

# Bodyapeel Gym

## Membership Agreement

## Terms & Conditions

Unless you have opted for one of our Upfront Membership options (Annexure 1) which is for a specific period (Fix-Term), this is an ongoing Membership Agreement. The agreement will continue until either you or we terminate it in accordance with this Membership Agreement.

Pursuant to the terms of your Direct Debit Authority, your Membership Fees will continue to be debited from your credit card or bank account until we cancel the arrangement by notifying the DD Provider following your termination of this Membership Agreement. If you terminate the Direct Debit Authority in a manner not described in this Membership Agreement, you may be liable to us for damages for breach of contract.

This agreement is subject to a 7 day Cooling-Off Period in accordance with clause 3.8(a). You understand that you can terminate this agreement in writing without reason within this 7 day period (use of a Cancellation Form in the form of Annexure 2 of this agreement is required), at which time you will be refunded all amounts paid pursuant to this agreement, less administration costs and other fees for any fitness services

## Bodyapeel Gym Membership Agreement and Membership Agreement Summary

### MEMBERSHIP AGREEMENT SUMMARY

#### DESCRIPTION OF SERVICES

Pursuant to this Membership Agreement, Bodyapeel Gym will provide access to our Bodyapeel Gym Facility for the use by Members, 24 hours a day, 7 days a week.

#### TERM OF AGREEMENT

The Membership Agreement will be either on an Ongoing basis OR an Upfront (Fix-Term) format (Refer to Annexure 1 for membership options)

In this context, an **Ongoing Agreement** means a Membership that has an initial term, continues after the end of the initial term and ends only if and when the Member terminates the Membership Agreement in accordance with the provisions of this Membership Agreement.

An **Upfront agreement** means a Membership with a fixed term as per the specific Agreement signed by the member. The contract ends at the date described in the original contract taking into consideration periods of suspensions or other gifted time on the contract that may extend the contract termination date.

Bodyapeel Gym will not enter into a Membership Agreement for a term that exceeds the unexpired period of the lease term for the Bodyapeel Gym Facility.

#### COOLING-OFF PERIOD

The Membership Agreement is subject to a Cooling-Off Period and a Member may end the Membership Agreement at any time within 7 days after the day on which the agreement is signed.

#### MEMBER FEES

The total amount of fees and charges payable is broken down as follows:

- (a) **Ongoing Memberships** – Refer to Annexure 1- This Membership Fee will be payable on an ongoing basis (debited from your account on a weekly basis on the Direct Debit Date) for the duration of your Membership with Bodyapeel Gym and relates to the services provided by Bodyapeel Gym as set out in the 'description of services' above;
- (b) **Upfront (Fix Term) Memberships** – Refer to Annexure 1- This Membership Fee will be payable on the date of sign up and relates to the services provided by Bodyapeel Gym as set out in the 'description of services' above;
- (c) \$80.00 Cooling-Off Administration Fee which reasonably reflects the administration costs incurred by Bodyapeel Gym in administering this Membership Agreement in accordance with clause 3.8(a)(iv). This Cooling-Off Administration Fee will be payable (at the absolute discretion of Bodyapeel Gym) if a Member terminates their Membership Agreement during the Cooling-Off Period;

- (d) an Unpaid Fee for all fees in relation to the fitness services supplied by Bodyapeel Gym under this Membership Agreement that a Member has not paid for at the termination of the Membership Agreement in accordance with clause 3.8 (including, but not limited to, amounts for all debts that the Member owes to Bodyapeel Gym, which will continue to accrue until termination). This Unpaid Fee will be payable (at the absolute discretion of Bodyapeel Gym) prior to this Membership Agreement being terminated for any reason whatsoever and will be calculated on a case by case basis;
- (e) \$80.00 Replacement Fee in the event we need to replace a Member's Key Tag in accordance with clause 5.1(b);
- (f) \$150.00 Additional Person Fee for each additional person granted access to the Bodyapeel Gym Facility by the Member without Bodyapeel Gym's prior written consent in accordance with clause 5.2(b)(ii);
- (g) \$21.90 Dishonour Fee in the event that a Member dishonours any payment under the Membership Agreement in accordance with clause 6.2(b)(ii); (this fee is charged by the DD company) and
- (h) \$0.66 (Bank Account) & 2.02% or minimum \$0.66 (Credit Card) Transaction Fee for each payment made by debit and / or credit card in accordance with clause 6.

## EXCLUSIONS, LIMITATIONS OR RESTRICTIONS

This Membership Agreement is subject to, among others, the following key exclusions, limitations or restrictions in relation to the fitness services provided by Bodyapeel Gym:

- (a) access to the Bodyapeel Gym Facility is only provided to Members and you are not permitted to bring Non-Members into the Bodyapeel Gym Facility and you accept full responsibility and liability on your behalf and agree to indemnify Bodyapeel Gym from and against all claims and liabilities (see clause 5.2 of the Membership Agreement);
- (b) Members must be at least 14 years of age and if you are under the age of 18 years old you are required to have authorisation from a parent/guardian to become a Member (see clause 3.4 of the Membership Agreement);
- (c) Members are entitled to suspend their Membership by completing a Suspension Form not less than 7 days prior to the proposed suspension date (see clause 3.6 of the Membership Agreement). Memberships can only be suspended for periods longer than 14 days and shorter than 3 months (a suspension fee may apply).
- (d) Upfront Membership applies solely to you and may not be sold, transferred to, or used by, any other person (see clause 3.7 of the Membership Agreement); and
- (e) Members may cancel their membership for medical reasons or other (see clause 3.8 of the Membership Agreement).

The above is not an exhaustive list of all exclusions, limitations or restrictions in relation to the fitness services provided by Bodyapeel Gym. Bodyapeel Gym advises that Members should refer to the full terms and conditions of the Membership Agreement.



