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TERMS AND CONDITIONS OF GORDONS GYMNASTICS CLUB (PTY) LTD

PREAMBLE

WHEREAS Gordons Gymnastics Club (Pty) Ltd is committed to the purpose and spirit of the Consumer Protection Act 68 of 2008 (hereinafter referred to as “the Consumer Protection Act”).

AND WHEREAS nothing herein contained shall limit or restrict the Client/Child’s right to privacy as envisaged in Sections 11 and 12 of the Consumer Protection Act;

AND WHEREAS nothing herein contained shall limit or exempt Gordons Gymnastics Club (Pty) Ltd, as a supplier of goods or services, from liability for any loss directly or indirectly attributable to the gross negligence of Gordons Gymnastics Club (Pty) Ltd or any person acting for or controlled by Gordons Gymnastics Club (Pty) Ltd, as envisaged in Section 51(1)(c)(i) of the Consumer Protection Act;

If any of the terms and conditions set out herein conflict with the provisions of the Consumer Protection Act, the provisions of the Consumer Protection Act shall prevail.

NOW THEREFORE:

1. INTERPRETATION AND DEFINITIONS

1.1 In these terms and conditions, unless inconsistent with, or otherwise indicated by the context:

1.1.1 the “Child” – means the minor child enrolled for Club Activities, whose details are specified by the Parent/Legal Guardian on the Membership Form and also referred to herein as the “gymnast”;

1.1.2 the “Client” – means the major male/female enrolled for Club Activities, whose details appear on the Membership Form and also referred to herein as the “gymnast”;

1.1.3 “Club Activities” – means the activities for which the Client/Child has been enrolled to take part in, which includes any travel to and from gymnastics classes and/or competitions and/or courses and/or displays;

1.1.4 “Enrolment date” – means the date on which the Membership Form together with these terms and conditions are completed and signed by the Client or the Parent/Legal Guardian of the Child;

1.1.5 the “Fee” – means the monetary cost per Term as specified on the Membership Form and which may or may not include any related deposit which may be payable;

1.1.6 the “Daily Fee” – means the monetary cost as specified on the Membership Form and which will be payable by the Client or Parent/Legal Guardian in the event that the Client/Child enrolls for a period of less than 2 Terms.



- 1.1.7 "Gordons Gymnastics" – means Gordons Gymnastics Club (Pty) Ltd;
 - 1.1.8 the "Instructor" – means the qualified individual(s), employed by Gordons Gymnastics to facilitate the Club Activities and/or who teaches and/or trains the Gymnast.
 - 1.1.9 "Membership Form" – means the form relating to the enrolment or re-enrolment of the Client/Child;
 - 1.1.10 the "Parent/Legal Guardian" – means an adult person being the parent or legal guardian of the Child and who will be responsible for the payment of the Fee/Daily Fee, as the case may be;
 - 1.1.11 the "Parties" – means Gordons Gymnastics and the Client or Parent/Legal Guardian of the Child, as the case may be;
 - 1.1.12 "Premises" – means Gordons Sport Centre, Hill Park Lane, Mowbray, Cape Town or such other premises as may be prescribed by Gordons Gymnastics from time to time;
 - 1.1.13 "Term" – means the term/duration for which the Club Activities will be provided to the Client/Child and shall be the same as the school terms set by the Western Cape Education Department;
 - 1.1.14 "this Agreement" – means these terms and conditions together with the Membership Form as well as any special terms or annexures in addition thereto;
 - 1.1.15 "Commencement Date" means the date on which the Client/Child commences with the Club Activities;
 - 1.1.16 words in the singular include the plural and vice versa;
 - 1.1.17 words referring to any one gender include the other gender; and
 - 1.1.18 a reference to a natural person includes a legal persona.
- 1.2 The headings of clauses are intended for convenience only and shall not affect the interpretation of this agreement.

2. INTRODUCTION

- 2.1 The Client/Parent/Legal Guardian is desirous of enrolling himself/herself/the Child as a member of Gordons Gymnastics, as a gymnast.
- 2.2 The Client/Parent/Legal Guardian warrants that the he/she/the Child is desirous of enrolling himself/herself as a member gymnast with Gordons Gymnastics.
- 2.3 The Client/Parent/Legal Guardian has completed the Membership Form and has read and understood these terms and conditions and considers himself/herself bound by the provisions hereof.
- 2.4 Gordons Gymnastics is desirous of providing the Client/Child with membership and utilisation of Club Activities.

3. CLUB ACTIVITIES



- 3.1 Gordons Gymnastics shall deliver the services of _____ to the Client/ Child. To this end, Gordons Gymnastics shall determine the Client/Child's level of skill and shall place him/her in the appropriate class as set out in the Membership Form.
- 3.2 The Client/Child shall be required to attend class on the days and times as set out in the Membership Form.
- 3.3 In the event that the Client/Child fails to attend any of his/her classes as per the Membership Form, Gordons Gymnastics shall not be obliged to schedule an additional class for the Client/Child nor shall it be obliged to refund the Client/Parent/Legal Guardian the amount in respect of such class.
- 3.4 Whilst every effort will be taken to maintain the consistency of the Instructors during the Term, Gordons Gymnastics reserves the right to replace/change the Instructor should it become necessary.

