

PILATES SERVICE MEMBERSHIP AGREEMENT

TERMS AND CONDITIONS

DISCLAIMER

Before you agree to these terms and conditions, please make sure that you read and understand the below.

- (a) **Dangerous Activities** – Participating in the Services is potentially dangerous and may expose you to risks, including accidents, serious injury, illness or even death. X-hale Pilates Studio uses its best endeavours to protect you but there remains a possibility of an accident-causing injury, illness, disability, death or property damage. You participate in the Services at your own risk and acknowledge that you have read clause 9, which describe how X-hale Pilates Studio limits its liability to you.
- (b) **Pregnant clients** – if you are pregnant, you must advise X-hale Pilates Studio prior to undertaking any Pilates classes.
- (c) **Not advice** – you acknowledge and agree that any information that X-hale Pilates Studio provides as part of the Services is not professional advice, and should not be taken or relied upon as a substitute for medical, health, psychological or professional advice. You acknowledge and agree that:
 - (i) any information provided by X-hale Pilates Studio is not intended to teach you to diagnose, treat, cure or prevent any medical condition;
 - (ii) you will seek medical advice from a trained medical professional in relation to any medical issues you are observing or experiencing, and if in doubt, will call emergency services; and
 - (iii) any recommendations provided during the Services are X-hale Pilates Studio's proposed solutions or remedies only based on X-hale Pilates Studio's experience, and not professional advice based on professional expertise.

These Terms and Conditions, together with any Pilates Service Form, Screening Tool, Waiver and/or DDR Service Agreement set out the agreement (this **Agreement**) under the terms of which you or, where applicable, the person for whom you are the parent or guardian, (the **User, you, your**) will obtain services, from The Lazy Grazer Pty Ltd ABN 86 644 628 197 t/as X-hale Pilates Studio (**X-hale Pilates Studio, we, us, our**).

We may change these Terms and Conditions at any time by updating the Terms and Conditions page on our website, and your booking of the Services or using the Premises following such an update will represent an agreement by you to be bound by the Terms and Conditions as amended. Changes to these Terms and Conditions will only apply to Pilates Service Forms entered into after the change occurs. However, we will only increase your Fees in accordance with clause 5.3 below.

2 THIS AGREEMENT

- (a) X-hale Pilates Studio provides pilates and other group fitness classes. These classes are made available through pre purchased packs of classes (**Class Packs**), private one on one Pilates classes (**Private Classes**) and a tiered subscription-based membership (**Memberships**) (collectively, the **Services**).
- (b) X-hale Pilates Studio makes these Services available to purchase and book through our website and/or our mobile application (**App**).

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- (c) These Terms and Conditions will apply to all the User's dealings with X-hale Pilates Studio, including being incorporated in all agreements or quotations under which X-hale Pilates Studio is to provide services to the User (each a **Pilates Service Form**) together with any additional terms included in such a Pilates Service Form (provided such additional terms are recorded in writing).
- (d) The User will be taken to have accepted this Agreement if the User accepts a Pilates Service Form, or if the User orders, accepts or pays for any services provided by X-hale Pilates Studio after receiving or becoming aware of this Agreement or these Terms and Conditions (**Booking**).

3 PARTICIPANT'S OBLIGATIONS

3.1 CAPACITY AND AGE

- (a) The User warrants that they:
 - (i) have the legal capacity and are of sufficient age to enter into a binding contract with us; and/or;
 - (ii) are the parent or guardian of the User who consents to this Agreement on behalf of the User.
- (b) The User acknowledges and agrees that:
 - (i) they must be at least 16 years of age to participate in the Services; and
 - (ii) they must be at least 18 years of age to participate in Services without parental supervision during the Staffed Hours.

3.2 ACCOUNT

- (a) To make a booking, purchase a Class Pack or register for a Membership, the User may be required to register an account through the App (**Account**).
- (b) When a User registers for an Account, the User must provide true, accurate and complete information as requested and keep this information up to date after registration.
- (c) As part of the Account registration process and as part of the User's continued use of the App, the User will be required to provide personal information and details, such as the User's email address, first and last name, a secure password, billing, postal and physical addresses, mobile phone number, bank account information, and other information as determined by X-hale Pilates Studio from time to time.
- (d) X-hale Pilates Studio may, in its absolute discretion, suspend or cancel the User's Account for any reason, including for any failure to comply with these Terms.

