



Membership Agreement

Terms and Conditions

VIVA HEALTH CLUB MEMBERSHIP AGREEMENT: 2 YEAR CONTRACT

MEMBERSHIP ENTITLEMENT

Your membership entitles You entry to the Viva Health Club to use all facilities of the Health Club during the term of Your membership subject to the provisions of this Membership Agreement and the Health Club Rules.

FORTNIGHTLY DIRECT DEBIT MEMBERSHIP

Payment of Membership Fees

We will usually debit Your nominated bank account or credit card for the amount of Your fortnightly membership fee or first fortnightly instalment (as applicable) within 24 to 72 hours of You signing this agreement. The amount of the first debit will be pro rata from the day of this agreement until the day of the next fortnightly direct debit. We will debit the fortnightly membership fee on the first day of each subsequent fortnightly day. Some direct debits may take up to 5 days to be drawn from Your nominated account or credit card.

You are aware fortnightly Direct Debit payments are managed and debited on behalf of Viva Health Club by a third party billing company and that You have read the third party billing companies Service Agreement and fully understood all points contained within it. The third party billing company will charge a transaction fee for each transaction processed. Currently this is \$2.10 per transaction.

We reserve the right to increase transaction fees at any time by making a reasonable effort to give You either 30 days prior written notice of that fee increase or by way of signage within the Health Club. If We give You such notice, You authorise Us to increase the amount of any debits from Your nominated account or credit card in line with the fee increase.

All fees quoted in this agreement are inclusive of GST. Should the GST rate change during the course of this agreement, Your fees will change in line with any government GST rate changes.

Transfer of membership

Your *2 Year Contract* membership is personal to You. You may at the sole discretion of Viva Health Club be able to transfer this *2 Year Contract* to another person. Should a transfer occur, all of the terms and conditions of this Contract shall apply except the payments may be adjusted. There may be a fee charged for each transfer. Details of any fees payable can be obtained by contacting Viva Health Club in writing.

Cancellation of membership

You may cancel the agreement at any time by giving Us at least fourteen days' notice (one final payment), submitted in writing by e-mail, where You are moving Your residence 20 kilometres away from the Health Club (2 forms of proof are required) or You submit a letter signed by a Medical Practitioner stating that You have a medical reason that prevents You

from using the Health Club facilities for a period of more than 12 months. All fees due up to the date of cancellation must be paid.

Termination of Contract

After the expiry of the *2 Year Contract*, and after all fees due have been paid in full, if You requested this Contract be terminated, Your membership shall be terminated by Viva Health Club.

If You requested this Contract transition to another Viva Membership at expiry, the *2 Year Contract* will terminate and be replaced by Viva's Standard or Concessional Membership.

There will be a period of notice of 30 days from the actual termination date of the *2 Year Contract*. You should contact Viva Health Club if You have not received written confirmation of the termination within the 30 day period. You shall not consider this *2 Year Contract* has been terminated until such time as this is confirmed in writing to You. Termination of this Contract will also terminate the Direct Debit Request Authority.

Time Hold

You understand that You are unable to place Your membership on temporary Time Hold.

Late and Disallowed Payments

You understand and agree that payments rejected for any reason will incur rejection fees and related costs from Our financial institution and that We will pass on to You any rejection fee or related cost that We incur (currently, those fees are \$15 per rejection but that amount may increase). You authorise Us to charge You and to debit from Your nominated account or credit card any rejection fees and additional recovery costs. You agree that We may suspend Health Club access during the time that membership fees are outstanding. We will continue to debit Your nominated account or credit card without notice until We have received the total amount owing (including any rejection and recovery costs).

Stopping or deferring a payment

Should You wish to defer a payment to another date You must contact Viva Health Club before the date of that payment to request the deferment. Deferments are entirely at the discretion of Viva Health Club and will depend on the length of deferment, the current state of Your account and Your past history. You may request Us to stop an individual payment however You will still be liable to make this payment by some other method or Your account will become overdue.

Debt Collection and Credit Reporting Agencies

Where You default on any obligation under this Contract and fail to remedy the default after notification by Viva Health Club, You authorise Viva Health Club to notify any debt collection/credit reporting agency of the default. Should this occur then at Viva Health Club' sole discretion it may terminate the Contract at which time the full outstanding balance for the remainder of the minimum term or payments (including any current arrears) shall be due in full. You authorise Viva Health Club to add to the outstanding debt a fee of \$100 and an amount equivalent to 25% of the full outstanding balance (being Viva Health Club' expenses reasonably incurred in collecting the debt) upon referral to the debt collection/credit reporting agency.

Disputes

If You dispute any debit payment, You must notify Viva Health Club immediately. Viva Health Club will respond to Your dispute within 7 working days.

Non Working Day

When the day to debit falls on a weekend or public holiday the debit will be initiated on the next working day.