## 1 DEFINITIONS & INTERPRETATION

### 1.1 Definitions

In this Membership Agreement, unless the context requires otherwise:

- (a) Bodyapeel Gym Facility means Bodyapeel Gym a registered business name owned and operated under by Esdeon Pty Ltd (ABN 33 611 231 951) and a reference to “we”, “us” or “our”, where the context permits, means Bodyapeel Gym. Bodyapeel Gym’ business address is 3/10 Dower Street, Mandurah, WA 6210 and its email address is [enquiries@bodyapeelmandurah.com.au](mailto:enquiries@bodyapeelmandurah.com.au).
- (b) Cancellation Form means the cancellation form you may use to cancel your Membership at Bodyapeel Gym in accordance with clause 3.8, the form or the website link of which is contained in Annexure 2.
- (c) Club Rules means any applicable rules regarding conduct and use of the fitness equipment at Bodyapeel Gym Facility as amended from time to time and in accordance with applicable laws and regulations and accessible from [www.bodyapeelmandurah.com.au/club-rules](http://www.bodyapeelmandurah.com.au/club-rules)
- (d) Commencement Date means the date of this Membership Agreement as stated on the Membership Form.
- (e) Cooling-Off Period means the period during which you may terminate this Agreement pursuant to clause 3.8(a)(i), and in accordance with the Regulations.
- (f) Deceptive Practices means deceptive, misleading, false, or unfair advertising or marketing practices.
- (g) Direct Debit Authority means the direct debit payment method you authorise the DD Provider to establish for the purposes of paying your Membership Fees in accordance with clause 6.2(a).
- (h) Direct Debit Date means the date our weekly Membership Fees are deducted from your account as specified in your Membership Form.
- (i) DD Provider means the direct debit service provider used by Bodyapeel Gym and stated on the Membership Form and/or Direct Debit Authority.
- (j) False Representation means any false or misleading representations concerning the Bodyapeel Gym’ fitness services.
- (k) High-Pressure Selling Techniques means high-pressure selling techniques or harassment in relation to the supply of fitness services by Bodyapeel Gym.
- (l) Home Club means the original Bodyapeel Gym Facility at which you signed up your Membership or as otherwise nominated on your Membership Form.
- (m) Key Tag means the electronic tag used to access the Bodyapeel Gym Facility.
- (n) Member means an individual holding a Membership with us.

- (o) Membership means a membership held by a Member to use and access the Bodyapeel Gym Facility on the terms and conditions contained in this Membership Agreement.
- (p) Membership Agreement or agreement means these terms and conditions which govern your Membership, including your Membership Form which forms part of these terms and conditions (as may be amended from time to time in accordance with any relevant laws or regulations).
- (q) Membership Fee means the amount stated in the Membership Form, to be debited to your account on a weekly basis on the Direct Debit Date.
- (r) Membership Form means the form completed by you to sign up to a Membership.
- (s) Minor means a Member under the age of 18 and includes the parent or guardian of that Member.
- (t) Non-Member means any person that is not a Member.
- (u) OIP means a Bodyapeel Gym orientation and induction program.
- (v) Policies means our Privacy Policy, Club Rules (if applicable) and our other policies implemented from time to time and notified to you.
- (w) Regulations means the Fair Trading (Fitness Industry Code of Practice) Regulations 2020 (WA).
- (x) Staffed Hours means the following staffed hours of the Bodyapeel Gym Facility (the staffed hours are subject to change):
  - (i) Monday – Thursday: 8.30am – 6.30pm;
  - (ii) Friday: 8.30am – 12.00pm;
  - (iii) Saturday: 8.30am – 12.00pm;
- (y) Suspension Form means the suspension form you must complete in order to suspend your Membership at Bodyapeel Gym in accordance with clause 3.6, the form or the website link of which is contained in Annexure 2.
- (z) Termination Date means the date you terminate your Membership in accordance with this Membership Agreement.
- (aa) Upfront Membership means a fixed term membership in accordance with clause 4.

## 1.2 Interpretation

In this Membership Agreement, unless expressed to the contrary:

- (a) headings and bolding are for convenience only and do not affect the interpretation of this Membership Agreement;
- (b) the singular includes the plural and vice versa;
- (c) if a word or phrase is defined, cognate words and phrases have corresponding definitions;
- (d) a reference to:
  - (i) “you” refers to the person entering into this Membership Agreement;
  - (ii) a clause or sub-clause refers to a clause or sub-clause of this Membership Agreement;
  - (iii) a person includes a firm, unincorporated association, corporation, partnership or a government or statutory body or authority;
  - (iv) a person includes its legal personal representatives, successors and assigns;
  - (v) a party includes that party, its successors, permitted assigns, receivers, administrators, executors, substitutes and liquidators;
  - (vi) any document includes a reference to that document as amended, rectified or replaced from time to time and to any document so amending, rectifying or replacing the document; and
  - (vii) a statute, ordinance, code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them; and
- (e) the meaning of a general word or phrase is not limited by specific examples introduced by “including”, “for example” or similar expressions.

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## TERMS & CONDITIONS OF MEMBERSHIP

- (a) Your Membership at Bodyapeel Gym is governed by this Membership Agreement. This Membership Agreement sets out the rights and obligations of Bodyapeel Gym and the member in relation to the Membership.
- (b) By signing this agreement, you acknowledge that you have read a copy of any Club Rules and accept and agree to comply with the terms of our Membership Agreement and Policies.
- (c) Unless otherwise stated on your Membership Form, the term of your Membership is for an indefinite period commencing on the Commencement Date and ending on the Termination Date.
- (d) We may change any provisions of this Membership Agreement from time to time with immediate effect, and you agree that such notice may be given by email to the email address provided by you to Bodyapeel Gym or in any other manner Bodyapeel Gym deems appropriate. If you do not agree to the new provisions, you may terminate this agreement in accordance with clause 3.8(c).
- (e) In the event of any conflict or inconsistency between this Membership Agreement, the Membership Form or any Policies, the documents will take priority in the order listed in this clause 2(e).
- (f) Once a Member enters into this Membership Agreement, Bodyapeel Gym will provide a signed copy of the Member's Membership Agreement (or the accompanying Membership Form) and any signed third party agreement (if applicable) that the Member has entered into within a reasonable timeframe upon receipt of a written request for this specific documentation from that Member.

