

Member Engagement - Terms and Conditions

1. Preamble

- 1.1. FP wishes to contract with you to provide you with access to a number of participating gym, swimming pool and/or leisure facilities (**Facilities**), through the use of a Fitness Passport Membership (**Membership**) on the terms and conditions set out below.
- 1.2. These terms and conditions together with any engagement form, application, quotation, order (including on-line or web-based orders) or proposal to which these terms are attached or in which these terms are referred (**Engagement Form**), together make up a legally binding agreement (**the Agreement**) between: Fitness Passport Pty Limited ACN: 118 426 029 (**FP**) AND the person(s) named as the "Member" in the attached or previously signed or submitted Engagement Form. For the purposes of this Agreement, the Member will also be referred to as "you" and "your" throughout.
- 1.3. You may accept this Agreement by doing either one or more of the following:
 - a. Completing the online engagement form at www.fitnesspassport.com.au; or
 - b. Accepting the FP membership card distributed by FP in your name; or
 - c. Accessing Facilities as part of your Membership after receiving notice of these terms and conditions (which may include notice of where these terms can be located).

2. Membership

- 2.1. Invitation to become a Fitness Passport member will be at the discretion of FP. FP reserves the right to restrict any individual or family from gaining a Membership in its absolute discretion.
- 2.2. Without limiting any other provision of this Agreement or FP's rights at law, to be eligible for a Membership, all Members must be an employee of an employer who is a party to a current Employer Engagement Agreement with FP or an immediate family member of such an employee as that term is defined in clause 2.5.
- 2.3. FP offers the following types of Memberships:
 - a. an 'Individual Fitness Passport'; or
 - b. a 'Family Fitness Passport if obtained in conjunction with an Individual Fitness Passport'; or
 - c. if obtained in conjunction with one of the other Memberships, an 'Additional Dependent Passport'.
- 2.4. An Individual Fitness Passport is for the sole benefit of the Member. No benefits or

entitlements attached to an Individual Fitness Passport may be transferred or shared.

- 2.5. A Family Fitness Passport entitles a prospective Member and the Member's immediate family members to access participating Facilities under the Membership. For the purpose of this clause 'immediate family members' is limited to:
 - a. partner or spouse of the Member who permanently resides at the same address as the Member; and
 - b. dependent children of the Member who permanently live with the Member and who are aged under 18 years.
Any child of the Member, whether or not a dependent, aged over 18 years is not covered by a Family Fitness Passport.The rights of each dependent child to access the Facilities under the Family Fitness Passport cease on the day that each child turns 18 years.
- 2.6. If a family member is temporarily residing at the primary member's residence for a duration of 3 months or less they are not eligible for Fitness Passport as the family members must permanently reside at the same residence as the primary member.
- 2.7. While ever you hold a current Individual Fitness Passport or a Family Fitness Passport you are also conditionally eligible for an Additional Dependent Passport upon payment of the Additional Dependent membership fee detailed in the engagement form. An Additional Dependent Passport entitles a child of the Member aged between 18 and 25 who resides with the Member and who is financially dependent on the Member to access the Facilities under the Membership. You must, at the reasonable request of FP, provide evidence of the financial dependency of your child to be covered by the Additional Dependent Passport which may include details of government payments received by you in respect of the child or documents confirming full time study undertaken by the child. The rights of the dependent child to access to the Facilities under the Additional Dependent Passport cease on the earlier of the day the child turns 25 years, the day the child stops residing with the Member or the day the child ceases being financially dependent on the Member.
- 2.8. If your child joins the program under the age of 18 and turns 18 during the course of the membership, your membership will automatically be upgraded to include an Additional Dependent Passport unless you notify FP you would like his or her membership to be cancelled and return his or her ID card.

