership Fees while you Membership is on hold. Billing will resume automatically upon the relevant reactivation date.

14. GYM ACCESS

- 14.1. Unless you are an Online Member (in which case you will not have any right to access the Gym), you may only attend and have access to the Gym:
 - a) during Staffed Hours; and
 - b) to participate in a group training session that is run by us or personal training session.
- 14.2. We reserve the right to change the Staff Hours at any time without notice to you.
- 14.3. Unless otherwise agreed with you, we will only provide access to the Gym to you and our other members. You are not permitted to bring a non-member into the Gym.
- 14.4. If you breach clause 14.3, you acknowledge and agree that:
 - a) you accept responsibility and liability on their personal behalf for any injury, Loss or damage

attributed to the non-member, whether or not caused through our negligence; and

- b) the act of bringing a non-member into the Gym constitutes automatic acceptance by you of a new membership for the non-member. Accordingly, the New Member Package, will be charged to you and deducted from your Billing Account.

- 14.5. We reserve the right to terminate your Membership if you bring a non-member into the Gym without our prior approval.

15. MINIMUM AGE

- 15.1. Notwithstanding any other provision in this Agreement, all Gym members must be a minimum of 16 years of age.
- 15.2. If you are under the age of 16, you must have a parent or legal guardian agree to the terms of this Agreement.

16. PHYSICAL CONDITION

- 16.1. It is your responsibility not to use any equipment or to participate in any group training sessions if it may adversely affect any medical condition.
- 16.2. You represent and warrant that, to the best of your knowledge, you do not have any physical, medical 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 the Gym (or its facilities), including your participation in any group training sessions.
- 16.3. If you have any health or medical concerns now or after you join as a member of the Gym, you must discuss them with your doctor before using the equipment of the Gym or participating in any group training sessions.

17. EQUIPMENT

- 17.1. You understand and acknowledge that we purchase or lease the Gym equipment from a third party and do not manufacture any of the fitness or other equipment used in the Gym or in the course of providing any group training sessions.
- 17.2. You acknowledge and agree that we are providing recreational services only and may not be held liable for defective products or equipment.

18. LIABILITY FOR PROPERTY

- 18.1. We are not liable to you for any personal property that is damaged, lost, or stolen while in or around the Gym including, but not limited to, a vehicle or its contents or any property left at the Gym.
- 18.2. If you cause damage to the Gym or any of its equipment, you agree to indemnify us for its cost of repair or full replacement value.

**19. VIDEO SURVEILLIANCE**

- 19.1. For security purposes, we may use video and audio surveillance equipment to monitor the Gym.
- 19.2. By accepting this Agreement, you acknowledge that by accessing the Gym you may be subject to video and audio surveillance and recording.

20. DEFAULT AND CONSEQUENCES OF DEFAULT

- 20.1. Where an amount that you owe us is not paid when due (including but not limited to Membership Fees), we may, at our discretion, charge interest on that overdue amount. Interest shall accrue daily on the overdue amount from the date when payment becomes due, until the date of payment, at a rate of 5% per annum (and such interest will be capitalised and added to the amount outstanding daily at such a rate). The payment of any interest under this clause must be paid by you immediately on demand by us.
- 20.2. In the event that a direct debit payment is dishonoured for any reason you shall be liable for any dishonour fees incurred by us.
- 20.3. If you default in payment of any amount to us when due, you shall indemnify us from and against all costs and disbursements incurred by us in pursuing the debt, including all legal costs and any collection agency costs.
- 20.4. You authorise us to notify any credit reporting agency in regard to any failure by you to pay us in accordance with this Agreement.
- 20.5. Without prejudice to any other remedies we may have, if at any time you are in breach of any obligation (including those relating to payment), we may suspend or terminate your Membership. We will not be liable to you for any Loss that you suffer because we have exercised our rights under this clause 20.4.

21. PERSONAL PROPERTY SECURITY

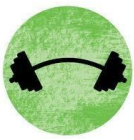
- 21.1. You charge all present and after acquired property in favour of us to secure the payment of all moneys under this Agreement.
- 21.2. You acknowledge and agree that this Agreement constitutes a Security Agreement for the purposes of the PPSA.
- 21.3. You acknowledge and agree that this Agreement creates:
- a) a Security Interest in all PPSA Personal Property; and
 - b) a fixed charge over all Other Property,
- to secure payment of all monies (including but not limited to Membership Fees and any interest) owing by you to us from time to time under this Agreement and under any other agreement or arrangement between you and us.
- 21.4. You undertake to:

