

TERMS AND CONDITIONS OF THE GENESIS HEALTH + FITNESS / DEBIT SUCCESS

MEMBERSHIP AGREEMENT

1. INTRODUCTION

This document outlines the rights and responsibilities relating to the Member's entitlements during the Membership Period to use of the Centre's facilities. It also relates to the member's authority to Debitsuccess Pty Ltd to directly debit the nominated bank account or credit card for any instalments or fees due under the terms and conditions of this Membership Agreement and DDR overleaf. The set terms are stated below.

2. DEFINITIONS

In this Agreement unless the contrary intention appears:

- 2.1 The singular includes the plural and vice versa.
- 2.2 A reference to a party includes that party's legal personal representative heirs and assigns.
- 2.3 "Member" includes the parent or guardian of the Member if the Member is under 18 years.
- 2.4 "Card" means the Genesis membership card and includes both a 24/7 access card and standard card.
- 2.5 "Centre" means the Genesis Fitness Centre named on the Direct Debit Request (DDR) and Contract that this booklet refers to
- 2.6 "Debitsuccess" is Debitsuccess Pty Ltd, PO Box 577, Mt Waverley, Vic, 3149, Phone: 1800 267 916, E-mail: Memberservice@Debitsuccess.com. All queries and comments about the fitness club services provided under this Membership Agreement should be directed to the Centre. All queries and comments about the direct debit billing service should be directed to Debitsuccess. The Member acknowledges that Debitsuccess has been engaged by the Centre to collect the due under this Membership Agreement if paying by way of direct debit and acknowledges that all rights of the Centre under this Membership Agreement are able to be forced by Debitsuccess as if it were the Centre without any involvement on the part of the Centre or the consent of the Member.
- 2.7 "Gold Membership" A member can use all participating Genesis clubs if they join up as a Gold Member. When a Gold member joins their contract is with Belgravia Health and Leisure Group. A Gold member pays a higher fee than a standard member which is a fixed rate set by Belgravia Health and Leisure Group. A gold member must join up at the club they most frequently use ("Home club") and may use other participating Genesis clubs ("Away clubs"). Genesis Franchisees sell gold memberships for Belgravia Health and Leisure Group.
- 2.8 "Silver Pass Membership" A member can use participating Genesis clubs in the specific region to which the Silver Pass Membership System applies if they join up as a Silver Pass Member. When a Silver Pass Member joins their contract is with Belgravia Health and Leisure Group. A Silver Pass Member pays a higher fee than a standard member which is a fixed rate set by Belgravia Health and Leisure Group. A Silver Pass Member must join up at the club they most frequently use (their "Home club") and may use other participating Genesis clubs ("Away clubs"). Genesis Franchisees sell the Silver Membership for Belgravia Health and Leisure Group.

2.9 "24/7 Tailgate Fee" means the fee payable by a Member for admitting a guest to any Genesis 24/7 Centre in breach of rule 25.2 of this Agreement. This fee will be set by Genesis on a case by case basis up to the amount \$250 per guest per instance.

3. LEGALLY BINDING AGREEMENT

The Member acknowledges and agrees that:

3.1 The Direct Debit Request (DDR) and Contract is legally binding whether the use of the Centre and its services is determined and paid on a yearly, monthly, weekly or individual basis.

3.2 The membership must remain current in order to avoid paying the joining fee again.

3.3 They declare that they are physically and medically fit and capable to engage in exercise and fitness programs at the Centre, and have and will inform instructors of any condition or risk that may have an effect on their ability to participate in any exercise or fitness program prior to commencement.

3.4 They are 18 years of age or older at the time of signing, and not under any other legal disability. If not, a parent or adult guardian will sign also.

3.5 The Genesis adult pre-exercise screening tool does not provide advice on a particular matter, nor does it substitute for advice from an appropriately qualified medical professional. No warranty of safety should result from its use. The screening system in no way guarantees against injury or death. No responsibility or liability whatsoever can be accepted by Genesis Fitness Clubs for any loss, damage or injury that may arise from any person acting on any statement or information contained in this tool.