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## MEMBERSHIP

During the term of your Membership, you are entitled to access the gym and use the fitness equipment at the Bodyapeel Gym Facility during Staffed Hours, and outside Staffed Hours in accordance with clause 5.4 (subject to clause 3.4).

**Ongoing Memberships** – Refer to Annexure 1- means a Membership that has an initial term, continues after the end of the initial term and ends only if and when the Member terminates the Membership Agreement in accordance with the provisions of this Membership Agreement.

The initial term of the Membership Agreement is ongoing unless Bodyapeel Gym provides two months' notice of the end of the initial term, which will be provided where the unexpired period of the lease term of Bodyapeel Gym Facility (as may change from time to time upon entry into new or renewed leases by Bodyapeel Gym) is concluding at the end of the two months' notice period or otherwise at the absolute discretion of Bodyapeel Gym.

**Upfront (Fix Term) Memberships** – Refer to Annexure 1- means a Membership with a fixed term as per the specific Agreement signed by the member. The contract ends at the date described in the original contract taking into consideration periods of suspensions or other gifted time on the contract that may extend the contract termination date.



## 3.1 Member Acknowledgement

You acknowledge that:

- (a) your access to Bodyapeel Gym Facility including the gym and the fitness equipment is not exclusive and must be shared with other Members;
- (b) we do not give any representations or guarantees that you will have access to any particular fitness equipment at any given time;
- (c) we purchase or lease the fitness equipment from a third party and do not manufacture any of the fitness equipment or other equipment used in the Bodyapeel Gym Facility and accordingly do not give any warranties regarding the equipment that would usually be given by a manufacturer;
- (d) the Staffed Hours are subject to change without notice;
- (e) we may operate as an unstaffed facility at certain times. You are permitted to access and use the Bodyapeel Gym Facility outside of Staffed Hours only in accordance with clause 5.4; and
- (f) your Membership does not include access to personal trainers. Services of personal trainers can be obtained via separate contracts with our personal trainers. Any fees payable for these services will be in addition to your Membership Fees and will be payable directly to the personal trainers. You acknowledge and confirm the release given in clause 10(e) regarding the use of personal trainers.

## 3.2 Member Information Obligation

- (a) You warrant and represent to us that all information you have provided in your Membership Form is true, accurate and complete in all respects and is not misleading or deceptive in any way.
- (b) You agree to notify us of any changes to the details provided in your Membership Form as and when they occur.

## 3.3 Member's Physical Condition

You warrant that:

- (a) you are in good physical condition and have considered any necessary medical advice prior to embarking on a fitness program or exercise routine;

- (b) if you are suffering from an illness, injury or long-term medical condition, or if you have not visited a fitness facility or gym in excess of 6 months as a result of an illness or injury, you will provide a medical certificate from your doctor permitting use of a fitness facility; and
- (c) it is your responsibility not to use any equipment that may have an adverse effect on any medical or physical condition you may have.

You acknowledge that we do not provide medical advice in any way in connection with your use of the Bodyapeel Gym Facility.

By signing this Membership Agreement, you acknowledge and represent that to the best of your knowledge, you do not have any medical, physical 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 Bodyapeel Gym Facility.

### 3.4 Minimum Age

Members must be at least 14 years of age. If you are under the age of 18 years old you are required to have authorisation from a parent/guardian to become a Member and your parent/guardian will be held responsible for your Membership Agreement.

Minors are governed by all terms and conditions of this Membership Agreement and additionally are subject to the following rules and restrictions:

- (a) Minors aged 14 years of age (inclusive) may use the Bodyapeel Gym Facility during staffed hours, without parent/guardian supervision. But outside staffed hours they must be fully supervised by a parent/guardian (who must be a full paying Bodyapeel Gym Member, who also has 24/7 access) or personal trainer.  
The parent takes full responsibility for the safety of the minor.
- (b) Minors aged 15 – 17 years (inclusive) are permitted to access the Bodyapeel Gym Facility, including outside Staffed Hours.

### 3.5 Orientation & Induction Program

- (a) It is a condition of Membership at Bodyapeel Gym that you view our OIP video prior to commencing your first exercise session.
- (b) The OIP focusses on, but is not limited to, access, layout, facility and amenities, entry and exit areas and emergency procedures.
- (c) Should you not be able to view the OIP on your own device you can ask Bodyapeel staff to provide you with a device to view it.

- (d) We have the right to suspend or terminate your Membership if we are satisfied that the OIP has not been completed prior to commencement of your use of the Bodyapeel Gym Facility.

## 3.6 Suspending of Membership

- (a) All memberships except Upfront memberships shorter than 3 months are entitled to suspend their Membership by completing a Suspension Form not less than 7 days prior to the proposed suspension date.
- (b) Membership suspensions are subject to the following conditions:
  - (i) you are entitled to suspend your Membership for a period not shorter than 14 days and no longer than 3 months (or longer based on discretion of Bodyapeel Management)
  - (ii) your Membership suspension will cease on the date indicated in your Suspension Form, subject to the time limit conditions contained in sub-clause 3.6(b)(i) above.
- (c) During the suspension period you will not be charged a Membership Fee and the Bodyapeel Gym Facility will not be available for your use. Your Membership Fees will be charged on a pro-rata basis in accordance with clause 6 from the Direct Debit Date immediately prior to the recommencement of your Membership after completion of the suspension period.
- (d) Following completion of the suspension period you will be entitled to access the Bodyapeel Gym Facility as a Member in accordance with clause 5 and:
  - (i) (Ongoing Members) if you pay your Membership Fee on a recurring basis pursuant to clause 6.1, we will resume charging your Membership Fee; and
  - (ii) (Upfront payment Members) if you have paid your Membership Fee in advance pursuant to clause 6.3, we will extend the date your advance payment period ceases by the duration of the suspension period.

