



# Membership Agreement Resource





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# Introduction

## Disclaimer

This resource is designed to be a general guide of the types of items to include and issues to consider when developing a **membership agreement**. It is not intended to be used for facilities' specific operations without further professional assistance. ExerciseNZ assumes no legal responsibility for members' own application of these guidelines. Before using any **membership agreement** in your facility you must obtain independent legal advice on its suitability for your particular situation.

**Always have changes to membership agreements checked by a lawyer.**

## How to use this resource

This **Best Practice for Membership Agreements Resource** (referred to as **the/this resource**) can be used to guide exercise facilities in the development of a form for (re)joining members, and also the associated terms and conditions of membership (referred to as **membership agreement**)

Contained in **this resource** is a sample **membership agreement**, along with detailed comment on how it should best be used.

While you are welcome to pick and choose parts of this resource for your own use, we strongly recommend that you read the entire resource at least once to ensure you are aware of all the issues that need to be covered. Care should also be taken when deleting clauses so that the **membership agreement** still makes sense, and also when adding clauses so that they do not detract from other essential terms of the agreement. It is important to consider the effect of the contract as a whole.

You should get specific legal advice before finalising your contract. This is particularly important with respect to potential breaches of the Fair Trading Act. These are criminal offences, with fines on conviction of up to \$600,000 for a company and up to \$200,000 for an individual who can be a director, manager, or staff member.

This resource is based on the experience of many club operators, and thousands of signed membership agreements together with legal input on current consumer law. While some clubs may not have experienced first-hand some of the issues raised, the recommendations are based on the experiences of other operators, learned the hard way.

While each facility will have their own unique situation, there are common elements of all membership agreements and common issues that need to be considered. However, no one membership agreement can cover the needs for every club, and as such this resource should be viewed as a starting point on which to base your own membership agreement. Where you add or delete clauses, use this resource to make sure you have covered the basics.

An electronic version, in an editable/copyable format, of the **membership agreement** and the **guarantee form**, along with sample wording for freezing and transfer options is also available – please email [info@exercisenz.org.nz](mailto:info@exercisenz.org.nz) to obtain.

## How to best use this document

### For new facilities

1. So that you are aware of all the issues, read **this resource** in full at least once.
2. Obtain an electronic copy of the sample **membership agreement** contained in this resource from ExerciseNZ.
3. Make the appropriate changes to edit the agreement to meet your needs.
4. Develop your own facility's **membership terms and conditions** document in plain language.
5. Before printing or using any forms, we strongly recommend you then have them checked by a lawyer for compliance with the Fair Trading Act.

### For existing facilities

1. Read **this resource** in full at least once.
2. Make a list of the areas **this resource** raises that you wish to consider changing or should change.
3. Re-read the sections relevant to the areas you wish to review, alongside your club's current practices and/or wording, and use the checklists.
4. Make a list of suggested changes and implementation plan.
5. Have any contract changes checked by a lawyer before finalising.

## Members who use combined exercise facility and payment service provider contracts eg DebitSuccess

These contracts primarily address important issues regarding payment services, and also advise members of basic rights. Facilities who use these contracts should also provide members with a full copy of the facility's rules on signup. It is important that these are comprehensive.

## Membership Agreements are living documents

The *membership agreement* should be considered a living document, and as such will need to be regularly amended and adjusted over time. This is to reflect changes in the following:

- the services offered by the facility
- the law
- feedback from your club members
- experience from other members (e.g. were any aspects of the current membership agreement confusing to others?)
- standard industry practice

We recommend reviewing **membership agreements** at least every year. For minor changes, we suggest simply using the new version with any member that (re)joins from now on, remembering that any person(s) who has signed a previous version is not necessarily bound by any changes until they renew/extend their membership using the new version of the membership agreement. If you do have a variation clause in your agreement you should notify those club members who are outside any minimum term of their agreement of the new terms.

## Legal status of relationship between the club and members

The membership agreement is only one of the strands of legal relationship between a club and its members. Members' rights are also affected by consumer law (in particular the Fair Trading Act 1986 and the Consumer Guarantees Act 1993), the Privacy Act 1993 and of course health and safety law.

Consumer law in New Zealand has undergone significant revision recently. As a consequence, a section on consumer law applicable to members has been added to this resource, by way of background. In particular it is important to note the application of unfair contract terms provisions of the Fair Trading Act. These came into effect on 17 March 2015. Information about these provisions is set out at (see page 9). They will apply to:

- all contracts entered into on or after 17 March 2015
- all contracts varied in any way on or after 17 March 2015.

It is **essential** that all contracts are revised to take these provisions into account.

## Attention to detail

Given the importance of **membership agreements**, seemingly insignificant changes can have a significant impact on the validity and/or usefulness of the **membership agreement**. For example, deleting the section for contact details of a close relative or friend may appear unimportant, but this removes one of the best ways to find a member should they move and not advise you of their new contact details, or if they have an accident and family should be notified. This can be useful both for general communication and also for debt recovery.

We also recommend reading the **ExerciseNZ Common Industry Issues Resource** that contains detailed information on members who are minors (under the age of 18), and also the revised note on the Credit Contracts and Consumer Finance Act.

## Revisions and updates to this resource

April 2015 revision

This document takes into account recent revisions to the Consumer Guarantees Act, the Fair Trading Act and the Credit Contracts and Consumer Finance Act that are relevant to the contract between an exercise facility and its members. It is particularly important to take into account the new (2015) unfair contract terms provisions of the Fair Trading Act in drafting a plain language membership agreement.

## October 2016 revision - significant changes to this resource

This version of the resource is updated in October 2016 to take into account recent changes to consumer law in New Zealand together with feedback relating to these changes. Key differences included in this version and the 2015 version are:

- change to the recommended layout of the membership agreement. In particular, it is recommended that the front page should contain all significant terms such as payments, minimum term, freezes where permitted by the club, together with the member's contact details and services covered.
- an enhanced focus on recording members' agreement to key contract clauses by the use of initial points (paper contracts) or checkboxes (online contracting).
- online contracting is taken into account.
- A 5-working day cooling-off period is recommended for all club contracts, whether or not there is credit involved. This is to assist in demonstrating the fairness of the contract in particular where contracts are entered into online. A 5-working day cooling off period is also essential if there is a consumer credit contract or if the contract is entered into as the result of a telephone sales call: this may bring the transaction under the uninvited direct sales provisions of the Fair Trading Act. The cooling-off period starts the day **after** the member has received the contract in writing.
- A distinction is made between the membership agreement, which contains the key terms, and ancillary documents such as club rules, or procedures for eg freezes or changes of details: these can be incorporated by reference into the agreement, but may vary from club to club or from time to time.
- clauses which might be considered to be unfair contract terms are indicated, with recommendations as to how to balance the clauses. The Commerce Commission's report is available at <http://www.comcom.govt.nz/the-commission/consumer-reports/uct-reviews/>

## October 2017 revision - significant changes to this resource

This version has been updated to include recommendations from the Commerce Commission's report on its review of unfair contract terms in gym contracts. In addition, a section has been added on unsolicited electronic messages with recommendations on contacting members by email. Practical changes arising from this addition have been added to the Membership Agreement precedent and matching commentary

## Copyright

This resource is subject to copyright, and remains the property of ExerciseNZ. Current members of ExerciseNZ may use this resource, either in its entirety or in part, unaltered or edited, as long as they continue to maintain their membership to ExerciseNZ. Any use of this document confirms acceptance of this condition.

Non-members of ExerciseNZ may NOT use this resource in any way, including copying any parts of it.

# Membership agreements and New Zealand consumer law

## Introduction

Membership agreements are contracts which set out the relationship between clubs and their members. The contracts describe members' benefits, rights and privileges, and also the club's rights and privileges. Contracts are enforceable at law, and in the case of membership agreements can be enforced through the Disputes Tribunals, which can hear claims up to \$15,000, or where both parties agree in writing, up to \$20,000.

However, members, as consumers, also have other rights under New Zealand statute law. These rights are independent of the contract and each other, and cannot be excluded. Because of this, statutory rights can affect the agreements between clubs and members. This section sets out key statutory rights which must be taken into account in both drafting and enforcing consumer contracts such as membership agreements.

## Consumer Guarantees Act 1993

The Consumer Guarantees Act (CGA) gives statutory rights to consumers where consumer goods or services do not meet a reasonable consumer's expectations. A "consumer" is a person who acquires goods or services of a kind ordinarily acquired for personal, domestic or household use or consumption. Fitness services are, of course, acquired for personal use. All club members will therefore have rights under the CGA. Consumers' rights under the CGA cannot be excluded or limited by any provision in a contract between a business and a consumer. Although sometimes consumers may acquire goods from a club, typically they will be making use of services.

**Guarantees for goods** will apply whether goods are purchased, hired or gifted. They include a guarantee that the goods will:

- be of acceptable quality;
- be reasonably fit for any specific purpose made known by the consumer to the club or by the club to the consumer;
- reasonably correspond with any description under which they are supplied;
- reasonably correspond with any sample offered before they are supplied;
- be a reasonable price. This guarantee applies only if the price is not a normal price, or part of the contract, and is rarely used.

The key guarantee for goods is the guarantee of acceptable quality. It is very flexible:

Goods must be as:

- fit for all of the purposes for which goods of the type in question are commonly supplied
- acceptable in appearance and finish
- free from minor defects
- safe
- durable,

as a reasonable consumer, fully acquainted with the state and condition of the goods and knowing about any defects, would regard as acceptable, having regard to:

- the nature of the goods
- the price
- statements on packaging or labels

- representations by supplier or manufacturer
- the nature of the supplier and the context of supply (new)
- all other relevant circumstances of the supply.

**Consumer remedies for defective goods:** Where guarantees for goods are breached, consumers have the right to ask for the problem to be fixed by the supplier (the supplier can choose whether to repair, replace or refund at this stage). If the problem is not fixed within a reasonable time, or if the problem is serious, they may have the right to a refund of any money they've paid for the goods, together with compensation for any reasonably foreseeable loss that they have suffered as a result of the failure to comply with guarantee.

