

TotalFusion Membership Terms and Conditions

1. Membership Agreement

- 1.1 By completing a membership application form, the person listed in the application form makes an offer to become a member of TotalFusion. TotalFusion may accept or reject an application form in its sole discretion.
- 1.2 If TotalFusion accepts an application form (**Application Form**), TotalFusion and the person whose name is listed in the Application Form (**Member**) and Legal Guardian where the member is under 18 years of age, agree to be bound by these Terms and Conditions (**T&Cs**), the membership schedule at the end of these T&Cs (**Membership Schedule**), the details set out in the Application Form, and the Direct Debit Agreement (together, the **Agreement**).
- 1.3 The Application Form will specify which club the Member has joined (**Club**) in the Membership Schedule. For the purposes of this Agreement, a reference to TotalFusion means the entity that is relevant to the Club as specified in the Membership Schedule (being the entity with whom the Member has contracted under this Agreement).
- 1.4 In accordance with this Agreement, TotalFusion will supply to the Member the benefits that are applicable to the membership selected by the Member in the Application Form (**Membership Inclusions**), as further described in these terms and conditions (**Services**).
- 1.5 The Services included in this agreement are only applicable to the Club the Member has joined per the Membership Schedule in the Agreement.
- 1.6 This Agreement is effective from the date the Application Form is signed and accepted by TotalFusion (**Signed Date**) and, subject to early termination in accordance with its terms, continues until effective cancellation of the Membership under this Agreement (**Term**).

2. Membership Term

- 2.1 The Membership will begin on the start date set out in the Application Form (**Start Date**) and, subject to the terms of this Agreement, will continue for the period specified in the Application Form (**Membership Period**), which may be either:
 - a. a fixed minimum commitment period of either 3, 6, 12 or 18 months (**Committed Membership**);
 - b. a fixed period of either 3, 6 or 12 months which has been pre-paid in full by the Member (**Prepaid Membership**); or
 - c. a recurring monthly period (**Monthly Membership**).
- 2.2 Where the Membership is a Committed Membership:
 - a. the Membership will automatically convert into a Monthly Membership at the end of the minimum commitment period unless the Member gives written notice to TotalFusion, at

least 30 days prior to the end of the minimum commitment period, that it wishes to cancel the Membership at the end of that period;

- b. where the Membership is converted into a Monthly Membership, the Membership Fees will remain the same fortnightly amount that the Member paid for the Committed Membership; and
- c. the minimum commitment period will be extended by:
 - (i) any period of suspension under clause 16.1 or 16.2;
 - (ii) any Freeze Period; and
 - (iii) Any Free Period Incentives.

2.3 Where the Membership is a Prepaid Membership:

- a. the Membership will not automatically renew upon expiry of the prepaid fixed period and the Membership will be deemed to have been cancelled at the end of such period unless the parties agree in writing prior to expiry that the Membership will be converted into a Monthly Membership upon expiry; and
- b. where the parties agree to convert the Prepaid Membership into a Monthly Membership, the fortnightly Membership Fees that will become payable by the Member will be calculated on a pro rata basis so that they are equivalent to the amount paid by the Member for the Prepaid Membership.
- c. the minimum pre-paid period will be extended by:
 - (i) any period of suspension under clause 16.1 or 16.2;
 - (ii) any Freeze Period; and
 - (iii) Any Free Period Incentives.

2.4 Where the Membership is a Monthly Membership (including as a result of conversion of a Committed Membership or Prepaid Membership under clause 2.2(a) or 2.3(a), either party may cancel the Membership at any time by providing the other party with at least 30 days' written notice.

3. Membership Fee

3.1 The membership fee payable by the Member (Membership Fee) will be:

- a. where the Membership is a Committed Membership, the amount stated in the Application Form, charged via direct debit in accordance with the Direct Debit Agreement;
- b. where the Membership is a Prepaid Membership, the amounts stated in the Application Form, which is payable upon sign-up; or

- c. where the Membership is a Monthly Membership, the amount stated in the Application Form (or, where the Membership has been converted into a Monthly Membership from a Committed Membership or Prepaid Membership, the relevant amount determined under clause 2.2(a) or 2.3(a),, as applicable), charged via direct debit in accordance with the Direct Debit Agreement.