## 3.7 Transfer of Membership

**Upfront Memberships** - Your Membership applies solely to you and may not be sold, transferred to, or used by, any other person.

**Ongoing Memberships** - Your Membership may be transferred to another person (excluding current or who were past members within the last 12 months). This can only be done after an email request, or in person request, to such an extend has been done to Bodyapeel Gym management.

On approval from Bodyapeel Gym Management, the process can continue. Changes must be made in person in the facility during opening hours to ensure Bodyapeel Gym records are changed in accordance with the changes in Memberships.

## 3.8 Cancellation of Membership

### (a) Cooling Off Period

- (i) This Membership Agreement is subject to a Cooling-Off Period of 7 calendar days which starts on the hour & day when the Membership Agreement is signed and ends at the same hour, 7 calendar days after the day from when the Membership Agreement is signed.
- (ii) This Cooling-Off Period applies to new Memberships only and excludes renewals, renewals of cancelled memberships or additional Memberships.
- (iii) To terminate your Membership during the Cooling-Off Period you must do so in writing, and where practicable complete a Cancellation Form, within the timeframe specified in 3.8(a)(i) and deliver the Cancellation Form in person at a Bodyapeel Gym Facility during staffed hours, along with proof of your identity. If you are unable to attend a Bodyapeel Gym Facility in person, you may email the Cancellation Form to us at [enquiries@bodyapeelmandurah.com.au](mailto:enquiries@bodyapeelmandurah.com.au) from the email address provided on your Membership Form along with proof of your identity.
- (iv) If you terminate your Membership during the Cooling-Off Period we will refund all monies (if any) paid by you prior to termination, and Bodyapeel Gym reserves the right to charge a Cooling Off Administration Fee that reasonably reflects the administration costs incurred by Bodyapeel Gym in administering this Membership Agreement that may be charged in our discretion in accordance with the Regulations and/or an Unpaid Fee in relation to the Membership Agreement.
- (v) The termination will take effect immediately if it occurs in accordance with this clause 3.8(a).

### (b) Permanent Sickness or Physical Incapacity

If you suffer a permanent sickness or physical incapacity preventing you from using the Bodyapeel Gym Facility you may request immediate cancellation of your Membership by completing a Cancellation Form and providing a medical certificate from a qualified medical practitioner stating that you cannot use the fitness services supplied by Bodyapeel Gym under this Membership Agreement because of your **permanent sickness or physical incapacity**. The Cancellation Form and medical

certificate must, where practicable, be delivered in person at a Bodyapeel Gym Facility, along with proof of your identity. If you are unable to attend a Bodyapeel Gym Facility in person, you may email the Cancellation Form to us at [enquiries@bodyapeelmandurah.com.au](mailto:enquiries@bodyapeelmandurah.com.au) from the email address provided on your Membership Form along with proof of your identity.

Upon receiving the Cancellation Form and medical certificate, we will cancel your Direct Debit Authority and refund any payments (if applicable) made in advance from the date we received the Cancellation Form on a pro-rata basis on any outstanding pre-paid period within 7 days after the day on which termination takes effect (noting that termination may occur at any time within 30 days of receipt of the Cancellation Form as determined by Bodyapeel Gym at its complete discretion). Bodyapeel Gym reserves the right to charge an Unpaid Fee in relation to the Membership Agreement.

(c) Cancellation Due to Other Reasons

Cancellation of your Membership for reasons other than those described in clauses 3.8(a) and 3.8(b) is subject to the following conditions:

- (i) cancellation fee for all Ongoing Memberships is 100% of the remaining minimum contract value. (For minimum values, refer to Annexure 1)  
Contract cannot be cancelled for reasons such as "moved". This includes Suburb, City, State, or Country. If moving overseas proof thereof will be required.

stopping your payment directly with your bank, will not stop your membership at Bodyapeel Gym, fees owing will continue to accrue. Accrued debt will be pursued through our debt collection agency.

Membership duration is as specified in this contract, it is not dependent on visits, membership will not be automatically cancelled if you stop visiting while your contract is still running.

- (ii) you may terminate this Membership Agreement by completing the Cancellation Form and, where practicable, delivering the Cancellation Form in person at a Bodyapeel Gym Facility, along with proof of your identity. If you are unable to attend a Bodyapeel Gym Facility in person, you may email the Cancellation Form to us at [enquiries@bodyapeelmandurah.com.au](mailto:enquiries@bodyapeelmandurah.com.au) from the email address provided on your Membership Form along with proof of your identity. We will respond to the termination request within 7 days and confirm the amount of the last payment under the Membership Agreement and the date that the termination takes effect;

- (iii) your Membership will be cancelled 7 days after you provide a signed Cancellation Form to a Bodyapeel Gym staff member in accordance with clause 3.8(c)(i), or 7 days after a Bodyapeel Gym Facility receives your Cancellation Form where sent via email. We recommend you contact us by phone to let us know if you have emailed your Cancellation Form. We are not responsible for lost Cancellation Forms;

- (iv) your Membership Fees will be due and payable throughout the 7 day notice period (in addition to any outstanding Membership Fees and Unpaid Fees that you owe to Bodyapeel Gym);

- (v) you will have the same access rights to Bodyapeel Gym Facility under this Membership Agreement for the full 7-day period;
- (vi) Bodyapeel Gym will cease any deductions under the Membership Agreement upon receipt of the last payment due under this Membership Agreement.
- (vii) Bodyapeel Gym must treat a notice of termination by the Member as a notice of any third party agreement and, on receipt of the last payment due by the Member under the Membership Agreement, will immediately instruct any third party (if applicable) to cease deductions under any third party agreement. This provision does not cancel/vitiate the Members obligations under clause 6.2.

