

# ONCE ACTIVE GYM

This Membership Agreement sets out the Terms and Conditions of Membership of Once Active Gym and incorporates the Club Rules which are available under Rules and Regulations. Membership is subject to these Terms and Conditions and is at all times conditional upon the Member abiding by the Club Rules. BEFORE COMMITTING TO MEMBERSHIP, YOU SHOULD READ CAREFULLY THESE TERMS AND CONDITIONS AND THE CLUB RULES.

We have made every effort to formulate the Membership Agreement in easily understandable language and to make the documentation as simple as possible. Should you, however, have any questions regarding the meaning or effect of any part of the membership documentation, you should please raise them with a Once Active Gym representative immediately.

IN SIGNING THIS MEMBERSHIP AGREEMENT, YOU ARE ENTERING A LEGALLY BINDING CONTRACT.

## 1. TERMS AND CONDITIONS

In this Membership Agreement the following expressions shall bear the following meanings and related expressions shall bear corresponding meanings:

- 1.1 "Administration Fee", means a one-off payment payable in advance by each new member to cover expenses including, but not limited to, access, parking and administration;
- 1.2 "Category", means a category of Membership as described more fully in rules 1.1 and 1.2 of the Club Rules;
- 1.3 "Club Rules", means the rules and regulations governing Membership which form part of the Membership Agreement;
- 1.4 "Club", means a leisure and health club belonging to the Once Active Gym group of companies;
- 1.5 "Home Club", means the local branch of the Club to which the Member has applied and been accepted for Membership;
- 1.6 "Initial Term", means the 12 (twelve) month period from the date of acceptance of Membership;
- 1.7 "Junior Member", means a Member below 21 (twenty one) years of age and above 16 (sixteen) years of age;
- 1.8 "Member", means a member of the Club and "Membership" shall be construed accordingly;
- 1.9 "Membership Agreement", means the Club Rules and these Terms and Conditions;
- 1.10 "Membership Benefits", means all facilities and services advertised and/or made available to Members under the terms and conditions of the selected membership (and, where applicable, "Member's guests") as detailed within these Terms and Conditions and Club Rules;
- 1.11 "Membership Term", means a rolling 3 month contract commencing from the date of acceptance of Membership by Once Active Gym for the minimum of 12 months;
- 1.12 "Subscription", means:
  - 1.12.1 monthly rolling instalment payable in advance by Direct Debit Instruction;
  - 1.12.2 a down payment payable either as an annual (12 month) or bi-annual (6 month)

lump sum instalment payable by the Member to the Club pursuant to clause 7.1 at the rates set and amended by Once Active Gym from time to time;

- 1.13 "Notice Period", means 3 months advance notice of intent to resign membership issued prior to the beginning of the month from which notice is due to run; and
- 1.14 "Terms and Conditions", means these terms and conditions.

## **2. CONSTITUTION**

- 2.1 The Club is a proprietary club, the proprietor being Once Active Gym.
- 2.2 The objects of the Club are to provide health and wellness facilities and all the other facilities usually associated with such a club pursuant to the Membership Brochure or exhibited during the sales tour. Without prejudice to clause 6.3, Once Active Gym reserves the right to vary, add or eliminate from time to time any of the particular facilities or services provided by the Club. Any proposed changes to the facilities or services shall be publicized in advance on the Club's website.
- 2.3 The Club's premises shall be at the Home Club.
- 2.4 Without prejudice to clause 6.3, Once Active Gym reserves the right to:
  - 2.4.1 Locate the Home Club at such premises as it shall from time to time provide; and
  - 2.4.2 Amend these Terms and Conditions at its sole discretion.
- 2.5 The general management of the affairs of the Club in all matters is under the entire control of, and is conducted by, Once Active Gym or Once Active Gyms appointed representative.

## **3. ACCEPTANCE AS A MEMBER**

- 3.1 Acceptance as a Member of the Club is at Once Active Gym absolute discretion. If an application is accepted by Once Active Gym, the Member's right to use the Club and facilities shall commence upon the date of acceptance. Upon acceptance the Member shall be issued with a membership token (the "Membership Token"), subject to clause 4.6 below, and shall be entitled to all rights and privileges exercisable by the Category of Membership to which the Member has been accepted under the Membership Agreement.
- 3.2 The Member agrees to abide by the Club Rules which are displayed prominently on the Club website and which relate to facilities, opening hours and conduct.
- 3.3 ACCEPTANCE BY ONCE ACTIVE GYM OF THE MEMBER'S APPLICATION SHALL CONSTITUTE A LEGALLY BINDING CONTRACT BETWEEN ONCE ACTIVE GYM AND THE MEMBER UPON THE TERMS AND CONDITIONS OF THIS MEMBERSHIP AGREEMENT.
- 3.4 Once Active Gym reserves the right to refuse to reconsider further Membership applications from applicants who have not been accepted for Membership pursuant to clause 3.1 for a period of three (3) months after their application has been denied.
- 3.5 Once Active Gym reserves the right to prevent entry into the Club by any Member or former Member who's Membership has been suspended or cancelled pursuant to clause 6.