3.2 Membership Fees are paid in fortnightly instalments in advance from the Start Date.

3.3 Committed memberships are subject to a minimum number of fortnightly payments (**Minimum Payments**) based on the Membership Term:

Membership Term	Minimum Payments
3 Months	6 payments
6 Months	13 payments
12 Months	26 payments
18 Months	39 payments

3.4 The minimum number of payments for a monthly membership is 2 payments.

3.5 TotalFusion may update the Membership Fee for a Monthly Membership (including where the Membership has been converted into a Monthly Membership from a Committed Membership or Prepaid Membership) from time to time provided it first gives the Member 60 days' prior written notice to provide the Member with an opportunity to exercise its right to cancel under clause 2.4 if it does not wish to proceed with the Membership on the basis of the updated fees.

3.6 It is the Member's responsibility to ensure that its payment details are kept up to date and that there are sufficient funds in its nominated bank account to enable the successful debit of the Membership Fee. If a transaction is rejected due to incorrect details or insufficient funds, the Member will be liable for any reasonable direct costs incurred by TotalFusion as a result including any bank fees. TotalFusion accepts no liability for any charges imposed by the Members financial institution for having insufficient funds to process the Membership Fees.

3.7 If TotalFusion is unable to collect payment of the Membership Fee on the due date of the fees TotalFusion will:

- a. Immediately suspend access to the Club and any services; and
- b. May continue to direct debit your nominated payment account until all Membership Fees are paid in full.

4. **Other fees**

4.1 On joining TotalFusion an administration fee (**Admin Fee**) and/or Joining Fee (**Join Fee**) may be charged.

4.2 The Admin Fee is due on the Sign Date of the Agreement.

4.3 The Admin Fee and Join Fee is set out in the Membership Fee schedule.

5. Cancelling a Membership

5.1 All requests to cancel a Membership must be made in writing and give 30 days' notice of the members intention to cancel (**Cancellation Period**).

a. A Member's membership cannot be on a Freeze during the cancellation period.

5.2 For a cancellation to be processed the balance of all outstanding Membership Fees (and other fees) must be paid in full.

5.3 All Membership agreements are subject to a cooling off period (**Cool-Off**) where a member can cancel their membership while only paying the lesser of a \$99 administration fee or 10% of their remaining membership:

a. The Cool-Off period for a Club that is operational on the Signed Date is 48 hours after the agreement has been signed.

b. The Cool-Off period for a Club that is not open on the Sign Date (**Pre-Sale Membership**) is seven (7) business days after the official opening of the Club.

5.4 Where the Membership is a Committed Membership or a Prepaid Membership. The Member may cancel the Membership during the committed period of the Membership Period in any of the following circumstances:

a. where the Member demonstrates to TotalFusion's reasonable satisfaction that the Member cannot utilise the Membership for the remainder of the fixed period due to illness or injury, including by providing a medical certificate from the Member's medical practitioner or qualified allied health practitioner, and subject to the Member paying a \$75 cancellation fee to cover a portion of TotalFusion's administrative costs and loss of anticipated income in cancelling the Membership (**Cancellation Fee**);

b. where the Member demonstrates to TotalFusion's reasonable satisfaction that the Member cannot utilise the Membership for the remainder of the fixed period because of relocation to an area that is not within a 20km radius of any TotalFusion club location, including by providing supporting documentation to evidence the Member's new address, the Member serving the cancellation period and subject to the Member paying the Cancellation Fee; and

c. for convenience, the Member may cancel a Committed or Prepaid Contract at any time. The cancellation period applies to cancellations for convenience and a termination fee calculated at 50% of the Membership Fee that would have been payable for the remainder of the fixed period (**Termination Fee**).