3.3 PRE-ACTIVITY OBLIGATIONS

The User warrants that, on or prior to the Commencement Date, they:

- (a) will complete the Screening Tool located in Appendix A and:
 - (i) if they answer 'yes' to any of the questions contained in the Screening Tool, obtain a doctor's certificate stating that they are allowed to participate in the Services; or
 - (ii) if they answer 'yes' to any of the questions contained in the Screening Tool and cannot obtain a doctor's certificate stating that they are allowed to participate in the Services, agree that they participate in the Services at their own risk, if permitted to do so by X-hale Pilates Studio;

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- (b) have read and signed the Waiver located in Appendix B;
- (c) have read and signed the DDR Service Agreement in Appendix C; and
- (d) accept any Third Party Terms, in accordance with clause 8.

3.4 PROVIDE INFORMATION

- (a) The User must provide X-hale Pilates Studio with all documentation, information and assistance reasonably required for X-hale Pilates Studio to provide the Services;
- (b) The User must participate in any briefings and/or introductions as notified by X-hale Pilates Studio prior to engaging in any Services; and
- (c) If you are the User's parent or guardian and the User is under the age of 18, you must ensure that the User complies with these terms, and agree to the terms of this Agreement in respect of the User.

3.5 INSTRUCTIONS AND SAFETY

The User warrants that they:

- (a) will undertake an instructional consultation with X-hale Pilates Studio's Personnel prior to using the Premises or engaging in the Services;
- (b) comply with any safety guidelines, instructions and/or rules that X-hale Pilates Studio's Personnel provide to them;
- (c) stop participating in any Services, and alert X-hale Pilates Studio or its Personnel, if the User has any concerns about their health or safety or if they start feeling dizzy, faint, unwell or feel any unusual pain during the Services; and
- (d) be responsible for their own safety and that of any person under the age of 18 years for whom they have signed responsibility.

3.6 HEALTH AND STATE OF THE PARTICIPANT

The User warrants that they:

- (a) do not have a health condition which might have the effect of making it more likely that they will be involved in an accident or injury while participating in the Services (**Condition**);
- (b) will notify X-hale Pilates Studio immediately if they develop a Condition;
- (c) are aware and agree that if they have a Condition, X-hale Pilates Studio might refuse them participation in some and/or all Services;
- (d) are aware that the Services, even when no accident occurs, may involve risk to health;
- (e) will not participate in the Services under the influence of drugs, alcohol or illicit substances;
- (f) will not participate in the Services, if ill, injured or feeling unwell; and
- (g) will warm-up prior to participating in the Services.

3.7 USER'S BEHAVIOUR

The User must:

- (a) wipe down each piece of equipment, including any exercise mats after use;

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- (b) not use abusive, offensive or threatening language or behaviour while at the Premises;
- (c) at all times wear clean clothing appropriate to the Services they are undertaking and/or as instructed by X-hale Pilates Studio from time to time;
- (d) not enter the Premises under the influence of drugs or alcohol;
- (e) not smoke, consume alcohol, drugs, foods, and/or chew gum at the Premises;
- (f) not use the equipment and/or facilities without seeking instructions from X-hale Pilates Studio Personnel if the User is not familiar with the equipment and/or facilities; and
- (g) be respectful and courteous to other people attending any Class and X-hale Pilates Studio's instructors;
- (h) follow all reasonable instructions given by any instructors of X-hale Pilates Studio;
- (i) treat X-hale Pilates Studio's reformer machines and any other X-hale Pilates Studio's equipment with care and respect;
- (j) turn up on time for any Class or Private Class.

3.8 POSSESSIONS

The User is responsible for their possessions while at the Premises. X-hale Pilates Studio will not be liable if any of the User's possessions are lost and/or stolen at the Premises.

4 CLASSES AND PREMISES AVAILABILITY

4.1 CLASSES

The User acknowledges and agrees that:

- (a) unless directed otherwise, they are required to book X-hale Pilates Studio's scheduled pilates classes in advance via the Website and/or App (**Classes**); and
- (b) any missed Classes will be forfeited by the User and X-hale Pilates Studio will not be required to reschedule such Classes, subject to clause 4.3.