If your Membership Agreement is cancelled in accordance with this clause 3.8(c), Bodyapeel Gym reserves the right to charge the Member an Unpaid Fee (which, for the sake of clarity, may include all debts that the Member owes to Bodyapeel Gym, which will continue to accrue until termination), in relation to the Membership Agreement.

If you have paid in advance under clause 6.3 you may not cancel your Membership under this clause 3.8(c).

- (d) Cancellation and Restriction of Membership by Bodyapeel Gym
  - (i) We reserve the right to terminate your Membership at any time upon 30 days' written notice, or immediately if we determine in our absolute discretion that:
    - (A) you have not complied with clauses 5 or 6 of this Membership Agreement;
    - (B) we reasonably suspect you have engaged in any illegal activity at the Bodyapeel Gym Facility;
    - (C) we have formed a genuine concern for your health and/or safety based on reasonable grounds; or
    - (D) you are in breach of any part of this Membership Agreement.
  - (ii) If we cancel your Membership pursuant to this clause 3.8(d);
    - (A) Ongoing Members your Membership Fees will be due and payable until the next Direct Debit Date;
    - (B) Upfront Members - if you are a Upfront Member (as per Annexure 1) who has paid their Membership Fee in advance, you will not be entitled to any refund.

- (iii) Notwithstanding any provision in clause 3.8(d)(iii), if we cancel your Membership pursuant to this clause 3.8(d), Bodyapeel Gym reserves the right to charge the member an Unpaid Fee in relation to the Membership Agreement (which, for the sake of clarity, includes may include all debts that the Member owes to Bodyapeel Gym, which will continue to accrue until termination).
- (iv) You will cease to have any access to any Bodyapeel Gym Facility from the date we cancel your Membership in accordance with this clause.

- (e) Member may be liable for breach of contract

A Member may be liable for damages for breach of contract if the Member terminates this Membership Agreement in a manner not described in this Membership.

### 3.9 Novation

We reserve the right to transfer, assign, sell or novate your Membership, including this Membership Agreement, to another gym service provider where the gym facility provided by the new owner of your Membership are:

- (a) on the same or substantially similar terms to your existing Membership under this Membership Agreement; and
- (b) are within a 6km radius of your Home Club.

### 4 UPFRONT MEMBERSHIP

If you have agreed to an Upfront Membership, all terms and conditions contained in the Membership Agreement apply to you, except for the following:

- (a) your Membership Fee must be paid in full and up-front, on date of sign up. Training can commence once payment have been established.
- (b) your Upfront Membership fee is non-refundable, subject to the Cooling-Off Period, and the conditions provided in clause 3.8(d)(ii)(B); and
- (c) your Membership ceases on the date stated on your Membership Agreement, taking into consideration periods of suspensions or other gifted time on the contract that may extend the contract termination date.

If you wish to continue your Membership following cessation of your Upfront Membership you will need to re-apply for Membership in accordance with this Membership Agreement.

In the event of any inconsistency between the terms of this clause 4 and any other provisions of this Membership Agreement, the terms of this clause will prevail to the extent of any inconsistency if you hold an Upfront Membership with us.

## 5 ACCESS AND CONDITIONS OF ENTRY

### 5.1 Access

- (a) We agree to provide a Key Tag system for entry and exit to the Bodyapeel Gym Facility and you agree that:
  - (i) you must use your own Key Tag to enter and exit the Bodyapeel Gym Facility; and
  - (ii) your Key Tag is non-transferrable and may not be used by any other person at any time, except in an emergency situation.
- (b) Key Tags must be acquired on becoming a Member.  
If your Key Tag is lost or stolen, you must report this to Bodyapeel Gym immediately upon it coming to your attention. A Replacement Fee will be charged to you in the event we need to replace your Key Tag.
- (c) Any misuse of the Key Tag system may result in us suspending, cancelling or terminating your Membership in accordance with clause 3.8(d).

### 5.2 Access by Non-Members

- (a) Access to the Bodyapeel Gym Facility is only provided to Members and you are not permitted to bring Non-Members into the Bodyapeel Gym Facility.
- (b) If we determine you have breached clause 5.2(a);
  - (i) you accept full responsibility and liability on your behalf and agree to indemnify, hold harmless and release Bodyapeel Gym from and against all claims, liabilities, injury, illness, loss or damage attributed to the Non-Member or the Non-Member's access, whether or not caused by any negligence of Bodyapeel Gym;
  - (ii) you agree to pay to Bodyapeel Gym an Additional Person Fee for each day, and for each person, granted access to the Bodyapeel Gym Facility by you, it being agreed that this amount represents a genuine pre-estimate of the loss suffered by Bodyapeel Gym due to the breach of your obligations in this clause 5.2(a); and
  - (iii) we reserve the right to terminate your Membership or suspend your after hours access in accordance with clause 3.8(d) if you breach this clause 5.2.
  - (iv) companions/carers may be permitted entry at the discretion of management. Should entry be permitted, entry will only be permitted during staffed hours. Companions/carers are only permitted to supervise & not permitted to utilise any equipment.



## 5.3 General Conditions of Entry

### (a) Dress Code

- (i) You must wear appropriate clothing while using the Bodyapeel Gym Facility, in the discretion of the Bodyapeel Gym staff. Work clothes, boots and casual clothes that are not sportswear are not permitted.
- (ii) You must wear appropriate enclosed sport shoes at all times while using the equipment or fitness area.
- (iii) If you do not wear appropriate clothing or shoes, we may ask you to leave the Bodyapeel Gym Facility.