- 2.9. You warrant that the details set out in the Engagement Form are accurate and correct in every particular aspect.
 - 2.10. Membership will commence on and from the date of the Member's first fee payment. The Member may attend any participating Facilities one fortnight after Membership commences.
 - 2.11. To obtain a membership card from, or entry to each Facility, the Member must provide that Facility with a form of photographic identification acceptable to that Facility and his or her Fitness Passport ID card. If there is a photo ID on the FP card, additional photographic evidence is not required.
 - 2.12. If a Member has his/her Membership terminated by FP, FP will immediately communicate this information to each participating Facility and all access cards issued to that Member by participating Facilities will immediately be cancelled and must immediately be returned by that Member. Any membership cards issued by FP must also be returned to the Member's employer.
 - 2.13. FP will regularly update the list of current financial members for each participating Facility and all inactive Members will have their Facility-issued access cards cancelled in accordance with clause 2.10.
- 3. Term and fees**
- 3.1. Membership fees are set out in the Engagement Form and will be subject to review on an annual basis having regard to the operating costs of FP and the fees charged by the Facilities.
 - 3.2. Membership is for an initial fixed term of one (1) year commencing upon first payment with access to Facilities commencing one fortnight from the date that the Member's first payment is advanced to FP as outlined below.
 - 3.3. Subject to clause 3.4, all membership fees must be paid on or before the due date by direct debit from the Member's nominated account. You must sign all forms and provide all authorities reasonably requested by FP to ensure that the direct debit facility is established and maintained during the currency of the Membership.
 - 3.4. Notwithstanding clause 3.3, if agreed between the parties in writing, Membership fees may be paid on behalf of the Member by the Member's employer by way of payroll deduction. Notwithstanding any agreement in respect of payroll deduction, you acknowledge and agree that you will remain liable for the Membership fees and will immediately pay any outstanding Membership fees if they are paid by your employer.
 - 3.5. If you cancel your Membership and rejoin at a later date, the subsequent membership will be governed by FP's trading terms current at the time you rejoin and will constitute a separate agreement for the term detailed in that separate agreement.
 - 3.6. If a regular payment is agreed by FP, and notwithstanding expiration of the initial fixed term, you will continue to be automatically charged the regular Membership fee following the initial term of one (1) year until you contact your employer and request a cancellation (and that request is passed on to FP) or the Membership is cancelled by FP. In all cases you must return all ID card(s) issued by FP or a Facility to your workplace facilitator before automatic payments are cancelled.
 - 3.7. Without limiting any other rights FP might have at law or under this Agreement, if a payment to FP is suspended or cancelled for any reason, then the Member must, on request by FP, immediately pay the amount owed or FP may immediately cancel that Member's Membership without notice. Fees will continue to accrue until the ID card is returned. If this occurs before the initial 12 month minimum period transpires, applicable cancellation fees may also apply.
 - 3.8. In addition to, and without limiting clause 3.7, where a periodic direct debit payment is not received by FP or otherwise fails without fault of FP, FP will be entitled, and you hereby authorise FP to, recover the amount of the failed payment in addition to and at the time the next periodic payment is due (that is, the next immediate periodic payment will be for an amount equal to 2 times the usual periodic payment). You must sign any document and provide your authority to ensure the additional amount can be recovered via the existing direct debit facility by FP. If the subsequent direct debit payment is also not received or otherwise fails you must pay FP an account dishonour fee of \$5.00 for each occasion that the subsequent direct debit payment/s is not received or fails.
 - 3.9. Membership fees paid in advance will not be refunded except in the specific circumstances referred to in clause 10.
 - 3.10. The first periodic payment of the Membership Fee will be applied by FP to the cost of the Membership card that will be issued to each Member from FP and for the administration processes involved. This amount is not refundable.
 - 3.11. Where the FP issued card is lost, stolen or damaged, FP will charge you a fee of \$10 for each replacement card FP issues. A Facility may charge you a fee to issue Facility specific

access cards, tokens or passes. This fee is payable to the Facility in addition to the membership fees.