3.5.1 If you answered "YES" to any of the 7 questions, please seek guidance from your GP or appropriate allied health professional prior to undertaking physical activity/exercise.

3.5.2 If you answered "NO" to all of the 7 questions, and you have no other concerns about your health, you may proceed to undertake light-moderate intensity physical activity/exercise.

3.5.3 The member acknowledges and agrees to the best of my knowledge, all of the information I have supplied to Genesis Fitness Clubs is correct.

4. RECEPTION AND ACCESS

4.1 All members must swipe or present their Card at reception every time they attend the Centre including outside staffed hours if provided.

4.2 At no stage are you permitted to give your Card to non-members to allow them to access the Centre.

4.3 If a member would like to train with a non-member they must attend within staffed hours and the non-member must pay the casual membership rate.

4.4 When scanning your Card upon entry outside staffed hours (if provided) you will have a limited amount of time to enter. If this opportunity is missed a second scan will not be able to be done for a period of 5 minutes.

4.5 Members must advise any changes of address and phone number.

4.6 The facilities are available to the general public and not exclusively for members.

4.7 To use the Centre your account must be valid and up to date, Overdue payments can be made directly at the Centre or by calling Debit Success after which the Centre may be used.

4.8 All Genesis 24/7 clubs but not limited to those clubs, require constant video surveillance whilst in the Centre except in the changerooms.

5. GENERAL CONDITIONS OF ENTRY

To ensure the Centre is able to provide a high level of service in a safe, healthy and pleasant environment for all, members must comply with the following conditions:

5.1 Entry will be refused, or a person requested to leave the Centre if the person:

5.1.1 Is abusive or uses offensive language or whose behaviour is threatening, or

5.1.2 Is under the influence of drugs or alcohol.

5.2 No smoking is permitted in the Centre.

5.3 No chewing gum permitted in the Centre.

5.4 Sweat towels must be used at all times.

5.5 Weights must be returned to their correct place after use.

5.6 Correct training attire and runners must be worn in the Centre – no jeans, work clothes, boots, sandals, thongs, or clothing that is likely to cause offence to others are permitted.

5.7 No person under the age of 16 is allowed in the Centre unless accompanied by a guardian or qualified instructor. Members between the age of 16 and 18 may train in the facility without a parent guardian during staffed hours, if outside staffed hours the must be accompanied by a guardian or qualified instructor.

5.8 No food allowed in the gym or group exercise classes.

5.9 No entry to a group exercise class 5 minutes after it starts.

6 LOCKERS (where provided)

6.1 All items stored in the lockers are at your risk and we do not accept responsibility for items lost, damaged or stolen.

6.2 Bags are not permitted in the Centre unless placed in the lockers provided.

7 CANCELLATION / TERMINATION

7.1 Direct Debt Membership

7.1.1 Cooling Off Period

The Direct Debit Request (DDR) and Contract is subject to a 7-day cooling off period:

7.1.1.1 The cooling off period commences at the close of business on the "Commencement Date".

7.1.1.2 The cooling off period ends at close of business on the 7th day after the "Commencement Date".

7.1.1.3 New members have the right to cancel their membership within the cooling off period if they are not completely satisfied with the services and programs.

7.1.1.4 All monies will be refunded on a pro rata basis with the exception of an Administration Fee.

7.1.1.5 All cooling off cancellations must be in writing to the Manager.

7.1.2 Permanent Disability

7.1.2.1 Upon providing written advice of a permanent disability or serious illness, along with a letter from a medical practitioner detailing the disability or illness, the Centre may agree to cancel the membership effective from the day of notice for an Administration Fee of up to 10% of the Membership Fee. If the medical condition is deemed not to be a permanent disability or serious illness and membership is within minimum term the standard cancellation terms and fees apply as outlined in 7.3.