### (b) Use of equipment and facility

- (i) You must have watched the Bodyapeel Gym OIP in accordance with clause 3.5 prior to undertaking your first exercise session or using any equipment at a Bodyapeel Gym Facility.
- (ii) You must at all times follow the safe operating procedures and instructions on the equipment and/or as directed by Bodyapeel Gym staff.
- (iii) You must only use the equipment for its intended purpose/s.
- (iv) If you cause any damage to the gym, the fitness equipment or any item of property at a Bodyapeel Gym Facility, you must notify us immediately and we are entitled, at our discretion, to charge you for the costs of repairing the damaged items or, if repair is not possible, replacement of the damaged items.

### (c) Refusal of Entry

You may be refused entry or asked to leave if you:

- (i) act or engage in any activity which could cause damage to the gym, the fitness equipment or any item of property at the Bodyapeel Gym Facility;
- (ii) do not follow any instruction or direction given to you by Bodyapeel Gym staff concerning use of the equipment or personal conduct;
- (iii) act or engage in any activity which causes or threatens harm against Bodyapeel Gym Fitness staff or other Members;
- (iv) act or engage in any activity which constitutes sexual harassment against Bodyapeel Gym staff or other Members;

- (v) are under the influence of, or suspected to be under the influence of, any intoxicating substance or illicit substance while at any Bodyapeel Gym Facility; and/or
- (vi) consume, or are in possession of, any intoxicating substance or illicit substance while at any Bodyapeel Gym Facility.

## 5.4 24 Hour Operation

If you use the Bodyapeel Gym Facility outside of Staffed Hours, you accept and acknowledge that:

- (a) you will not allow any Non-Members into the Bodyapeel Gym Facility pursuant to clause 5.2 of this Membership Agreement; and

## 5.5 Safety, Maintenance and Changes to Operations

We will at times be required to make changes to our operations and the operations of the Bodyapeel Gym Facility for the purposes of safety, maintenance, and service demand. This may include:

- (a) closing part or all of a Bodyapeel Gym Facility due to safety or maintenance requirements;
- (b) closing off part of the Bodyapeel Gym Facility and equipment areas due to safety of maintenance requirements; or
- (c) changing operating hours to suit demand.

Where this occurs, we will endeavour to provide you with adequate and reasonable advance notice.

## 6 PAYMENT

### 6.1 Payment

- (a) You agree to, and must pay, the Membership Fees and other applicable fees in the amounts and frequency set out in your Membership Form:
  - (i) by using the DD Provider Direct Debit Authority payment method pursuant to clause 6.2, or

- (ii) with our approval, by payment in advance pursuant to clause 6.3.
- (b) You acknowledge that at any time, we may change the DD Provider. You acknowledge, agree and consent to Bodyapeel Gym assigning or novating all existing payment agreements to a new payment provider and providing your personal information, including but not limited to your payment details, to the new payment provider in accordance with this Membership Agreement and our Privacy Policy which is available on our website.
- (c) Bodyapeel Gym will not charge a Member a fee unless it has been disclosed to the Member in the Agreement Summary to this Membership Agreement and the fee may be charged under the Regulations.

## 6.2 DD Provider

- (a) Your Obligations
  - (i) Unless you pay the Membership Fee in advance pursuant to clause 6.3, you must sign a Direct Debit Authority with the DD Provider in favour of Bodyapeel Gym which enables direct debit payments from an approved credit card or bank account in the amounts and frequency set out in your Membership Form. The Direct Debit Authority will set out any amounts payable by a Member to the DD Provider on top of any fees contemplated under this Membership Agreement.
  - (ii) You must ensure that your nominated credit card or bank account is able to accept direct debits and have sufficient funds available to pay the Membership Fees and any other applicable fees on each applicable Direct Debit Date.
  - (iii) You acknowledge that the contract that you enter into with the DD Provider (or such other direct debit service provider in accordance with clause 6.1(b) as applicable) is a separate contract to this Membership Agreement and that any problems or issues that you have with the Direct Debit Authority should be raised directly with DD Provider. The DD Provider contract can be accessed electronically on the Bodyapeel Gym website during the sign-up process.
  - (iv) You must keep the Direct Debit Authority in place until 7 days after you have given us written notice to terminate your Membership pursuant to clause 3.8(c).
  - (v) You acknowledge that we will continue to debit Membership Fees under the Direct Debit Authority until you or we cancel your Membership (and any

Membership Fees and/or Unpaid Fees will continue to be owing regardless of your use of the fitness services).

- (vi) It is your responsibility to ensure the Direct Debit Authority is cancelled upon termination or expiry of your Membership.
- (b) Dishonoured Payments
- (i) We will endeavour to notify you of any dishonoured or overdue payments by informing you via the contact information provided by you in your Membership Form or pursuant to clause 3.2.
  - (ii) A Dishonour Fee will be charged to you in the event a payment is dishonoured.
  - (iii) The rejected payment remains due & payable by you and, if not settled access to Bodyapeel Gym will be denied until such time your outstanding fees are paid.
  - (iv) Additional fees and charges may be incurred by you for any dishonoured payments by DD Provider or your financial institution pursuant to your agreements with them.
  - (v) Your Membership and access to the Bodyapeel Gym Facility will be suspended until such time your outstanding fees are paid.
  - (vi) If you fail to pay any amounts owing under this Membership Agreement on the due date for payment and this amount remains outstanding, we will be entitled to contact a debt collection agency to collect the funds owing. You will be responsible to any additional fees from the debt collection agency regarding your debt collection.

## 6.3 Payment in Advance

All **Upfront Memberships** at Bodyapeel Gym must be paid in full on sign up (see Annexure 1 for Upfront Memberships).

You may also request to pay your **On-going Membership** Fees in advance. We, at our sole discretion, reserve the right to accept or deny your request.