4.2 AVAILABILITY

- (a) While X-hale Pilates Studio will endeavour to ensure that Classes and equipment are available during the advertised opening hours, on occasion, Classes or equipment may be full, unavailable or no longer offered and X-hale Pilates Studio will not be liable to the User in such circumstances.
- (b) X-hale Pilates Studio reserves the right to change the Classes and times offered at its absolute discretion without notice to the User.
- (c) The User acknowledges that during public holidays and over the Christmas and New Year breaks, X-hale Pilates Studio classes may be reduced in frequency and/or unavailable. This circumstance has been reflected in our Fees and the User is not entitled to any fee discounts on this account.

4.3 CLASS CANCELLATIONS

- (a) The User may cancel a Class or a Private Class through the App at any time 2 hours before the Class or Private Class is scheduled to take place. If the User does cancel 2 hours or more prior to the Class or Private Class is scheduled to take place:

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- (i) the User will receive a full refund of any fees paid for that Class or Private Class; and
 - (ii) if the Class was paid for through the use of a Class Pack and if the User cancels at least 2 hours prior to the Class is scheduled to take place, that Class will not be removed from the User's Class Packs.
- (b) If the User does not cancel 2 hours before the Class or Private Class is scheduled to take place:
 - (i) the User will not receive any refund of any fees paid for that Class or Private Class; and
 - (ii) if the Class was paid for through the use of a Class Pack, the Class will be removed from the User's Class Pack.
- (c) X-hale Pilates Studio reserves the right to cancel any Classes at any time. If X-hale Pilates Studio cancels a Class, X-hale Pilates Studio will refund the pro-rata fees for that Class or provide a replacement Class, subject to X-hale Pilates Studio's sole discretion.

4.4 WAITLIST

- (a) Where a Class no longer has capacity, the User may opt to join a waiting list for the Class via the App (**Waiting List**). The User may then be automatically registered for the Class where additional capacity becomes available and will be notified of such registration via the App.
- (b) The above clauses 4.2(a) and 4.2(b) will apply to any Users who opt to join a Waiting List and are then automatically registered for the class according to the above clause 4.4(a), regardless of whether such notification outlined in the above clause 4.4(a) has been received by the User.

4.5 CLASS PACKS

The following terms apply for the Class Pack:

- (a) The User may purchase a set number of Classes to attend at any time listed on the App by X-hale Pilates Studio, subject to capacity.
- (b) The User must attend the number of Classes purchased in the Class Pack within the allocated time. 5 Packs are valid for 4 weeks and 10 packs are valid for 12 months. Validity commences from date of first booking.
- (c) If the User does not attend the full number of Classes in accordance with clause 4.5(b), the Class Pack will expire and the User will no longer be able to use that Class Pack to make further Bookings. The User is not entitled to any refund for any number of Classes not attended in a Class Pack.

4.6 MEMBERSHIP

If the User purchases a Membership, the following terms apply:

- (a) Depending on the tiered package selected by the User and in exchange for the payment of the relevant Membership fees (**Membership Tiers**), X-hale Pilates Studio Membership will grant the User:
 - (i) a set number of Classes per week in exchange for the payment of the Membership fees (**Fortnightly Membership**); or
 - (ii) unlimited Classes each month.
- (b) The User acknowledges that the Fortnightly Membership shall entitle the User access to only 2 Classes per week or 4 Classes per fortnight. If the User does not

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utilise these Classes within the allocated period, they will be forfeited and cannot be carried over to the following fortnight.

- (c) For clarity, the Membership only allows for the User to make bookings for Classes offered by X-hale Pilates Studio, and does not include Private Classes.
- (d) Membership fees are billed on a recurring basis to the User's payment details as provided on their Account and in accordance with clause 5.2.

4.7 PRIVATE CLASSES

The User may book Private Classes via the website or App. For the avoidance of doubt, Private Classes are one-on-one classes or two-on-one classes scheduled with X-hale Pilates Studio's instructors and are different to classes scheduled under the Class Pack or Membership classes.