**Guarantees for services** will apply to all fitness services (e.g. provision of gym facilities, equipment, classes) and also to any credit facilities and administration provided by the club or a third party credit or collection provider. Each supplier is responsible for the services it provides.

The CGA service guarantees are that the service will be:

- carried out with reasonable care and skill;
- reasonably fit for the consumer's particular purpose (or any particular purpose that the supplier has made known to the consumer);
- completed within a reasonable time and at a reasonable price, except where the time or price is fixed by the contract or determined by standard price lists or policies and procedures. This will normally be the case for clubs.

The two most important guarantees for fitness clubs are the service guarantees of reasonable care and skill and reasonable fitness for purpose.

**The guarantee of reasonable care and skill** requires clubs to offer a level of service quality that a reasonable club would provide. What that service contains will depend to some extent on what is promised to consumers. It is fair to say that the more services or results that are promised, the more clubs will be expected to provide. It is important to provide members and potential members with clear and realistic expectations.

**The guarantee of reasonable fitness for purpose** also depends to a large extent upon what is promised to a member. It has two aspects: the service must be reasonably fit for any particular purpose that the consumer makes known to the club before or at the time of the making of the contract for the supply of service, and it must be of such a nature and quality that it can reasonably be expected to achieve any particular result. However, it does not apply where circumstances show that the consumer does not rely on the supplier's skill or judgment (for example, where it is made clear to a consumer that they will not lose weight unless they continue to work out and adjust their diet) or where it is unreasonable for the consumer to rely on the supplier's skill or judgment.

**Consumer remedies for defective services:** Where there is a minor breach of guarantee that can be fixed, the consumer can require the club to fix the problem within a reasonable time. If the club fails to do so, or if there is a significant problem, the consumer has a statutory right to cancel the membership agreement, including within the minimum term. Where the consumer cancels the membership agreement, he or she is as of right entitled to a full refund of all monies paid. However, the club has the right to claim monies paid for services already provided. If the consumer demands a complete refund in circumstances where the consumer has in fact made use of the clubs facilities, a matter like this can be heard in the Disputes Tribunal.

***Credit or payment service providers' contracts:*** An important provision which was inserted into the Consumer Guarantees Act from December 2013 is that where the membership agreement is cancelled by the consumer, any collateral credit contract will revert in the club. This means that the credit provider's or payment service provider's rights under the contract will be against the club, not the member. The member will no longer be liable to the credit provider or the payment service provider but the club will be.

***Warning:*** Any attempts to contract out of Consumer Guarantees Act rights will breach the Fair Trading Act and could lead to prosecution by the Commerce Commission. Where a club uses a credit or payment services provider, if that provider's contract breaches the Fair Trading Act, the club, its directors and staff are likely to be caught up in any investigation and could be prosecuted and convicted as a party.

## **Fair Trading Act**

The Fair Trading Act (FTA) prohibits misleading or deceptive conduct in trade. Specific offences include false or misleading representations as to the price for goods or services, and false or misleading representations concerning the existence, exclusion, or effect of any condition or warranty, guarantee, right or remedy. This includes misleading consumers as to their rights under the Consumer Guarantees Act.

Complaints can be made to the Commerce Commission by consumers or competitors, but the Commission can start an investigation without having to receive a complaint. Prosecutions are brought by the Commerce Commission, although competitors or other persons can ask the Court for a declaration that conduct breaches the FTA. Where the Commerce Commission succeeds in a prosecution, the Court can impose fines for these serious offences of up to \$600,000 for a company and up to \$200,000 for an individual. The Commerce Commission can also apply for management banning orders where directors or officers of a company have been convicted of FTA offences on two separate occasions within the last 10 years.

The FTA also contains strict provisions for the procedures involved in specific consumer transactions, including uninvited direct sales (this includes door-to-door sales and telephone selling). All members who sell by these methods should familiarise themselves with the requirements set out in the FTA, which are available as a fact sheet on <http://goo.gl/rfWU5o>. Breaches of these procedures can result in fines of up to \$30,000 for a company or \$10,000 for an individual.

The FTA does provide statutory defences: reasonable mistake (which depends on the existence and ongoing use of a consumer law compliance programme), reasonable reliance on information provided by a third party, and an accident completely outside the control of the defendant.

Most common FTA breaches by clubs:

- Terms which mislead consumers as to their rights under the Consumer Guarantees Act;
- limitation or exclusion of liability clauses which apply where the club is at fault (see [pg 33] for information regarding personal injury and Accident Compensation);
- broad “No refunds” clauses that are not limited to a member’s non-use of the club;
- undisclosed conditions;
- conditions in fine print or unavailable before signup (including online signup);
- “no cancellation” clauses that are not limited to change of mind (consumers may have the right to cancel if there is a Consumer Guarantees Act breach by the Club) or are unfair (see [pg 7]).
- where member agreements are credit contracts, lack of proper disclosure as required by the Credit Contracts and Consumer Finance Act
- add-on but compulsory costs: all compulsory costs must be included in the upfront price.

Members who are approached by the Commerce Commission in relation to a specific investigation are recommended to seek legal advice urgently.

### **Unfair contract terms in standard form consumer contracts**

A new provision in the FTA, a prohibition against the use and enforcement of unfair contract terms in standard form consumer contracts, came into effect on 15 March 2015. It is an offence to include in a contract, or attempt to enforce, a term which a Court has declared to be unfair. Full fines for serious offences apply: \$600,000 for a company and \$200,000 for an individual. Fitness club contracts are almost certainly standard form consumer contracts, because most of their terms are prepared by the club or the payment services provider and presented on a form to potential members.

A term is unfair only if a Court declares that it is unfair. Only the Commerce Commission can make application to the Court for a declaration. This means that individual members cannot make a claim that the term is unfair, or argue on that basis before the Disputes Tribunals, but they can complain to the Commerce Commission.

***The Commerce Commission has already carried out a study of gym contracts: see its report at <http://www.comcom.govt.nz/the-commission/consumer-reports/uct-reviews/>. Also its Fact sheet on unfair contract terms for businesses at <http://comcom.govt.nz/fair-trading/guidelines/unfair-contract-term-guidelines/> also the consumer fact sheet: <http://www.comcom.govt.nz/fair-trading/fair-trading-act-fact-sheets/consumers-and-unfair-contract-terms/>***

### ***What is an unfair term?***

A term in a standard form consumer contract is unfair if:

- the term would cause a significant imbalance in the parties’ rights and obligations arising under a contract, and
- the term is not reasonably necessary in order to protect the legitimate interests of the party advantaged by the term (in this case the club); and
- it would cause detriment to the consumer if it were applied, enforced, or relied on.

All three of these factors must be made out.

There are terms which **cannot** be unfair: those which set out:

- the main subject matter of the contract (fitness services, classes, parking etc);
- the upfront price, which includes “consideration” contingent upon any particular event as long as it is transparent. The concept of transparency is important and is addressed below;
- terms required by any enactment.

There is a “grey list” of terms which **may** be unfair. That list is useful in identifying potential terms for careful consideration, many being unilateral rights eg rights to terminate the member’s contract, or the right to put fees up. The grey list is addressed below with suggestions for drafting. Remember that to be unfair, the term must be not reasonably necessary in order to protect the legitimate interests of the club. So if the membership agreement contains terms which fall within the categories below, clubs should make sure that they understand and have documented the reason for including the term.

However, even then, the Court must:

- check whether the term is transparent, and
- consider the contract as a whole.

**Contract as a whole:** If (for instance) a member pays a lower rate because they have promised to stay with the club for a longer term, that will be taken into consideration in assessing the fairness of a minimum term – as long as the consequences are clear to the member before signup - that is, the deal is transparent. A cooling off period will help too. This also means that where there is a potentially unfair term such as an early termination charge, it might be balanced by giving real options to the member – such as the ability to choose a shorter term contract or month by month contract signup, and on termination giving the member the option to transfer the contract to another person without paying more than a reasonable cost of administering the transfer. The club should retain the right to refuse to accept persons who have poor credit records or a history of misconduct within the club.

**Transparency:**

Transparent terms are drafted in plain language, are legible and presented clearly and are readily available to the member before they sign up to contracts.

**Plain language:** this means that most consumers in the target market would be able to understand the term.

To be **legible**, terms must be clearly visible and easily readable.

**Clear presentation:** important terms must be set out clearly.

**Ready availability:** the contract terms must be available to prospective members before signup, they must be given or sent a copy and they must be able to get a copy on request. After the contract is entered into, the terms should be available to members on the club website.

### ***Grey list terms in fitness centre and gym contracts***

Important terms in club contracts that fall within the grey list are:

- price increase terms
- limitation of liability or limitation of the member's right to make a claim against the club (important, because the Consumer Guarantees Act will apply: see [xref] below)
- any right for the club to terminate the agreement
- early termination penalties: check that these are balanced against the club's actual costs and losses or are balanced by an option to transfer the contract to another person.
- terms allowing the club to decide whether or not to renew the contract, or providing that a term contract on expiry rolls over into a new term contract (as against converting to week by week or month by month)
- terms allowing the club to make significant changes in the services provided or the location of the premises without a balancing right to terminate if the changes are detrimental to the member
- terms allowing the club to decide the interpretation of any clause, or what evidence would be necessary if the member was to make a claim.