7.1.2.2 All monies will be refunded with the exception of charges for services already delivered.

7.1.3 Cancellation procedure

7.1.3.1 ALL CANCELLATION REQUESTS MUST IN THE FIRST INSTANCE BE DIRECTED IN WRITING TO THE CENTRE.

7.1.3.2 Cancellations inside the Minimum Term – The Member may terminate their Membership Agreement before the expiry of the minimum term or payment if all the instalments and fees due up to the date of termination (which outstanding fees remain owing to the Centre), by paying the cancellation fee specified on the front of the Direct Debit Request (DDR) and Contract to Debtsuccess. The Direct Debit Request DDR and Contract may be cancelled upon payment of either:

1. the costs the Centre has incurred in establishing and operating the Membership which the Centre assesses as \$150.00, or
2. the payment of the balance of the Membership Fees, whichever is the lesser. 30 days' notice is required for cancellation of all memberships including cancellations inside Minimum Term.

7.1.3.3 Cancellations after completion of the Minimum Term- After the expiry of the minimum term or payments, and after all instalments and fees due have been paid in full, should the box on the front of the Direct Debit Request (DDR) and Contract requesting termination at minimum term be marked then the Direct Debit Request (DDR) and Contract shall automatically terminate. Should the box on the front of the Direct Debit Request (DDR) and Contract requesting termination after the minimum term not be marked, then the Direct Debit Request (DDR) and Contract shall continue indefinitely until such time as the Member makes a request, after the expiry of the minimum term for it to terminate. Any instalments/fees due at the date of termination (including instalments/ fees which fall due during the notice period) will remain a debt owed to and recoverable by Debtsuccess. There will be a period of notice of 30 days unless otherwise specified by the Centre between the date of request and the date of actual termination during which any payments due must still be paid in full. The Member should contact Debtsuccess if they have not received written confirmation of the termination within the 30-day period. The Member shall not consider that the Direct Debit Request (DDR) and Contract has been terminated until such time as this is confirmed in writing to the Member by Debtsuccess (not more than 14 days after the termination date). Termination of the Direct Debit Request (DDR) and Contract will also terminate the Direct Debit Request Authority.

7.2 Paid in Full Memberships

7.2.1 If you decide to pay your membership in full, there will be no refunds available if you wish to terminate your membership prior to the end of your agreement.

7.2.2 If you purchase a paid in full memberships you have the ability to transfer the remaining time on your membership's agreement to another person for a set fee as outlined in condition 8.1.

7.2.3 Paid in full memberships cannot be transferred between Genesis clubs at any time.

7.2.4 We agree and will refund any paid in full memberships or any other fees that the law requires.

7.2.5 Upon providing written advice of a permanent disability or serious illness, along with a letter from a medical practitioner detailing the disability or illness, the Centre may agree to cancel the membership effective from the day of notice for an Administration Fee of up to 10% of the Membership Fee. In such a case the balance of the unused portion of the membership less the Administration Fee shall be refunded to the Member.

8 TRANSFER OF MEMBERSHIP BY THE MEMBER

8.1 Transfer of membership will be by agreement of the Manager of the Centre and will incur a Transfer Fee of \$55. This fee is payable to the Centre.

8.2 Transfers between Centres will be by agreement of the Manager of the Centre to which the Member wishes to transfer.

8.3 Transfers of Gold Memberships between clubs may automatically occur from time to time. After the initial 6 months of a gold membership, if over a 3-month period a Gold Member's visits are greater than 60% at an Away club and in-line with the Genesis Gold Membership Policy, from that time that club will be designated as the Member's Home club. This club will then be considered your HOME club and all other clubs AWAY clubs. Both the clubs and the Member will be notified once this change occurs.

8.4 Transfers of Silver Pass Memberships between clubs may automatically occur from time to time in accordance with the Silver Pass Membership Policy as modified from time to time. After the initial 6 months of a Silver Membership, if over a calendar month period a Silver Pass Member's visits are greater than 60% at an Away club and in-line with the Genesis Silver Pass Membership Policy, from that time that club will be designated as the Member's Home club. This club will then be considered your Home club and all other clubs Away clubs. Both the clubs and the Member will be notified once this change occurs.