4.8 STUDIO ACCESS

- (a) From time to time, the User may access the Premises during Staffed Hours, provided there are no Classes scheduled. The User agrees to use their own personal mobile devices or iPads to access our virtual recorded Pilates sessions through the App (**Virtual Sessions**).
- (b) Where the User does not have a suitable device to access the Virtual Sessions, X-hale Pilates Studio has an iPad available for the User to borrow at the Premises. The User agrees to treat the iPad with care and is responsible for any damage that may occur during their use.

5 PAYMENT

5.1 FEES

- (a) The User must pay the Fees to X-hale Pilates Studio, in the amounts and at the times set out in the App or as otherwise agreed in writing.
- (b) To the maximum extent permitted under the *Competition and Consumer Act 2010* (Cth) any fees paid in accordance with these Agreement are non-refundable.

5.2 MEMBERSHIP FEES AND DIRECT DEBIT

- (a) The User must pay the fees to X-hale Pilates Studio in the amounts and at the times specified in the App for the User's Membership Tier (**Membership Fees**).
- (b) All Membership Fees must be paid in advance and are non-refundable for change of mind.
- (c) Unless otherwise agreed in writing, the Membership Fees are due and payable on a fortnightly basis, with the first payment being due at the time of signing up for the Membership.
- (d) As the User's Membership will continue to renew on a fortnightly basis indefinitely, depending on the Membership Tier, the User:
 - (i) agrees to pay the Membership Fees in respect of the relevant periodic basis unless the User notifies X-hale Pilates Studio prior to the expiry of the then current month that the User wants to cancel the Membership;
 - (ii) enter into DDR Service Agreement with GoCardless located in Appendix C to this Agreement;

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- (iii) authorises X-hale Pilates Studio to charge the User's bank account in advance in line with the Pilates Service Form and DDR Service Agreement;
- (iv) acknowledges and agrees that each direct debit payment will incur a \$1.25 transaction fee per transaction for bank accounts and \$1.25 or 2.2%, whichever is greater, for Visa and MasterCard;
- (v) must ensure that there are sufficient funds available in their account to allow GoCardless to debit the fees payable;
- (vi) must give X-hale Pilates Studio a notice of at least 48 hours if:
 - (A) the User is transferring or closing the account specified in their DDR;
 - (B) there are any changes to the User's credit card specified in their DDR; and
- (vii) acknowledges and agrees that if a debit is returned by the User's financial institution as 'unpaid':
 - (A) X-hale Pilates Studio will charge the User a \$7 dishonour fee in addition to any fees charged under the DDR Service Agreement by GoCardless; and
 - (B) X-hale Pilates Studio will suspend your Premises access until the amounts payable are received by X-hale Pilates Studio.

5.3 FEE INCREASES

We reserve the right to increase the Fees at any time after the period of your initial Membership Plan has ended, or at any time if your Membership Plan is 'Month to Month' or 'Fortnight to Fortnight', by giving you a 31-day notice of such increase.

5.4 INVOICES

If X-hale Pilates Studio issues an invoice to the User, payment must be made by the time(s) specified in such invoice.

5.5 GST

Unless otherwise indicated, amounts stated in a Pilates Service Form or on the App include GST.

5.6 STRIPE

X-hale Pilates Studio also uses Stripe to collect Fee payments made via credit card. The processing of payments by Stripe will be, in addition to this Agreement, subject to your DDR Service Agreement in Appendix C and privacy policy of Stripe. We are not liable for the security or performance of Stripe. We reserve the right to correct, or to instruct Stripe to correct, any errors or mistakes in collecting your payment.

6 DEBT RECOVERY

If you do not pay an amount due under this Agreement on or before the date that it is due:

- (a) X-hale Pilates Studio may seek to recover the amount due by referring the matter to debt collectors; and

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- (b) you must reimburse X-hale Pilates Studio for any costs it incurs, including any legal and debt collector costs, in recovering the amount due or enforcing any of its rights under this Agreement.

7 SUSPENSION OF MEMBERSHIP

- (a) You may suspend your Membership Plan for a minimum of 2 weeks at a time so long as the total time suspended within a 12 month period does not exceed 6 fortnights.
- (b) To suspend your Membership Plan you must:
 - (i) notify X-hale Pilates Studio in writing with 7 calendar days prior to the date of suspension; and
 - (ii) not have any outstanding Fees to pay to X-hale Pilates Studio.
- (c) The request for suspension will not be finalised until you have received email confirmation stating that your suspension has been approved. It is your responsibility to monitor the suspension of your membership and advise us immediately if payment is being deducted after your requested suspension date. Refunds for any payments made to us after 30 days from the suspension request date may be credited to your account instead, at our discretion.