- a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which we may reasonably require to:
 - v) promptly register a Financing Statement or Financing Change Statement in relation to a Security Interest on the PPS Register and to otherwise do all things necessary and required by us to ensure that any Security Interest registered by us is a perfected Security Interest under the PPSA;
 - vi) promptly register any document on any register reasonably necessary to secure our interest under this Agreement;
 - vii) promptly register any other document required to be registered under the PPSA; or
 - viii) promptly correct a defect in previously registered documents;
- b) not to make an amendment demand in respect of a Security Interest, apply to the Registrar to register a Financing Change Statement in respect of a Security Interest, without our prior written consent;

- 21.5. You agree that sections 96 and 125 of the PPSA do not apply to the Security Interest created by this Agreement.
- 21.6. You hereby waive all rights to receive notices, information or statements (as the case may be) under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 21.7. You waive all rights as a grantor and/or a chargor under sections 142 and 143 of the PPSA.
- 21.8. You waive all rights to receive a verification statement in accordance with section 157 of the PPSA.
- 21.9. You irrevocably appoint us (or our nominee), to be your attorney to do such acts and execute such documents as you could personally do or execute (including the appointment of a substitute attorney) which in our opinion (acting reasonably) is necessary or expedient to give effect to any right, power or remedy conferred on us by this Agreement or the PPSA and to give effect to the matters contemplated by this Agreement.
- 21.10. The provisions of this clause 21 will survive the cancellation of your Membership or the termination of this Agreement.

22. TERMINATION BY US

- 22.1. We may immediately terminate your Membership and this Agreement without any notice to you upon the occurrence of an Event of Default.



- 22.2. If we terminate your Membership and this Agreement in accordance with clause 22.1:
- a) you will cease to have access to the Gym; and
 - b) you must immediately pay us any and all unpaid Membership Fees and all other moneys due and payable to us up to the date of termination.

22.3. Upon termination of your Membership and this Agreement in accordance with clause 22.1, we, at our discretion, may enforce our rights under the security granted to us under clause 21.

22.4. All costs and expenses incurred by us in the recovering Monies Owing to us from you, including (but not limited to) legal, administrative or other collection costs will be payable by the you upon demand.

23. RELEASE AND INDEMNITY

23.1. We are entitled to ask you to agree to exclude, restrict or modify our liability for death or any personal injury suffered by you in the Gym, or from the use of our facilities or equipment.

23.2. By accepting this Agreement, you agree to restrict our liability if you are killed or injured, with the result that compensation may not be payable if you or a third party suffers death or personal injury.

23.3. We may refuse to provide you with the services if you do not agree to exclude, restrict or modify your rights by accepting this Agreement.

23.4. You use the facilities provided by us at the Gym at your own risk and acknowledge that the use of the Gym may involve risk of injury, whether caused by you or another party. By accepting this Agreement you agree that we will not be liable for any loss, injury, damage or theft of property, belonging to or brought into the Gym by you, or for any death, personal injury or illness in the Gym premises, or from using our facilities or equipment.

23.5. This releases in this clause 23 do not apply if your death or injury results from gross negligence on our part.

24. LIMITATION OF LIABILITY

24.1. To the maximum extent permitted by law, our total liability arising out of or in connection with our performance of our obligations under this Agreement is limited as follows:

- a) we shall have no liability to you for any Consequential Loss; and
- b) your total aggregate liability for Loss, however arising, shall not exceed the aggregate of the GST inclusive Membership Fees paid by you to us over the course of your Membership.

24.2. To the maximum extent permitted by law, you agree:

- a) that all statutory and common law warranties or representations regarding the provision, delivery, quality, fitness for purpose or otherwise in respect of the Gym or our facilities and equipment, including those made under the CCA and the ACL, are excluded from this Agreement; and
- b) to waive any all and right you may have against us for a failure to comply with a protection afforded under the CCA or the ACL to a consumer.

25. GENERAL

25.1. If any provision of this Agreement shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

25.2. This Agreement shall be governed by the laws of Queensland and are subject to the jurisdiction of the courts of Queensland.

25.3. Unless otherwise specified in this Agreement, all amounts payable under or in connection with this Agreement are inclusive of GST.

25.4. You shall not be entitled to set off against, or deduct from the Membership Fees, any sums owed or claimed to be owed to you.

25.5. Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, pandemic, epidemic, fire, flood, storm or other event beyond the reasonable control of either party.

25.6. We may assign or novate our rights under this Agreement at any time without prior consent.

25.7. The failure by us to enforce any provision of this Agreement shall not be treated as a waiver of that provision, nor shall it affect our right to subsequently enforce that provision.

25.8. A written notice to be provided under this Agreement may be provided by:

- a) handing the notice to the person, or an employee or officer of that person;
- b) by leaving it at the address stated in your Membership Application; or
- c) by email to the last known email address of that person.