

TERMS AND CONDITIONS**1. ACCEPTANCE**

1.1 These Terms and Conditions (**Terms**) are between Amberlee Corporation Pty Ltd trading as Fitness Hub Bullsbrook (ABN 87 609 319 486), its successors and assignees (referred to as “**we**”, “**us**” or “**our**”) and you, the person, organisation or entity described in these Terms (referred to as “**you**” or “**your**”), and collectively the Parties and each a Party. These Terms apply to all Services provided by us to you. These Terms are also available on our Website, www.fitnesshubbullsbrook.com.au (**Site**).

1.2 You have requested the Services set out in these Terms. You accept the Services and these Terms by either:

- (a) signing and returning these Terms and/or the application form;
- (b) confirming by email that you accept these Terms;
- (c) instructing us to proceed with the Services;
- (d) accepting these Terms on the Site; or
- (e) paying any Fees set out in these Terms, or making part or full payment for the Services set out in these Terms or our tax invoice to you (**Invoice**).

1.3 **You agree that these Terms form the agreement under which we will supply Services to you. Please read these Terms carefully.** Please contact us if you have any questions using the contact details in these Terms, the application form or on the Site. Purchasing Services from us indicates that you have had sufficient opportunity to read these Terms and contact us if needed, that you have read, accepted and will comply with these Terms, and that you are 18 years or older, or are 14 years or older and have the consent of a legal guardian who is 18 years or older. You must not order or use the Services if you are under 14 years of age or do not have the consent of a legal guardian who is 18 years or older. If you do not agree to these Terms, you must not use or purchase our Services from us.

1.4 We will not commence performing the Services until you have paid Fees.

2. SERVICES

2.1 We agree to perform the Services with due care and skill.

2.2 We reserve the right at any time to refuse any request for Services that we deem inappropriate, inadvisable, unreasonable or illegal, including but not limited to health reasons.

2.3 Our Services include access to and advice in respect of exercise equipment, exercise classes and training techniques. You acknowledge and agree that you are aware of the inherent risks of injury or ill health resulting from use of the Services and from participating in exercise generally. You accept that there may be a period at the commencement of your membership during which the hours that you use our gym facility are restricted so your fitness and ability to use the Services safely can be assessed. You acknowledge and agree to release us, our instructors, our agents, affiliates, employees, members, sponsors, promoters and any person or body directly and indirectly associated with us against any liability (including liability for their negligence and the negligence of others), claims, demands and proceedings arising, directly or indirectly, from your access to or use of the Services. Any advice we provide you

is general and should not be used as a substitute for medical treatment. We accept no responsibility and will not be liable for any harm, loss and/or damage that you suffer, directly or indirectly, as a result of any advice that is inaccurate, incomplete, unsuitable or incorrect.

2.4 You agree to undergo any health checks requested by us in relation to your use or proposed use of the Services and in the event that you become aware at any time of any medical conditions, injuries or impairments that may be detrimental to your health, you must immediately cease to use our Services and contact your medical practitioner.

2.5 You are solely responsible for determining the suitability of any of the Services, and your reliance on any information that is provided to you through our Site or Services are at your own risk.

2.6 We will provide you with a keyless entry key (**FOB key**) which you must use each time that you access our gym facility and use the Services and which you further acknowledge is strictly non-transferable and may only be used by yourself to enter our gym facility.

2.7 If you lose the FOB Key you must pay a replacement fee of \$50.00 or as advised by us from time to time.

2.8 We may provide the Services to you using our employees, contractors and third party providers, and they are included in these Terms.

2.9 Third parties who are not our employees or our direct contractors (**Third Parties**) will be your responsibility. We are not responsible for the services provided by Third Parties.

3. PRICE, INVOICING AND PAYMENT

3.1 Our Services require you to subscribe and become a member of our Services. To subscribe to our Services you must nominate a subscription type as indicated on the application form and/or Site (**Subscription Term**).

3.2 At the end of the Subscription Term the Parties agree that these Terms, and the rights and obligations arising herein, will continue to bind the Parties until such time as either Party terminates these Terms in accordance with clause 8.