8 THIRD PARTY GOODS AND SERVICES

- (a) If X-hale Pilates Studio is required to acquire goods or services supplied by a third party, the User may be subject to the terms and conditions of that third party ('**Third Party Terms**').
- (b) The User agrees to familiarise itself with any Third Party Terms applicable to any such goods and services and, by instructing X-hale Pilates Studio to acquire the goods or services on the User's behalf, the User will be taken to have agreed to such Third Party Terms.

9 LIABILITY AND INDEMNITIES

9.1 NO RELIANCE

The User acknowledges that in deciding to pay for the Services and in entering into this Agreement the User has not relied on the skill or judgment of X-hale Pilates Studio and that the User has satisfied itself as to the condition and suitability of the Premises and/or Services and their fitness for the User's purpose.

9.2 LIABILITY

To the maximum extent permitted by law, the total liability of each party in respect of loss or damage sustained by the other party in connection with this agreement is limited to the amount paid by the User to X-hale Pilates Studio under this Agreement on the date of the event resulting in the relevant liability.

9.3 CONSEQUENTIAL LOSS

To the maximum extent permitted by law, neither party will be liable for any incidental, special or consequential loss or damages, or damages for loss of data, business or business opportunity, goodwill, anticipated savings, profits or revenue in connection with this agreement or any goods or services provided by X-hale Pilates Studio, except:

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- (a) in relation to a party's liability for fraud, personal injury, death or loss or damage to tangible property; or
- (b) to the extent this liability cannot be excluded under the *Competition and Consumer Act 2010* (Cth).

9.4 RISK

- (a) Participating in the Services involves the potential for injury and the User is participating in any Services at their own risk with knowledge of the dangers involved, including but not limited to, physical injury, muscle and ligament strains, illness, bruising, falls, injury through equipment failure, injury through impact during martial arts participation and death.
- (b) The User acknowledges that there will be times where the User will be unsupervised by any X-hale Pilates Studio Personnel and agrees to accept any risks of loss, injury, damage or death arising out of the User's unsupervised use of the Premises, unless there is reckless disregard or gross negligence on X-hale Pilates Studio's behalf.
- (c) The User acknowledges that while X-hale Pilates Studio uses its best endeavours to ensure that the Premises and any facilities and/or equipment are free of faults and safety issues, there may be instances of equipment failure, and/or equipment and other objects may be left in incorrect positions by other Premises users. The User agrees that X-hale Pilates Studio will not be liable for any loss or damage arising out of such circumstances unless there is reckless disregard or gross negligence on X-hale Pilates Studio's behalf.
- (d) The User will bear all risk of loss or destruction of, or damage to, any equipment and/or other property and/or people arising out or contributed to by their participation in the Services.

9.5 INDEMNITY

The User indemnifies X-hale Pilates Studio from and against all losses, claims, expenses, damages and liabilities (including any taxes, fees or costs) which arise out of:

- (a) any breach of this Agreement by the User;
- (b) any negligent, fraudulent or criminal act or omission of the User or its Personnel; or
- (c) an event, where circumstances giving rise to a claim, were caused or contributed to by the User.

10 WARRANTIES

- (a) To the maximum extent permitted by applicable law, all express or implied representations and warranties not expressly stated in this agreement are excluded.
- (b) Nothing in this agreement is intended to limit the operation of the Australian Consumer Law contained in the *Competition and Consumer Act 2010* (Cth) (**ACL**). Under the ACL, the User may be entitled to certain remedies (like a refund, replacement or repair) if there is a failure with the goods or services provided.

11 SUBCONTRACTING

X-hale Pilates Studio may subcontract any aspect of providing the Services and the User hereby consents to such subcontracting.

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12 MARKETING, ADVERTISING AND PROMOTION

Subject to clause 13(b), X-hale Pilates Studio retains the right to describe the Services and use photos or videos of the Services provided to the User to market, advertise and promote X-hale Pilates Studio services on its websites, through social media and any other channel.

