

MEMBERSHIP AGREEMENT

**SMALES
FARM**
FITNESS

MEMBER INFORMATION

Full Name: _____ Date of Birth: _____

Employer: _____ Occupation: _____

Work Email: _____ Phone – work: _____

Home Address: _____ Phone – mobile: _____

Payment Option: (TICK ONE) ☐ A (FIXED) ☐ B (FLEXI)

Access: (TICK ONE) ☐ MALE ☐ FEMALE

EMERGENCY CONTACT

Name: _____ Phone: _____ Relationship: _____

PAYMENT INFORMATION

OPTION A: 6 Month Term with a monthly rate of \$45.50 (including GST) payable per calendar month via direct debit.

OPTION B: No fixed Term, flexible membership with a monthly rate of \$55.50 (including GST) payable per calendar month via direct debit.

The Initial fee required (details of which will be emailed to you) will include any part month and the first month in advance and the supply of an access card to enable entry. This Initial Fee must be paid by you once we notify you of acceptance of this Membership Agreement.

A Replacement Fee for any lost/stolen/damaged Access cards will be charged at \$20.00 (including GST).and must be paid before a new Access Card for re-entry will be supplied.

A reactivation fee for memberships on hold/missed payments will be charged at \$10.00 (including GST) and must be paid before access Card is re-activated.

GENERAL INFORMATION

The Membership is with Smales Farm Fitness Limited, c/- Smales Farm Corporate Services (Management Office). In general membership of the Facility is for tenants of Smales Farm managed properties, their employees, and associated business/affiliates and such other persons as we accept as members of the Facility.

The completed and signed Membership Agreement may be emailed to fitness@smalesfarm.co.nz. We will verify with the employer stated that applicant is a current staff member of a Smales Farm managed property or associated business/affiliate. Once these details are confirmed and the Initial Payment has been received, we will confirm your membership and an access card will be issued.

The Monthly Rate for membership of the Facility is paid monthly in advance, on the 20th of the Month for each succeeding Month commencing on the 1st day of the following Month. On-going monthly payments will be debited from you're bank account on the 20th of each Month for the next Month. Failure to make payment will result in Access being denied.

We will process your application and email you with payments and reference details. Please ensure you set your payments up as provided to ensure your payment is correctly allocated and to avoid your membership being disabled and Access Card declined entry.

THANK YOU FOR CHOOSING SMALES FARM FITNESS LIMITED

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DECLARATION

By ticking this box, I (the applicant) hereby apply for membership with Smales Farm Fitness Limited on the basis of the information contained in this Membership Agreement form which I declare to be true and correct and I agree to be bound by the Terms and Conditions set out on the Membership Agreement and in the accompanying Membership Terms and Conditions (and as varied from time to time).

Signed: _____ Date: _____

Smales Farm Fitness Limited

c/-Smales Farm Corporate Services (Management Office) Private Bag 93 504, North Shore, Auckland, 0740
Phone: (09) 488 2300 Email: fitness@smalesfarm.co.nz

SMALES FARM FITNESS LIMITED – TERMS & CONDITIONS

1. Payment

- 1.1. You agree to pay in full the Initial Fee as specified in the Membership Agreement upon acceptance by us of the completed Membership Agreement.
- 1.2. You agree to pay in full the specified & chosen Monthly Rate on a monthly basis in advance. Payment of the Monthly Rate must be received by the twentieth (20th) day of each Month during the term of this Membership Agreement commencing with a payment on the 20th of the Month following the Commencement Date, and without deduction or set off.
- 1.3. You agree to pay in full any Replacement Fee(s) for any lost, stolen or damaged Access card/s as specified in the Membership Agreement.
- 1.4. You agree to pay in full the fee for tag reactivations as specified in the Membership Agreement.
- 1.5. The Monthly Rate must be paid in accordance with clause 1.2 regardless of your use of the Facility.

2. Rate Review

- 2.1. The Monthly Rate payable by you may be varied by us by providing written notice specifying the new Monthly Rate. Such written notice must be provided to you at least one Month prior to the effective date of payment of the new Monthly Rate. Written notice for the purposes of this clause 2.1 must be given by us in accordance with clause 13.1.
- 2.2. You have the right to terminate this Membership Agreement by written notice to us given within five (5) working days of receipt of a notice pursuant to clause 2.1.
- 2.3. If this Membership Agreement has not been terminated by you in accordance with clause 2.2, the new Monthly Rate shall be payable by you as set out in clause 1.2 as from the effective date for the new Monthly Rate notified by us.

