

MEMBERSHIP TERMS AND CONDITIONS



Capat Investments Pty Ltd trading as
Benefitness & Health Centre
ABN: 63 066 628 224
PO Box 71, Greenwith SA 5125
341 Hancock Road, Fairview Park SA 5126
Email: sales@benefitness.com.au
Phone: 8251 3011

1. Definitions

- (a) **Agreement** means this Membership Agreement made between you and Benefitness & Health Centre.
- (b) **Benefitness & Health Centre** means the entity on the front page of this Agreement and includes its heirs, estates, agents, representatives, officers, directors, shareholders, successors, affiliates, subsidiaries and employees.
- (c) **Billing Account** means the bank account or credit card nominated by you to have your direct debit Membership Fees deducted from.
- (d) **Club** means Benefitness & Health Centre as specified in this Agreement.
- (e) **Club Access** means an Admin Fee (if applicable – Flexi only) and Smart Band/Card Fee as described on the front page of this Agreement.
- (f) **Club Rules** mean the Club rules as amended from time to time, which are located at the Club.
- (g) **Club Membership** entitles the member to Group Fitness Classes, Cardio Room, Mixed Gym, Ladies Gym (if applicable), Functional Training Zone and Creche/Kids Club.
- (h) **Club Platinum** entitles the member to Group Fitness Classes, Cardio Room, Mixed Gym, Ladies Gym (if applicable), Platinum Room, Functional Training Zone and Creche/Kids Club.
- (i) **Direct Debit Membership** means a weekly membership, with recurring weekly direct debit payments. Please see page 5, 6 & 7 for complete Direct Debit Request Service Agreement.
- (j) **Dishonour Fee** means a \$5.00 fee.
- (k) **Fixed Term Agreement** means a membership that has a maximum term of 12 months. A member can be released from their obligation by paying out the remaining term of the membership. A new contract will be required to be completed if you wish to continue for a further term.
- (l) **Flexi Periodic Agreement** means a weekly membership, with recurring weekly direct debit payments which will continue until either party cancels, 2 weeks notice in writing is required. This is a periodic agreement with no expiry date.
- (m) **Member** means the individual who has entered into this Agreement with Benefitness & Health Centre.
- (n) **Membership Fees** means the fees that are due and payable by you pursuant to this Agreement.
- (o) **Minor** means members under the age of 18.
- (p) **Payment Agreement** means the Agreement between you and our Payment Provider, permitting the Payment Provider to provide the direct debit and credit card payment facilities.
- (q) **Payment Provider** means the Payment Provider specified from time to time by Benefitness & Health Centre.
- (r) **Policies** means the Benefitness & Health Centre membership policies as amended from time to time, which are located at www.benefitness.com.au and available at your Club on request.
- (s) **Pre Exercise Screening Questionnaire** means the pre-workout questionnaire that the member is required to complete prior to using the Club.
- (t) **Privacy Policy** means the Benefitness & Health Centre privacy policy which is available at www.benefitness.com.au or by emailing sales@benefitness.com.au
- (u) **Products** means any products that are purchased pursuant to Benefitness & Health Centre sale of goods terms and conditions.
- (v) **Smart Band/Card** means your membership access band/card allowing you to enter the Club.
- (w) **Smart Band/Card Fee** means the Smart band/card fee specified in your Membership Agreement.
- (x) **Staffed Hours** means the hours for the Club, which are located at the entrance to the Club or at www.benefitness.com.au. Benefitness & Health Centre reserves the right to change the Staffed Hours at any time without notice.
- (y) **Upfront Membership** means members that have paid in advance according to the level as indicated on the front page of this Agreement.
- (z) **U18 Membership Club & Platinum** entitles you to access the Club as per definitions (g) and (h) during Staffed Hours only.
- (aa) **Written Notice** means notice in writing, given in person, by email or post to the parties last known address or input of data via Benefitness & Health Centre.
- (ab) **10 Visit Pass** entitles you to Club Membership services and facilities during Staffed Hours only.

2. Terms and Conditions

- (a) Your membership is governed by this Agreement.
- (b) This Agreement incorporates the terms of the Policies, the Club Rules, and the Privacy Policy.
- (c) Signing this Agreement does not automatically entitle you to membership as your application may be subject to further review by Benefitness & Health Centre.