5.5 If a Termination Fee is payable by the Member under clause 5.4(c), TotalFusion will waive the requirement for the Member to pay that amount if the Member nominates a person to whom

the Member will 'transfer' their Membership (**Transferee**), provided the Membership Period is for a fixed period of at least 12 months and there are still at least 3 months remaining of the committed period. Pre-Sale Memberships are not eligible to be transferred.

- 5.6 Members are only able to transfer Committed Memberships or Prepaid Memberships. Monthly Memberships (including those converted from Committed or Prepaid Memberships) are not eligible to be transferred.

5.7 Transferring Membership to a different TotalFusion Club

- a. The Member may request to transfer their Membership from the selected Club to another TotalFusion location (as specified under clause 1.3) (**New Club**). Such requests must be in writing and be accompanied by any relevant supporting evidence. TotalFusion must act reasonably in considering any such requests and will notify the Member in writing of its decision. The Member acknowledges and agrees that any accepted transfer request under this clause will be on the basis that they will be committing to a new Membership with the New Club and new Membership fees may apply subject to the current prevailing prices at the New Club.
- b. If TotalFusion accepts a request under clause 5.8(a), this Agreement will be taken as varied by agreement of the parties, so that any terms specific to the new Membership will apply in place of the old Membership. The Member must pay the new Membership Fee from the date that the new Membership becomes active.
- c. Where a Membership is transferred no termination fees will be charged on the old membership.

6. Membership Add-Ons

- 6.1 TotalFusion offers several Membership Add-Ons (**Membership Add-On**) for extra services in addition to those included in this Agreement.
- 6.2 Each Membership Add-On will specify:
- a. the additional services and/or facilities that are included in the Membership Add-On;
 - b. the fees for the Membership Add-On; and
 - c. the Terms and Conditions that apply for the Membership Add-On.
- 6.3 Membership Add-Ons are charged as a prepayment for services included with the Add-On for the fortnightly period in advance of the payment (**Add-On Entitlement Period**).
- 6.4 There is no minimum commitment period for a Membership Add-On and members can cancel a Membership Add-On at any time by sending a request in writing.
- 6.5 Once a Membership Add-On has been cancelled, the Member will be entitled to access the Membership Add-On until the end of the Add-On Entitlement Period.

7. Health and safety

7.1 The Member acknowledges and agrees that:

- a. there may be activities and inclusions offered by TotalFusion as part of the Membership that are not suitable for the Member based on the Member's individual circumstances or medical history;
- b. TotalFusion does not, and cannot, provide the Member with any medical advice. It is the Member's responsibility to consult with a medical professional and discuss any medical concerns it may have before engaging in any activities provided as part of the Membership;
- c. TotalFusion does not recommend that any pregnant women, children, elderly persons, haemophiliacs or anyone predisposed to bleeding or impaired sweating engage in any heated activities offered as part of a membership; and
- d. the Member must use its own judgement, based on its own circumstances, to decide whether to participate in any activity provided by TotalFusion as part of the Membership.

7.2 By entering into this Agreement, the Member warrants that:

- a. the Member is in good physical health and is able to safely access the Services under the Membership; and
- b. the Member has obtained all necessary medical advice and has disclosed any relevant medical conditions or aspects of its medical history that could impact its ability to safely access the Services (including any health risk assessment, initial and periodic fitness assessment or information provided by the Member's medical or allied health practitioner).

7.3 The Member must ensure that it refrains from using any equipment or engaging in any activity provided as part of the Membership that it does not know (or is not sure if it knows) how to safely use or engage in. Any questions can be directed to TotalFusion's Representatives at the Club who are available at all times during opening hours.

7.4 The Member must not use any equipment or engage in any activity provided as part of the Membership where it is suffering from any infectious or contagious illness, disease or other ailment or while suffering from any physical ailment that may present a risk to other members such as any open cuts or sores.