### ***How to reduce the risk that your contract will be declared to be unfair***

The important steps for clubs are:

1. Check all of your terms against the list above. If in doubt, assume your term is on the grey list!
2. Decide if you really need a term like this. If you don't, why have it at all?
3. If you do need it, identify and record exactly why you need it. If you need it for a specific reason, and there are legitimate business purposes (eg health and safety), limit the scope of the term to those reasons.
4. Check whether there is a better, more balanced way of achieving the same result.
5. Draft the term in simple language that your staff and members will understand. Test this eg by running it past staff or contractors who are in the target market and finding out what they think it means. Note member feedback carefully.
6. Any grey list terms which are in the terms and conditions on the back of the contract should have "initial points" where each member should put their initials.
7. Check for terms which penalise the member beyond any loss to the club. For example, a term which required a member to pay the full contract rate for the remainder of the contract period if they miss several payments or terminate early would be a penalty. As well as being unenforceable in general law, it could lead to Commerce Commission action. On the other hand a term which provided for fair compensation of the club (admin costs plus loss of net profit) is less likely to be unfair, but would have to be checked. For example, if the club has a 3-year minimum term rate which is lower than the 1-year minimum term rate, then if the member terminated after 15 months, charging the difference between 15 months at the 1-year rate and 15 months at the 3 year rate has a rational basis related to the club's losses and is less likely to be seen to be unfair.
8. ALWAYS have your contract checked by a lawyer before you use it with members. If there is a collateral credit contract with a financier or payment services provider, have that checked by your lawyer too.
9. Check that staff who are signing up new members have clear operating procedures which include simple and accurate explanations of key terms: in particular payment terms, early termination costs, and what happens if payments are missed.
10. Always have a 5 working day (one week starting the day after signing, plus any statutory holidays) cooling off period for term contracts.

### **Special pointers for online contracting:**

11. Use check boxes at all initial points. Make sure the contract cannot be completed online unless all check boxes are ticked, the member has entered his or her full name, address and email, and has checked a box saying “I have read this agreement carefully and agree to the terms and conditions”.
12. Check that what prospective members can see on their screens matches your current contract. Check all against all common browsers including Internet Explorer, Firefox, Microsoft Edge, Google Chrome and Apple Safari. Recheck every time there is a significant browser upgrade.
13. Make direct personal contact with each new online member when they first use the club, and go through the key terms with them.
14. Make sure that all add-on options are opt-in, not opt out – that is, to sign up for them the prospective member must actively tick the “Yes, I want to add this on” box, with the “no, I don’t want this option” box as the default, or no default.
15. Do not allow the completion of online contracting where one person is paying for another person’s membership. The person who is paying and the member should both complete the agreement in the club, and ID should be checked and recorded for both of them

### **Mini-contracts**

Other documents commonly used by a club may well have contractual effect of their own.

#### **Mini-contracts can include:**

- club rules
- hold forms or transfer forms
- special offers
- conditions for prize draws and competition
- health and safety forms

All of these must also be carefully checked for compliance with the law.

### **Member identification**

It is recommended that photo ID should be checked for all new members to ensure that the person signing up is indeed the person they say they are. Most clubs take and keep a photograph of all new members. This is appropriate in order to reduce the risk of misuse of entry keys and cards.

## The Privacy Act 1993

The Privacy Act affects all persons (the club and its staff and contractors) who have access to the personal information of an identifiable individual. Information on the Privacy Act and its implication are set out on the website of the Office of the Privacy Commissioner. Personal information includes name, address, date of birth, health issues, payment and credit information, and training notes.

Key privacy requirements include:

- personal information must be collected for lawful purposes and only to the extent necessary;
- personal information must be collected from the individual or with their consent;
- personal information must be used only for the purpose for which it was collected except as required by law. Key conduct here involves telling members in the membership agreement the purposes for which their personal information is collected, and the use of emergency contact information when there is in fact an emergency;
- personal information must be kept secure and must not be disclosed to third parties without consent or as required by law;
- personal information must be kept only as long as it is needed by the club;
- all individuals have the right to access their personal information held by a club, and to ask for it to be corrected (the Act sets out procedures where the club does not wish to change the information).

A key point is that personal information can be used only for the purpose for which it was collected. This means that the individual must be aware of that purpose. See further details on the Privacy Commissioner's website.

### Key areas where the Privacy Act affects clubs:

- member contact details – must be kept secure and must not be disclosed;
- referrals from members – the club must require the referring members to get the consent of those referred before referrals are given. This can be done quite simply by using a “referrals form” which clarifies this requirement e.g. “My friends below have asked me to refer them to [club name] for a special joining offer” or alternatively a reference to consent at the end of the referral form e.g. “The people whose names are listed have all consented to my giving the names to you - [club name].”;
- storing of membership identification photographs
- photographs in the club – the default position should be that without specific consent from club management, the use of cameras including mobile phone cameras/videos within the club is banned and is grounds for termination of membership contracts. If specific photography has been permitted, the consent of every person in the photograph should be sought and consent given. Photographs should never be posted to social media without **written** consent.
- disclosure of payment information;
- fitness assessments;

Retention of personal training notes without consent when members leave a club

### Use of personal information in an emergency

Where there is an emergency involving health or safety, for example where a member must be rushed to hospital, the member's personal information may be used to inform contacts (this is why you collect emergency contact information). Their health information may also be disclosed as it might be relevant to the emergency treatment.

### Unsolicited electronic messages

The Unsolicited Electronic Message Act 2007 (often referred to as the Spam Act) prohibits the sending of commercial electronic messages (texts, emails, messages via apps such as Messenger and faxes). Commercial electronic messages

are messages that market or promote goods or services, the sale of land or investments or business opportunities. This Act does not prevent telephone calls or direct mail contact. Businesses that breach the Act can be fined.

However, there are sensible exclusions. Facilities can send email messages without the recipient's consent in a limited but practical number of circumstances including where the messages:

- provide a quote or estimate for the supply of goods or services if that quote or estimate was requested by the recipient;
- facilitate, complete, or confirm a commercial transaction that the recipient previously agreed to enter into with the facility;
- provide warranty information, product recall information, or safety or security information about goods or services used or purchased by the recipient;
- provide notification of factual information about a member's fees, membership (including changes of rules, club information) or account, or.
- where the email or other electronic address is conspicuously publicly available eg on in a business directory, or on a (legitimate) business or public website. Email or messenger contact details on a social media site will not fall into this category.

Messages of this kind are deemed to have consent inferred from the relationship. This is because there is a clear and reasonable expectation that messages like this will be sent to the recipient.

The Unsolicited Electronic Message Act requires all senders of commercial electronic messages to have a functional unsubscribe message, and to make sure that all unsubscribe messages are actioned promptly. This does not prevent a facility from pursuing debts. This could be as simple as including these words in the email footer: *"To unsubscribe, send a return email with "Unsubscribe" in the Subject line"*. However, the person's electronic contact details must be disabled for e.g. marketing messages if an unsubscribe message is received. In December 2015 The Warehouse was fined \$20,000 for failing to action unsubscribe requests.

Note that emailing a former member who has no outstanding debts, and no ongoing relationship with the club after the member's termination has been processed, would breach this Act. The former member could be contacted by (postal) mail or phone call.

The use of address harvesting software is also illegal. Facilities should not use address harvesting software or purchase is used to provide contact information for member prospects, and should not purchase email or other electronic addresses from anyone for marketing purposes. In 2014 an Auckland marketing company was fined \$120,000 for supplying email addresses to third parties without consent.

The Unsolicited Electronic Message Act is administered by the Department of Internal Affairs. Their website contains a great deal of useful information to help with compliance: <https://www.dia.govt.nz/Spam-Information-for-Businesses>

# Recommended Structure of Membership Agreements

## Main Membership Agreement

We recommend that the main membership document is referred to as a **membership agreement**. This reinforces the point that members agree to sign up. The agreement must be signed by the member, or consented to online [pg 13] *to section on online contracting.*

Note: in advertising membership deals, do not use the words “no contract” where members have an open term contract. There is always a contract, and both members and the club will be bound by it.

If you use a membership contract document that is supplied by a payment services provider, we recommend that you check its terms carefully against the terms in this resource, and have a separate agreement which sets out terms from this resource that are important to you and to members. That document should refer to the other contract document, and include these words at the top:

*This agreement is additional to the agreement between [name of club and name of payment services provider] and you (**the Membership and payment terms**). If any terms of the two documents conflict, then if they relate to how payments are made, the Membership and Payment terms will apply, and if they relate to the Club, these terms will apply.*

## Additional Membership Documents

Additional related membership documents that address specific issues should have titles that meaningfully convey their contents, to avoid potential claims that members never knew the document contained a particular term. For example, it is reasonable to assume that a document called **Putting your membership on hold** may contain rules about freezing, or that **Club rules contain** guidelines on using the workout, training or pool area, safety and conduct, but clauses relating to automatic price increases every year apply to all members so these items should be contained in your **main membership agreement**.

## Definitions

For the sake of clarity and consistency, throughout this resource the following terms are used:

- **Main membership agreement** or **membership agreement** refers to the main document that gathers contact information about the member (name, address, date of birth etc) and also outlines the principal terms and conditions of the membership and is signed by the member.
- **Related documents** are documents that outline facility-specific matters such as club rules, how to carry out membership-related activities such as freezing, transferring or terminating membership. They are also useful for informing members about practical issues that arise, like parking conditions, differences between clubs, or trainer bookings and payment conditions (note: trainers who are independent contractors should have their own separate contract forms).
- **Initial point** refers to a place next to an important clause of the Membership agreement where prospective members are asked to initial to show that they have read the clause (which should be in bold font)
- **Guarantee form** refers to the form used when one person guarantees the payments of another person. Note that the user of the membership must also sign the Membership Agreement as they must be bound by club rules.

- **Additional declaration** refers to the sections at the end of the agreement used to get parental consent for the membership of persons under 16 years of age, or for any person with diminished understanding of the **Membership Agreement**
- **Facility** and **club** are used interchangeably to refer to the business providing the services (e.g. fitness centre, gym, health club, recreation centre, studio etc).
- **Member** describes the person completing and signing the **membership agreement or the person** who will be the actual user of the membership paid for by another person.

## Membership Agreement basics

The structure of a **membership agreement** and related documents is very important. This includes where a person signs on the document, how many pages the document contains, and whether it is an “all in one” approach, or a main document, with attachments.