- 3.12. A Member may be liable to pay any fees incurred by FP in establishing and maintaining the payment arrangement, due to his or her credit card or nominated bank account being declined for payment.
- 3.13. Notwithstanding clause 3.1, you acknowledge and agree that it may be reasonably necessary from time to time, but at intervals no more frequently than 6 months, for FP to increase the membership fees on account of increases in operating costs and other costs incurred by FP which are outside of the control of FP. FP will use reasonable endeavours to notify members not less than one fortnight in advance of any such increase, which once notified will apply to that Member for the balance of the term of their membership.
- 3.14. You may accrue additional fees in the event that you do not return your Membership card upon request as per clause 10.6.
- 3.15. If you, or any other person continues to try and use the facilities under your Membership after you become ineligible, or your membership is cancelled, FP reserves the right to charge you as the primary member for all costs incurred.
- 3.16. If a FP member wishes to attend a facility located inside a licenced premises (e.g. Leagues Club or RSL Club) the FP member may be required to join the club directly as a member to be able to access the facility and any such access will be subject to any terms attached to that club membership.
- 3.17. At the time of this Agreement, less than 1% of the gyms and pools on Fitness Passport charge a joining fee, however FP cannot guarantee this will remain the position for the Term. Any gyms that charge an additional fee like this will have it noted on the Fitness Passport website so members can make an informed choice about whether to use these facilities. You should ensure that you regularly review those terms of use for each individual Facility.
- 3.18. If you visit a facility that uses a Fitness Passport i-pad scanner to record visits, you must swipe your Fitness Passport card or key in your details on every visit. This includes those facilities that are 24/7 facilities that can be accessed outside of staffed hours.
- 3.19. If you do not register your visit on a Fitness Passport scanner when you access the facility (regardless of whether you have already swiped into the facility using the facility's own access card), you will be charged a \$10 fee for

each visit that you have made where you did not register your visit.

4. Direct Debit Payments

- 4.1. Where you have elected to pay Membership fees via direct debit, by completing the Engagement Form (either in hard copy or online), you hereby request and authorise FP to arrange, through its own financial institution, a debit to your nominated account any amount FP deems payable by you under this Agreement. This debit or charge will be made through the Bulk Electronic Clearing System (BECS) from your account held at the financial institution you have nominated online and will be subject to the terms and conditions of the Direct Debit Request Service Agreement contained in this clause 4.
- 4.2. By accepting this Agreement you are providing FP with a valid instruction in respect to your Direct Debit Request. You confirm that you have understood and agreed to the terms and conditions governing the debit arrangements between you and FP as set out in this Request and in your Direct Debit Request Service Agreement (DDRSA).
- 4.3. The following clauses constitute your Direct Debit Service Agreement with FP. The agreement is designed to explain what your obligations are when undertaking a Direct Debit arrangement with FP. It also details what FP's obligations are to you as your Direct Debit provider.
- 4.4. FP will only arrange for funds to be debited from your account as authorised in this Agreement.
- 4.5. FP may vary any details of this agreement at any time by giving you at least fourteen (14) days written notice. Where you receive notice of any variation and you do not consent to the varied terms, you may notify us and cancel the DDRSA upon and subject to provision of adequate replacement arrangements for payment of your periodic membership fees and any other money payable by you under this Agreement.
- 4.6. At any time after the initial 1 year fixed term, you may stop a debit payment, or terminate this agreement by providing at least fourteen (14) days notification in writing to your workplace facilitator and returning all membership cards to the nominated employer contact (workplace facilitator). Unless otherwise expressly provided in this Agreement or at law, you may not cancel your Membership at any time during the initial 1 year term.
- 4.7. 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 this Agreement.

- 4.8. 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 FP including without limitation those fees detailed in clause 3.8; 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 FP can process the debit payment.
- 4.9. You should check your account statement to verify that the amounts debited from your account are correct.
- 4.10. If you believe that there has been an error in debiting your account, you should notify your workplace facilitator within your employer who has been assigned to manage the Memberships and confirm that notice in writing with FP as soon as possible so that we can resolve your query more quickly. Alternatively, you may direct your query to your financial institution direct.
- 4.11. If FP concludes as a result of its investigations that your account has been incorrectly debited FP will respond to your query by arranging for your financial institution to adjust your account (including interest and charges) accordingly. FP will also notify you in writing of the amount by which your account has been adjusted.
- 4.12. If FP concludes as a result of its investigations that your account has not been incorrectly debited FP will respond to your query by providing you with reasons and any evidence for this finding in writing.
- 4.13. 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
 - c. with your financial institution before completing the Direct Debit Request if you have any queries about how to complete the Direct Debit Request.
- 4.14. FP will use reasonable endeavours to keep your account details in your Direct Debit Request confidential. FP will make reasonable efforts to keep any information that FP has about you secure and to ensure that any of FP's employees or agents who have access to information about you do not make any

unauthorised use, modification, reproduction or disclosure of that information. FP's use and disclosure of your personal information, including information provided on your Direct Debit Request will be governed by FP Privacy Policy and 13.