The following conditions apply to all memberships paid in advance;

- (a) you are entitled to a Cooling-Off Period in accordance with clause 3.8(a) (where you are a new Member who has never previously held a Membership with us);

- (b) your advance payment is non-refundable after expiration of the Cooling-Off Period (if any)

## 6.4 Change of Payment Details

- (a) If you close the credit card account or bank account which is subject to the Direct Debit Authority, it is your responsibility to provide the DD Provider with a replacement Direct Debit Authority over another approved credit card or bank account prior to the next applicable Direct Debit Date.
- (b) Failure to provide a replacement Direct Debit Authority will constitute a breach of this Membership Agreement, the provisions of clause 3.8(d) will apply, and you will be liable to us for any unpaid fees, or fees we incur in connection with such breach.

## 6.5 Membership Fee Increase

If you have joined on a 3 or 12 month recurring membership term then:

- (a) after your minimum term has expired, your membership fees may increase automatically by 3% from the next direct debit date and annually thereafter without further notice to you.

## 7 BODYAPEEL GYM'S GENERAL RULES OF

### 7.1 High Pressure Selling Techniques

Bodyapeel Gym will:

- (a) not engage in High-Pressure Selling Techniques; and
- (b) take reasonable steps to ensure Bodyapeel Gym staff do not engage in High-Pressure Selling Techniques.

### 7.2 Deceptive Practices and False Representations

Without limiting the Australian Consumer Law (WA), Bodyapeel Gym must:

- (a) not use any Deceptive Practices;

- (b) not make any False Representation.
- (c) take reasonable steps to ensure that Bodyapeel Gym employee's do not use Deceptive Practices; and
- (d) ensure that sufficient information is available to enable a Member to make an informed decision in relation to the supply of fitness services by Bodyapeel Gym.

## 8 PRIVACY

### 8.1 Personal Information

In this clause 8.1, a word or expression defined in the *Privacy Act 1988* (Cth) which is not otherwise defined in this Membership Agreement has the meaning given to it in that Act.

- (a) Bodyapeel Gym must not use or disclose to another person (and must take reasonable steps to ensure that Bodyapeel Gym employees do not use or disclose to another person) personal information about a Member obtained through Bodyapeel Gym' business of supplying a fitness service to the Member unless authorised in writing by the Member or authorised or required under a written law.
- (b) You acknowledge that during the process of entering into a Membership Agreement with us, we will obtain access to your personal information. You authorise Bodyapeel Gym to use and disclose your personal information for the purposes of giving effect to the fitness services contemplated by this Membership Agreement and in accordance with our Privacy Policy (subject to any applicable privacy law).
- (c) You acknowledge that in entering into the Direct Debit Authority agreement with DD Provider in accordance with clause 6.2 (or any other direct debit service provider as applicable) you agree to provide DD Provider with your personal information which will be handled in accordance with the Privacy Policy of DD Provider.
- (d) By signing this agreement, you subscribe to receive promotional communication from Bodyapeel Gym.

### 8.2 Surveillance

For safety and security reasons we implement video and audio surveillance to monitor Bodyapeel Gym Fitness Facility. Surveillance is limited to the Bodyapeel Gym Facility entry and floor areas only.

By signing this Membership Agreement, you acknowledge that when accessing a Bodyapeel Gym Facility you will be subject to video and audio surveillance and consent to such surveillance being taken and held by Bodyapeel Gym.

The surveillance videos are for use by Bodyapeel Gym only due to privacy reasons and will not be made available to clients or the public.

## 9 LIABILITY OF PROPERTY

- (a) We will not be liable for any loss, theft or damage occurring to your personal items. Any personal items left or stored at Bodyapeel Gym Facility are left or stored at your own risk.

- (b) All types of vehicles parked in or around the vicinity of Bodyapeel Gym, are parked at your own risk and we will not be liable for the theft or any damage occurring to vehicles or their contents.

## 10 RELEASE AND INDEMNITY

- (a) You acknowledge and accept that while on the premises of any Bodyapeel Gym Facility and while undertaking exercise and using the equipment, you are at risk of sustaining injury, permanent disability or death. Such risks may arise from:
  - (i) slipping on wet flooring;
  - (ii) being struck by weights;
  - (iii) colliding with equipment, or other Members;
  - (iv) engaging in strenuous exercise and activities; and/or
  - (v) incorrect use of equipment or the Bodyapeel Gym Facility.
- (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 risks contained in clause 10(a) are not exhaustive, and there are other unknown or anticipated risks from your use of the Bodyapeel Gym Facility that may result in injury, permanent disability or death.
- (d) You acknowledge that while every attempt is made to ensure that the Bodyapeel Gym Facility is safe, there are some significant and inherent risks involved in your use of the Bodyapeel Gym Facility. You assume all such risks and agree that you are attending and using the Bodyapeel Gym Facility voluntarily and entirely at your own risk.
- (e) You acknowledge that we are not liable to you for any injuries sustained while you are under the supervision of a personal trainer who is not an employee of Bodyapeel Gym. If you engage your own private personal trainer, any liability for injuries sustained under the supervision of that personal trainer remains with that personal trainer and not Bodyapeel Gym.
- (f) You agree to indemnify, hold harmless, and release Bodyapeel Gym and all employees, volunteers, agents, and officers thereof from and against all claims, liabilities, injury, loss, or damage you may suffer or incur, including to a third party (including any minor or other person for whom you are responsible), arising from or connected in any way with your participation or attendance at or near the Bodyapeel Gym Facility.

Further, you agree not to bring or assert or allow to be brought or asserted any claim, demand, cause of action, proceeding, action or the like against Bodyapeel Gym or any employee, volunteer, agent, or officer thereof in contravention of this clause.
- (g) This clause 10 survives termination of the Membership Agreement.

## 11 COMPLAINTS

If you have any complaints regarding our service or any other issue regarding the Bodyapeel Gym Facility you must complete a complaint form obtainable from Bodyapeel Gym staff at the Bodyapeel Gym Facility (or an electronic copy obtainable from Bodyapeel Gym by providing written request to Bodyapeel Gym to receive such a complaint form). We will:

- (a) make a record of your complaint and inform you that we have received and recorded your complaint as soon as reasonably practicable after receiving a complaint; and
- (b) undertake every reasonable effort to resolve your complaint quickly and fairly.