3.3 You agree to pay us the Fees for the Services that you have requested, as per the Subscription Term. All amounts are stated in Australian dollars. All amounts include Australian GST (where applicable).

3.4 You may elect to defer the Services for a minimum period of two (2) weeks at a time and a cumulative period of six (6) weeks during each calendar year of your membership. During the Suspension Term you will not be required to pay the Fee but will be required to pay a \$5 a week suspension fee during the Suspension Term. Your Subscription Term will be extended for a period equal to the Suspension Term.

3.5 If you do not pay us our Fees for the Services per the Subscription Term or within fourteen (14) days of the Fees being due, we will cease to provide the Services to you until we receive payment.

3.6 If the Fees are unpaid for thirty (30) days after the payment date, we have the right to engage debt collection services for the collection of unpaid and undisputed debt, and the right to commence legal proceedings for any outstanding amounts owed to us.

- 3.7 The Fees are to be paid by cash, electronic funds transfer (EFT), credit card, direct debit or such other method as advised by us from time to time.
- 3.8 After any minimum term as set out in the application form under your membership type, our prices, pricing structure, payment methods and these Terms may be amended from time to time at our discretion by notification to you. Any pricing changes will take effect after the end of the Subscription Term.
- 4. YOUR OBLIGATIONS AND WARRANTIES**
- 4.1 You warrant that you will not canvass, employ, induce or attempt to employ, induce, solicit or entice away from us, any employee or contractor that was employed by or contracted to us during the term that we provide Services to you or the prior twelve (12) month period.
- 4.2 You warrant that throughout the term of these Terms that:
- you will keep the FOB Key supplied to you secure and not allow anyone else to use it;
 - there are no legal restrictions preventing you from agreeing to these Terms;
 - you will cooperate with us and provide us with information that is reasonably necessary to enable us to perform the Services as requested by us from time to time, and comply with these requests in a timely manner;
 - you will comply with any code of conduct for our gym facility;
 - the information you provide to us is true, correct and complete;
 - you will not infringe any third party rights in working with us and receiving the Services;
 - you will inform us if you have reasonable concerns relating to our provision of Services under these Terms, with the aim that we and you will use all reasonable efforts to resolve your concerns; and
 - you are responsible for obtaining any consents, licences and permissions from other parties (such as medical practitioners) necessary for the Services to be provided, at your cost, and for providing us with the necessary consents, licences and permissions.
- 5. OUR INTELLECTUAL PROPERTY**
- 5.1 The work and materials that we provide to you in carrying out the Services contains material which is owned by or licensed to us and is protected by Australian and international laws (**Materials**). We own the Intellectual Property rights in the Materials including but not limited to copyright which subsists in all creative and literary works incorporated into our Materials.
- 5.2 You agree that, as between you and us, we own all Intellectual Property rights in our Materials, and that nothing in these Terms constitutes a transfer of any Intellectual Property rights in our Materials, except as stated in these Terms or with our written permission.
- 5.3 Your use of our Materials does not grant you a licence, or act as a right to use any Intellectual Property in the Materials, whether registered or unregistered, except as stated in these Terms or with our written permission.
- 5.4 You must not breach our Intellectual Property rights by, including but not limited to:
- altering or modifying any of the Materials;
 - creating derivative works from the Materials; or
 - using our Materials for commercial purposes such as onsale to third parties.
- 5.5 This clause will survive termination of these Terms.
- 6. CONFIDENTIAL INFORMATION**
- 6.1 We, including our employees and contractors, agree not to disclose your Confidential Information to any third party (other than, where necessary; to use all reasonable endeavours to protect Confidential Information from any unauthorised disclosure; only to use the Confidential Information for the purpose for which it was disclosed by you, to provide better quality services to you, and not for any other purpose.
- 6.2 You, including your employees and contractors, agree not to disclose our Confidential Information to any third party; to use all reasonable endeavours to protect Confidential Information from any unauthorised disclosure; and only to use the Confidential Information for the purpose for which it was disclosed or provided by us to you, and not for any other purpose.
- 6.3 These obligations do not apply to Confidential Information that:
- is authorised to be disclosed;
 - is in the public domain and/or is no longer confidential, except as a result of breach of these Terms;
 - is received from a third party, except where there has been a breach of confidence; or
 - must be disclosed by law or by a regulatory authority including under subpoena.
- 6.4 This clause will survive termination of these Terms.
- 7. FEEDBACK AND DISPUTE RESOLUTION**
- 7.1 Your feedback is important to us. We seek to resolve your concerns quickly and effectively. If you have any feedback or questions about the Services, please contact us.
- 7.2 If there is a dispute between the Parties in relation to these Terms, the Parties agree to the following dispute resolution procedure:
- The complainant must tell the respondent in writing, the nature of the dispute, what outcome the complainant wants and what action the complainant thinks will settle the dispute. The Parties agree to meet in good faith to seek to resolve the dispute by agreement between them (**Initial Meeting**).
 - If the Parties cannot agree how to resolve the dispute at the Initial Meeting, any Party may refer the matter to a mediator. If the parties cannot agree on who the mediator should be, the complainant will ask the Law Society of Western Australia to appoint a mediator. The mediator will decide the time and place for mediation. The Parties must attend the mediation in good faith, to seek to resolve the dispute.
- 7.3 Any attempts made by the Parties to resolve a dispute pursuant to this clause are without prejudice to other rights or entitlements of the Parties under these Terms, by law or in equity.
- 8. TERM AND TERMINATION**
- 8.1 These Terms are subject to a forty eight (48) hour cooling off period, during which either Party may terminate these