- 4.15. Notwithstanding clause 4.14, FP cannot and does not warrant or guarantee that its systems are fail safe or impermeable to malicious or deliberate attempts to take or destroy confidential information. To the fullest extent permitted by law FP excludes all liability arising out of loss or disclosure of your confidential information in circumstances where FP has used reasonable endeavours to protect that information.
- 4.16. 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).
- 4.17. If you wish to notify us in writing about anything relating to this agreement, you should write to PO Box 252, Hamilton, 2303 or email info@fitnesspassport.com.au
- 4.18. We will notify you by sending a notice in the ordinary post to the address or by electronic mail to the email address you have nominated in the Direct Debit Request.
- 4.19. Any notice will be deemed to have been received on the third banking day after posting.

5. Cancellation of membership

- 5.1. Cancellation of a Membership by a Member will be allowed at any time in the first 7 days from agreeing to this Agreement (by giving notice in writing to your workplace facilitator prior to the expiration of that 7 day period) or following the expiration of the initial 1 year term of the membership. Except for the circumstances set out in clause 5.3, should you otherwise request cancellation of your Membership, then you will be liable for a membership cancellation fee equal to \$50 plus 30% of the value of the membership fees for the remainder of the Membership term. This cancellation fee is a genuine pre-estimate of the damage likely to be suffered by FP due to an early termination of this fixed term agreement.
- 5.2. You may at any time upgrade your membership from an Individual Fitness Passport to a Family Fitness Passport. You may not downgrade your membership from Family to Individual within the first 12 months, unless a dependent child has turned 18 (in which case an extra fee will be payable) or 25

(in which case the child will be ineligible to continue).

- 5.3. You may suspend your membership if you are taking annual or long service leave of at least one month's duration where you will be out of the state or country. Evidence of the vacation must be provided (e.g. flight itinerary) and the membership card handed back to the workplace facilitator for the suspension period. Payments will be suspended during this time.
- 5.4. You may lodge a written request with FP for cancellation of your Membership due to reasons of hardship. Reasons of hardship include, but are not limited to:
 - a. a job transfer;
 - b. a recognised medical condition.
- 5.5. In the case of a medical condition which prevents you from utilising your Membership, FP will:
 - a. agree to a cancellation of the membership if a letter is provided from a certified physician stating that you are on a medical restriction of an indefinite nature, in which case the membership may be cancelled; or
 - b. direct that the membership be suspended for the duration of the injury/ailment where a letter is provided from a certified physician stipulating an approximate period that you will be on a medical restriction.
- 5.6. During the period a Fitness Passport is suspended, you must return your Fitness Passport and those of any family members to your employer. Following the period of suspension, the membership will resume with the same rights and obligations as applied at the time of the suspension, including payment obligations and credit for any unused payments.
- 5.7. If a suspension occurs within the initial 12 month contract period the duration of the suspension will be added to the contracted period, so that the total period for which you have been a financial Member equals 12 months.
- 5.8. Except as set out in clause 5.5 above, FP reserves the right to determine the individual merit of each application in its absolute discretion and reserves the right to refuse a written request for cancellation or suspension of a membership in its absolute discretion.

6. Amendment to rules and included facilities

- 6.1. You acknowledge and agree that FP or a Facility has or may at any time develop rules of conduct for any Facility. Those rules do not form part of this Agreement. FP reserves the right at all times to vary any such rules or the services and facilities to be offered at any participating Facility at any time.

- 6.2. FP will notify you of any changes by emailing the person appointed within your employer as the Fitness Passport Facilitator (in which case that person will be responsible for and will be deemed to have notified you).

- 6.3. You agree that the preceding notification process is reasonable. Providing FP has complied with this process, then it has discharged its duties of notification of changes to you. Should you continue to use your Membership after notification in accordance with the preceding clauses, then you will be deemed to have accepted any amendments contained in such notification.

7. Benefits of membership

- 7.1. Membership will provide each Member with access to a range of fitness facilities and services from time to time.
- 7.2. Members may utilise the services of any or all of the participating Facilities by approaching each individual Facility and providing their FP Membership card and an acceptable form of photographic identification to that Facility. At that time, the Facility will either present the Member with a Facility Card or alternatively will require the Member to show their FP Membership card and photographic identification on each subsequent visit. If a Fitness Passport scanner is in place at the Facility, the member MUST swipe his/her ID card or manually log in on each visit.
- 7.3. You may frequent each participating Facility as many times as you choose during the currency of your Membership.