3. Term of Membership Agreement

- 3.1. If you have elected to pay the **flexible** monthly Rate, this Membership Agreement commences (once acceptance is notified by us to you and you have paid the Initial Fee) on the Commencement Date and will continue as a monthly Membership Agreement from the first day of each Month thereafter until two weeks written notice of termination is given by either party in writing.
- 3.2. If you have elected to pay the **fixed** six-monthly Monthly Rate:
 - 3.2.1. this Membership Agreement commences (once acceptance is notified by us to you and you have paid the Initial Fee) on the Commencement Date and will continue for a fixed term of six months.
 - 3.2.2. No later than two weeks prior to the expiry of the six-month term you must notify us in writing whether you wish to:
 - 3.2.2.1. extend for a further six-month term at the then applicable six-monthly Monthly Rate;
 - 3.2.2.2. convert to a Monthly membership at the then applicable flexible monthly Rate; or
 - 3.2.2.3. terminate your Membership Agreement.
 - 3.2.3. If no notice is received in accordance with clause 3.2.2 above, you will be deemed to have extended this Membership Agreement for a further six months at the then applicable six-month Monthly Rate.
- 3.3. If you wish to terminate your membership within your 6month term you will be required to pay the remaining balance of the term and any outstanding amounts owed to Smales Farm Fitness.
- 3.4. We may terminate this Membership Agreement on notice in writing to you should you default in performance of any of your obligations under this Membership Agreement and fail to remedy such default (if capable of remedy) within five (5) working days after receipt of written notice from us specifying such default.
- 3.5. We may at our option terminate this Membership Agreement if you cease to be a tenant of a Smales Farm managed property or at our request if you are unable to demonstrate to us that you are an employee of a tenant of a Smales Farm managed property, and/or associated business/affiliate.

4. Variation of Membership Agreement

- 4.1. We may vary the terms and conditions of this Membership Agreement by giving you one Month's notice in writing specifying the new terms and conditions.
- 4.2. If you do not wish to use the Facility after the notice from us of the change of terms and conditions, you must notify us in writing within five (5) working days after our notice is given. This Membership Agreement will then end at the end of the then current full calendar Month.
- 4.3. If no notice is given by you in terms of clause 4.2, the new terms and conditions as advised or notified by us will take effect from the date specified in our notice.
- 4.4. No one but us is authorised to amend these terms and conditions on our behalf.

5. Rules and Regulations

- 5.1. You must follow and comply with the terms of this Membership Agreement and the Facility Rules now in force or in the future adopted by us and with reasonable instructions given to you by any on-site personnel. The Facility Rules include but are not limited to, hours of operation, use of equipment and facilities, personal hygiene and attire. We reserve the right to revoke or suspend your membership without refund, if you fail to follow and comply with the Facility Rules or if you cause a nuisance, or unreasonably disturb other members in their use and enjoyment of the Facility or for reasons of moral turpitude or fraud, or if we determine your actions may endanger yourself or other persons.
- 5.2. It is prohibited for you or for any member to conduct, purchase or subscribe to any commercial business or activity or solicit any business competitive with that of Smales Farm Fitness Limited at or from the Facility without our prior, express written consent.

6. Access Control/Security

- 6.1. We will provide you with an Access Card for the Facility following signing of the Membership Agreement, payment of the Initial Fee and acceptance by us of your membership.
- 6.2. The Access Card must not be copied. Only the Access Card issued by us is valid for use of the Facility and it is personal to you.
- 6.3. If the Access Card issued to you is lost, stolen or damaged, you must notify us immediately. You will be liable for any loss, costs or damage incurred by us as a result of use of the lost or stolen Access Card.