13 PRIVACY

- (a) You agree to be bound by our Privacy Policy, which is available [\[here\]](#).
- (b) You consent to us taking images and recording video footage of you for the following purposes only:
 - (i) promotion of the Premises, Premises events and advertising the associated products and services; and
 - (ii) publication on social media platforms or in newspapers, in trade and other journals and on websites and the internet for the purposes of professional advancement,in accordance with our Privacy Policy.
- (c) Please notify us by email if you do not wish footage or images of you to be taken or kept by us.

14 CANCELLATION

14.1 BY X-HALE PILATES STUDIO

X-hale Pilates Studio may terminate this Agreement in whole or in part immediately by written notice to the User if the User is in breach of any term of this Agreement.

14.2 MEMBERSHIP USERS

For users on a Membership Plan, if you wish to cancel this Agreement, you must provide at least 4 weeks written notice to X-hale Pilates Studio (**Notice**).

14.3 SURVIVAL

Any clause that by its nature would reasonably be expected to be performed after the termination or expiry of this Agreement will survive and be enforceable after such termination or expiry.

15 DISPUTE RESOLUTION

- (a) A party claiming that a dispute has arisen under or in connection with this Agreement must not commence court proceedings arising from or relating to the dispute, other than a claim for urgent interlocutory relief, unless that party has complied with the requirements of this clause.
- (b) A party that requires resolution of a dispute which arises under or in connection with this Agreement must give the other party or parties to the dispute written notice containing reasonable details of the dispute and requiring its resolution under this clause.
- (c) Once the dispute notice has been given, each party to the dispute must then use its best efforts to resolve the dispute in good faith. If the dispute is not resolved within a period of 14 days (or such other period as agreed by the parties in writing) after the date of the notice, any party to the dispute may take legal proceedings to resolve the dispute.

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16 NOTICES

- (a) A notice or other communication to a party under this Agreement must be:
 - (i) in writing and in English; and
 - (ii) delivered via email to the other party, to the email address specified in this agreement, or if no email address is specified in this agreement, then the email address most regularly used by the parties to correspond regarding the subject matter of this agreement as at the date of this agreement (**Email Address**). The parties may update their Email Address by notice to the other party.
- (b) Unless the party sending the notice knows or reasonably ought to suspect that an email was not delivered to the other party's Email Address, notice will be taken to be given:
 - (i) 24 hours after the email was sent, unless that falls on a Saturday, Sunday or a public holiday in the state or territory whose laws govern this Agreement, in which case the notice will be taken to be given on the next occurring business day in that state or territory; or
 - (ii) when replied to by the other party,whichever is earlier.

17 GENERAL

17.1 GOVERNING LAW AND JURISDICTION

This agreement is governed by the law applying in the Australian Capital Territory. Each party irrevocably submits to the exclusive jurisdiction of the courts of the Australian Capital Territory and courts of appeal from them in respect of any proceedings arising out of or in connection with this agreement. Each party irrevocably waives any objection to the venue of any legal process on the basis that the process has been brought in an inconvenient forum.

17.2 AMENDMENTS

This agreement may only be amended in accordance with a written agreement between the parties.

17.3 WAIVER

No party to this agreement may rely on the words or conduct of any other party as a waiver of any right unless the waiver is in writing and signed by the party granting the waiver.

17.4 SEVERANCE

Any term of this agreement which is wholly or partially void or unenforceable is severed to the extent that it is void or unenforceable. The validity and enforceability of the remainder of this agreement is not limited or otherwise affected.

17.5 JOINT AND SEVERAL LIABILITY

An obligation or a liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally.

17.6 ASSIGNMENT

A party cannot assign, novate or otherwise transfer any of its rights or obligations under this agreement without the prior written consent of the other party.

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17.7 COUNTERPARTS

This agreement may be executed in any number of counterparts. Each counterpart constitutes an original of this agreement and all together constitute one agreement.

17.8 COSTS

Except as otherwise provided in this agreement, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this agreement.

17.9 ENTIRE AGREEMENT

This agreement embodies the entire agreement between the parties and supersedes any prior negotiation, conduct, arrangement, understanding or agreement, express or implied, in relation to the subject matter of this agreement.