ExerciseNZ suggests the following in relation to the structure and format of a paper-based or electronically signed **membership agreement**:

- **Length:** The paper-based **main membership agreement** should be on a single sheet of paper, using two sides. Use side one to collect details (name address etc), set out important membership terms (see next section), and side two for the full membership conditions. Side two will be easier for members to read if it is set out in two columns. The font must be big enough to be read easily. An electronic version should be in one column and easily readable. See next section for more details.
- **Signatures:** Ensure the signature section of an agreement is on the same side of the page as the membership and payment conditions. Ensure all the key membership conditions in the main document are **on the same side as the signature**: these must include member details, price, payment start date and frequency, payment amounts, minimum term, permitted freezes, and whether the membership covers a single club location or other related clubs. All of these must be presented in a clear and transparent manner. Members who sign up online should be required to provide an electronic signature, credit card verification and photo ID when they first enter the club. An electronic signature entered through a signature pad is a valid signature.
- **Initial points:** There are other important terms which should be drawn to members’ attention, even though they are not unfair. These include the club’s right to cancel the contract if the member breaches health and safety provisions (including carrying out exercises which are unsafe for themselves) or club rules. These terms should have **Initial Points** next to them and should be printed in bold font. Where signup is carried out using an electronic version of the contract (whether online or in club) the initial points should become check boxes which must all be checked before the agreement can be completed. If this is not done, members may be able to claim that they are not bound by those terms because they didn’t acknowledge they had seen them.
- **Club’s Signature:** We recommend having a section that the club signs to ‘approve’ the membership. This ‘approval’ must be signed at the time of joining. Without this the club has less ability to decline to accept, for example, a rejoining person whose earlier membership had been terminated for bad behaviour.
- **Cooling off provision:** We recommend including a 5 working day cooling off provision. This is required by law if the member’s payments will be under a credit contract or is the result of a telephone sales call (even if you reasonably believe the prospective member wants you to call), but in all cases will be important in assessing whether the terms of the contract are transparent or unfair. It will also reduce front of house difficulties caused by early changes of mind.
- **Language:** Make sure that all clauses are in plain and simple language. If you are drafting any additional clauses, test them on staff to see if they interpret them the way you mean. Use **you** and **we** so that members are clear as to what they must do, and what the club will do.
- **Related Documents:** Any operational membership rules which apply in the club should be set out as one or more separate documents, which should be provided to the members at the time of joining. Club rules should also be available at all times in the club and on the club website. The member should acknowledge receiving and reading this document somewhere in the main membership agreement with an initial point (see section on **Membership Terms and Conditions** for more detail on this). This assists in keeping the **main membership agreement** to one page, which would be impossible if every membership term, rule and policy was included. It also makes it easier to make functional changes, such as safety-related changes during renovations.

- **Copies of documents:** A copy of any documents that are signed or referred to in the *membership agreement* must be provided to the member at the time of joining/signing, or if a member signs up online, by mail or email to the member's address. This is particularly important in regards to the main *Membership Agreement*, but also applies to any *Related documents*. Hard copies may be photocopied or written on paper with multi-layer "self-carbonising paper" (carbon paper process without the carbon paper). Keep a signed copy of each member's agreement, either in hard copy or preferably scanned into a database (scan both sides to show initial points). If you are using electronic signatures which are imported into the document, make sure the member gets a signed copy.
- **Tracking Changes:** For ease, store the *membership agreement* and any other membership documents in an electronic template format (e.g. Word<sup>®</sup>) so it is easy to edit. Keep a master copy showing tracked changes from the previous version and make sure all documents have version number or 'last date altered' printed on the document footer. Do not use automatic date update for this. Save the Word master for each version with changes accepted, then save the same version for use as a locked document except for filling in the form. Keep the password in a secure place. Alternatively, if paper forms are to be filled in, save the document in pdf format so it cannot be inadvertently changed. Keep a clean Word<sup>®</sup> version in a secure place for the next revision. The version number should also be recorded in the membership database so that you know which terms relate to which members without having to find the actual form the member signed. Do not make changes to the membership agreement without checking those changes with your lawyer.

**Initial points:** These are important in ensuring that a member has read and agreed to a particular condition or term. Contracts should not be accepted unless each initial point is signed: if they are, it would be very easy for a member to argue that they have not read an important clause and it was not pointed out to them. Our advice is not to accept any *membership agreement* unless it has been initialled on each and every initial point. This should be a compulsory element of operating procedures. For online contracts, the agreement should not be able to be completed unless all initial points are checked. We also recommend ensuring all the key clauses are on the *membership agreement*, and clearly highlighted either in bold or in colour. Key messages, such as "I understand that after the first 5 working days I cannot cancel during the initial term because I have changed my mind, and that if I do, cancellation fees may apply" can and should be initial points.

**Marketing and referrals:** we recommend that all referrals by members be made using separate documents which are not linked with the Membership Agreement. See the section on the Privacy Act at page 5 for important background information.

## Membership Agreement – the Structure

We recommend that any *membership agreement* is one A4 sheet, with two sides:

**Side1:** Gathers information on the member, including contact details, other ways of contacting the member, and a health declaration. It should also include the payment amount (first payment and ongoing payments), due dates, any conditions of freezing (eg 1 month minimum, up to 2 months in a 12 month period) and any minimum term (eg 2 years plus freezes). It is extremely important that the following key concepts relating to membership payments are on this side, and very clearly outlined:

- The initial term of the membership (e.g. twelve months);
- That during the initial term and after the cooling off period the member CANNOT change their mind and cancel the agreement without transferring the contract to another person or paying a cancellation fee reflecting the club's costs and losses for the early cancellation;
- Shortly before the end of the minimum term, members should be advised by email, text or letter that their minimum term is nearly complete, and that their membership will continue on a month by month basis. They should also be given notice of any price increase at least 30 days before the end of the minimum term.
- Giving members the right to choose to transfer their membership agreement for the balance of the minimum term is strongly recommended. Members should be told how the membership can be transferred during the minimum term, with specific clauses on Side 2 telling members how this works. The Facility should reserve the right to approve of the transferee. Reasons for refusal of transfer may include previous misconduct of the transferee within the club or a related facility, inability to make payments, refusal by the facility's payment provider to accept the transferee because of previous credit history.
- That the terms and conditions on Side 2, also club rules will apply to the contract. Members must be given or emailed a copy of all pages of their member agreement.
- That the person or persons signing has or have read the terms and conditions on Side 2.
- A privacy notice stating that the club will use the member's personal information for administrative and marketing purposes, and (where applicable) for credit checking. See [pg 15] regarding unsolicited electronic messages.

We recommend that the signature is on the first side of the agreement because this contains important information which must be transparent to members. See [pg 22] regarding the importance of signatures.

**Forms must be signed by the member and by the person paying for the membership if different.**

Side 1 will also include notes for office use. These might include a note (which may be a tick) that a direct debit form has been signed, that ID has been checked, and that the initial payment has been received.

**Side 2:** This outlines the detailed terms and conditions. This should include missed payment consequences, cancellation process, a detailed explanation of any minimum term and what happens if the member wishes to terminate early, and transfer rights, together with reference to club rules, and in particular termination by the club if the member breaches club rules or carries out unsafe activities. Key terms on page 2 should be accepted with *Initial Points in the right hand margin*. Make sure staff are required to check that all initial points have been correctly initialled by the member (and also by the person paying if different from the member). Points marked \* below, and all other important terms must have an initial point in the right hand margin.

## **Recommended terms to be included in side 2**

- \*What happens at the end of the initial term. Most clubs have a roll-over policy in which the membership continues on a month by month basis until cancelled in writing. Automatic rollover into a new term contract (as against a voluntary term contract) is likely to be considered unfair.
- \*Any new conditions which come into play following the minimum term, such as potential price increases, loss of rights to transfer.
- \*The facility's right to cancel the membership under certain conditions, in particular where the member fails to pay the membership fee, carries out unsafe or illegal activity, or breaches club rules.

Initial points should be placed in the right hand margin beside key conditions in paper versions (checkboxes for online versions).

## Club Rules and Related Documents

The Club Rules should contain practical details of freezing and transferring policy, and also any other house rules such as safety, conduct towards other members and staff, bringing workout towels, not attending when you have an infectious disease including a cold, and advice regarding security including a prohibition on use of cameras (including mobile phone cameras) and recording devices within the club.

### Related Documents

These may include operating procedure and forms: These are likely to be needed to assist members with changes of address and contact details, transfer of contracts, applications for freezes, and referrals. All must be checked for consistency with the Membership Agreement and the law.

Information documents can be used to inform members about other services available, and also contain helpful information to the member such as:

- a 'welcome to our club' letter from the owner or manager
- an explanation about your policy for opening hours and hours of attendance of trained staff, particularly during public holidays
- Details of parking including paid and unpaid parking
- In the case of 24hr gyms, protocols for security including advising members about security cameras;
- a list of other services available (and optionally costs) such as personal training, food supplements, water and drinks, shower facilities etc
- contact details for the club
- a reminder about the process needed to cancel a membership, and when this can be done
- policy on bookings for limited number group exercise classes (e.g. spin)

## Importance of Signatures and verification of identity

**It is essential that the person paying for the membership signs the membership agreement.** For minors under 18 years of age, see the section on this [pg 39], as well as the ***guarantee form*** for when one person is paying for another.

We recommend ensuring the person paying and also (if different) the member has their identity confirmed by both of the following methods:

1. Take a photo of the member (digital photos are cheap and easy)
2. Photocopy photo ID with the person's name on it (make sure the photo comes out on the copy)

This way if the person claims ***I never came in and joined***, there is proof that they did. Photo ID has the advantage of also ensuring the person has provided you with their correct name and that if necessary there is a reference document and photograph if you suspect a member is letting someone else use their membership card without consent.

A drivers licence is an ID commonly carried that includes both the person's photo, and also provides an accurate date of birth which assists greatly should debt recovery action be needed. For younger members a student ID can be used.

## Common Scenarios to Consider

### Minors (those under 18 years of age) and those with understanding issues.

For health and safety reasons, unless the club specialises in providing supervised services for families or children, we recommend that persons under the age of 15 should not be permitted to use club facilities other than child care facilities.