3. Membership

- (a) Nature of Membership Your membership permits you to use Benefitness & Health Centre premises, facilities, equipment and services as shown and limited by the membership identified. Your membership is non-transferable by you unless deemed appropriate by Benefitness & Health Centre.
- (b) Change to Details You must provide Benefitness & Health Centre with any changes to your details, which are relevant to your membership in writing.
- (c) Membership Suspension Benefitness & Health Centre will suspend your membership for a fee of \$15 paid up front. To be eligible for suspension you must be in good standing with all processing and enrolment fees paid and you must be current on your weekly fees. A membership can be placed on hold for a maximum period of 12 months.
- (d) Membership Transfer – Upfront Memberships Members are able to transfer to a non-member who is accepted as a member of the Club free of charge.
- (e) Membership Transfers - Direct Debit Members who pay weekly by direct debit may transfer their membership free of charge to a non-member who is accepted as a member of the Club providing:-
 - (i) direct debit membership is not in arrears; and
 - (ii) must submit their transfer request in writing to Benefitness & Health Centre providing new direct debit details.

4. Payments

- (a) You agree to pay all Membership Fees as set out in this Agreement and agree to be bound by the direct debit terms and conditions as described in the Direct Debit Request.
- (b) For a Direct Debit Membership you must make your payments on a weekly basis in advance.
- (c) For an upfront membership, you must pay your membership in advance according to your type of membership as indicated on the front page of this Agreement.
- (d) For all memberships you must make payment of the Club Access amount in advance and the balance of the Membership Fees by way of direct debit (or if upfront by way of credit, cash or EFTPOS).
- (e) You must complete and deliver to Benefitness & Health Centre a Membership Application and Direct Debit Request if applicable authorising Benefitness & Health Centre's Payment Provider to debit the Membership Fee due for each direct debit period from your Billing Account.
- (f) Benefitness & Health Centre will endeavour to contact you by phone, sms or email to inform you of any overdue payments. In the event that Benefitness & Health Centre cannot contact you, it will provide you with written notice of overdue payments;
- (g) A member will be charged a Dishonour Fee in the event that a weekly direct debit payment is dishonoured by their financial institution.
- (h) A member will be charged a \$49.00 fee if their Smart Card/Band is damaged or lost and requires replacement.
- (i) Additional fees (being bank charges or administrative charges incurred by the Payment Provider) will apply for any overdue or late payments.
- (j) If there are repeated failures to meet your payment obligations (other than through the fault of Benefitness & Health Centre or its Payment Provider), without prejudicing Benefitness & Health Centre's rights to recover any overdue payments, your membership may be suspended or terminated by Written Notice to you.
- (k) Benefitness & Health Centre may change its Payment Provider. In such circumstances, you must complete and deliver to Benefitness & Health Centre a Direct Debit Request authorising Benefitness & Health Centre's new Payment Provider to debit the Membership Fees due for each direct debit period from your Billing Account.
- (l) Benefitness & Health Centre reserves the right, at any time, to change the Membership Fees charged to members for use of the Club facilities. Benefitness & Health Centre agrees to use reasonable endeavours to provide you with Written Notice of the changes. The changes will take effect 30 days after the Written Notice has deemed to be received by you. We deem receipt to have occurred 2 business days after the Written Notice was sent. At the end of the 30 day period, you authorise Benefitness & Health Centre and/or the Payment Provider to debit the new amount to your account.

5. Minimum Age

- (a) All members of Benefitness & Health Centre must be a minimum of 14 years of age. All Minors must have a parent or guardian co-sign this Agreement.
- (b) Minors aged 14,15,16 and 17 years of age must comply with the following restrictions:
 - (i) access to the Club can only be during Staffed Hours;
 - (ii) a pre-exercise questionnaire must be completed by the parent or guardian prior to the commencement of exercise; and
 - (iii) a suitably qualified personal trainer to undertake a pre-exercise assessment and then provide an exercise program for the Minor prior to the commencement of exercise.

6. Staffed Access

A member may be subject to a Staffed Access only membership, which will only allow them to attend the Club during Staffed Hours.

7. Access by Non-Members

- (a) Benefitness & Health Centre only grants members, unless otherwise specified in this Agreement, access to the Club. No member is permitted to bring a non-member into the Club or allow another person entry without using the correct procedure of entry.
- (b) If a member breaches clause 7(a) of this Agreement, the member acknowledges that:
 - (i) they accept responsibility and liability on their personal behalf for any injury, loss or damage attributed to the non-member whether or not caused through the negligence of Benefitness & Health Centre;
 - (ii) the act of bringing a non-member or allowing entry using incorrect entry into the Club constitutes automatic acceptance by the member of a fee for the non-member or breach of Agreement. The fee amount is \$50 and will be charged to the member in the following ways:
 - (1) for a member who holds a Direct Debit Membership, this amount will be deducted from their nominated bank account; and
 - (2) for a member who holds an Upfront Membership, the member will receive an invoice for this amount;
 - (v) Benefitness & Health Centre reserves the right to terminate the membership of the member who brings a non-member into the Club or allows access to another member without using the correct entry procedures.