GENERAL TERMS AND CONDITIONS

1. You agree to abide by the Health Club rules of conduct, behaviour, dress code, equipment usage and use of services that are displayed within this Health Club and that have been provided.
2. You agree that the membership fees are not refundable and You agree and understand that non usage of the Health Club does not allow early termination of this agreement nor does it warrant a refund of any type. You also

agree and understand that non usage of the Health Club does not affect any payment terms and conditions of this agreement and that Viva Health Club is in no way responsible for my level of usage of the Health Club.

3. Viva Health Club may at its discretion terminate any membership agreement without notice for any non-compliance of this agreement or any behaviour or action that they deem inappropriate.
4. Facilities and services may change without prior notice. Any such changes will not affect the terms of Your membership agreement.
5. You understand that under no circumstances are members permitted to bring children into the Health Club, nor are they permitted to leave children unattended in any area of the Health Club at any time, and that neither Viva Health Club nor the Medical Centre accepts responsibility for children either brought into the Health Club or left in the Health Club by a parent or guardian.
6. You fully understand and accept that if You provide access to the Health Club for a non member or a member who has lost or damaged its Personal Access Card (PAC) that You will have my membership immediately cancelled and You will be charged a \$250 penalty which will be automatically debited from my bank account or credit card. You understand that this policy is applicable regardless of whether the person You provide access to exercises or not.
7. You fully understand and accept that if You intentionally activate a Duress Button or a Personal Duress Lanyard with no reason or for a reason that is deemed not appropriate by Viva Health Club that You will be charged a \$250 penalty which will be automatically debited from my bank account or credit card.
8. You are fully aware that Viva Health Club is equipped with Video Surveillance technology which is constantly recording for the security of the Health Club and that the Video Surveillance can be remotely viewed at any time by the Health Club operator and/or security provider.
9. You acknowledge that You are aware of the inherent risks of injury or ill health resulting from use of the services and from participation in exercise generally. In consideration of participation in activities within the Viva Health Club, You agree to release and indemnify the Health Club and Medical Centre and any company associated with the Health Club or Medical Centre. You agree to participate in all activities at my own risk and responsibility whether supervised or not by staff. You agree to release and hold harmless the Health Club or Medical Centre and any associated parties from and against all actions, which may be brought about by me or on behalf of me in respect of any incident arising out of injury, loss, damage or death caused to me or my property in any way what so ever.
10. At Viva Health Club We take Your privacy seriously. We do not pass Your information onto any other business. If You do not wish to receive email, sms or mail correspondence from Us regarding Your membership, special offer, promotions or Your health then please send Us an email or letter confirming that You wish to unsubscribe for such methods of communication.
11. You will not hold the Health Club or Medical Centre liable in any way for any injuries that may occur while You are on these premises.

CONTRACTORS AND THIRD PARTY PROVIDERS

Contractors, tenants, franchisees and other third party providers may provide some of the services in Our Health Club which are not part of this agreement. Some of these services may include Group Fitness and Physiotherapy. If You use these services, You should make yourself familiar with any agreements, fees and terms and conditions for those services. Fees for those services may be collected by Health Club staff but will be paid directly to such third parties and We shall not be responsible for those fees. If You make a claim because of something a contractor, tenant, franchisee or other third party provider has or has not done, Your claim must be brought against that third party provider, not us.

You release Us and hold Us harmless from any claim resulting from an act or omission by a tenant, contractor, franchisee or other third party provider. Wherever possible, We will help to resolve any issues with those third parties.

MEMBERS OBLIGATIONS, REPRESENTATIONS AND ACKNOWLEDGEMENTS

By signing this agreement You represent to us:

- that You have read and understand the Health Club Rules and acknowledge that We reserve the right to amend the Health Club Rules at Our discretion with 30 days written notice to you, which may be provided by displaying the amended rules prominently in and around the Health Club;
- that You are at least 18 years old;
- that You have been advised of the risks of participating in physical activity at the Health Club and that Your participation is voluntary and will be entirely at Your own risk, including of injury or bodily harm;
- (and warrant to us) that to the best of Your knowledge, there is no risk to Your health from doing any Health Club fitness exercises or participating in any activity within the Health Club and that that You are in good physical condition; and

- that You voluntarily consent to participate in an exercise assessment and programming.

You agree:

- to follow the Health Club Rules at all times;
- to notify Us of any details that affect Your membership including postal and email address changes, contact numbers and account or credit card details at the earliest time possible;
- that You will not lend Your PAC under any circumstances or allow anybody else to use it. If You lose Your PAC, We will charge You a \$15 replacement fee and You authorise Us to debit this amount from Your nominated account or credit card once a replacement card has been issued to you;
- that You will not use the Health Club facilities when You are suffering from an infection, a contagious illness or a physical ailment that may prevent You from exercising safely or that may put any of Our members at risk;
- that You will not misuse the Health Club equipment, and You undertake to seek the advice of a staff member when You are unsure how to use any Health Club equipment;
- to disclose any physical limitations, disabilities, ailments, or impairments that may affect Your ability to participate in any physical activity at the Health Club;
- to comply with all reasonable requests and directions of Health Club staff; and
- that You will accept responsibility and liability for any damages caused by yourself or Your guests through a wilful act or negligence.