9 REPLACEMENT CARD FEE

If a Card is lost, destroyed or damaged and requires replacement a replacement card fee of \$5.00 applies for a standard card and up to \$50 for a 24/7 access card payable to the Centre.

10 ADDITIONAL FEES FOR SPECIAL SERVICES

Some services require an additional fee, and these include personal training, crèche and swimming lessons.

11 DAMAGE TO THE CENTRE

Any Member who wilfully or through their negligence damages the Centre or its property will pay for the damage. Members are responsible for damages caused by their guests and children.

12 SAFETY, MAINTENANCE & SERVICE DEMAND

The Centre may from time to time as reasonably necessary:

12.1 Close off any part of the Centre or isolate any piece of equipment for maintenance or safety reasons; or

12.2 Change the hours of opening and closing or alter class timetables in accordance with demand; or

12.3 Vary Centre rules. Where this occurs, the Centre will provide reasonable notice on the Centre notice boards or at reception.

13 DAMAGE & PERSONAL INJURY - DISCLAIMER

To the extent permitted by law, the Centre and Debit success exclude any liability to the Member in the Membership Agreement, 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 the Member and/or any other person, or for any costs, charges or expenses incurred by the Member, arising from or in connection with the Direct Debit Request (DDR) and Contract and/or the services/products provided by the Centre and/or Debit success, and/or any act or omission of the Centre and/or Debit success.

Warning under the Australian Consumer Law and Fair Trading Act 2012 (Victorian memberships only)

A. If you participate in these activities your rights to sue the supplier under the Australian Consumer Law and Fair Trading Act 2012 if you are killed or injured because the activities were not supplied with due care and skill or were not reasonably fit for their purpose, are excluded, restricted or modified in the way set out in or on this notice.

B. 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 supplier is entitled to ask you to agree that these statutory guarantees do not apply to you. If you sign this form, you will be agreeing that your rights to sue the supplier under the Australian Consumer Law and Fair Trading Act 2012 if you are killed or injured because the services provided were not in accordance with these guarantees, are excluded, restricted or modified in the way set out in 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.

14 SEVERABILITY

In the event any part of this Direct Debit Request (DDR) and Contract being or becoming void or unenforceable then that part shall be severed from the Direct Debit Request (DDR) and Contract with the intention that the balance of the Direct Debit Request (DDR) and Contract shall remain in full force and effect, unaffected by the severance.

15 SUSPENSION

Suspension may be possible under the terms of the Direct Debit Request (DDR) and Contract. You may suspend for a minimum of 2 weeks at a time so long as the total time suspended within a 12-month period does not exceed 6 weeks. In order to suspend you must contact the Centre Manager in writing with reasonable notice (at least 3 days) prior to the date of suspension. There is a charge of \$5.00 per week dependant on the type of membership while the Agreement is suspended. Any time spent on suspension will be added onto the minimum term of the Agreement so that the amount payable shall still be payable regardless of any suspension or suspension charges made.

16 BREACH OF TERMS & CONDITIONS

Any breach of the set terms and conditions will result in a warning and any further breach will result in a second warning and your membership may be suspended or terminated. A proven serious breach of the general conditions of entry under Clause 5 may result in immediate termination of your membership without warning. The Member, Debit success and the Centre each hold reciprocal rights of termination for a material breach of any term or condition of this Membership Agreement. The Membership Agreement will be terminated upon receipt of written notice outlining the relevant breach.

17 TRANSFER OF MEMBERSHIP BY THE CENTRE

17.1 The Centre will have the right to assign or novate the Membership Agreement to a third party in the event of the sale of the business.

17.2 The Centre may relocate to another premise within a 5-kilometre radius and the location at which the services are provided may change during the term of this Membership Agreement.

17.3 In the event of clauses 17.1 or 17.2 occurring you agree that the Direct Debit Request (DDR) and Contract will continue with the new third party and/or at the new location.

18 PAYMENTS BY DIRECT DEBIT

If paying by Direct Debit the Member agrees to pay the instalment amount at the agreed payment frequency until the Direct Debit Request (DDR) and Contract is terminated in accordance with Clause 7 above. Should there be any arrears in payments the Member authorises Debit success to debit the outstanding balance in order to bring the account up to date.