- 6.4. If you are unable to present your Access Card at any time then you will not be entitled to use the Facility. No refund will be made for any alternative facility fees incurred or paid by you or for the loss of the right to use the Facility.
- 6.5. A replacement Access Card can be provided to you by us as soon as practical upon our receiving your notice of a lost, stolen or damaged Access Card and payment by you of the Replacement Fee for the Access Card specified in the Membership Agreement.
- 6.6. The Access Card provided belongs to us at all times. On termination of this Membership Agreement, you must return the Access Card to us forthwith.
- 6.7. Misuse of the Access Card may result in the Access Card being cancelled without warning. If you misuse the Access Card then we may terminate this Membership Agreement in accordance with clause 3.2. Without limitation the Access Card is personal to you as a member of the Facility and must not be loaned to or be used by any other person.
- 7. Disclaimer of Liability**
 - 7.1. Nothing in this Membership Agreement affects your rights under the Consumer Guarantees Act 1993 and you shall have the benefit of the guarantees under that legislation (the **Consumer Guarantees**).
 - 7.2. Except as expressly set out in this Membership Agreement, or the Consumer Guarantees, we make no warranties or other representations with respect to the Facility or services provided, and any implied warranties or representations are excluded.
 - 7.3. Except as expressly set out in this Membership Agreement, or the Consumer Guarantees, us, our employees or agents will have no liability to you for any loss or damage of any kind whatsoever, except where such loss or damage is due to the negligence or wilful act or omission of us or our employees or agents.
 - 7.4. Subject to clause 7.5, you hereby fully and effectively indemnify and agree to keep indemnified us, our employees, agents and contractors (each an **Indemnified Party**) against every liability, loss, damage, cost or expense (hereafter **Liabilities**) (including all Liabilities arising as a result injury to or death of any person, and all legal costs in relation to any Liabilities) sustained, suffered or incurred by any such Indemnified Party arising out of or in connection with any breach of this Membership Agreement by you or any negligence, fraud, dishonesty, or misrepresentation by you.
 - 7.5. To the extent permitted by law, neither party will have any liability under this Membership Agreement for any indirect or consequential losses.
 - 7.6. You acknowledge that you use the Facility at your own risk and we are not responsible for any medical issues or in any way in relation to your use of the Facility.
- 8. Members Responsibility as to Use of Facility**
 - 8.1. You should consult your physician before using the Facility
 - 8.2. You agree you will not use the Facility with any medical condition, infections, or maladies before first consulting with your physician and then in accordance with any advice from your physician.
 - 8.3. It will be your responsibility to consult your physician to determine if you have any medical condition which would make it unwise for you to use the Facility whether for reasons of risk to your own health and welfare or where such medical condition might pose a threat to the health and safety of other members of the Facility. We however reserve the right to exclude you from the Facility if it becomes apparent to us that you have a medical condition or your personal hygiene (or lack of it) or use of the Facility is deemed by us to cause or potentially cause a nuisance or unreasonable annoyance or threat to the health and safety of yourself or to any other person employed in or using the Facility.
- 9. Consequences of Breach and Default**
 - 9.1. Failure to pay the Monthly Rate or any monies payable by you under this Membership Agreement for five (5) working days or to comply with any terms or conditions of this Membership Agreement including the Facility Rules for five (5) working days is a breach of the Membership Agreement.
 - 9.2. You agree to pay our legal costs and disbursements of and incidental to recovering any amount outstanding by you together with any debt collection agency charges. The liability for payment by you of arrears of the Monthly Rate and other monies shall continue notwithstanding that we may have terminated this Membership Agreement.
- 10. No Safe Custody**
 - 10.1. We urge you to lock all valuables in the lockers provided. You agree that we will not be liable for the loss, or theft of, or damage to the personal property of you or any other person on the Facility even if you use the lockers supplied. All lockers are for daily use only and operate on a first-come, first-served basis. Please refrain from leaving personal belongings in lockers when you are not in the Facility. The appointed contractors, cleaners, security or management of the Facility reserves the right to clear and remove all items from lockers when left without prior consent.
- 11. Reservation of Rights**
 - 11.1. We have the right to at any time close the Facility or any part or parts of it for repairs and maintenance where they may cause disruption or health and safety concerns to any member.
 - 11.2. We reserve the right to alter the hours of operation of the Facility and to add to, eliminate or amend the costs of any programme, activity, class or service in our sole discretion from time to time by notice in writing.
- 12. Collection of Personal Information**
 - 12.1. You acknowledge that personal information collected by us (whether obtained in the Membership Agreement application form or otherwise obtained) may be held or disclosed:
 - 12.1.1. To any credit reporting or referencing agency upon default by you in any obligation to us;
 - 12.1.2. To enable us to sell, or provide you with advice and information concerning products and services we believe may be of interest to you;
 - 12.1.3. To enable us to assign any person to communicate with you for any purpose.
 - 12.2. You have the right under the Privacy Act 1993 to (a) ask for a copy of any personal information we hold about you; and (b) to ask for it to be corrected if you think it is wrong. If you would like to ask for a copy of your information, or to have it corrected, please contact us at fitness@smalefarm.co.nz.
 - 12.3. Within a reasonable time following the termination of this Membership Agreement we will destroy all personal information we hold about you.
 - 12.4. You agree that we can obtain information about you from any other persons in the course of our usual business activities and you consent to any other person providing us with such information.