8. Member's responsibilities

8.1 The Member must, in connection with the Membership:

- a. comply with all applicable laws;
- b. subject to clause 9.2, comply at all times with:
 - (i) these T&Cs;
 - (ii) the Membership Schedule; and

- (iii) the TotalFusion Member Rules, which are attached to this Agreement
(Member Rules);

- c. comply with all lawful and reasonable directions of TotalFusion and its Representatives;
- d. notify TotalFusion as soon as possible after becoming aware of any changes to the information disclosed by the Member in the Application Form, including any medical information that may impact the Member's ability to safely access the Services;
- e. promptly inform TotalFusion of all material matters concerning the Membership or this Agreement that come to the attention of the Member; and
- f. not do anything which might adversely affect the reputation or goodwill of TotalFusion.

8.2 Except where otherwise agreed with TotalFusion in writing, the Member must not use its Membership or the Club to:

- a. promote, provide or sell any goods or services to any other members, guests or TotalFusion Representatives, whether offered by the Member or a third party, including any personal training, coaching or nutrition services; or
- b. recruit or solicit (or attempt to recruit or solicit) other members, guests or TotalFusion Representatives for any political or religious purposes, media interviews or business opportunities.

9. **TotalFusion's right to make changes**

- 9.1 TotalFusion may change any aspect of its business operations, the Membership Schedule, the Member Rules or these T&Cs:
 - a. without notice at any time, where the changes will not cause any material detriment to the rights of the Member; or
 - b. by giving the Member at least 60 days' prior written notice (**Change Notice**) of the changes where the changes will or may cause a material detriment to the rights of the Member (**Change Notice Period**).
- 9.2 If TotalFusion gives the Member a Change Notice, the Member may cancel the Membership by giving TotalFusion written notice at any time during a Change Notice Period (regardless of whether the Member has completed the Minimum Term), with such cancellation taking effect after the end of the Change Notice Period. During the Change Notice Period, the Member will not be required to comply with the change the subject of the Change Notice.
- 9.3 For the avoidance of doubt, if the Member does not exercise the Member's right to terminate within a Change Notice Period, the Member will be deemed to have accepted the changes in the Change Notice, which will take effect after the end of the Change Notice Period.

10. **Goods and Services Tax (GST)**

- 10.1 Words or expressions used in this clause that are defined in *A New Tax System (Goods and Services Tax) Act 1999* have the same meaning given to them in that Act.
- 10.2 Unless otherwise stated, any amount specified in this Agreement as the consideration payable for any taxable supply includes any GST payable in respect of that supply.
- 10.3 Each party agrees to do all things, including providing valid tax invoices and other documentation that may be necessary or desirable to enable or assist the other party to claim any input tax credit, adjustment or refund in relation to any amount of GST paid or payable in respect of any supply made under or in connection with this Agreement.
- 10.4 If an adjustment event arises in relation to a taxable supply made by a party under this Agreement (**Supplier**), the amount paid or payable by the party to whom the taxable supply is made (**Recipient**) pursuant to clause 10.2 will be amended to reflect this and a payment will be made by the Recipient to the Supplier or the other way around as the case may be.
- 10.5 If a third party makes a taxable supply and this Agreement requires a party to this Agreement (the **payer**) to pay for, reimburse or contribute to (**pay**) any expense or liability incurred by the other party to that third party for that taxable supply, the amount the payer must pay will be the amount of the expense or liability plus the amount of any GST payable in respect thereof but reduced by the amount of any input tax credit to which the other party is entitled in respect of the expense or liability.
- 10.6 This clause does not merge on completion and will continue to apply after expiration or termination of this Agreement.
- 10.7 Unless otherwise stated, all fees and taxes are stated in Australian Dollars.