18.1 Dishonoured Payments

It is your responsibility to ensure that on the due date clear funds are available in your nominated account to meet the direct debit payment. Should your payment be dishonoured Debit Success will debit you an additional \$14.95 with your next payment and may, if we have not received instructions to the contrary from you, debit both the current due payment and the now overdue payment(s) on the same day. Debit Success may debit other fees or costs involved with debt collection in accordance with the terms and conditions of the Membership Agreement (refer to clause 21 Credit/Debt Reporting Agencies).

19 ADMINISTRATION FEE (DIRECT DEBIT)

If paying by Direct Debit, a one-off Administration Fee of the value indicated on the face of this Contract is payable to Debitsuccess by the Member on signing of the Direct Debit Request (DDR) and Contract. This fee is split, \$7.50 to Debit success, the remainder to the Centre.

20 PRIVACY

20.1 A Customer's "personal information" (as that term is defined in the Privacy Act 1988 (Cth)) will only be used by the Centre or Debit success to provide you with the services contemplated by the Direct Debit Request (DDR) and Contract or in accordance with your selection relating to the Privacy disclaimer on the front page of the Direct Debit Request (DDR) and Contract. Debitsuccess' Privacy Statement is to be found on its website debitsuccess.com. The Centre's Privacy Statement can be obtained from the Centre.

20.2 Unless you indicate to the contrary, you agree that we may use your personal information for internal marketing purposes. We may use your personal information to develop marketing lists and other programs for internal use only so that we may offer you goods and services by mail, telephone, facsimile, email or SMS. If you do not want to be contacted in this manner, please notify your Centre or reply "STOP" to any email or SMS.

21 CREDIT/DEBIT REPORTING AGENCIES

If paying by Direct Debit, upon default by the Member in regard to any obligation under the Direct Debit Request (DDR) and Contract and failure to remedy the default after notification by Debit success, the Member authorises Debit success to notify any debt collection/credit reporting agency of the default. Should this occur then at Debit success' sole discretion it may terminate the Membership Agreement at which time the full outstanding balance for the remainder of the minimum term or payments (including any current arrears) shall be due in full. The Member authorises Debit success to add an amount equivalent to 25% of the full outstanding balance (being Debit success' expenses reasonably incurred in collecting the debt) upon initial referral to the debt collection/credit reporting agency.

22 INCREASE IN FEES

If paying by Direct Debit, Debit success may at any time AFTER the end of the minimum term, upon sending notice to the member's last known address and giving 14 days' notice, increase the instalment amount. If the Member wishes to terminate the Direct Debit Request (DDR) and Contract as a result of the increase in the instalment amount, the Member must notify Debit success in writing within 14 days of the date of the written notice sent by Debit success. The Membership Agreement will be terminated upon receipt of this notice. If the Member does not notify Debit success of its intention to terminate the Direct Debit Request (DDR) and Contract within such specified time period, then the Direct Debit Request (DDR) and Contract will remain in force and the increase in the instalment amount will be deemed to be accepted by the Member.

23 ENTIRE AGREEMENT

The Direct Debit Request (DDR) and Contract, constitute the entire agreement, understanding and arrangement (express and implied) between the Member, the Centre and Debit success relating to the subject matter of the Direct Debit Request (DDR) and Contract and supersedes and cancels any previous agreement, understanding and arrangement relating thereto whether written or oral.

23.1 Updating Terms and Conditions

Genesis Health and Fitness may update these terms and conditions from time to time (including if Debitsuccess changes its terms of business with us). In the event that we do update terms and conditions Genesis Health and Fitness will give you 14 days' notice of the change.

If we reasonably consider that any change to the terms and conditions is likely to benefit you or be of no, or immaterial, detriment to you, we can make the change immediately and do not need to notify you.

For all other changes, we give you at least 14 days' notice of any changes, for instance by:

- Publishing them in our newsletter or on our website; or
- Placing a notice in the Club; or
- Calling you or writing to the address (post or email) you last gave us.