8. Fitness Centre Cards

- 8.1. On acceptance of the application for membership, each Member will be provided with a Membership card from FP within 14 days. These cards may also be referred to as Fitness Passport, or an ID card.
- 8.2. Should the list of participating Facilities change, Members will be notified as soon as possible by either FP or by their employer.
- 8.3. FP will regularly update the list of current financial Members for each individual Facility.
- 8.4. On confirmation of membership each Member may be issued with a Facility Card for each Facility at the time they visit the Facility as a means of permitting access to the facility. The Facility Card includes, but not limited to, a 24 hour electronic key. Members may also be required to continue to use their FP Membership card to gain entry.
- 8.5. FP members may be required to purchase an electronic out of hours access key for 24/7 gyms that are open 24 hours per day, 7 days per week. The electronic key permits access

during un-staffed hours and the payment for the access key will be paid directly by the FP member to the nominated facility. Fees may vary depending on the location and are not governed by this Agreement.

- 8.6. Members are not restricted on the amount of Facility Cards they may obtain from different participating Facilities or the number of Facilities they may visit.
 - 8.7. Should a Member fail to pay the nominated fee or cease employment with the employer affiliated with FP the member must return the Fitness Passport card to his or her employer. During this time payments will still accrue and be payable by you until you have returned all ID cards issued to you or a Family Member to your workplace facilitator.
 - 8.8. All Facility Cards are and shall remain the property of the individual Facility. The Facility Card must be returned on demand.
 - 8.9. When a member terminates their membership with Fitness Passport, all Facility Cards must be returned to the relevant facility for cancellation. FP will also advise any relevant facilities that the FP member has terminated their membership.
 - 8.10. The FP Membership cards given to you and each of your family Members are and will remain the property of FP and must be returned to your employer once you leave the employment of the employer affiliated with FP.
 - 8.11. Once you have returned all cards issued to you or your family members to your employer, and provided the membership is being cancelled in accordance with this Agreement, your employer will cancel the relevant payments.
- 9. Rules and conditions of membership**
- 9.1. You acknowledge and agree that FP or a Facility has or may at any time develop rules of conduct for any Facility. Those rules do not form part of this Agreement. FP reserves the right at any time to vary any such rules or the services and facilities to be offered at any participating Facility.
 - 9.2. You must abide, and must ensure that all associated family Members abide, by each Facility's terms and conditions of entry or use.
 - 9.3. FP will notify you of any changes by emailing the person appointed within your employer as the Fitness Passport Facilitator (in which case that person will be responsible for and will be deemed to have notified you).
 - 9.4. You agree that the preceding notification process is reasonable. Providing FP has complied with this process, then it has discharged its duties of notification of changes to you. Should you continue to use your Membership after notification in accordance with the preceding clauses, then you will be deemed to have accepted any amendments contained in such notification.
 - 9.5. Access to each individual Facility is varied. It is your responsibility to check with each Facility for hours of operation, schedule of classes and availability of positions within classes.
 - 9.6. You acknowledge and agree that FP is not in any way liable for:
 - a. cancellation of fitness classes by a participating Facility;
 - b. amendment to class schedules and hours of operation;
 - c. termination of individual Facility Cards due to failure of a Member to abide by the terms and conditions of usage of the participating Facility or otherwise;
 - d. cancellation of a Facility's involvement with FP;
 - e. the refusal of any Facility to accept or honour the benefits conferred by the Membership;
 - f. injury, death or disability incurred or suffered or contributed to by any Member whilst utilising the benefits provided by the Membership;
 - g. any loss or damage to property, whether in whole or part, incurred or sustained by a Member whilst utilising the benefits of the Membership; or
 - h. the condition, suitability, quality or safety of any goods or services provided by the participating Facilities.
 - 9.7. FP is not liable for and will not refund to you any separate payments you make directly to a Facility for any reason. Any extra payment made to a Facility constitutes a separate arrangement between you and the Facility and FP does not receive any of these payments.
 - 9.8. You acknowledge and agree to consult with an employee of each Facility on your first visit to each respective Facility to undergo a fitness assessment and any other induction required by the Facility and to determine the level of fitness of the Member. This may incur a cost to you.
 - 9.9. Notwithstanding the foregoing you acknowledge and agree that you have been advised by FP that you should attend, and have either attended, or elected of your own volition not to attend, an appointment with your own General Practitioner (Dr) for the purpose of:-