8. Orientation

- (a) It is a condition of this Agreement that you watch our member safety & orientation video and sign off on our checklist.
- (b) The orientation focuses on the safe and correct use of safety equipment and emergency procedures at the Club.
- (c) Benefitness & Health Centre may suspend or terminate this Agreement in the event of unsatisfactory completion of the Club orientation prior to the commencement of exercise.

9. Physical Condition

- (a) It is your responsibility not to use any equipment which may adversely affect any medical condition.
- (b) You hereby represent to your Club and Benefitness & Health Centre and their directors, officers, employees, contractors and agents 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 Club or its facilities.
- (c) If you have any health or medical concerns now or after you join as a member of the Club, you must discuss them with your doctor before using the equipment or the Club.
- (d) You acknowledge that Benefitness & Health Centre did not give you any medical advice before you used the equipment, and cannot give you any medical advice after you use the equipment.

10. Pre Exercise Screening Questionnaire

- (a) It is a condition of membership with Benefitness & Health Centre that each member, prior to using the Club, has to complete the Pre Exercise Screening Questionnaire.
- (b) You will not be permitted to use the Club until you have completed the Pre Exercise Screening Questionnaire.
- (c) Benefitness & Health Centre reserves the right to restrict, suspend or terminate your membership if Benefitness & Health Centre is of the reasonable opinion that you are unfit to utilise the Club on a 24/7 basis. If your membership is

restricted or suspended for this reason, your membership will not be reinstated until you provide Benefitness & Health Centre with a medical certificate confirming that you are fit to train.

11. Video and Audio Surveillance

- (a) For security purposes, Benefitness & Health Centre uses video and audio surveillance equipment to monitor the Club on a 24 hour basis.
- (b) By signing this Agreement you acknowledge that by accessing Benefitness & Health Centre you will be subject to video and audio surveillance and recording.
- (c) Video and audio surveillance is limited to the floor area only, and is not within the walls of the bathrooms or assessment rooms.

12. Equipment

- (a) You understand and acknowledge that Benefitness & Health Centre purchases or leases the equipment from a third party and therefore does not manufacture any of the fitness or other equipment used in the Club.
- (b) You understand and acknowledge that Benefitness & Health Centre is providing recreational services and may not be held liable for defective products or equipment.
- (c) in the event that you do not adhere to signage clearly stating "out of order" or "not to be used during unstaffed hours" a \$50 fine will be charged to the member in the following ways:
 - (i) for a member who holds a Direct Debit Membership, this amount will be deducted from their nominated bank account; and
 - (ii) for a member who holds an Upfront Membership, the member will receive an invoice for this amount;
 - (iii) Benefitness & Health Centre reserves the right to terminate the membership of the member who does not adhere.
- (d) in the event that you use an emergency response button without reasonable cause a \$500 fine will apply and if you do not return the mobile duress alarm upon exit a fee of \$100 will apply and will be charged in the following ways:
 - (i) for a member who holds a Direct Debit Membership, this amount will be deducted from their nominated bank account; and
 - (ii) for a member who holds an Upfront Membership, the member will receive an invoice for this amount;
 - (iii) Benefitness & Health Centre reserves the right to terminate the membership of the member who does not adhere.

13. Liability for Property

- (a) Benefitness & Health Centre is not liable to you for any personal property that is damaged, lost, or stolen while on or around the Club including, but not limited to, a vehicle or its contents or any property left in a locker or at the front desk.
- (b) If you cause damage to the Club or any equipment you are liable to Benefitness & Health Centre for its cost of repair or replacement.

14. Cooling Off Period

- (a) All new memberships are subject to a cooling off period of 48 hours, and start from the date you enter into the Agreement. The cooling off period ends 48 hours after the cooling off period starts.
- (b) A request for termination of membership during the cooling off period must be made by you in writing and delivered to the Club.
- (c) For any membership terminated validly during the cooling off period, Benefitness & Health Centre shall refund to you the total of all Membership Fees minus an administration charge of \$49.00. Benefitness & Health Centre will refund all monies to you within 7 days of Benefitness & Health Centre receiving Written Notice of Termination.