## **4. MEMBERSHIP**

- 4.1 Membership of the Club is personal to a Member and cannot be assigned, transferred or otherwise disposed of.
- 4.2 Once Active Gym may assign the benefit of this Membership Agreement (including, for the avoidance of doubt, any obligation to sell Vouchers to the Member as part of the

Subscription) to a third party at any time upon notice to the Member. Notices of assignments will be posted on the Club website, which will constitute due notice of all such changes.

- 4.3 Once Active Gym shall be entitled, at its absolute discretion and at any time, to request evidence of a Member's status and entitlement to a particular category of Membership. In the event of Once Active Gym not being satisfied with such evidence of the Member's change of status, Once Active Gym shall be entitled, at its absolute discretion, to terminate the Member's Membership in accordance with clauses 6.1 and 6.2 below.
- 4.4 WHERE TWO OR MORE PEOPLE SIGN THIS MEMBERSHIP AGREEMENT (AS COUPLE MEMBERS) THEIR OBLIGATIONS SHALL BE DEEMED TO HAVE BEEN GIVEN TO BOTH.
- 4.5 Applicants for individual Membership shall be at least SIXTEEN (16) years old. Where the Member is a Junior Member, this Membership Agreement must be signed by the Junior Member's parent or guardian, who will, at all times, be responsible for the Junior Member's behaviour and actions while the Junior Member is at the Club or using the facilities. The parent or guardian undertakes to pay to Once Active Gym any amounts that are due to Once Active Gym arising from the Junior Member's Membership of the Club and his or her use of the facilities.
- 4.6 Each Member will be issued with:
  - 4.6.1 A Membership token OR Biometric (fingerprint access), which shall remain the property of Once Active Gym;
  - 4.6.2 A copy of the Club rules will be displayed on the Once Active Gym website, a personal copy will be emailed directly to you, on request.
- 4.7 Once Active Gym reserves the right to charge a nominal fee for the replacement of any such Membership token.

## 5. MEMBERSHIP TERM

- 5.1 Membership shall commence on the first day of the Initial Term and shall continue until terminated in accordance with clause 5.3 or earlier pursuant to clause 6.
- 5.2 The Member acknowledges and agrees that, owing to the costs and responsibilities incurred by the Club in assessing the new Member DURING THE INITIAL TERM pursuant to rule 14.2 of the Club Rules but without prejudice to clause 6.3, MEMBERSHIP OF THE CLUB MAY NOT BE TERMINATED BY THE MEMBER DURING THE INITIAL TERM, NOR MAY THE MEMBER APPLY FOR A SUSPENSION OF HIS OR HER MEMBERSHIP PURSUANT TO CLAUSE 6.4 DURING THE INITIAL TERM. A MEMBER MAY REQUEST A 3 MONTH CANCELLATION DURING THE TERM IN WRITING ADDRESSED TO CLUB MANAGEMENT STATING REASON FOR CANCELLATION.
- 5.3 Subject to clauses 6.1 and 6.2, but without prejudice to the provisions of clause 6.3, A MEMBERSHIP TERM MAY ONLY BE TERMINATED WITH EFFECT FROM THE LAST DAY OF THE INITIAL TERM BY THE MEMBER GIVING AT LEAST ONCE (1) MONTHS NOTICE IN WRITING addressed to the Membership Administrator. To be effective, such notice must be received by Once Active Gym prior to the beginning of the month from which notice is due to run and acknowledged by receipt of a written confirmation of the Membership termination date.
- 5.4 Members may renew their Membership by paying the Subscription and complying with these Terms and Conditions.