## 12 REGULATIONS

The Regulations apply to this Membership Agreement and Bodyapeel Gym will provide any document or information required to be provided by Bodyapeel Gym or available under the Regulations (including a copy of the Regulations themselves) to a Member free of charge in electronic form and/or in paper form on written request from the Member to provide any such document or information.

## 13 GOVERNING LAW

This Membership Agreement is governed by and construed in accordance with the laws of the State of Western Australia and the parties agree to submit to the non-exclusive jurisdiction of its courts.

## 14 SEVERABILITY

Any term or any part of this Membership Agreement that is or becomes illegal, void or unenforceable may be severed from this Membership Agreement and the remaining terms or parts of the terms of this Membership Agreement continue in force.

## 15 ENTIRE AGREEMENT

The terms of this Membership Agreement constitute the entire agreement between the parties.



## **Annexure 1**

(Membership Options: On-going & Upfront (Fix Term))

### **On-going Memberships:**

- **Platinum +** (minimum 12 months recurring) (minimum value \$779.48)
- **Gold** (minimum 3 months recurring) (minimum value \$284.97)
- **FIFO 1/1** (minimum 3 months recurring) (minimum value \$150.00)
- **FIFO 2/1** (minimum 3 months recurring) (minimum value \$120.00)
- **FIFO 3/1** (minimum 3 months recurring) (minimum value \$90.00)
- **FIFO 4/1** (minimum 3 months recurring) (minimum value \$75.00)
- **Seniors** (minimum 3 months recurring) (minimum value \$129.90)

### **Upfront Memberships (Fix Term):**

- **12 Month Upfront + 2 Bonus Months FREE** (minimum value \$583.00)
- **3 Months** (minimum value \$284.97)
- **Seniors 3 Months** (minimum value \$129.90)
- **1 x Month Pass** (minimum value \$116.99)
- **1 x Week Pass** (minimum value \$35.00)
- **10 Pack Casual Visit + Key Tag** (minimum value \$100.00)
- **1 x Day Pass** (minimum value \$15.00)

\* **All minimum values above exclude 24/7 Access Key Tag (valued up to \$80)**

\* **Membership prices may change from time to time.**

## **Annexure 2**

- Suspension Form/Link
- Cancellation Form/Link



## Bodyapeel Mandurah Membership Suspension Request

Date: \_\_\_\_\_

To Bodyapeel Mandurah

I \_\_\_\_\_ would like to advise you of my intent to suspend my current membership, I hereby agree to the associated fees to make the changes.

**Notice:**

- I am aware that there is a **\$4.99 fee** to be paid to action my suspension request.
- I am aware that there is a minimum suspension time of **14 days** to be able to suspend my membership.
- I am aware that there is a maximum of **3 months** available to suspend on my membership only.
- I understand that until the suspension term is completed, my key tag will be inactive & I am not to re-enter to use the gym during the suspension period.
- I am aware that any payments due prior to my suspension taking effect will still be due and payable, and that my account **must be current "owing \$0"** for suspension to take effect.
- If my account is **not** current I acknowledge that my membership will **not** be suspended and payments will continue to occur until such time my account is paid to date.

**Membership:** Recurring 3mths  Recurring 12mths  Seniors  FIFO  Other

**Reason for suspension:** (Please circle or write reason)

- Injured
- Holiday
- Other \_\_\_\_\_

**Start Date:** \_\_\_\_\_

**End Date:** \_\_\_\_\_

**\$4.99 Fee:** Paid  Charged

---

By my signature below, I have read, understood and agree to the "Notice" section of this form.

Sincerely,

**Name:** \_\_\_\_\_

**Phone:** \_\_\_\_\_

**Member Sign:** \_\_\_\_\_

---

**Office Use Only:**

Account Checked  Suspension Approved & Applied  Rejected  (Reason) \_\_\_\_\_

\$4.99 Fee Paid or Charged  Suspension Form placed into Members File:  Staff: \_\_\_\_\_ Date: \_\_\_\_\_



## Bodyapeel Mandurah Membership Cancellation Request

Date: \_\_\_\_\_

To Bodyapeel Mandurah

I \_\_\_\_\_ would like to advise you of my intent to cancel my membership.

**Notice:**

I am aware that I can only cancel my membership once I have fulfilled the **minimum value of my membership** as stated on my membership form. I am aware that I need to give at least 7 days' notice to Bodyapeel Gym to cancel my membership. I acknowledge that failure to pay my account will result in Bodyapeel taking further action to retrieve the funds through a collections agency where extra fees apply.

**Membership:**                      Recurring                       FIFO                       Other

**Reason for cancellation:** \_\_\_\_\_

Please take a moment and let us know how we've been doing in the following areas:

|  | Poor                     | Fair                     | Good                     | Great                    | N/A (did not utilise)    |
|--|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|
| Customer Service from front desk staff: <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |                          |
| Cleanliness & atmosphere of gym: <input type="checkbox"/>        | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Personal Trainers: <input type="checkbox"/>                      | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Overall experience with Bodyapeel Gym: <input type="checkbox"/>  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |                          |

**Would you recommend Bodyapeel to your family or friends?** YES/NO (if no, we would appreciate you advising why)

\_\_\_\_\_

By my signature below, I have read, understood, and agree to the "Notice" section of this form.

Sincerely,

**Name:** \_\_\_\_\_

**Phone:** \_\_\_\_\_

**Member Sign:** \_\_\_\_\_

**Office Use Only:**

Account Checked                       Cancellation Approved & Applied                       Rejected  (Reason)

\_\_\_\_\_

Approved Cancellation Date: \_\_\_\_\_                      Member file removed, form attached & placed into Expired Cabinet:

Staff: \_\_\_\_\_                      Date: \_\_\_\_\_