15. Cancellation, Termination or Restriction of Membership

Cancellation of Membership:

- (a) In regards to a Fixed Term Agreement, you may request to be released from your obligations by paying the remainder of your contract in full. This will be calculated by number of weeks remaining in your contract x weekly amount due. This request must be sent to the club in writing, with a minimum of 2 weeks notice.
- (b) In regards to a Flexi Periodic Agreement, you may cancel your membership at any time. You must provide Benefitness & Health Centre with Written Notice of cancellation at least 2 weeks before your direct debit bill date to allow Benefitness & Health Centre sufficient time to process your request.

Termination of Membership:

- (c) You may request for termination of your membership if your request for termination is for reason of permanent sickness or physical incapacity and this prevents you from using the Club, your termination request must be in writing and accompanied by:

- a medical certificate evidencing such permanent sickness or physical incapacity; and
- In the event of death, your estate must provide written evidence in the form of a death certificate and all unused Membership Fees will be refunded.

Benefitness & Health Centre may also terminate your membership at any time on the following basis:

- you fail to make any payments of your Membership Fees;
- any payment of fees are late;
- Benefitness & Health Centre reasonably suspects that you are engaging in illegal activity in the Club;
- you fail to follow any of the Policies or Club Rules, or violate any part of this Agreement; or
- your conduct is improper or harmful to the best interest of Benefitness & Health Centre members or staff.
- In the event that Benefitness & Health Centre terminates your membership in accordance with clause 16(c), termination will be effective on the date that Benefitness & Health Centre sends Written Notice. You are liable for all financial obligations until that date. If you are an Upfront Member, Benefitness & Health Centre will not refund any unused portion of your fees.
- Upon termination of your membership by Benefitness & Health Centre, you will cease to have access to the Club. Any money owing to Benefitness & Health Centre when your membership ends, remains immediately due and payable and Benefitness & Health Centre will deduct the amount outstanding from any refund which you may be eligible. If there is not enough money to cover the amount owing to Benefitness & Health Centre, you must pay the balance of the amount owing.
- Termination or expiration of this Agreement shall be without prejudice to the rights of each party against the other in respect of anything done or omitted under this Agreement prior to such termination or expiration.

Restriction of Membership:

Benefitness & Health Centre may restrict your membership and limit access to Staffed Hours at any time on the following basis:

- concern for the health and/or safety of the member; or
- non-compliance, improper or harmful conduct engaged in by the member.

16. Risk Warning

(a) Benefitness & Health Centre warns that whilst you are on our premises using our Club and recreational services, you are at risk of suffering physical harm or personal injury including broken bones, soft tissue injuries, joint injuries, permanent disability or death. These injuries may occur from you:

- (i) slipping on wet flooring;
- (ii) being struck by weights;
- (iii) colliding with equipment, or other members;
- (iv) engaging in strenuous exercise and activities; or
- (v) incorrect use of equipment,

(b) You acknowledge that any such injury may result not only from your actions but from the action, omission or negligence of others.

(c) You acknowledge and agree that the 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.

(d) You acknowledge that whilst every attempt is made to ensure that the recreational services and facilities provided by Benefitness & Health Centre 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.

DIRECT DEBIT REQUEST (DDR) SERVICE AGREEMENT

The following is your Direct Debit Service Agreement with Benefitness. The agreement is designed to explain what your obligations are when undertaking a Direct Debit arrangement with us. It also details what our obligations are to you as your Direct Debit Provider.

We recommend you keep this agreement in a safe place for future reference. It forms part of the terms and conditions of your Direct Debit Request (DDR) and should be read in conjunction with your DDR service agreement, membership contract and membership terms and conditions.

Definitions

account means the account held at *your financial institution* from which we are authorised to arrange for funds to be debited.

agreement means this Direct Debit Request Service Agreement between *you* and *us*.

banking day means a day other than a Saturday or a Sunday or a public holiday listed throughout Australia.

debit day means the day that payment by *you* to *us* is due.

debit payment means a particular transaction where a debit is made.

direct debit request means the Direct Debit Request between *us* and *you*.

us or **we** means *Benefitness*, (the Debit User) *you* have authorised by signing a *direct debit request*.

you means the customer who signed the *Direct Debit Request*.

your financial institution means the financial institution nominated by *you* on the DDR at which the *account* is maintained

Debiting your account

- 1.1 By signing a Direct Debit Request, you have authorised us to arrange for funds to be debited from your account. You should refer to the Direct Debit Request and this agreement for the terms of the arrangement between us and you.
- 1.2 We will only arrange for funds to be debited from your account as authorised in the Direct Debit.
- 1.3 If the debit day falls on a day that is not a banking day, we may direct your financial institution to debit your account on the following banking day. If you are unsure about which day your account has or will be debited you should ask your financial institution.