- Terms by giving the other notice in writing (including email) (**Cooling-off Period**). If these Terms are terminated during the Cooling-off Period the Parties will be discharged from any obligations and/or liabilities contained herein.
- 8.2 After the Cooling-off Period you may terminate these Terms by giving us thirty (30) days' notice. The notice period begins to run when you sign the termination of membership form as provided by us. If you terminate these Terms during the Subscription Term you must pay the Fees to the effective date of termination and the Cancellation Fee.
- 8.3 We may terminate these Terms without cause upon providing you with thirty (30) days' notice in writing.
- 8.4 Either Party may terminate these Terms, if there has been a material breach of these Terms, subject to the following dispute resolution procedure.
- 8.5 We may suspend and/or terminate (including by deactivation of your FOB key) these Terms immediately, at our sole discretion, if:
- we consider that a request for the Services is or has become inappropriate, inadvisable, improper or unlawful;
 - you fail to provide us with clear or timely instructions to enable us to provide the Services;
 - you fail to pay our Fees within fourteen (14) days of the payment date as set out in the Subscription Term;
 - you fail to follow our reasonable instructions;
 - you fail to abide by our code of conduct;
 - you act in a manner that is dangerous to or disruptive of other Service users;
 - you misuse the Services; or
 - you fail to keep your FOB key secure, use it every time that you enter our gym facility, or allow others to use it.
- 8.6 If you terminate these Terms before the end of the Subscription Term, you must pay for all Services provided prior to the effective date of termination, including any Services which have been performed and that we or our contractors have not yet charged you for.
- 8.7 On termination of these Terms you agree to promptly return (where possible), or delete or destroy (where not possible to return), our Confidential Information and Intellectual Property, and/or documents containing or relating to our Confidential Information and Intellectual Property.
- 8.8 On termination of these Terms, we agree to promptly return (where possible), or delete or destroy (where not possible to return), your Confidential Information.
- 8.9 On completion of the Services, we will retain your documents (including copies) as required by law or regulatory requirements. Your express or implied agreement to these Terms constitutes your authority for us to retain or destroy documents in accordance with the statutory periods, or on termination of these Terms.
- 8.10 The accrued rights, obligations and remedies of the Parties are not affected by the termination of these Terms.
- 9. CONSUMER LAW, LIMITATION OF LIABILITY AND DISCLAIMERS**
- 9.1 **ACL:** Certain legislation including the Australian Consumer Law (**ACL**) in the *Competition and Consumer Act 2010* (Cth), and similar consumer protection laws and regulations may confer you with rights, warranties, guarantees and remedies relating to the provision of Services by us to you which cannot be excluded, restricted or modified (**Statutory Rights**). Our liability is governed solely by the ACL and these Terms.
- 9.2 **Services:** If you are a consumer as defined in the ACL, the following applies to you: You are entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the Services remedied if they are not rendered with due care and skill or they are not fit for purpose and the failure does not amount to a major failure. To the extent we are able to exclude liability; our total liability for loss or damage you suffer or incur from our Services is limited to us re-supplying the Services to you, or, at our option, us refunding to you the amount you have paid us for the Services to which your claim relates.
- 9.3 **Delay:** Where the provision of Services depends on your information or response, we have no liability for a failure to perform the Services in the period set out in these Terms where it is affected by your delay in response, or supply of incomplete or incorrect information.
- 9.4 **Referral:** We may provide you with contact details of third party specialists. This is not a recommendation by us for you to seek their advice or to use their services. We make no representation or warranty about the third party advice or provision of services, and we disclaim all responsibility and liability for the third party advice or provision of services, or failure to advise or provide services.
- 9.5 **Warranties:** To the extent permitted by law, we exclude all express and implied warranties, and all material and work is provided to you without warranties of any kind, either express or implied. We expressly disclaim all warranties including but not limited to implied warranties of due care and skill and fitness for a particular purpose.
- 9.6 **Liability:** To the extent permitted by law, we exclude all express or implied representations, conditions, guarantees and terms relating to the Services and these Terms, except those set out in these Terms, including but not limited to:
- implied or express guarantees, representations or conditions of any kind, which are not stated in these Terms;
 - the Services being unavailable; and
 - any loss, damage, costs including legal costs, or expenses whether direct, indirect, incidental, special, consequential and/or incidental, including loss of profits, revenue, production, opportunity, access to markets, goodwill, reputation, use or any indirect, remote, abnormal or unforeseeable loss, or any loss or damage relating to business interruption, or otherwise, suffered by you or claims made against you, arising out of or in connection with your inability to access or use the Services, even if we were expressly advised of the likelihood of such loss or damage.
- 9.7 **Limitation:** To the extent permitted by law our total liability arising out of or in connection with the Services, however arising, including under contract, tort, including negligence, in equity, under statute or otherwise, will not exceed the amount recoverable under our professional indemnity insurance.