11. Facilities

- 11.1 TotalFusion may need to limit access to certain areas of the Club from time to time as necessary to carry out cleaning, repairs and maintenance services and to improve or upgrade its facilities (**Disruption Event**). TotalFusion will endeavour to notify the Member in advance where the Disruption Event will materially impact the benefits provided to the Member under their Membership but cannot guarantee that advance notice will always be provided where the Disruption Event relates to urgent or emergency repairs or other similar issues.
- 11.2 Where a Disruption Event materially impacts the benefits provided to the Member under their Membership for a period of more than 3 consecutive days, the Member may request a credit against their Membership Fees for the period during which their benefits were materially impacted.
- 11.3 Where a Disruption Event results in complete closure of the Club for a period of more than 7 consecutive days, either party may, by written notice to the other party, suspend the Membership until the Disruption Event has ceased, during which time the Member's obligation to pay Membership Fees will also be suspended. If a Disruption Event persists beyond 6 months, either party may terminate this Agreement.

12. Personal property

- 12.1 The Member is responsible for any personal property that it brings to the Club. TotalFusion is not liable for any loss or theft of, or damage to, any personal property that it brings to the Club, including any items stored in lockers, except to the extent such loss, theft or damage is caused by TotalFusion's negligence or wilful misconduct.
- 12.2 TotalFusion makes lockers available at the Club for temporary use during opening hours only. The Member must ensure that any locker it uses is secured at all relevant times and must remove its personal property from the locker before departing the Club. The Member must not leave any personal property in a locker overnight. Any personal property that has been left in a locker overnight will be removed. TotalFusion may access and search any of its lockers at any time for safety and security reasons.
- 12.3 Where the Member accesses the car parks located at or near to the Club, the Member is responsible for its vehicle and any personal property located within the vehicle. TotalFusion does not operate the car parks and thus excludes any liability for loss or theft of, or damage to, the Member's vehicle or any personal property stored within it.

13. Membership freeze

- 13.1 The Member may, no more than two times in each year following the Start Date, freeze their membership for a minimum of 7 days up to a maximum of 2 months and for a total of two months per annum (each a **Freeze Period**), provided that:
 - a. the Member will not be entitled to cancel their Membership during a Freeze Period; and
 - b. the Member may not freeze their Membership during the cancellation period.
- 13.2 During a membership freeze a member is required to pay a freeze fee of \$10 per week (charged fortnightly).

14. Free period incentive

- a. The Member may be offered a period where they may access a Club without having to pay the Membership Fee at the start of the Members Membership Term (**Free Period Incentive**).
- 14.2 Where the Member has a Free Period Incentive included in the Agreement this period is not included in the Members Membership Term and the total amount payable under the Agreement is not reduced by this period.

15. Termination

- 15.1 This Agreement is automatically terminated upon cancellation of the Member's Membership under clauses 2.2, 2.3 or 9.2.
- 15.2 Subject to clause 15.3, which shall take precedence over this clause in relation to the subject matter of clause 15.3, either party (**Non-Defaulting Party**) may terminate this Agreement immediately by written notice to the other party (**Defaulting Party**) if the Defaulting Party:

- a. breaches a material term of this Agreement which cannot be remedied, or which can be remedied but is not remedied within 5 Business Days after the Non-Defaulting Party gives the Defaulting Party written notice of the breach; or
- b. suffers an Insolvency Event.

15.3 In addition to its rights under clause 15.1, TotalFusion may terminate this Agreement immediately by written notice to the Member if the Member:

- a. breaches a material term of the Member Rules (which includes, for the avoidance of doubt, a breach of clauses 3, 4, 5 and 6 under the Member Rules) which cannot be remedied, or which can be remedied but is not remedied within 5 Business Days after TotalFusion gives the Member written notice of the breach;
- b. fails to pay any amounts owing within 28 days after the due date for that amount;
- c. engages in behaviour which would cause serious harm to the image or reputation of TotalFusion or its Related Bodies Corporate; or
- d. commits an act of theft, fraud or serious or wilful misconduct.