- a. ensuring you are sufficiently fit and well to attend one or more of the Facilities and undertake physical activity at any such Facility; and
 - b. to obtain a full physical health check so you can advise any Facility which you attend of any prevailing medical condition(s) which might affect your ability to use any piece of equipment or participate in any fitness program and you hereby release to the fullest extent permitted by law both FP and each Facility from any and all liability that might arise from you having either elected not to, or failing to, attend your General Practitioner (Dr) for the above purposes.
- 9.10. You acknowledge the inherent dangers (including personal injury and death) involved in the types of high intensity exercise and other activities that you may be involved in at a Facility and hereby release to the fullest extent permitted by law FP, your Employer and each Facility from any and all liability, injury, illness, loss or damage to both person or property that might arise from you undertaking the preceding activities.
- 9.11. You acknowledge and agree that you must seek instruction from relevant instructors at each Facility before using any piece of equipment and release to the fullest extent permitted by law both FP and each Facility from any and all liability that might arise from you using any equipment either without instruction or not strictly in accordance with any instructions so provided.
- 9.12. Subject to clause 9.13 below, FP will use best endeavours to ensure that the offering of Facilities that a Member can access through the FP Membership match the Facilities that have been advertised to that Member.
- 9.13. Facilities are chosen on a majority rules basis. If a Facility is not being patronised or is being under patronised in the opinion of FP, then that Facility may be withdrawn from the Membership offering.
- 9.14. FP's engagement with Facilities is on a venue by venue basis, not franchise by franchise. For example, if you are able to access Curves at a specific location on this program, it does not mean you can access every Curves franchise. The Member can only use the facilities at the locations specified by FP from time to time.
- 10. Termination of membership**
- 10.1. Subject to clause 10.3, FP reserves the right at any time in its absolute discretion and to revoke the Membership of any Member and/or the right of any Member to use the benefits provided by the Membership by giving not less than one month notice to the Member of such termination and revocation.
- 10.2. If a Member's Membership is terminated, without cause by FP pursuant to clause 10.1, that Member will (subject to this clause) be refunded that amount of their membership fee (if any) that has been paid in advance and remains unused as at the date of termination.
- 10.3. Without limiting clause 10.1, FP may terminate a Member's Membership immediately in each of the following circumstances without the obligation to reimburse detailed in clause 10.3 or otherwise:
- a. breach of this Agreement by a Member;
 - b. breach of any participating Facility's terms and conditions of use;
 - c. failure to pay any outstanding money as required under this Agreement after being informed by FP of the outstanding amount.
- 10.4. If you leave the employment of an employer with whom FP has an engagement agreement, your Membership will be automatically terminated regardless of whether the initial 12 month membership period ended. You must immediately return all membership cards (whether issued by FP or a Facility). Until you return the ID card, you will continue to have membership payments debited from your account.
- 10.5. If the agreement between FP and your employer is terminated, FP may in its discretion terminate your Membership and refund, on a pro-rated basis, that amount of their membership fee (if any) that has been paid in advance of the date of termination. On termination of this Agreement under this clause, you must immediately return your membership cards, together with the cards of any family members, to your employer.
- 10.6. If you have your Membership cancelled for any reason and do not return your membership card on request by FP, FP will be at liberty to charge you and you will be liable to pay a fee equal to the periodic membership fees payable by you immediately prior to termination plus \$100 per fortnight until the membership cards are returned. You agree that this is a genuine pre estimate of the likely damage to be suffered and costs incurred by FP in connection with a Member failing to return membership cards.
- 11. No warranty**
- 11.1. FP does not warrant in any way, and expressly excludes any warranty which may otherwise be implied, that the services and facilities will be available at any particular time or times nor does it warrant the condition and repair of such facilities offered at each participating Facility. Additionally, FP gives no warranty and shall have no liability whatsoever in respect of

services offered by the respective Facilities or as to the accuracy of any description of or information about services or facilities given by any of the participating Facilities.