It is important to understand that on the face of it, any agreement with anyone less than 18 years of age (a minor) is enforceable against the minor **only** if it is fair and reasonable. Please refer to **ExerciseNZ Common Industry Issues Resource** which covers this topic, including an outline of the Minors' Contracts Act 1969, in greater depth than this resource. The minor can enforce the contract against the club, but if the club chooses to enforce the contract the minor can claim that this is not fair and reasonable, and might also claim a refund of money already paid. The club can contest this claim in the Disputes Tribunals but this is time-consuming.

If a person under 18 wants to join, it is important to require a parent or guardian to act as a guarantor to guarantee the payments using a **guarantee form**, or preferably to enter the Membership Agreement on behalf of the minor who will be the primary user. It is recommended that this guarantee should be added to the bottom of the membership agreement, and be separately signed by the guarantor who should print his or her name.

Persons aged under 18 should undergo more thorough investigation to determine if they can afford the membership, and understand the obligations involved even if there is to be a guarantor. We recommend using an **additional declaration form** that asks a series of questions that the person answers with words (i.e. not just tick boxes) so this indicates the person understands what they are signing.

It is imperative that the minor has the ability to consult another person before signing the membership agreement, has fully read and understood any forms they do sign, and has the ability to meet the payment. We recommend that the guarantor or person making the payment be asked to sign the guarantee in the club, that their photo ID should be checked to verify their identity and a record retained. Guarantees allegedly signed offsite by parents or guardians should be checked directly with parents or guardians to reduce the risk of fraud. Failure to ascertain these key pieces of information is likely to void any agreement with a person under 18.

The **additional declaration form** may also be used for any person where you think they may have a diminished understanding of the **membership agreement**. This could apply to cases where English is a second language, or the facility otherwise may believe the person may not fully understand the agreement they are signing. Doing so protects both the facility and the member.

Samples of both the **additional declaration forms** and a **guarantee form** may be obtained from ExerciseNZ. They are free to Gold Members, and only \$195+GST to other members.

### The club's right to cancel a membership agreement for breach of a term

A unilateral right for the club to terminate a membership agreement could be considered to be unfair unless the contract provides that it must be exercised only where the club reasonably believes there is a serious breach of the membership agreement or club rules, or where the breach is specifically described (eg repeated non-payment). Breaches which a club could reasonably consider to be serious include:

- Health and safety breaches such as dangerous conduct during workout (the danger may be to the member or to other persons including staff);
- Sexual harassment;
- Permitting non-members to use a club during unsupervised hours;
- Attempting to sell illegal drugs or performance enhancing therapies to other members, on or near club premises (eg carparks etc);
- Use of a club as a base for the member's own business purposes.

### **One person paying for another (guarantee form)**

If one person intends to pay for another we recommend using the following system:

1. Ensure the person who is paying for the membership completes a **Membership Agreement** as usual.
2. Ensure the person who is paying for the membership also signs an agreement saying they will pay for the membership. Ideally this would be at the bottom of the membership agreement, but in cases where space does not permit it, on a separate form, with a clear link to the original membership agreement, which they initial (copies of both should be provided to the guarantor)
3. We recommend that the guarantor or person making the payment be asked to sign the guarantee in the club, that their photo ID should be checked to verify their identity and a record retained.

A sample **guarantee form** is provided at the end of this resource.

### **Credit Contracts**

It is extremely important that any membership agreement complies where applicable with the **Credit Contracts and Consumer Finance Act** (CCCFA). It is both a legal requirement to do so, and also by not doing so puts the enforceability of the contract in question – i.e. the member may not be required to make the payments, may be entitled to a refund of all payments already made.

Please review the **ExerciseNZ Common Industry Issues Resource** and refer to the section on **Credit Contracts**. **A breach of the CCCFA is a criminal offence, and if members are misled as to their rights under the CCCFA the Fair Trading Act is likely to be breached.**

The prepaid membership trap: a membership agreement will be a credit contract if a member making regular payments pays more than a member prepaying by lump sum, including additional administration fees. ExerciseNZ recommends members charge the same amount for memberships of the same length of term, regardless of payment type. Weekly payment memberships and lump sum memberships should in effect be the same total cost over the relevant lump sum period.

**In particular, we recommend that all clubs follow the provisions of the Responsible Lending Code when signing up members for long-term contracts (eg more than 3 months), regardless of how payment is made. This code is available here <http://goo.gl/ftPF1S>**

## Sample Membership Agreement

When reviewing the sample *membership agreement* contained in this resource, sections that have been highlighted in yellow must be edited before use in order to match the agreement to the club's own conditions. Other sections should be checked for relevance. In particular, cancellation dates, charges for missed payment etc should be reviewed before use. Anything with *{club name}* should be replaced with the name of the club providing the membership services. Also the company name and postal address must be added. Please note that this agreement does not cover payments for additional optional services. If these are ongoing services they should be noted on the agreement.

**Important Note:** The following sample *membership agreement* has been reduced slightly to fit on the page. To use, the font on these pages should be enlarged so that it is easily readable, and spaced out appropriately. To receive a full sized version of this membership agreements electronically (Word® format) please email [info@exercisenz.org.nz](mailto:info@exercisenz.org.nz) It is suggested that you reformat this for your own use, as well as reviewing each clause for suitability before having it reviewed by your own lawyer.

If you reformat the terms and conditions of the *membership agreement* into two columns to make it easier to read a printed version, make that any electronic copy (website, mobile or email) is single column. It is very difficult to read a two-column document on a screen. Check how easy it is to read on computers, Apple and Android devices.

The attached sample agreement assumes all prices quoted are weekly or monthly rates, but the payments themselves can be weekly, fortnightly or monthly (payments should be set out clearly in the summary box where provided).

**Next Page: Side 1: Member's Details**

# MEMBERSHIP AGREEMENT with [club legal name] trading as [name]

Please Print Clearly In Block Capital Letters

**Full Name:** Mr / Mrs / Miss / Ms \_\_\_\_\_

**Your Address:** Street Name & Number: \_\_\_\_\_

Suburb: \_\_\_\_\_ City: \_\_\_\_\_

**Phone:** Home: \_\_\_\_\_ Work: \_\_\_\_\_ Mobile: \_\_\_\_\_

**Would you prefer us to communicate with you by:** Email \_\_\_ Text \_\_\_ Both \_\_\_

**Date of Birth:**     /     /     Email Address: \_\_\_\_\_

**Your Doctor (used for medical emergencies only):** \_\_\_\_\_

Emergency Contact person \_\_\_\_\_ Phone \_\_\_\_\_

**Any medical conditions affecting your workouts:** \_\_\_\_\_

**Note: this is important for your own health and safety.**

**A Close Relative or Friend** (not living with you): \_\_\_\_\_ **Their Ph:** \_\_\_\_\_

**Your Password:** (to keep your information confidential): \_\_\_\_\_

**Your Employment Details:** (if you are a student please record your school, or place of learning)

Occupation: \_\_\_\_\_ Employer: \_\_\_\_\_ Work Phone: \_\_\_\_\_

**Initial period:** \_\_\_\_\_ (     ) months ending \_\_\_/\_\_\_/\_\_\_ **plus Freezes** See details on reverse

**Available freezes:** [maximum x months] per 12 month period: see details on reverse

<p><b>Payments</b> to be made by direct debit on _____ day (weekly) or the ___ day of the month (monthly).</p> <p>Membership: _____</p> <p>Type: _____ \$ _____</p>
---

<p><b>Total payment \$</b>    per week: or \$    per calendar month :</p> <p>First Payment \$ _____ (for broken 1<sup>st</sup> period plus first full period)</p> <p>Payment Frequency: Weekly/Fortnightly/ Monthly</p> <p>First direct debit due on    ___/___/___</p>
---

After the initial period, payments will continue until this Membership Agreement is cancelled (see clause "How to cancel")

I have read and understood this document including the terms and conditions set out on the second (back) page, and understand that this is a legally binding document. All the details that I have given you are correct. I understand that if I do not give you the information you need my membership may be terminated, and that you will use my personal information for administration, credit and marketing purposes. I have the right to see my personal information and to ask for it to be corrected. I understand that I have 5 working days to cancel this agreement after today's date.

Please send me emails or texts about club activities     Please allow other companies to send promotional messages to me.

Preferred contact method:  Email  Text I understand that I will be able to unsubscribe from promotional messages at any time.

Signed \_\_\_\_\_

Signed \_\_\_\_\_

Member -----

Authorised person of [club]

I will produce my student ID within 14 days or have my membership converted to the closest full price membership & any extra payment will become due immediately

Office Use only below this line

Office Use only below this line

Office Use only below this line

Initial Fee:	
Copy Given	
Start	/ /

Initial Period:		Mths
Student ID		
Card	<input type="checkbox"/> Perm <input type="checkbox"/> Temp	

Joined by	
PT	
Corp Deal?	

Joined with:	
#	
#	

**Pay:** Cash / Chq / Eft    **Join Fee:** \$ \_\_\_\_\_     P.I.F or  Paid \$: \_\_\_\_\_    **BAL:** \$ \_\_\_\_\_

Time Payment     Set Term    **DD Complete** Y/N    Bank & Acc# \_\_\_\_\_    IP End: / /

**Notes:** \_\_\_\_\_

		Photo		Database	
--	--	-------	--	----------	--

Toured by	
-----------	--

Version: 5

## NOTES FOR SIDE 1

### Legal name of club:

*Many clubs use a brand name but the club legal (company) name is different. Both names should be used so that the member knows who they are contracting with.*

### Date of Birth

Gathering this data is VERY important, not only for the obvious reasons of determining a person's age, but also is essential should any debt collection recovery action be needed or if the member needs to be hospitalised in an emergency. It is also worth noting that rarely will individuals lie about their day and date of birth (only their year) meaning debt collection agencies can still match up individuals with the same name.

### Doctor

Important for medical emergencies.

### Emergency contact person

The person to be contacted if for any reason the member has an accident or suffers a medical event.