15.4 If this Agreement is terminated by TotalFusion under clause 15.2 or 15.3:

- a. the Member must, within 7 days after the date of termination, pay TotalFusion:
 - (i) all relevant Membership Fees for the period up to the date of cancellation on a pro rata basis; and
 - (ii) in addition to any other unpaid amounts payable under this Agreement;
- b. the Member must, on or before the termination or expiration date, remove all Member Property from the Club and return all keys, access passes or other means of entry to the Club to TotalFusion; and
- c. any accrued rights and obligations of the parties as at the date of termination or expiration are unaffected.

15.5 If this Agreement expires or is terminated for any reason other than that set out under clause 15.4:

- a. the Member must, within 7 days after the date of termination or expiration, pay TotalFusion all relevant Membership Fees for the period up to the date of termination or expiration on a pro rata basis, in addition to any other unpaid amounts payable under this Agreement;
- b. TotalFusion must, within 7 days after the date of termination or expiration, refund to the Member the unused portion of any Membership Fees paid in advance to TotalFusion, calculated on a pro-rata basis;

- c. the Member must, on or before the termination or expiration date, remove all Member Property from the Club and return all keys, access passes or other means of entry to the Club to TotalFusion; and
- d. any accrued rights and obligations of the parties as at the date of termination or expiration are unaffected.

16. Suspension

- 16.1 Without limiting any other rights or remedies TotalFusion may have, where TotalFusion is entitled to terminate this Agreement under clause 15.2 or 15.3 in circumstances where the relevant default or non-compliance is capable of remedy, TotalFusion may suspend the Membership until such time that the relevant default or non-compliance has been remedied in full by the Member.
- 16.2 During any period of suspension under clause 16.1, the Member may not access the Club or access any Services connected with the Membership, and no Membership Fees will be payable.

17. Limitation of liability

- 17.1 Nothing in this Agreement is intended to have the effect of excluding any Consumer Guarantees or any other terms, conditions, guarantees and warranties which cannot lawfully be excluded or modified by agreement, including those under the Australian Consumer Law (**Non-Excludable Rights**). **The remainder of this clause 17 is to be read as subject to this clause 17.1.**
- 17.2 All express terms, conditions, guarantees and warranties which might apply to or arise out of this Agreement are excluded other than those expressly specified in this Agreement and any Non-Excludable Rights.
- 17.3 Neither party will be liable for any Consequential Loss arising under or in connection with this Agreement.
- 17.4 To the extent that the Services constitute 'recreational services' under section 139A(2) of the CCA, the Member agrees that other than where TotalFusion has engaged in reckless conduct, TotalFusion will not have any liability for any death or injury (whether mental or physical and including the contraction, aggravation or acceleration of an injury or disease) arising from its failure to comply with a Consumer Guarantee.

18. Force majeure

- 18.1 In this clause 18, **Force Majeure Event** means any event that is outside the reasonable control of a party, including an act of God, natural disaster, war, act of terrorism, revolution, unlawful act against public order or authority, disease, pandemic or epidemic, a strike or industrial dispute or an act or omission of a government agency.

- 18.2 An obligation of a party (other than an obligation to make payment) is suspended for the time and to the extent that the party is prevented from or delayed in complying with that obligation by a Force Majeure Event.
- 18.3 On the occurrence of a Force Majeure Event, the affected party must promptly notify the other party and describe in reasonable detail the nature of the Force Majeure Event and its likely effect on the ability of the affected party to perform its obligations under this Agreement.
- 18.4 The Member will not be required to pay Membership Fees to the extent a Force Majeure Event experienced by TotalFusion prevents TotalFusion from providing access to the Club. Where a Force Majeure Event prevents TotalFusion from providing access to the Club for a period of more than 6 months, either party may, by written notice to the other party, terminate this Agreement.