2. Amendments by us

- 2.1 We may vary any details of this *agreement* or a *Direct Debit Request* at any time by giving *you* at least fourteen **(14) days'** written notice.

3. Amendments by you

- 3.1 *You* may change, stop or defer a debit payment, or terminate this agreement by providing us with at least fourteen **(14 days)** notification by writing to:
Benefitness at 341 Hancock Road, Fairview Park SA 5126 or sales@benefitness.com.au. This notice should be given to us in the first instance. Cancellation, amendments or termination of this agreement is subject to the terms and conditions on your Direct Debit Request Form, Membership Contract and Membership Terms and Conditions.

4. Your obligations

- 4.1 It is *your* responsibility to ensure that there are sufficient clear funds available in *your* account to allow a *debit payment* to be made in accordance with the *Direct Debit Request*.
- 4.2 If there are insufficient clear funds in *your* account to meet a *debit payment*:
 - (a) *you* may be charged a fee and/or interest by *your financial institution*;

- (b) *you* may also incur fees or charges imposed or incurred by *us*; and
 - (c) *you* must arrange for the *debit payment* to be made by another method or arrange for sufficient clear funds to be in *your account* by an agreed time so that *we* can process the *debit payment*.
- 4.3 *You* should check *your account* statement to verify that the amounts debited from *your account* are correct.
- 4.4 If Benefitness is liable to pay goods and services tax ("GST") on a supply made in connection with this agreement, then *you* agree to pay Benefitness on demand an amount equal to the consideration payable for the supply multiplied by the prevailing GST rate.

5. Dispute

- 5.1 If *you* believe that there has been an error in debiting *your account*, *you* should notify *us* directly on 8251 3011 and confirm that notice in writing with *us* as soon as possible so that *we* can resolve *your* query more quickly. Alternatively *you* can take it up with *your* financial institution direct.
- 5.2 If *we* conclude as a result of our investigations that *your* account has been incorrectly debited *we* will respond to *your* query by arranging for *your financial institution* to adjust *your* account (including interest and charges) accordingly. *We* will also notify *you* in writing of the amount by which *your account* has been adjusted.
- 5.3 If *we* conclude as a result of our investigations that *your account* has not been incorrectly debited *we* will respond to *your* query by providing *you* with reasons and any evidence for this finding in writing.

6. Accounts

You should check:

- (a) with *your financial institution* whether direct debiting is available from *your account* as direct debiting is not available on all accounts offered by financial institutions.
- (b) *your* account details which *you* have provided to *us* are correct by checking them against a recent *account* statement; and
with *your financial institution* before completing the *Direct Debit Request* if *you* have any queries about how to complete the *Direct Debit Request*.

7. Confidentiality

- 7.1 *We* will keep any information (including *your account* details) in *your Direct Debit Request* confidential. *We* will make reasonable efforts to keep any such information that *we* have about *you* secure and to ensure that any of *our* employees or agents who have access to information about *you* do not make any unauthorised use, modification, reproduction or disclosure of that information.
- 7.2 *We* will only disclose information that *we* have about *you*:
- (a) to the extent specifically required by law; or
 - (b) for the purposes of this *agreement* (including disclosing information in connection with any query or claim).

8. Notice

- 8.1 If *you* wish to notify *us* in writing about anything relating to this *agreement*, *you* should write to Benefitness, 341 Hancock Road, Fairview Park SA 5126.
- 8.2 *We* will notify *you* by sending a notice in the ordinary post to the address *you* have given *us* in the *Direct Debit Request*.
- 8.3 Any notice will be deemed to have been received on the third banking day after posting.

9. Payment Default

- 9.1 If a direct debit or payment is defaulted any expenses, costs or disbursements incurred by Capat Investments Pty Ltd in recovering any outstanding monies, including debt collection agency fees and solicitor's costs shall be paid by the customer, providing those fees do not exceed the scale charges as charged by that debt collection agency/solicitor.