- 12.5. You authorise us to check with the Employer named in the Membership Agreement whether you are an employee at the Commencement Date and to ascertain your employment status from time to time.

13. Notices

- 13.1. Any notice which you are required to give us is to be in writing and should be delivered or sent by e-mail (the address for which is set out on the front page of the Membership Agreement).
- 13.2. Any notice which we are required to give you is to be in writing and will be delivered or posted or sent by facsimile or e-mail to your street or postal address or facsimile number or e-mail address as set out in the Membership Agreement (or otherwise as provided in this Membership Agreement including clause 2.1 and 4.1).
- 13.3. Where notice of a matter is required to be given a certain number of days in advance under the Membership Agreement, notice will be treated as having been given:
- 13.3.1. If delivered, on the date that it is delivered; or
- 13.3.2. If e-mailed, on the date that it is delivered to you by us; or
- 13.3.3. If sent by facsimile, when the sender receives a communication of fax at the end of transmission.

14. Persons Signing

- 14.1. The person signing this Membership Agreement has the authority to bind you to the terms of this Membership Agreement.

15. Words Used in this Membership Agreement

- 15.1. "Access Card" means the Access Card, Tag or Receptacle issued by us to you for use to enter the Facility.
- 15.2. "Commencement Date" means the Commencement Date specified on the cover page of the Membership Agreement.
- 15.3. "Facility" means the areas allocated for the Smales Farm Fitness Limited Gym for use in terms of this Membership Agreement at Smales Farm Technology Office Park ("Smales Farm"), corner Northcote and Taharoto Roads, Takapuna or otherwise as varied by us from time to time.
- 15.4. "Facility Rules" means the rules, regulations and policies for the use of the Facility existing at the date of this Membership Agreement as varied from time to time covering (but without limitation) the hours of operation of the Facility, use of equipment and facilities in the Facility, personal hygiene and attire in the use of the Facility.
- 15.5. "Initial Fee" is the initial fee described under the heading "Payment Information" on the cover page of the Membership Agreement.
- 15.6. The "Membership Agreement" is the document completed and signed by you headed "Membership Agreement" and includes these Terms and Conditions and the Facility Rules (both as varied from time to time).
- 15.7. "Month" means a calendar month commencing on the 1st and expiring on the last day of the month.
- 15.8. "Monthly Rate" is the monthly rate specified under the heading "Payment Information" on the cover page of the Membership Agreement (as revised from time to time by us pursuant to clause 2.1).
- 15.9. "Replacement Fee" is the Access Card replacement fee specified under the heading "Payment Information" on the cover page of the Membership Agreement.
- 15.10. "Smales Farm" for the purposes of this Membership Agreement means the property known as Smales Farm at the corner of Northcote and Taharoto Roads, Takapuna and at our option any property managed by any company or person affiliated with Smales Farm Fitness Limited.
- 15.11. "we" and "us" means Smales Farm Fitness Limited, c/- Smales Farm Corporate Services (Management Office) and includes (where appropriate) or employees, agents and independent contractors.
- 15.12. "you" means the person named as the "Applicant/Member", and/or "Full Name" in the Membership Agreement and having signed the declaration in the Membership Agreement.
- 15.13. Terms defined in the Membership Agreement have the same meaning in this Terms & Conditions which forms part of the Membership Agreement.

16. Transferable

- 16.1. This membership is non-transferable by you at any stage of this Membership Agreement.
- 16.2. We may transfer the Facility to another person and may transfer this Membership Agreement to the person conducting the Facility. We will give notice to you in such event. Our liability will terminate from the date that notice of transfer is given to you.

17. License Only

- 17.1. This Membership Agreement is a nonexclusive license to you only and you accept that it is not a lease and gives you no right to the Facility other than the license rights set out in and subject to the Membership Agreement which is personal to you.

18. Unsolicited Electronic Messages Act 2007

- 18.1. I hereby authorise you to communicate with me electronically regarding my membership, news and promotions.

19. Governing Law

- 19.1. This Membership Agreement is governed by the laws of New Zealand.