### Close relative or friend

The **Close relative or friend** is designed to enable an alternative contact for the member in case the member moves and doesn't advise the club.

### Password

The **Password** is to allow the member to nominate any word, letter or number combination that can then be used to identify the member over the telephone (particularly useful if you are not sure who you are speaking to). Given privacy laws in NZ, simply asking a person's name on the phone and then giving out information about their membership would be regarded as an insufficient check for privacy purposes and could lead to a complaint to the Privacy Commissioner. ExerciseNZ recommends that before providing any details on a member a simple ID process should be used that includes asking the person for their full name and date of birth, also their password.

### Employment Details

This is both useful as an alternative contact method, and also in confirming a person's ability to pay (i.e. they are in paid employment). Please note that if you wish to check with eg their employer that they are currently employed, you will need to get specific written consent from the member. This can be done by asking the member at time of signing up, and noting their consent on the agreement.

### Initial period:

This is the minimum term of the contract. If it is extended by freezes, this must be shown on the front page.

### Freezes

The length (maximum and minimum) and number of freezes should be listed here.

### **Office Use Only**

The section **Office Use Only** is designed to record information such as start date, sales person, a confirmation that the member received a copy of the agreement, plus any other notes that may be relevant. It is important that this section should not be regarded as a part of the agreement, but rather used for admin purposes (that's why the "office use only" message is important). This is where internal codes may be used without adding unnecessary complexity to the agreement. The codes and details recorded here are examples only, and should be personalised for the facility.

### **Version Number**

Note the **Version 5** in the bottom right corner of this page. This is to allow an easy reference as to which version of your membership agreement the member has signed. This should be recorded in your membership database somewhere, and blank copies of old agreements kept in easy reference so that as your agreement changes over time you are able to quickly see which terms apply to each member. If you use Microsoft Office Word or Excel for your agreements, make sure that the document is locked so that only the variables (Member details etc) can be edited, and make sure that the version number and date do not auto update.

**Next Page: Side 2: The terms and conditions and signature**

# MEMBERSHIP TERMS AND CONDITIONS: PLEASE READ CAREFULLY

**Note:** You may cancel this contract without penalty within 5 working days after you have received a copy of it by informing the Club in writing. We may require you to pay for the days that you have had access to the club, at our standard daily rate, and for any goods you have received on joining up.

This Membership Agreement is between the Member whose details are on the front page (you) and [Club legal name] trading as [club trading name and address] (we, us).

## USE OF THE CLUB

Your membership gives you the right to use the club facilities during normal opening hours on the terms of this Agreement. It does not cover additional costs like food or drink, special classes or personal training, which you must pay for separately. We will take all reasonable care to ensure that facilities are available during normal opening hours, but sometimes demand from other members or circumstances beyond our control such as equipment failure may mean that the equipment you want to use may not be available.

## FEES AND PAYMENTS

You agree to pay all the payments as shown on the front page. You must continue paying even if you do not use the club. INITIAL\_\_\_\_\_

During the initial (minimum) period membership you can only cancel or transfer your membership as set out in these Terms and Conditions (see Termination by you below). **After the initial period, payments will continue until you advise us of your cancellation or successful transfer of this agreement (see "How to Cancel" below).** The membership rate quoted is a weekly rate and must be paid by direct debits which may be processed on or after the date due, but not before. It is your responsibility to make sure there are sufficient funds in your account. INITIAL\_\_\_\_\_

Payments are guaranteed not to increase during the **initial period** unless required by law. After the **initial period** the rate may be increased by [club name] giving you at least 30 days' notice in writing which may be by email or text. If you do not wish to accept that increase you may cancel your membership but must do so before the first Direct Debit at the new rate. INITIAL\_\_\_\_\_

When payment(s) are missed, you may not be able to enter the club until you have paid any overdue balance. If you do not pay at the club, any overdue amount will be added to your next Direct Debit. All costs associated with recovery of any missed payments will be added to any amounts due. This includes a \$X administration charge, and all reasonable collection agency costs. INITIAL\_\_\_\_\_

**Club rules and procedures:** You must comply with club rules and procedures at all times while using the club. These rules and procedures are designed to allow all members to get maximum benefit from their membership and may change from time to time. Copies are available at the front desk and online at [website link]. You must not carry out any illegal acts on club premises and you must comply with our health and safety requirements. You must respect staff and other members, and you must not take photographs in the club without our permission and the permission of every person in the photograph.

**Termination by you:** If you choose to terminate your contract within the Initial Term, then if you have a special discounted rate for agreeing to an Initial Period you must pay us [formula] to cover our losses. Alternatively, you can ask us to transfer your membership to another person with our consent for the remainder of the initial term providing you pay a transfer administration fee of \$x, and that person complies with our usual membership requirements. INITIAL\_\_\_\_\_

**Termination by us:** we may terminate your membership immediately if you carry out any activity which we reasonably consider to be illegal, offensive, dangerous to other people or to you, if you act in serious breach of club rules, or if at any time four or more payments are overdue. If we terminate because of your actions, we will not be liable to you in any way.

## HOW TO CANCEL

After the **initial period** you may cancel your membership by informing [club name] in person at the Club, or in writing which may be by email. Confirmation letters/emails/texts will be sent within seven days of receiving a cancellation request. Cancellation will take effect from your next direct debit date that is more than 53 working days after we receive your request.

**Freezes:** During the initial term you can suspend your membership and your payments as set out in the front page. Each freeze must be for at least 1 month/4 weeks. Your Initial Period will be extended by the length of freezes. After the minimum term you can suspend your membership by a maximum of X months in any period of 12 months of club use. A freezing administration fee of \$x per month or part month will apply. If you use the club during a freeze period, your payments will restart immediately. INITIAL\_\_\_\_\_

## GENERAL

We may need make changes to this membership agreement from time to time. We will give you one month's notice of any changes using email/text. Where we reasonably believe that a change will be detrimental to you (unless it is required by law) and you are still within the Initial Period we will offer you the right to cancel the contract.

You may have other rights under the Consumer Guarantees Act, the Fair Trading Act or other consumer law. It is your responsibility to use this club safely, to take care of your own health and to take care of your own property. Personal injury by accident in New Zealand is covered by the Accident Compensation Act.

**Young Members (less than 18 years old): Parent or legal guardian to sign**

I have read this contract and consent to the named person entering into it. I agree to become a party to this Membership Agreement and to be responsible for all obligations owed under it resulting from the person's use of the Club, including failure to meet any regular payment as set out in on the first page.

Signed \_\_\_\_\_ (parent or guardian)

Full name and address of signatory: \_\_\_\_\_

Contact phone number \_\_\_\_\_ Date \_\_\_\_ / \_\_\_\_ / \_\_\_\_

Photo ID: \_\_\_\_\_

## Notes for side 2

This side of the membership application form is very important, so has been repeated here section by section with explanatory notes. It is important to understand the intention of various clauses, especially when these are being edited or removed.

### 5 working day cooling off period

*Note: You may cancel this contract without penalty within 5 working days after you have received a copy of it by informing the Club in writing. We may require you to pay for the days that you have had access to the club, at our standard daily rate, and for any goods you have received on joining up.*

This is required by law if your contract is a credit contract, or if you use a payment services provider who charges fees, in which case both contracts must be cancelled. However we recommend that all clubs offer it for term contracts of more than one month. Not only will it be seen to support the fairness of a term contract, but it will reduce change of mind problems. You are not entitled to charge any fees for this cancellation other than fair payment for goods or services already actually provided, which is likely to be the daily rate for any use of the club, and market price of any goods. You must refund any excess of funds received from the member.

### Parties

*This Membership Agreement is between the Member whose details are on the front page (you) and [Club legal name] trading as [club trading name and address] (we, us).*

This sets out the names of the parties to the contract. See [pg 39] for further information where another person pays for the membership.

### Fees and Payments

*You agree to pay all the payments as shown on the front page. You must continue paying even if you do not use the club.*

*During the initial (minimum) period membership you can only cancel or transfer your membership as set out in these Terms and Conditions (see "Termination by you" below. After the initial period, payments will continue until you advise us of your cancellation or successful transfer of this agreement. (See "How to Cancel" below). The membership rate quoted is a weekly rate and must be paid by direct debits which may be processed on or after the date due, but not before. It is your responsibility to make sure there are sufficient funds in your account. INITIAL\_\_\_\_\_*

This clause sets out the member's obligation to pay for the minimum term. It would be likely to be unfair unless the member is presented with a range of options eg a shorter term for a higher fee, and/or a right to transfer the contract to someone else. It also clarifies that members must pay even if they fail to use the club facilities. They are paying for the right to use, not actual use. Members cannot be told that they are unable to cancel within the minimum term: they might have statutory rights to cancel under the Consumer Guarantees Act or the Credit Contracts and Consumer Finance Act. Note the initial point.

*Payments are guaranteed not to increase during the **initial period** unless required by law. After the **initial period** the rate may be increased by [club name] giving you at least 30 days' notice in writing which may be by email or text. If you do not wish to accept that increase you may cancel your membership but must do so before the first Direct Debit at the new rate. INITIAL\_\_\_\_\_*

This clause sets out the circumstances in which a price increase might occur. A price increase in a contract after the minimum term, when the member has the right to cancel without penalty, is not unfair, provided sufficient notice is given. 30 days' notice is recommended. A price increase during the initial period would be unfair unless required by law (eg a GST increase).

*When payment(s) are missed, , you may not be able to enter the club until you have paid any overdue balance. If you do not pay at the club, any overdue amount will be added to your next Direct Debit. All costs associated with recovery of any missed payments will be added to any amounts due. This includes a \$X administration charge, and all reasonable collection agency costs.*

INITIAL\_\_\_\_\_

This sets out the point that any overdue amount will be added to the next direct debit. The initial point is important. Please note the difference in wording from the previous version, also the variable administration charge. The club's right to refuse entry has been added. **Any administration charge must reflect only the actual marginal cost to the facility, without taking into account overheads.** It is strongly recommended that operating procedures should be set up to contact members whose payments are overdue *before* charges are added to the amount owing. See also the responsible lending code which will apply to this section if the membership agreement is also a credit contract: [pg 24].

