

Fit 4 Life Packages

Terms and Conditions of Membership

Your attention is particularly drawn to the fees and charges, cancellation, liability and extension terms set out at **Clause 4, Clause 5, Clause 7 and Clause 9.**

DEFINITIONS

Club: Dolphin Centre and Eastbourne Leisure Centre in Darlington

Contract: these terms and conditions, Code of Conduct and Membership Agreement, copies of which are available on our website:

The Council or We/Us means Darlington Borough Council

Fixed Term: means a fixed term commitment of either 6 or 12 calendar months. The Fixed Term may be extended in accordance with this Contract.

Code of Conduct: the standards of behaviour required for safe and acceptable use of the Club facilities, as displayed in the Club and a copy of which is available on our website.

Membership Agreement: document signed by you accepting these terms and conditions and confirmation of your membership category and Membership Fees and payment method.

Membership Fees: the charges payable for your category of membership as set out in the Membership Agreement.

Monthly Fee: The monthly payment of your Membership Fee as set out in your Membership Agreement. The Monthly Fee must be paid by Direct Debit.

Health Survey : the questionnaire to be completed by each member before commencing physical activities.

Student Membership: means membership for an individual who is aged 14 or above and is in full time education and is able to provide a stamped student form for the current academic year.

Junior Plus Membership: means membership for a child who is aged 12 to 14 years old and has a linked membership with an adult (who is also a member). Junior Plus Membership is a rolling monthly contract which must be paid by monthly direct debit by the adult whom the child's membership is linked to. The child shall only be allowed to attend the Gym with the adult his/her membership is linked to.

Upfront Fee: if you choose to pay in advance for a Fixed Term Contract, the amount payable upfront for your Membership Fee as set out in the Membership Agreement.

1. COMMENCEMENT

- 1.1 Your Contract and membership will commence as set out below:
 - 1.1.1 For Fixed Term Contracts paid by an Upfront Fee will commence on the date you have signed the Membership Agreement and paid your Upfront Fee and shall continue for the Fixed Term or as otherwise set out in this Contract, unless extended or cancelled in accordance with this Contract.
 - 1.1.2 For Fixed Term Contracts paid by a Monthly Fee your Contract will commence on the date you sign the Membership Agreement and pay two months fees upfront and shall continue for the Fixed Term or as otherwise set out in this Contract, unless extended or cancelled in accordance with these terms and conditions.
 - 1.1.3 The Council at its sole discretion may at any time change your payment arrangement from a Monthly Fee to an Upfront Fee.

2. MEMBERSHIP

- 2.1 Applicants for Student Membership must present a stamped student form on making their application, for individuals aged under 18 parental consent will also be required to join. A stamped student form must be provided for subsequent academic years (September to August). If a valid and up to date stamped student form is not provided your membership will be transferred to a full membership which will increase your Monthly Fee. If you paid an Upfront Fee further funds will be owed by you to cover the shortfall. Refunds will not be made for stamped student forms issued late.
- 2.2 Junior Plus Members must be accompanied by the adult their membership is linked to at all times and must have parental consent to join. Junior Plus Membership is a rolling monthly contract which must be paid by monthly direct debit by the adult the child's membership is linked to.
- 2.3 Applicants for a Senior Membership will be required to prove that they are 60 or over and complete the Dolphin Centre Card Form.
- 2.4 Acceptance of an application for membership is solely at the discretion of the Council and reasons need not be given for refusal. If the Council accepts the application there shall be a binding contract between you and the Council.
- 2.5 You agree to comply and be bound by these terms and conditions, Membership Agreement and our Code of Conduct.
- 2.6 Membership is personal to you and cannot be assigned, transferred or otherwise disposed. You must also not share, sell, lend, or otherwise allow another person to use, your membership card. Any member found to be doing so shall have his/her membership revoked.

- 2.7 If your membership card is lost, stolen or damaged you will be charged £2.00 for a replacement.
- 2.8 You must complete a Health Survey before commencing use of the Club.
- 2.9 You agree that We may take and store a photograph of you for the purposes of your membership card and our security checks.
- 2.10 You acknowledge that the Council may make reasonable changes to the Code of Conduct, these terms and conditions and the Membership Agreement at any time and at the Council's discretion. You must therefore regularly check our website for updates and variations.
- 2.11 You agree to advise Us promptly of any change to your Member details, as provided on your Membership Agreement.
- 2.12 You agree that We may store your personal details provided on your Membership Agreement.

3. APPLICATION OF CONDITIONS

- 3.1 These terms and conditions shall prevail over any inconsistent terms or conditions contained or referred to in your Membership Agreement, the Code of Conduct or course of dealing.
- 3.2 The Council may, from time to time and without notice, change the services provided pursuant to this Contract in order to comply with any applicable safety or statutory requirements.
- 3.3 We shall notify you of any changes in the manner We deem most appropriate, which may include updates to our website or signs within the Club (this list is not exhaustive).