12. Liability and release

12.1. In consideration of FP accepting an application for Membership and except to the extent caused by the negligence of FP, you hereby agree to:

- a. release and forever discharge FP to the fullest extent permitted by law from all claims that you may have or may have had but for this release arising from or in connection with your Membership or your access to or use of any Facility;
- b. indemnify and hold harmless FP and keep FP indemnified to the fullest extent permitted by law in respect of any claim by any person arising as a direct or indirect result of or in connection with your Membership.

12.2. For the purposes of this clause claims means and includes without limitation any actions, suit, proceeding, claim, demand, damage, penalty, cost or expense howsoever arising at any time.

13. Privacy

13.1. FP acknowledges and respects the privacy of individuals. We will collect personal information from you in the course of providing our services. We may obtain personal information from you and also from third parties, such as your employer or a Facility.

13.2. Your personal information will only be used for the purposes for which it is collected, in accordance with FP's Privacy Policy or in accordance with the *Privacy Act 1988 (Cth)*. You hereby acknowledge and agree that intended recipients of your personal information collected or obtained by FP are FP, your nominated financial institution, and where relevant FP's financial institution, for the purposes of establishing or managing your direct debit payments, the Employer, and the participating Facilities and consent to FP disclosing your personal information to those recipients.

13.3. You are not obliged to provide any information to us, but if you do not provide us with the personal information that we request we may not be able to deliver our services. Generally, we will not disclose your information overseas. The way we collect, use and store your personal information is governed by our privacy policy which we can provide to you on request. Our privacy policy contains information about how you can access and correct the personal information we hold about

you and how you can raise any concerns about our personal information handling practices. For more information, please contact us in writing.

13.4. As part of your Membership, you may receive information from FP from time to time regarding the services of the participating Facilities.

13.5. If you do not wish to receive an updated participating Facility list, you should indicate this desire to FP and your name will be removed from the mailing list within a reasonable period of time.

14. Confidential Information

14.1. Each party acknowledges that the content of this Agreement and all information disclosed in connection with this Agreement is confidential.

14.2. Each party will, except as otherwise required by law or with the consent of the other party, keep each other's confidential information strictly confidential. You hereby consent to FP releasing any of your confidential information in the manner and as required or authorised under this Agreement or in accordance with FP's Privacy Policy.

14.3. This clause will survive the termination of this Agreement.

15. Assignment

The Member must not assign its rights or delegate the performance of its obligations under this Agreement without the prior written consent of FP. Any attempted assignment or delegation without consent will be ineffective.

16. Jurisdiction

This Agreement will be subject to the laws of New South Wales. The parties will submit to the exclusive jurisdiction of the Courts of that State.

17. Notices

17.1. Notices will be in writing and may be given to a party:

personally; by email to the party's last known email address;
by leaving it at or posting by pre-paid mail to the following address for each party or to an alternate address that a party may notify the other party from time to time:

FP

Attention: Fitness Passport Director
Address: PO Box 252, Hamilton, NSW,
2303
Email : info@fitnesspassport.com.au

Member

to the address or email address of the Member set out in the Engagement Form.

17.2. Notice is deemed to have been received by a party:

- a. when left at that party's address; or
- b. if sent by email using the email address provided by the member; or
- c. if sent to the member's workplace facilitator.

17.3. Unless a later time is specified in it or by a provision of this Agreement, a notice, consent, approval or other communication, it takes effect from the time it is received.

18. General

18.1. The relationship between the parties is that of independent contractors. Nothing in this Agreement constitutes or will be deemed to constitute a partnership between the parties or one party as agent or employee of the other party.

18.2. A party may not make press or other announcements or releases relating to this Agreement and the transactions the subject of this Agreement without the approval of the other party to the form and manner of the announcement or release unless and to the extent that the announcement or release is required to be made by the party by law or by a stock exchange.

18.3. The rights and obligations of FP under or in respect of this Agreement are not personal to FP.

18.4. This Agreement binds each party's permitted successors, assigns, administrators and substitutes.

18.5. A provision of or a right created under this Agreement may not be waived or varied except in writing, signed by the party or parties to be bound.

18.6. The parties acknowledge that in entering into this Agreement they have not relied on any representations or warranties about its subject matter except as expressly provided by the written terms of this Agreement.