**Important notes re changes from previous version: the previous version of this document contained this wording:**

- *We do not recommend using any clauses that use the wording “this rate has already been discounted by \$x” as it creates unnecessary complications with the Credit Contracts Act (it may be viewed as interest), and may also create a Fair Trading Act issue. Facilities who still use this type of clause are strongly recommended to seek urgent legal advice and amend their contracts.*
- *Also, we do not recommend using any clause such as: ‘If at any time four or more payments are overdue, then all payments up to the end of the initial period become immediately due’. . This clause is highly to be unenforceable as the full amount due is not likely to reflect actual losses and thus is a penalty. It would risk misleading members as to their rights and thus breach the Fair Trading Act. It is also likely to be considered to be unfair.*

**CLUB RULES AND PROCEDURES:** *You must comply with club rules and procedures at all times while using the club. These rules and procedures are designed to allow all members to get maximum benefit from their membership and may change from time to time. Copies are available at the front desk and online at [website link]. You must not carry out any illegal acts on Club premises and you must comply with our health and safety requirements. You must respect staff and other members, and you must not take photographs in the club without our permission and the permission of every person in the photograph.*

This clause incorporates club rules and procedural documents into the Membership Agreement. It is important to set out clearly the expectations of conduct of the member, also circumstances under which a member's contract can be terminated. Club rules should be readily available to all members. Experience indicates that the members most likely to challenge the termination of their agreement are those who carry out significant misconduct.

**Termination by you:** *If you choose to terminate your contract within the Initial Term, then if you have a special discounted rate for agreeing to an Initial Period you must pay us [formula] to cover our losses. Alternatively, you can ask us to transfer your membership to another person for the remainder of the initial term providing you pay a transfer administration fee of \$x, and that person complies with our usual membership requirements.*

INITIAL\_\_\_\_\_

It is strongly recommended that the early termination fee should be carefully considered to reflect only the club's losses of overheads related to the maintenance of membership. A requirement to pay the full amount outstanding would be considered to be unfair. It does not take into account the fact that the membership can be replaced by another person, among other issues. Where a member has the option of a shorter term at a higher rate, the difference between what has actually been paid during the contract, and what would have been paid over the shorter contract term would appear to be the maximum loss that could be claimed, but this approach can be taken advantage of by members to enable a short term membership at a long term rate. A more appropriate cost is the cost of recruiting a new member plus administration and induction costs, but again this could be unfair on members who terminate late in the initial period. See the Commerce Commission's report on unfair contract terms in gym contracts [link] which addresses these issues.

It is therefore strongly recommended that clubs provide a transfer option for members on term contracts. These give members real choice to reduce their continuing payments. Transfer fees should reflect initial administration and induction costs only.

**Termination by us:** *we may terminate your membership immediately if you carry out any activity which we reasonably consider to be illegal, offensive, dangerous to other people or to you, if you act in serious breach of club rules, or if at any time four or more payments are overdue. If we terminate because of your actions, we will not be liable to you in any way.*

This clause makes it clear that the club has the right to terminate the member's right to use the club if there is a serious misdemeanour. This may well be necessary in order to protect staff or other members. We recommend adopting a policy of refunding any pre-payments the member has made, less the termination costs.

## How to Cancel

*After the **initial period** you may cancel your membership by informing {club name} in person at the Club or in writing which may be by email. Confirmation letters/emails/texts will be sent within seven days of receiving a cancellation request. Cancellation will take effect from your next direct debit date that is more than 5 working days after we receive your request.*

**Notes:** This explains the cancellation process. This clearly outlines that the cancellation must be in writing, and that the club will confirm this in writing to the member. Communications include advice in club, emails and texts. Cancellation by telephone is risky because there needs to be some method of confirming the identity of the person carrying out the cancellation. We recommend keeping a record of the member's preferred method of communication (see amendment to front page). This last step is important as otherwise a member could claim they have cancelled and the facility didn't receive it, and they assumed the facility had. The cancellation notice period is best matched to the time required to cancel a weekly direct debit, including time to process the request. It is therefore prudent to encourage weekly payments to reduce the risk of having to give refunds where members are outside their initial term.

**Note: change from earlier version:** the following clause has been removed: **Wording:** *I am physically & mentally sound to proceed with exercise. {Club name} is not liable for any loss of property or accidents, whether or not these are contributed to by {club name}, its staff, or members. Refunds are not given for unused membership.*

The declaration of fitness has been removed to page 1, while the failure to use the club is now part of the payment clause. Members now have a positive obligation to look after their own property. The club cannot exclude liability for property or other losses which are caused by the club or its staff: members would be entitled to compensation under the Consumer Guarantees Act. Attempting to exclude that right would mislead consumers and amount to a Fair Trading Act breach. Any facilities using that clause should amend their contracts

**Freezes:** *During the initial term you can suspend your membership and your payments as set out in the front page. Each freeze must be for at least 1 month/4 weeks. Your Initial Period will be extended by the length of freezes. After the minimum term you can suspend your membership by a maximum of X months in any period of 12 months of club use. A freezing administration fee of \$x per month or part month will apply. If you use the club during a freeze period, your payments will restart immediately.* Σ

This clause sets out freeze conditions and makes it clear that the Initial Period will be extended by any freezes. You can choose the minimum freeze period. The clause also addresses freezes after the

end of the Initial Period, where the member's agreement rolls over. The administration fee should be small and reflect staff time and bank fees only.

### **GENERAL**

*We may need make changes to this membership agreement from time to time. We will give you one month's notice of any changes using email/text. Where we reasonably believe that a change will be detrimental to you (unless it is required by law) and you are still within the Initial Period we will offer you the right to cancel the contract.*

This clause addresses two issues: first, there may be statutory requirements that require clubs to amend their contracts. Changes in GST are a classic example: members may need to pay the increase in tax. Note that at time of writing of this resource this is able to be done: a GST increase can be required providing members are notified before any increases are debited from their accounts, but this could change: seek legal advice if it should recur. However if the change is, for example, because the club decides to move premises to a more distant location, members who are disadvantaged (not all will be) should be given the opportunity to make their case for termination – in this example, it would depend upon the relative ease of accessing the new location.

*You may have other rights under the Consumer Guarantees Act, the Fair Trading Act or other consumer law. It is your responsibility to use this club safely, to take care of your own health and to take care of your own property. Personal injury by accident in New Zealand is covered by the Accident Compensation Act.*

This clause clarifies that members may have overarching and non-excludable rights. It is recommended that this be brought to their attention. The reference to personal injury by accident has been included to avert claims by tourists and persons accustomed to bringing lawsuits in respect of personal injury.

*Special Conditions:* \_\_\_\_\_

**Notes:** Any special conditions should be noted on page 1 of the Agreement. This allows for any variations to the agreement to be written in here. It is important NOT to use this for general notes, as anything written here forms an amendment to the agreement. Use this for variations to the standard terms and conditions, for example to say "Can freeze once for no charge for up to three months." or "Membership will reduce to \$15 per week if Joan Smith joins up before 30/7/07".

**Wording:** *I agree to all the terms and conditions above & acknowledge receiving a copy of this agreement. I understand that any additions to the terms of this agreement will be written above under "Special Conditions".*

**Notes:** This clarifies that the person agrees to the terms, and has received a copy of the agreement. To avoid possible claims of "I was verbally told such and such" there is a confirmation that any such variations would be written in under special conditions.

**Wording:**       Please send me messages about club activities  
                      Please allow other companies to send promotional messages to me.  
Preferred contact method:  Email  Text

I understand that I will be able to unsubscribe from promotional messages at any time.

**Notes:** these provisions enable the Club to contact the member and to secure the member's agreement to receive commercial electronic messages. This is important for compliance with the Unsolicited Electronic Messages Act 2007.

**Wording:**

*Signed:* \_\_\_\_\_ *Date:* / / ***NB: Signing means you have joined***

**Notes:** The signature panel and date. The wording on the right hand side confirms that the person understands they have actually joined, and have not just applied to join.

**Membership renewal**

Members should be given notice by email or letter of expiry of the Initial Period – 30 days' notice is recommended. This means they can choose whether to terminate at the expiry or to continue their membership. This can be handled in two ways:

A: memberships can roll over after the initial term. In this case the agreement will continue on a month-by-month basis, with the member able to terminate as set out in the agreement. This is the preferred default method. A rollover of a longer term without specific member consent will almost certainly be considered to be unfair.

B. the member can be asked to re-sign a new term contract. We recommend collecting updated personal details and explaining key clauses again as set out above, otherwise forms can be identical to new applications, except for minor changes on side 1.

## Sample Terms and Conditions

The following section outlines two of the most common membership options provided: Freezing and Transferring of memberships. Both provide options for consideration. ExerciseNZ recommends including the exact details of any such rules and policy in the *Membership Terms and conditions* document, and providing a copy of this at the time of joining for the member to read.

### Transferring Membership

Transferring a membership from one person to another is a useful option to provide members who are inside their initial term, or anyone who has a pre-paid membership that has not yet expired, but for some reason is unable to use it.

With transfers, the first decision is whether or not to offer them. Assuming the facility does offer them it is advisable to set some conditions on who may be transferred to, and what are the obligations of the existing and new member in terms of payments. This is a commercial decision. However it should be taken into account that the offer of a transfer assists significantly in a decision as to whether a fee for termination within the Initial Period is likely to be fair.

Note: The term *new member* is used to describe the prospective person taking over the membership. The term *existing member* is used to describe the person who currently has the membership.