4. MEMBERSHIP FEES AND CHARGES

- 4.1 You agree to pay the Membership Fees in accordance with your Membership Agreement. You shall pay either an Upfront Fee or a Monthly Fee for your Fixed Term Contract. Upfront Fees can be made by either cash, cheque, credit or debit card. Monthly Fees must be made by direct debit.
 - 4.2 If you opt to pay monthly via Direct Debit you will be required to pay 2 months subscriptions upfront at application and a further 10 payments by Direct Debit on a monthly basis, commencing in the third month of your membership. If you join the Gym mid-month you will be required to pay the full Monthly Fee for this month, however, if you ever terminate your membership the days you paid for at the start of the membership will be made available to you at the expiry of your membership. For example if you joined on the 21st of the month the 20 days which you have paid for will be added to the end of your Fixed Term or rolling monthly contract. Monthly subscriptions shall be payable irrespective of the actual usage of the membership facilities and shall be debited from the members bank account monthly by direct debit.
 - 4.2.1 Direct Debits will be taken out of your account on the first working day of each month.
 - 4.2.2 We reserve the right to vary the membership Fees at any time. You will be notified 14 days before any changes are made to the amounts being debited from your bank account.
 - 4.3 The Upfront Fee or the first two Monthly Fees paid upfront if you are paying monthly, and or subsequent monthly payments are not refundable.
 - 4.4 If you fail to pay any monies due under your Contract the Council will refuse you entry to the Club and or terminate your membership see clause 8.1. You will be refused entry to the Club until the arrears are settled in full. Please note that even if you are in arrears and barred from entering the club direct debit payment will still be requested from your bank account for the remainder of your Fixed Term and or on a rolling monthly basis and or until all the outstanding funds have been collected.
 - 4.5 The Council may charge you an administration fee of up to £10 on each occasion the Council requests payment of the debt from you. Any failure to pay a debt due to the Council will result in you being refused membership in the future.
- ### 5. EXPIRY OF A FIXED TERM CONTRACT/ROLLING MONTHLY CONTRACT
- 5.1 Where you enter into a Fixed Term Contract, you acknowledge that you are entering into a long term commitment with us. Fixed Term Contracts can be paid wholly upfront, or paid by Direct Debit on a monthly basis for a minimum fixed term (6 or 12 months). You confirm that you have entered into this commitment in full consideration of any likely changes in your own personal circumstances over this period and acknowledge that the Contract can only be cancelled by you in very limited circumstances (see clause 9).
 - 5.2 For Fixed Term Contracts paid by an Upfront Fee your Contract will end on the last day of the Fixed Term.