## 6. SUSPENSION AND CANCELLATION OF MEMBERSHIP

- 6.1 Once Active Gym reserves the right, at its sole discretion and at any time, to cancel or suspend the Membership of any Member with immediate effect in the event that the Member or any of the Member's guests commit a serious breach of this Membership Agreement and the breach, if capable of remedy, is not remedied within seven (7) days of receipt of a notice advising him or her of such serious breach, particularly where:
  - 6.1.1 The Member or his or her guests fail to obey notices and signs in the Club, including those relating to health and safety, in contravention of rules 7.4 and 7.5 of the Club Rules;
  - 6.1.2 The Member's conduct is deemed by Once Active Gym to be improper or likely to endanger the welfare, safety, harmony or good reputation of the Club in contravention of rule 7.6 of the Club Rules;
  - 6.1.3 The Member is shown to have provided Once Active Gym with false or misleading information for the purposes of gaining Membership for him or her or for any other person; or
  - 6.1.4 Where any amounts due and owed to Once Active Gym by the Member have not been paid within seven (7) days following the date of a written reminder of the amount due.
- 6.2 Once Active Gym reserves the right, at its sole discretion and at any time, to cancel or suspend the Membership of any Member upon thirty (30) days' notice in the event that the Member:
  - 6.2.1 Is shown to have given his Membership Token to another person to be used at the Club in contravention of rule 4.1 of the Club Rules;
  - 6.2.2 Cannot provide evidence of his status or entitlement to a particular Category of Membership
  - 6.2.3 Once Active Gym has reasonable grounds to believe that the Member's physical and/or medical condition is not up to the standards required by Once Active Gym and that the continuance of the Membership would be detrimental to that Member's health, and in the event of such suspension or cancellation, Once Active Gym reserves the right to retain a proportion of the monies paid by the Member under this Agreement to cover any reasonable costs incurred relating to the incident but all amounts owed and outstanding in respect of the unexpired portion of the relevant Subscription (which for the avoidance of doubt, includes the cost of any Voucher or Vouchers) for the then current Membership Term will become immediately due and payable to Once Active Gym as liquidated damages.
- 6.3 A Member may terminate this Membership Agreement on thirty (30) days' written notice in the event that the facilities provided at the Club, or a suitable alternative venue, are:
  - 6.3.1 Suspended for thirty (30) days or more; or
  - 6.3.2 The location of the Home Club's premises is changed so as to make attendance significantly more difficult for the Member, and the Member shall be entitled to a refund of that proportion of any monies paid in advance to Once Active Gym, less a reduction for any reasonable costs incurred by Once Active Gym.
- 6.4 A Member shall, at the discretion of Once Active Gym, be entitled during the relevant Membership Term but not, for the avoidance of doubt, during the Initial Term, to suspend

his Membership for a period of at least three (3) months but for no longer than three (3) months provided that:

- 6.4.1 The application for the suspension is made in writing to the Club Membership Administrator.
  - 6.4.2 The suspension is requested by the Member, is supported by documentary evidence and is based on medical necessity, and Once Active Gym reserves the right to charge a suspension fee in respect of this period, details of which are available from the Club's reception.
- 6.5 In the event of suspension of a Membership pursuant to clause 6.4, such suspension shall take effect upon the Member being given written notice of Once Active Gym's approval of such suspension.

## **7. ADMINISTRATION AND SUBSCRIPTION**

- 7.1 A member shall pay the Administration Fee and the relevant Subscription at the rates specified and as amended by Once Active Gym from time to time. Membership and all Subscriptions due to the Club must remain current in order for the Member to avoid paying the Administration Fee again.
- 7.2 All Members shall pay the relevant Subscription, which will become immediately due when the Member is accepted for Membership. The Subscription (which, for the avoidance of doubt, includes the cost of Vouchers, if applicable) will be payable annually or if paid by monthly instalments may be subject to an additional excess charge.
- 7.3 Monthly payments shall be paid in advance by direct debit from the Member's designated bank account in instalments (as set out overleaf or subsequently agreed with the Member). Monthly instalments will fall due on the first day or first available day of the calendar month during the Membership Year. New Members joining the Club will pay an Initial instalment equal to the value of the category/categories selected. New Members joining after the 20th of the month may be asked for an additional advance instalment in lieu of their Direct Debit payment.
- 7.4 In the event that a Category of Membership is deemed full by the Club, Once Active Gym reserves the right to prohibit or permit further Memberships to such categories at its discretion and, in the event that such permission is granted, to charge applicants a further fee above the Subscription charged for Membership of such a Category.
- 7.5 Once Active Gym reserves the right to refuse payment of any sum due by cheque. Cheques will only be acceptable when supported by a valid cheque guarantee card and will only be accepted up to the amount covered by that cheque guarantee card. Once Active Gym will accept payment by debit and credit cards.