9.8 This clause will survive termination of these Terms.

10. INDEMNITY

10.1 You are liable for and agree to indemnify, defend and hold us harmless for and against any and all Claims, liabilities, suits, actions and expenses, including costs of litigation and reasonable legal costs, resulting directly or indirectly from:

- (a) any information that is not accurate, up to date or complete or is misleading or a misrepresentation;
- (b) any breach of these Terms; and
- (c) any misuse of the Services from or by you, your employees, contractors or agents.

10.2 You agree to co-operate with us (at your own expense) in the handling of disputes, complaints, investigations or litigation that arise as a result of your use of the Services including but not limited to disputes, complaints, investigations or litigation that arises out of or relates to incorrect information you have given us.

10.3 This clause will survive termination of these Terms.

11. GENERAL

11.1 **Privacy:** We agree to comply with the legal requirements of the Australian Privacy Principles as set out in the *Privacy Act 1988* (Cth) and any other applicable legislation or privacy guidelines.

11.2 **Video Surveillance:** Our facility is fitted out with and uses closed circuit television (CCTV) cameras at all times for personal safety and security purposes. No CCTV cameras are located in the change rooms and/or bathroom facilities.

11.3 **Publicity:** You consent to us using advertising or publically announcing that we have undertaken work for you.

11.4 **Email:** You acknowledge that we are able to send electronic mail to you and receive electronic mail from you. You release us from any claim you may have as a result of any unauthorised copying, recording, reading or interference with that document or information after transmission, for any delay or non-delivery of any document or information and for any damage caused to your system or any files by a transfer.