#### Items to consider include:

- Restricting the new member to be only persons that have not been a member of the club before, or have not been members within the previous 6 or 12 months (this stops transferring between members or recently expired members, which ends up reducing the total number of members the club has). If you choose this option, it should be made clear in the club rules.
- Refusing to accept potential new members whose contracts have been terminated by the club for health and safety or financial reasons. **Note that serious Privacy Act issues could arise if these reasons are passed on to the existing member: they should be advised to ask the potential new member for the reason why the transfer is not accepted.**
- What fee there will be for transferring memberships (having no fee could mean a membership is transferred back and forth between people every day). In any case there will be administrative costs to recover. It should be the existing member's responsibility to pay the transfer fee although the club should be prepared operationally to accept payment from the new member or part payment from the transferring member and the transferee. The transfer fee should reflect actual administration costs, which might include induction and introductory assessments for the new member
- Whether the membership can be transferred more than once. As long as it is crystal clear to both the transferring member and the new member, the club can insist that there be only one transfer per membership.
- We recommend making the existing member liable for payments until the new member begins payments. The existing member then has an incentive to choose a new member who will make payments.

- We do not recommend making the existing member liable should the new member miss a future payment. While this may appear to be a practical option, in reality it is highly unlikely that the existing member can control the new member's ability or intention to pay, the more so as many transfers result from members moving from the vicinity of the club for employment or other reasons. Moreover, a new member who knows that the existing member will be required to take back the payment responsibility has a disincentive to complete the contract. A term of this kind is highly likely to be considered to be unfair [pg 10]

**Example wording in the terms and conditions document:**

*If your payments are up to date, and your membership is either within its initial term or you have prepaid for your membership in full, you are able to transfer your membership for the balance of the agreed term to anyone who has not been a member of {facility name} within 6 months of the transfer date. There can be only one transfer for each membership agreement provided that member meets our membership requirements.*

*If you are on a weekly payment membership, then the new member simply continues your payments for you. However, the new member must complete a credit check and sign a direct debit form.*

*Student memberships must be transferred to another student (or the membership price will be adjusted to the non-student rate).*

*You are responsible for paying a transfer fee at the time of transfer and for all membership payments until the new member's payments begin. The fee is [eg] half of our standard full joining fee (currently \$99 so the new member will pay \$49.50) and covers administrative and induction costs.*

## Freezing Memberships

Offering a provision to freeze a membership has more items to be considered as there are several quite different ways of freezing memberships, especially when it is relevant to memberships that are being paid off.

The two basic options are:

1. **Freeze everything:** When a membership is frozen, payments are frozen also. When the membership resumes, the payments resume.

Note: This system encourages freezing to be used when making the payments is a financial challenge, which is reasonable from the member's perspective. Note that the Responsible Lending Code and the Credit Contracts and Consumer Finance Act require hardship to be taken into account. You may wish to choose this as a discretionary option, to be decided on a case by case basis e.g. where there is hardship or ill health.

**Freeze membership, with an on-hold administration payment:** With this option the membership is put on hold, and a small payment made on a periodical basis (somewhere in the region of  $\frac{1}{4}$  of the regular payment – something like \$4 or \$5 a week, but should be related to administration costs). There can be a minimum fee and/or a minimum length of freezing. When unfrozen, payment and membership resumes as normal.

This option has the advantage of being consistent whether the member has paid in advance for the membership or is paying it off by regular payments – either way they pay the small weekly fee to freeze.

2. **NOTE: The option of “Freeze membership, not payment” should not be used and is likely to be considered to be unfair:** With this option, when the membership is put on hold, the payments continue as normal and a credit is built up. The credit can be used when the membership finally finishes (i.e. once cancelled the member continues to use it for the credit period). This has been removed from this resource because it is unfair on the member. It should no longer be used.

**Items to consider for any option:**

- Minimum length of freezing (or minimum fee for option 2). This is needed to stop members freezing for the weekend every time they go away and thus increasing administrative costs.
- Maximum length of freezing
- Maximum number of times a membership may be frozen every year, or maximum total freeze period per calendar year or contract year (make this clear in your agreement).
- Fee for freezing (if any): a small monthly administration fee may be payable for removing direct debit payments from the bank schedule every month of the freeze. This is not likely to be unfair if it reflects actual costs. Note that we no longer recommend a minimum freezing fee greater than the weekly fee. This is likely to be considered to be unfair. If significant administration is required to set up the freeze, then the first fee should be eg twice the regular freeze fee.
- Does the freezing policy apply the same way to those who have paid in full for their membership? How is the prepayment to be managed? For example, is the freeze period added to the end of the prepaid term? It is recommended that this be spelled out clearly. Note that in this case there is only a one-off cost, so a regular fee should not be charged.
- Does the freezing period reduce the initial term outstanding? For example, if after three months into a twelve month membership, the membership is frozen for 2 months; does the member still have nine months left of payments, or only seven? We recommend nine, as freezing is about non-use, not non-payment. This is drafted into the model membership agreement.
- We also recommend a discretionary policy regarding termination or freezing without charge where members are unable to make use of the club for medical or financial reasons.

Example wording for the freezing application form (this must be consistent with the terms of the agreement):

*All memberships with up to date payments can be frozen as set out in the Membership Agreement for \$4/week. If a current medical certificate is produced, then the charge is waived for the period the certificate covers, to a maximum of three months. The initial period is extended by the period of freezing. Monthly/weekly Payments will be reduced to the freezing fee for the freezing period. In all cases, freezing cannot be backdated, and takes effect once a freezing form and Direct Debit are completed. After the initial period, membership can be frozen for a maximum of six months out of every twelve month period.*

Note the above example uses option 2, and has a \$4 per week fee. You should carefully set your own fees to a level that reflects no more the actual cost of actioning a freezing application.

Example wording to use as part of the form when the person requests freezing:

*I wish to freeze my membership and agree to pay \$x per week by Direct Debit each Thursday until I complete an "Un-Freeze Form" [ or Date]. I understand that the total length of all freezing can be no more than X months, and that my **initial term will be extended by the length of time my membership is frozen.***

When the member returns to the club, they can just request that the freezing be lifted. This is administrative only, as their membership agreement will continue through and following the freezing.

## Sample Forms

### Guarantee Form

Name: \_\_\_\_\_ Mem #: \_\_\_\_\_

I understand that I am responsible for all payments of all the membership agreement I have signed for \_\_\_\_\_. The member is responsible for his or her use of the club and conduct within the club. The relevant terms of the membership agreement will apply to me as well as to the member. The member understands that you will contact me if payments overdue.

Signed \_\_\_\_\_ Date:     /     /

Note: This information could be added to the bottom of the main membership agreement if room permits (with a simple clause to guarantee payment). This would be the simplest and easiest solution.

### Electronic Samples of Documents

Electronic samples of both the **membership agreement** forms are available free of charge to ExerciseNZ members. This electronic document also contains sample wording for use on freezing and transferring policies and forms.

To obtain a copy please email [info@exercisenz.org.nz](mailto:info@exercisenz.org.nz)

## General Best Practices for Member Sign-up

The following are ExerciseNZ's recommendations on best practice for signing up members:

1. First and foremost, you must have written contracts with **all** members (regardless of how they are paying).
2. Have a documented standard training policy for all staff that sell memberships, and ensure they all complete this training. Review and retrain sales staff regularly. Ensure that the other staff of the club are also familiar with the training policy.
3. Ensure all key terms are carefully explained to members either before they sign, or if they have signed up online, on their first visit to the club. Here are key points to be covered.

### **Minimum term** (and any non-cancellation policy)

- Ensure the minimum term is understood and that that member knows they will be required to make a certain number of payments as a minimum.
- Ensure the member understands the cooling off period and how to cancel during that period.
- Explain what happens after the minimum term has expired.
  - Will the regular payments continue?
  - Will they stop automatically?
  - How will they be contacted?

### **Fees**

- What are the regular payments? Are there additional fees such as joining fees?
- Are there fees for the payment type? e.g. the member may pay transaction fees for direct debits depending upon their bank account conditions, and fees may include a payment to a payment services provider (these should be included in the total fee).
- Will there be extra transaction fees for late payment? What will the payment services provider charge?
- Are there any other costs associated with the membership? Note: all compulsory costs should be included in the membership fee.

### **Cancellation**

- Can the membership be cancelled within the minimum term? If so what are the consequences? What are the options? Eg transfer or early termination fee.
- What has to be done to terminate the membership after the minimum term?
- How does the member cancel?

### **Club rules**

- Explain key club rules and where they can be found within the club.
- Give a copy to the member on signup

4. Confirm with the member they fully understand the terms and conditions before they sign the **membership agreement**. Make sure all **initial points** are initialled by the member.
5. Give a copy of the **membership agreement**, plus any additional forms (such as **club rules**) at the time the person signs the **membership agreement**. *If the membership agreement is electronic, email a copy to the new member and also give them a printed copy.*
6. Send the member an email or letter immediately after joining outlining their contract terms and conditions and including the club rules.
7. Send some sort of reminder periodically if the person is not using their membership – this especially includes people that may be outside of their minimum period.
8. Document all conversations/correspondence with members, especially in regards to payment/their **membership agreement**, and in relation to any behavioural problems or safety issues.
9. Have additional copies of all signed documents (**membership agreements** etc) available for members on request. Electronic copies can be printed out.
10. Ensure your club rules not only complies with all laws, but also the ExerciseNZ code of ethics, with particular reference to the membership agreement guidelines. Members of the public could choose to present this code and guidelines to the Commerce Commission and/or the Disputes Tribunal as evidence of ‘unfairness’ (by not following industry practice).
11. Finally in case things still go wrong, familiarise yourself, and any person involved with **membership agreements**, with the Privacy Act, Fair Trading Act, the Consumer Guarantees Act and the Credit Contracts and Consumer Finance Act. Both the Commerce Commission and the Ministry of Consumer affairs have excellent free publications available upon request. Exercise New Zealand is also available for advice in this area. Sales and reception staff should have basic training in this.

**POST:** PO PO Box 22114  
Christchurch Mail Centre  
Christchurch 8140

**PHONE:** 0800-66-88-11

**EMAIL:** [info@exercisenz.org.nz](mailto:info@exercisenz.org.nz)

**WEB:** [www.exercisenz.org.nz](http://www.exercisenz.org.nz)



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