17.10 INTERPRETATION

- (a) **(singular and plural)** words in the singular includes the plural (and vice versa);
- (b) **(gender)** words indicating a gender includes the corresponding words of any other gender;
- (c) **(defined terms)** if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (d) **(person)** a reference to "person" or "you" includes an individual, the estate of an individual, a corporation, an authority, an association, consortium or joint venture (whether incorporated or unincorporated), a partnership, a trust and any other entity;
- (e) **(party)** a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes any substituted or additional trustee;
- (f) **(this agreement)** a reference to a party, clause, paragraph, schedule, exhibit, attachment or annexure is a reference to a party, clause, paragraph, schedule, exhibit, attachment or annexure to or of this agreement, and a reference to this agreement includes all schedules, exhibits, attachments and annexures to it;
- (g) **(document)** a reference to a document (including this agreement) is to that document as varied, novated, ratified or replaced from time to time;
- (h) **(headings)** headings and words in bold type are for convenience only and do not affect interpretation;
- (i) **(includes)** the word "includes" and similar words in any form is not a word of limitation;
- (j) **(adverse interpretation)** no provision of this agreement will be interpreted adversely to a party because that party was responsible for the preparation of this agreement or that provision; and
- (k) **(currency)** a reference to \$, or "dollar", is to Australian currency, unless otherwise agreed in writing.

18 DEFINITIONS

In addition to capitalised terms defined in the Agreement Details above, capitalised terms used in this agreement will have the following meanings:

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Term	Meaning
Direct Debit Request, DDR	means the Direct Debit Request located in the Pilates Service Form authorising GoCardless to debit your nominated account or credit card for Fees payable to X-hale Pilates Studio in accordance with the DDR Service Agreement.
DDR Service Agreement	means the DDR Service Agreement between you and GoCardless relating to the Fees payable under the Pilates Service Form located in Appendix C.
Commencement Date	means the date that this Agreement is executed.
Laws	mean any applicable statute, regulation, by-law, ordinance or subordinate legislation in force from time to time in the relevant jurisdiction(s) where the Services are performed or received and includes any industry codes of conduct.
Premises	means the Pilates Studio located at 6/17 Sidney Nolan Cres Conder ACT 2906.
User, you, your	means the party and includes the parent or guardian of the User if the User is under 18 years of age.
Pilates Service Form	has the meaning set out in clause 2(a) of these Terms and Conditions.
Membership Plan	means the type of membership available through the App that the User has selected.
Personnel	means, in respect of a party, that party's officers, employees, contractors (including subcontractors) and agents.
Staffed Hours	means between 5AM and 7PM on a weekday basis.
Third Party Terms	has the meaning set out in clause 6.

19 INTERPRETATION

In this Agreement, the following rules of interpretation apply:

- (a) **(singular and plural)** words in the singular includes the plural (and vice versa);
- (b) **(gender)** words indicating a gender includes the corresponding words of any other gender;
- (c) **(defined terms)** if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (d) **(person)** a reference to **"person"** includes an individual, the estate of an individual, a corporation, an authority, an association, consortium or joint venture (whether incorporated or unincorporated), a partnership, a trust and any other entity;
- (e) **(party)** a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes any substituted or additional trustee;
- (f) **(this Agreement)** a reference to a party, clause, paragraph, schedule, exhibit, attachment or annexure is a reference to a party, clause, paragraph, schedule,

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exhibit, attachment or annexure to or of this Agreement, and a reference to this Agreement includes all schedules, exhibits, attachments and annexures to it;

- (g) **(document)** a reference to a document (including this agreement) is to that document as varied, novated, ratified or replaced from time to time;
- (h) **(currency)** a reference to “\$” or “dollar” is to Australian currency;
- (i) **(headings)** headings and words in bold type are for convenience only and do not affect interpretation;
- (j) **(includes)** the word “includes” and similar words in any form is not a word of limitation; and
- (k) **(adverse interpretation)** no provision of this Agreement will be interpreted adversely to a party because that party was responsible for the preparation of this Agreement or that provision.

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APPENDIX A – SCREENING TOOL

The Screening Tool below is intended for general use only and in no way guarantees against harm to health injury or death. X-hale Pilates Studio accepts no liability for any loss, damage or injury that may arise from any person acting on any information contained in this tool.