24 STATE SPECIFIC CONDITIONS APPLICABLE TO WESTERN AUSTRALIAN MEMBERSHIPS ONLY

Clause 7.1 is amended as follows:

The Direct Debit Request (DDR) and Contract is subject to a 7-day cooling off period.

Clause 7.1.3.3 is amended as follows:

Cancellations after completion of the Minimum Term - After the expiry of the minimum term or payments, and after all instalments and fees due have been paid in full, should the box on the front of the Direct Debit Request (DDR) and Contract requesting termination at minimum term be marked then the Direct Debit Request (DDR) and Contract shall automatically terminate. Should the box on the front of the Direct Debit Request (DDR) and Contract requesting termination after the minimum term not be marked, then this is an ongoing membership agreement. The agreement will continue until either you or the supplier terminates it in the way described in the agreement. If an automatic debit arrangement is in place, membership fees will continue to be debited from your credit card or account until you or your fitness Centre cancels the arrangement by notifying your bank or credit provider. 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 the fitness Centre for damages for breach of contract. Any instalments/fees due at the date of termination (including instalments/fees which fall due during the notice period) will remain a debt owed to and recoverable by Debit success. There will be a period of notice of 30 days unless otherwise specified by the Centre between the date of request and the date of actual termination during which any payments due must still be paid in full. The Member should contact Debit success if they have not received written confirmation of the termination within the 30-day period. The Member shall not consider that the Direct Debit Request (DDR) and Contract has been terminated until such time as this is confirmed in writing to the Member by Debit success (not more than 14 days after the termination date). Termination of the Direct Debit Request (DDR) and Contract will also terminate the Direct Debit Request Authority.

25 ADDITIONAL TERMS IF 24/7 ACCESS PROVIDED

If the Membership type provided includes 24/7 access to the Centre, then the provisions of this clause 25 apply to the membership:

25.1 Genesis 24/7 Centres are unmanned facilities for periods of time and as such if you participate in activities in these facilities, you are exposing yourself to the potential for serious injury including death. As such you should take note that your rights to sue the supplier if you are killed or injured

because the activities were not supplied with due care and skill or were not reasonably fit for their purpose, are (subject to clause 13) excluded, restricted or modified in the way set out in or on this Membership Agreement including:

25.1.1 the Member expressly indicates an understanding of the risks associated with undertaking activities in an unmanned and unsupervised Centre and hereby releases, indemnifies and holds harmless Genesis, their respective owners, officers' affiliates, agents and employees in the event that I suffer personal loss, an injured or killed in the Centre; and

25.1.2 further, the Member provides this release whether it arises from the negligence of the Centre or otherwise and does so with the intention that this release shall be as broad and inclusive as the laws of the state allow.

25.2 Subject to clause 4.3, the Member acknowledges and agrees that they may not admit guests at any time to the Genesis 24/7 Centre. Furthermore, the Member agrees that if this clause is breached then the following provisions shall apply:

25.2.1 Upon a first breach the Member's access to the Genesis 24/7 Centre may be immediately suspended for a period of 14 days without any notification to the Member.

25.2.2 Upon a second breach the Member's access to the Genesis 24/7 Centre may be immediately suspended for a further period of 14 days and the Member may be notified that our billing provider will debit an initial 24/7 Tailgate Fee of up to \$250 from the Member's nominated account-

25.2.3 Upon any subsequent breach the Member may incur another 24/7 Tailgate Fee of up to \$250 and the Centre may immediately cancel the Member's membership. In the event that the membership is cancelled, the Member shall also be liable to and agrees to pay a Cancellation Fee of \$150 or 50% of the remaining membership fees due and payable under the terms of the agreement, whichever is the lesser, in addition to any 24/7 Tailgate Fee payable.

25.2.4 Some areas of the Centre will be locked off outside staffed hours and Members will not have access. These general areas may include but are not limited to swimming areas, spa, sauna, childcare areas and office areas. Please check with your facility to confirm.