- 5.3 For Fixed Term Contracts paid by a Monthly Fee, if you fail to provide the Council with written notice that you do not want your Contract to extend, no less than 30 days before the end of the Fixed Term, your Contract will automatically continue on a rolling monthly basis.
- 5.4 If your Contract continues on a rolling basis the Council will continue to debit the applicable Membership Fees at the time the Fixed Term expires until your Contract is terminated in accordance with clause 5.5.
- 5.5 You may cancel your rolling monthly Contract (i.e. after the expiry of the Fixed Term) on providing the Council with 30 days written notice which must expire on the last day of the calendar month. As per clause 4.2 above you may be able to access the Gym at the expiry of your rolling monthly contract depending on when your membership started.
- 6. REPAIR AND REFURBISHMENT**
- 6.1 You acknowledge that it may be necessary for the Council to close all or parts of the Club from time to time to carry out repairs or refurbishments and that this may disrupt the provision of the services. Subject to Clause 6.2, you agree that any such disruption shall not constitute a material breach of the Contract. The Council will always take care to minimise any inconvenience caused.
- 6.2 If the Club is closed for an extended period, the Council will use its best efforts to provide you with suitable alternative facilities for the duration of the closure. Where the Council is unable to do so, the Council may, at its discretion, refund a proportion of your Membership Fees already paid that relate to the period of closure.
- 7. LIMITATION OF LIABILITY**
- 7.1 Nothing in this Contract shall limit or exclude the Council's liability:
- 7.1.1 for death or personal injury caused by the Council's negligence;
- 7.1.2 for fraud or fraudulent misrepresentation;
- 7.1.3 for any liability that cannot be limited or excluded by law.
- 7.2 Subject to Clause 7.1 above;
- 7.2.1 The Council shall not be liable for any direct, indirect, general or special damages, or consequential loss (including loss of profit, loss of business opportunity, loss of business, loss of goodwill, loss of production and pure economic loss), or any other damages or loss however caused.
- 7.2.2 The Council shall not be liable for any theft, loss or damage to any property however caused.
- 7.2.3 The Council shall not be liable for death or personal injury caused by another party's negligence, omissions or actions.
- 7.2.4 You accept that there is a risk of personal injury by taking part in physical activity (for example muscular strains, sprains, fractures etc. this list is not exhaustive). You confirm and accept that you are aware of this risk but still wish to participate in physical activity at the Club. You accept that the Council is not liable for such injuries, unless caused by its negligence.
- 7.3 The Council shall not be liable for any services offered by any third parties.
- 7.4 Any property found within the Club (including a locker) will be stored for a period of up to 1 month and will be deemed lost property (excluding any wet items which will be disposed of immediately on discovery). After expiry of the 1 month period, the property will be disposed of if not claimed. The Council shall not be liable for any loss incurred by you in relation to the disposal of lost property.
- 8. CANCELLATION BY THE COUNCIL**
- 8.1 Without prejudice to any other rights or remedies which each party may have, the Council shall be able to terminate the Contract immediately on giving notice to you if you are in breach of these terms and conditions, Membership Agreement and or the Code of Conduct. If the Council terminates the Contract pursuant to this clause it reserves the right to retain all or a proportion of the money which you have paid under the Contract.
- 8.2 We may cancel your membership immediately should you harass, threaten or abuse our staff or other Members of the Club, maliciously damage our property, or should you commit any illegal act whilst on our facilities. We may also cancel your membership immediately if it is discovered that you have breached a previous contract/agreement with Us.
- 8.3 The Council may terminate the Contract upon providing you with 30 days written notice without reason.
- 9. TERMINATION/SUSPENSION BY YOU**
- 9.1 You may terminate or suspend your Contract on giving the Council 30 day's written notice in the event of certain circumstances that are beyond your reasonable control, as follows:
- 9.1.1 In the event that your permanent address changes to be more than 20 miles away from the Club, upon appropriate evidence being provided and received by the Council (for example a copy of a utility bill showing your new address).
- 9.1.2 In the event that your employment changes to be more than 50 miles away from the Club, upon appropriate evidence being provided and received by the Council.
- 9.1.3 Long term (over three months) illness or injury: in the event of an illness, injury or medical condition which in the written opinion of a doctor or other suitably qualified medical practitioner prohibits you from exercising for a period of three consecutive months or longer, upon appropriate evidence of such illness, injury or medical condition being provided.
- 9.1.4 Redundancy: where you have been made redundant from your employer or otherwise lose your job, upon appropriate evidence of redundancy or proof of entitlement to jobseeker's allowance being provided.
- 9.2 You may suspend your membership for no longer than 3 months, after which, your membership will continue or you may terminate your membership if any of the above reasons listed at clause 9.1 apply.
- 9.3 If you pay by Monthly Fee and your Contract is cancelled under this Clause 9 your Contract will end at the end of the calendar month of your final payment. No refund of payments already made shall apply.
- 9.4 If you paid an Upfront Fee and you cancel your Contract under this Clause 9, you may be entitled to a partial refund of your Membership Fee pro-rated for the remaining months of the Fixed Term (at the total discretion of the Council).
- 10. VARIATION OF MEMBERSHIP**
- 10.1 You may vary your membership at any time during the Fixed Term of your Contract with the written consent of the Council.
- 11. FORCE MAJEURE**
- 11.1 The Council shall not be liable for failure to perform its obligations under the Contract if such failure results from Force Majeure. Force Majeure means any cause materially affecting the performance by the Council of its obligations under this Contract arising from any act beyond its reasonable control, including without limitation: acts of God, war, industrial action, protests, strike, fire, flood, storm, tempest, epidemic, explosion, acts of terrorism and national emergencies.
- 11.2 If a Force Majeure event occurs that affects the performance of the Council's obligations under these Terms:
- 11.2.1 the Council will contact you as soon as reasonably possible to notify you; and
- 11.2.2 the Council's obligations under these terms will be suspended for the duration of the Force Majeure event. Where the Force Majeure event affects the Council's performance of the services to you, the Council will restart the Services as soon as reasonably possible after the Force Majeure event is over.
- 12. MISCELLANEOUS**
- 12.1 Access to the Club and use of the facilities is only to be gained on presentation of a valid membership card.
- 12.2 Details of the Dolphin Centre and Eastbourne Sports Complex opening hours can be obtained from the reception at both sites.
- 12.3 Any special offers are subject to availability and cannot be used in conjunction with any other offer's.
- 12.4 Due to the nature of the facilities, public events will occur periodically, which may necessitate some services/facilities being temporarily unavailable, for example swimming galas.
- 12.5 Some exercise classes may require bookings in advance. Classes can be booked 8 days in advance, from 2pm onwards. Members should note that they are not guaranteed a place on any class.
- 12.6 All activities are subject to availability. The Council reserves the right to change the time and length of all activities and classes.
- 13. General**
- 13.1 If any provision of the Contract (or part of any provision) is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed not to form part of the Contract, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- 13.2 Unless set out in these terms, any notice or other communication to be given under the Contract must be delivered in writing to the Council at the addresses set out at the top of this Membership Agreement.
- 13.3 A person who is not a party to the Contract shall not have any rights to enforce its terms.
- 13.4 Failure by either party at any time to enforce any one or more of the provisions of this Contract or to require performance by the other party of any of the provisions shall not constitute or be construed as a waiver of the provision or of the right at any time subsequently to enforce all terms and conditions of this Contract nor affect the validity of the Contract or any part of it or the right of the parties to enforce any provision in accordance with its terms.
- 13.5 This Contract shall be governed by the laws of England and shall be subject to the exclusive jurisdiction of the English courts.