## **8. FACILITIES AND CHARGES**

- 8.1 Subject to and conditional upon clause 8.3, use of certain facilities at the Club is subject to payment of the tariff charges from time to time in effect. These charges are additional to the Administration Fee and Subscription.
- 8.2 A list of tariff charges is available from the Club reception. Once Active Gym reserves the right at any time to change the tariff charges at its absolute discretion.
- 8.3 Subject to the facilities available, a Member is entitled to use the facilities available at the

Home Club under the relevant Category of Membership in accordance with the Club Rules. Without prejudice to the provisions of clause 6.3, Once Active Gym reserves the right to add, change or provide suitable alternative facilities from time to time and may also at any time withdraw all or any part of such facilities for any period(s) where the same are required for tournaments, exhibitions or other activities or in connection with any repair, alteration or maintenance work.

8.4 Members and guests are advised to store valuables and other personal belongings in the lockers provided. In accordance with rule 12 of the Club Rules, lockers are provided on a daily basis only and items left overnight may be removed. Members may claim the removed contents from reception for up to two (2) days after removal, after which time Once Active Gym will not be responsible for such contents.

8.5 Without prejudice to clause 8.3, Once Active Gym reserves the right to adjust the opening hours of the Club for the purpose of cleaning, decorating, repairs or special functions and holidays and pre-book for tournaments, exhibitions and other social activities.

## **9. RULES AND REGULATIONS**

9.1 The Member agrees to abide by the Club Rules.

9.2 Without prejudice to the provisions of clause 6.3, Once Active Gym may alter the Club Rules at any time. Alterations to the Club Rules will be posted on the Club website, which will constitute due notice of all such changes.

## **10. CONDUCT**

10.1 Once Active Gym has the right to terminate or suspend a Member's Membership for reasons relating to conduct as specified in rule 7 of the Club Rules.

10.2 Once Active Gym reserves the right to prevent entry into or reject from the Club anyone whose behaviour or appearance is, in its sole opinion, deemed by it to be unsuitable.

## **11. GUEST**

11.1 Once Active Gym will be entitled entirely at its discretion to refuse entry or to eject from the Club any non-member who is not properly admitted as a guest in accordance with this clause 12 and rule 9 of the Club Rules.

11.2 Any Member who brings any person into the Club on an unauthorised basis will be in breach of their Membership Agreement. A first offence will receive a warning; second offence will constitute a serious breach of conduct and will entitle Once Active Gym to suspend or cancel the Member's Membership in accordance with clause 6.1 above.

## **12. PHYSICAL CONDITIONS OF MEMBERS AND GUESTS**

12.1 In applying for Membership, the Member warrants and represents that, so far as he/she is aware, he/she is in good physical condition and that he/she is capable of all forms of exercise and that such exercise would not be detrimental to his/her health.

12.2 In registering a guest into the Club, the Member warrants and represents that the guest is, so far as the Member is aware, in a physical condition suitable for the type of exercise

or activity in which the guest engages at the Club.

- 12.3 Without in any way limiting the scope and effect of the Member's warranty given in clauses 12.1 and 12.2 above, it is the Member's sole responsibility to bring to the attention of Once Active Gym any medical condition that may present a risk to the Member and/or to a Member's guest in engaging in any particular activity.

YOUR ATTENTION IS DRAWN TO THIS CLAUSE 12 IN CONJUNCTION WITH CLAUSE 13 BELOW.

**13. LIABILITY**

- 13.1 Once Active Gym's will not be held liable for damage or loss to Member's or guest's property.
- 13.2 **Once Active Gym will not accept any liability for any accident or injury (including any fatality) to any Member, child, guest or visitor (including any person admitted to the Club under the Member's Membership) that may occur on the premises or within the grounds of the Club OR outside of the club under the supervision of a Once Active Gym personal trainer.**
- 13.3 APPLICANT'S PARTICULAR ATTENTION IS DRAWN TO CLAUSE 14 THIS CLAUSE SHOULD BE READ IN CONJUNCTION WITH CLAUSES 12 AND 13 ABOVE AND IS IMPORTANT AND SHOULD BE READ CAREFULLY BEFORE SIGNATURE OF THIS MEMBERSHIP AGREEMENT.

**14. FORCE MAJEURE**

- 14.1 Neither the Member or Once Active Gym shall be deemed to be in breach of these Terms and Conditions by reason of any delay in performing, or any failure to perform, any of the Member's or Once Active Gym's obligations in respect of these Terms and Conditions, if the delay or failure was due to any cause beyond the Member's or Once Active Gym's control including, but not limited to, acts of God, explosions, actual or suspected terrorist attacks, floods, fire or accident, war or threat of war, sabotage, civil disturbance, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority, import or export regulations or embargoes or industrial actions or trade disputes.

**15. GOVERNING LAW**

- 15.1 This Agreement shall be governed and construed in accordance with the laws of the Republic South Africa and shall be subject to the non-exclusive jurisdiction of the courts of South Africa.