11.5 **GST:** If and when applicable, GST payable in connection with the supply of the Services will be set out on our Invoices. You agree to pay us an amount equivalent to the GST payable on the supply at the same time that you pay our Invoices.

11.6 **Relationship of parties:** These Terms are not intended to create a relationship between the parties of partnership, joint venture, or employer-employee.

11.7 **Assignment:** You must not assign or deal with the whole or any part of your rights or obligations under these Terms without our prior written consent but, provided we notify you prior to the assignment, we may assign this contract to a purchaser of our business or certain assets of our business without your consent, and in that event you agree to the transfer of your Confidential Information to the purchaser and to receiving commercial electronic messages from them.

11.8 **Severance:** If any provision (or part of it) under these Terms is held to be unenforceable or invalid in any jurisdiction, then it will be interpreted as narrowly as necessary to allow it to be enforceable or valid. If a provision (or part of it) under these Terms cannot be interpreted as narrowly as necessary to allow it to be enforceable or valid, then the provision (or part of it) must be severed from these Terms

and the remaining provisions (and remaining part of the provision) of these Terms are valid and enforceable.

11.9 **Force Majeure:** We will not be liable for any delay or failure to perform our obligations under these Terms if such delay is due to any circumstance beyond our reasonable control. If we are delayed from performing our obligations due to such a circumstance for a period of at least 2 months, we may terminate our agreement with you by giving you 5 Business Days' notice in writing.

11.10 **Notices:** Any notice required or permitted to be given by either Party to the other under these Terms will be in writing addressed to you at the address provided by you to us. Our address is set out in these Terms. Any notice may be sent by standard post or email, and notice will be deemed to have been served on the expiry of 48 hours in the case of post, or at the time of transmission in the case of transmission.

11.11 **Jurisdiction & Applicable Law:** These terms are governed by the laws of Western Australia and the Commonwealth of Australia. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts operating in Western Australia.

11.12 **Entire Agreement:** These Terms and any document expressly referred to in them represent the entire agreement between you and us and supersede any prior agreement, understanding or arrangement between you and us, whether oral or in writing.

12. DEFINITIONS

12.1 **Business Day** means a day which is not a Saturday, Sunday or bank or public holiday in Western Australia, Australia.

12.2 **Cancellation Fee** means the amount set out on the application form for the type of membership selected.

12.3 **Claim/Claims** includes a claim, notice, demand, right, entitlement, action, proceeding, litigation, prosecution, arbitration, investigation, judgment, award, damage, loss, cost, expense or liability however arising, whether present, unascertained, immediate, future or contingent, whether based in contract, tort or statute and whether involving a third party or a party to this Agreement or otherwise.

12.4 **Confidential Information** includes confidential and personal information about you, including your health information, your credit card or payment details, and information about our business, structure, programs, processes, methods, operating procedures, activities, products and services, trade secrets, know how, financial, accounting, marketing and technical information, customer and supplier lists (including prospective customer and supplier information), ideas, concepts, know-how, Intellectual Property, technology, and other information whether or not such information is reduced to a tangible form or marked in writing as "confidential".

12.5 **Fees** means the pricing on the application form and/or Site.

12.6 **GST** means GST as defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) as amended from time to time or any replacement or other relevant legislation and regulations.

12.7 **Intellectual Property** includes any and all present and future rights to intellectual and industrial property throughout the world, and includes all copyright and analogous rights, all rights in relation to inventions (including patent rights),

patents, improvements, registered and unregistered trademarks, designs (whether or not registered or registrable), any corresponding property rights under the laws of any jurisdiction, discovery, circuit layouts, trade names, trade secrets, secret process, know-how, concept, idea, information, process, data or formula, business names, company names or internet domain names.

- 12.8 **Services** means membership of our gym facility, seven (7) days a week, twenty four (24) hours a day, which provides access to our premises and the exercise equipment contained therein, and for additional fees payable directly to the trainer, may provide access to personal training and

training advice by qualified personal trainers and/or exercise physiologists.

Contact details:

Amberlee Corporation Pty Ltd trading as Fitness Hub Bullsbrook
ABN 87 609 319 486

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