1. Has your doctor ever told you that you have a heart condition or have you ever suffered a stroke?	Yes	No
2. Do you ever experience unexplained pains in your chest at rest or during physical activity/exercise?	Yes	No
3. Do you ever feel faint or have spells of dizziness during physical activity/exercise that causes you to lose balance?	Yes	No
4. Have you had an asthma attack requiring immediate medical attention at any time over the last 12 months?	Yes	No
5. If you have diabetes (type I or type II) have you had trouble controlling your blood glucose in the last 3 months?	Yes	No
6. Do you have any diagnosed muscle, bone or joint problems that you have been told could be made worse by participating in physical activity/exercise?	Yes	No
7. Do you have any other medical condition(s) that may make it dangerous for you to participate in physical activity/exercise?	Yes	No
8. Are you pregnant or have you given birth within the last 12 months?	Yes	No
9. Do you know of any other reason why you should not participate in physical activity? If so please list below	Yes	No

IF YOU ANSWERED 'YES' to any of the above questions, please seek guidance from your GP or appropriate allied health professional and return with a copy of the doctor's clearance letter prior to starting exercising.

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APPENDIX B – AGREEMENT AND WAIVER

X-HALE PILATES STUDIO NAME WAIVER

1. You request to participate in the Services set out in your X-hale Pilates Studio Membership Agreement which includes this Waiver (**Agreement**) that are provided by X-hale Pilates Studio ABN 86 644 628 197 or third parties hired by X-hale Pilates Studio.

Your initial_____

2. You understand and acknowledge that the Services, including but not limited to access to Premises and equipment as well as training, programs, and events held by X-hale Pilates Studio may expose you to risk, including accidents, injury, illness or even death. You assume all risk of injuries associated with participation in the Services, including but not limited to, falls, contact with other participants, equipment failure, risks inherent in pilates and other related fitness activities, such as impact injuries, physical risks inherent in exercise, the effects of the weather, including high heat and/or humidity and the loss of your personal property and exclude X-hale Pilates Studio from liability.

Your initial_____

3. You understand and acknowledge that participating in the Services is inherently dangerous and can occasion a range of minor and major injuries, including but not limited to, bumps, bruises, scrapes and scratches, sprains, twists, cramps, fractured bones, broken bones, torn ligaments and even death. If you are participating in any classes provided by X-hale Pilates Studio, you assume all risk of injuries and/or death associated with your participation and exclude X-hale Pilates Studio from liability.

Your initial_____

4. Because physical exercise can be strenuous and subject you to risk of serious injury, X-hale Pilates Studio urges you to obtain a physical examination from a doctor before using any exercise equipment or participating in any Services. You agree that when you use the Premises, engage in the Services, on the premises or off the premises, including at an event, you do so entirely at your own risk.

Your initial_____

5. You warrant and represent that you have no injuries, physical restrictions, disabilities or predispositions to sickness or injury (**Conditions**) that may affect your participation in the Services or that if you are aware of such Conditions, you participate in any Services provided by X-hale Pilates Studio entirely at your own risk.

Your initial_____

6. You exclude X-hale Pilates Studio and its officers, employees and contractors, the organisers, sponsors, other participants and any other persons involved in your participation in the Services with X-hale Pilates Studio (**Releasees**) from any demand, claim, or other proceeding in relation to any injury or death or loss or damage to personal property in connection with your participation in the Services with X-hale Pilates Studio, whether or not caused by the negligence of a Releasee.

Your initial_____

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7. You agree to indemnify each Releasee in relation to any demand, claim or proceeding that may be brought in connection with your participation in the Services with X-hale Pilates Studio where circumstances giving rise to such a demand, claim, or proceeding were caused or contributed to by you or your breach of X-hale Pilates Studio Pilates Service Form and Agreement.

Your initial _____

8. You agree that should any part of this Agreement and waiver be found by a court of law to be against public policy or in violation of any state statute or case precedence, then only that wording is removed and the remainder of this Agreement and waiver will remain in full force.

Your initial _____

Signed by the User or (if applicable) their)
Parent or Guardian:)

Full name of User

Signature of User/Parent or Guardian

Name of Parent or Guardian (if applicable)

Date

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APPENDIX C – DDR SERVICE AGREEMENT

X-hale Pilates uses GoCardless to process your Direct Debit payments. More information on GoCardless services can be found through the [link here](#).