19. Privacy

- 19.1 The Member acknowledges that TotalFusion collects Personal Information relating to the Member. TotalFusion collects, uses and discloses this Personal Information for the following purposes:
 - a. providing the Membership (and related Services) to the Member;
 - b. operating the Club and otherwise performing its obligations and exercising its rights under this Agreement; and for any other purposes;
 - c. processing direct debit payments in accordance with the Direct Debit Agreement;
 - d. sending marketing communications to the Member with special offers, promotions and information about the services provided by TotalFusion and its Related Bodies Corporate (provided that TotalFusion will obtain consent to send such marketing communications where required by law);
 - e. all other purposes:
 - (i) set out in TotalFusion's privacy policy, which can be found here: <https://totalfusion.com.au/wp-content/uploads/2023/10/TOTALFUSION-PRIVACY-POLICY.pdf>; or
 - (ii) that are permitted, authorised or required by law,

(Approved Purposes).

- 19.2 The Member consents to TotalFusion collecting and using the Personal Information that the Member provides for the Approved Purposes.

20. General

- 20.1 All notices, requests, demands, consents, approvals or other communications under this Agreement (**Notice**) to, by or from a party must be in writing and addressed to a party in

accordance with their details set out in this Agreement (or as updated from time to time by Notice to the other party).

- 20.2 Neither party may assign or otherwise deal with any of their rights under this Agreement without the prior written consent of the other party, which consent must not be unreasonably withheld or delayed.
- 20.3 Except for a change effected under clause 9, a variation of this Agreement will be of no force or effect unless it is in writing and signed by each of the parties.
- 20.4 A waiver of a right, remedy or power must be in writing and signed by the party giving the waiver. A party does not waive a right, remedy or power if it delays in exercising, fails to exercise or only partially exercises that right, remedy or power.
- 20.5 If a provision in this Agreement is wholly or partly void, illegal or unenforceable in any relevant jurisdiction that provision or part must, to that extent, be treated as deleted from this Agreement for the purposes of that jurisdiction. This does not affect the validity or enforceability of the remainder of the provision or any other provision of this Agreement.
- 20.6 This Agreement is governed by and is to be construed under the laws in force in the Jurisdiction. Each party submits to the non-exclusive jurisdiction of the courts in the Jurisdiction and courts of appeal from them in respect of any proceedings arising out of or in connection with this Agreement.
- 20.7 This Agreement states all of the express terms of the Agreement between the parties in respect of its subject matter and supersedes all prior discussions, negotiations, understandings and agreements in respect of its subject matter. However, if the Member is a Consumer, this clause does not exclude any Consumer Guarantees or any rights of the Member under the Australian Consumer Law.
- 20.8 The parties are not and are not to be taken to be in a partnership, joint venture, employment or fiduciary relationship. Nothing in this Agreement gives a party authority to bind any other party in any way.
- 21. Without limiting or impacting upon the continued operation of any clause which as a matter of construction is intended to survive the termination or expiry of this Agreement, clauses 3, 7, 8, 12, 15.4, 17, 19 and 20 survive the termination or expiry of this Agreement.

22. Definitions and interpretation

22.1 Definitions

In these T&Cs:

- a. **Application Form** has the meaning given in clause 1.2;
- b. **Australian Consumer Law** means Schedule 2 of the CCA and any equivalent state or territory legislation;