You acknowledge:

- that at times We and other third party providers at the Health Club may take photo/video footage for promotional purposes, and that We or they may use Your image in such promotion if Your permission is obtained at the time the footage is recorded;
- that We operate closed circuit video system cameras in the Health Club for the safety of members and its guests, and by signing this agreement You accept that this video surveillance is carried out by Us in the best interest of the staff, members and guests of the Health Club;
- that shelving in the locker area are provided for daily use by the members on a first come, first served basis and are not suitable for securing valuables and that neither We nor the Medical Centre will accept any liability for any loss of or damage to any belongings that You or Your guests bring on to the Health Club premises nor for thefts of any valuables brought on to the Health Club premises; and
- that using Health Club facilities and services including participation in aerobic and other classes is potentially a hazardous activity and that it is a condition of use of the Health Club that You use it, the facilities and services, and participate in activities of the Health Club, at Your own risk.

HEALTH CLUB RULES

- Appropriate identification and a valid membership card are required to gain access to the Health Club and its facilities.
- Members must not use the Health Club unless they are in good physical condition and, to the best of its knowledge, there is no risk to its health from doing any fitness exercises or participating in any activity within the Health Club.
- A "Pre-Activity Questionnaire" must be completed prior to commencing exercise.
- Members must not use the Health Club when suffering from an infection, a contagious illness or a physical ailment that may prevent them from exercising safely or that may put any other members at risk.
- Each member is responsible for using the Health Club equipment in the manner for which it is intended. If You are unsure how to use a piece of equipment, You must seek the advice of a staff member.
- Member must be 18 years or older to utilise the facilities of the Health Club.
- Members must not wilfully damage or misuse the Health Club or any Health Club equipment or facilities.
- Members must comply with all reasonable requests and directions of Health Club staff.
- Usage of towels is compulsory whilst using equipment in the Health Club.
- Flat soled sports shoes must be worn at all times.
- Members must replace all equipment in its correct position after use in a clean and hygienic condition.
- Smoking is not permitted in or around the Health Club.
- A T shirt or tank top must be worn at all times.
- Offensive language and inappropriate behaviour will not be tolerated and Viva Health Club reserves the right terminate Your membership for such offences.
- Members must not store valuables in the shelving in the locker area, but should keep valuables with them at all times while in the Health Club.

MISCELLANEOUS. In this agreement, the following meanings apply:

Health Club means Eastbrooke Health Suites Pty Ltd (ACN 123 744 388) trading as 'Viva Health Club' situated at Suite 5, Mezzanine Level, 112 Main Street Blacktown NSW 2148 and includes the facilities and car park at that address.

Health Club Rules means the rules provided with this agreement and headed 'Health Club Rules', as they may be amended or replaced by time to time in accordance with this agreement.

Medical Centre means the Eastbrooke Blacktown GP Super Clinic operated by Eastbrooke Medical Centres Pty Ltd (ACN 130 596 002).

We, Us, Our means Eastbrooke Health Suites Pty Ltd (ACN 123 744 388).

You means a member of the Health Club.

We can assign or transfer the benefit of this agreement to a person, firm or company at any time, and if We do We will give You 6 weeks' notice in writing. We can also sub-contract Our obligations to someone else without notice, in which case We will remain responsible for those obligations.

Should We not enforce Our contractual rights at any time, it does not mean that We are waiving those rights no matter how long We wait.

Any provision of this agreement which is prohibited or unenforceable in any jurisdiction is ineffective as to that jurisdiction to the extent of the prohibition or unenforceability. That does not invalidate the remaining provisions of this agreement nor affect the validity or enforceability of that provision in any other jurisdiction.

To the maximum extent permitted by law, unless otherwise expressly provided in this agreement, all implied terms, conditions, warranties and any other additional obligations are excluded from this agreement. If any legislation implies into this agreement any term, condition, warranty or additional obligation that cannot be lawfully excluded then that provision will be included into this agreement only to the extent required by the relevant legislation but Our liability in respect of that provision will be limited to the maximum extent (if any) permitted by that legislation.

This agreement and the Health Club Rules form the entire agreement between parties.

All terms of this agreement are binding. If You believe You have received any information or additional terms to this agreement, not covered by this agreement, the terms of this agreement will apply unless We provide You with written confirmation of changes to this agreement.

This agreement is governed by the laws of New South Wales. In relation to it and related non-contractual matters each party irrevocably submits to the non-exclusive jurisdiction of courts with jurisdiction there.

By signing this agreement, You agree to abide by all rules and conditions and represent that You understand this agreement in its entirety.

SIGNATURE OF MEMBER (at least 18 years old)

You have had sufficient opportunity to read this entire document. You have read and understood it, and agree to be bound by its terms.

Signature: _____ Date: ____/____/____