- c. **Business Day** means a day on which banks are open for business in the Jurisdiction, excluding a Saturday, Sunday or public holiday in that city;
- d. **CCA** means the *Competition and Consumer Act 2010* (Cth);
- e. **Cancellation Period** has the meaning given in clause 5.1;
- f. **Committed Membership** has the meaning given in clause 2.1a;
- g. **Consequential Loss** means any indirect or consequential loss, including loss of profits, loss of revenue, loss of production, loss or denial of opportunity, loss of or damage to goodwill, loss of business reputation, loss of use, loss of interest, loss of anticipated savings or any other similar kind of loss;
- h. **Consumer** has the meaning set out in section 3 of the Australian Consumer Law;
- i. **Consumer Guarantee** means any right or statutory guarantee under Division 1 of Part 3-2 of the Australian Consumer Law;
- j. **Corporations Act** means the *Corporations Act 2001* (Cth);
- k. **Direct Debit Agreement** means the agreement between TotalFusion, the Member and Payrix Australia Pty Ltd ABN 63 135 196 397 (as TotalFusion's direct debit agent) dated on or around the date of the Member's Application Form;
- l. **Freeze Period** has the meaning given in clause 13.1;
- m. **Insolvency Event** means the occurrence of any of the following events:
 - (i) where a party is a natural person, the person becomes bankrupt, files or is served with a petition in bankruptcy or is served with a bankruptcy notice, the person is unable to pay his/her debts as and when they become due and payable or a creditor's meeting in relation to the person is called;
 - (ii) an application is made to a court for an order or an order is made that a body corporate be wound up, and the application is not withdrawn, stayed or dismissed within 21 days of being made;
 - (iii) appointment of a liquidator, provisional liquidator, administrator, receiver, receiver and manager or controller in respect of a body corporate or its assets;
 - (iv) except to reconstruct or amalgamate while solvent, a body corporate enters into, or resolves to enter into, a scheme of arrangement, deed of company arrangement or composition with, or assignment for the benefit of, all or any class of its creditors, or it proposes a reorganisation, moratorium or other administration involving any of them;
 - (v) a body corporate resolves to wind itself up, or otherwise dissolve itself, or gives notice of intention to do so, except to reconstruct or amalgamate while solvent or is otherwise wound up or dissolved;

- (vi) a body corporate is or states that it is insolvent as that term is defined in section 95A of the Corporations Act;
 - (vii) as a result of the operation of section 459F(1) of the Corporations Act, a body corporate is taken to have failed to comply with a statutory demand;
 - (viii) a body corporate is or makes a statement from which it may be reasonably deduced that the body corporate is the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act;
 - (ix) a body corporate takes any step to obtain protection or is granted protection from its creditors, under any applicable law;
 - (x) a body corporate ceases to carry on business; or
 - (xi) anything analogous or having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction.
- n. **Jurisdiction** means the State or Territory in which the Club is located;
 - o. **Minimum Payments** has the meaning given in clause 3.3;
 - p. **Monthly Membership** has the meaning given in clause 2.1c;
 - q. **Non-Excludable Rights** has the meaning given in clause 17.1;
 - r. **Prepaid Membership** has the meaning given in clause 2.1b;
 - s. **Related Body Corporate** has the meaning given to it in section 9 of the Corporations Act;
 - t. **Representative** means an officer, employee, agent, representative, contractor or subcontractor of the relevant party;
 - u. **Signed Date** has the meaning given in clause 1.2; and
 - v. **Start Date** has the meaning given in clause 2.1.

22.2 Interpretation

In this Agreement, unless a contrary intention is expressed:

- a. headings and italicised, highlighted or bold type do not affect the interpretation of this Agreement;
- b. the singular includes the plural and the plural includes the singular;
- c. a gender includes all other genders;
- d. other parts of speech and grammatical forms of a word or phrase defined in this Agreement have a corresponding meaning;

- e. a reference to a 'person' includes any individual, firm, company, partnership, joint venture, an unincorporated body or association, trust, corporation or other body corporate and any government agency (whether or not having a separate legal personality);
- f. a reference to any thing (including any right) includes a part of that thing, but nothing in this clause 22.2f implies that performance of part of an obligation constitutes performance of the obligation;
- g. a reference to a clause, party, annexure, exhibit or schedule is a reference to a clause of, and a party, annexure, exhibit and schedule to, this Agreement and a reference to this Agreement includes any clause, annexure, exhibit and schedule;
- h. the words 'include', 'including', 'for example', 'such as' or any form of those words or similar expressions in this Agreement do not limit what else is included and must be construed as if they are followed by the words 'without limitation', unless there is express wording to the contrary; and
- i. a reference to a document (including this Agreement) includes all amendments or supplements to, or replacements or novations of, that document.