4. TERMS AND FEES

- 4.1 When enrolling himself/herself/the Child at Gordons Gymnastics, the Client/Parent/Legal Guardian shall be liable to pay, in addition to the Fee/Daily Fee as the case may be, any amount in respect of WCGA (together with relevant official costs in respect of competitions) and a deposit as set out in the Membership Form.
- 4.2 In the event that the Client/Child enrolls at Gordons Gymnastics for a period equal to or longer than 2 Terms the Fee as set out in the Membership Form shall be payable by the Client/Parent/Legal Guardian in advance and in accordance with Clause 4.5 below.
- 4.3 In the event that the Client/Child enrolls at Gordons Gymnastics for a period of less than 2 Terms the Daily Fee as set out in the Membership Form shall be payable by the Client/Parent/Legal Guardian in advance and in accordance with Clause 4.5 below.
- 4.4 In the event that the Client/Child enrolls at Gordons Gymnastics during a Term, the Client/Parent/Legal Guardian shall be charged the pro-rata Fee/Daily Fee, as the case may be, in respect of the remaining period of the Term(s).
- 4.5 The amounts as set out in the Membership Form and as per Clauses 4.1, 4.2, 4.3 and 4.4 above, as the case may be, must be paid on the Enrolment Date. The Client/Child will only be considered enrolled at Gordons Gymnastics if such amounts have been paid, unless the Client/Parent/Legal Guardian has signed a debit order agreement authorising Gordons Gymnastics to deduct the amounts owed to it.
- 4.6 Failure to comply with the provisions of Clause 4.5 above shall result in the Client/Child being prohibited from attending classes and/or participating in any other Club Activities.
- 4.7 Any and all Fees paid by the Client/Parent/Legal Guardian are non-refundable



except with the prior written consent of Gordons Gymnastics.

- 4.8 Should the Client/Child, in the discretion of Gordons Gymnastics, be allowed to continue with Club Activities despite not having complied with the provisions of Clause 4.5 above, the payment due but not yet received shall bear interest at the rate of 2% per month.
- 4.9 In the event that the Client/Child progresses to a higher level of Club Activities or changes gymnast groups, the Client/Parent/Legal Guardian agrees that the Fee/Daily Fee and deposit amount will change and escalate accordingly and that he/she will be liable therefore upon presentation of an invoice.

5. BREACH

- 5.1 In the event that the Client/Parent/Legal Guardian breaches any of the provisions of this Agreement, specifically those contained in Clause 4, and fails to remedy such breach within 7 days after receiving written notice from Gordons Gymnastics calling upon him/her to do so, then and in that event, Gordons Gymnastics shall be entitled, without further notice and in addition to any other remedy available to it at law to:
 - 5.1.1 Cancel this Agreement and claim all amounts which were outstanding as at the date of cancellation together with all amounts which, but for cancellation, would have been payable for the remaining period of this Agreement; or
 - 5.1.2 Claim specific performance of any obligation.

6. CANCELLATION AND TERMINATION

- 6.1 Gordons Gymnastics shall have the right to cancel this Agreement with 20 business days' written notice to the Client/Parent/Legal Guardian. In such event Gordons Gymnastics shall refund the Client/Parent/Legal Guardian the pro-rata amount in respect of the remaining period of the Term, as the case may be.
- 6.2 The Client/Parent/Legal Guardian shall have the right to cancel this Agreement by providing Gordons Gymnastics with 20 business days' written notice. In such event the Client/Parent/Legal Guardian shall be liable to pay a reasonable cancellation penalty in respect of the remaining period of the Term and as determined by Gordon Gymnastics in its sole discretion
- 6.3 The Client/Parent/Legal Guardian accepts that Gordons Gymnastics will not accept any cancellations during its shutdown period during the December/January holidays, since there is no staff on duty to process such notifications for cancellation.

7. INDEMNITY



- 7.1 The Client/Parent/Legal Guardian undertakes/warrants that he/she/the Child participates voluntarily in the Club Activities and related events.
- 7.2 The Client/Parent/Legal Guardian understands that whilst every attempt shall be made to minimise the risks inherent in the nature of gymnastics through the use of proper equipment and safe facilities, the Client/Parent/ Legal Guardian accepts and understands that the aforementioned risks cannot be eliminated completely.
- 7.3 The Client/Parent/Legal Guardian understands and realises that by he/she/the Child participating in the Club Activities and/or by attending training, he/she/the Child could possibly incur injuries no matter how well conditioned he/she/the Child may be.
- 7.4 The Client/Parent/Legal Guardian understands and accepts that gymnastics is partially a contact sport, that collisions may occur regularly and that due to the nature of gymnastics, injuries may vary from being minor to being fatal.
- 7.5 The Client/Parent/Legal Guardian is aware that the following specific injuries are not uncommon to persons who participate in gymnastics professionally or recreationally: a stoppage of breathing; spine and neck injuries (either of which could result in paralysis); heart failure; broken bones; heat stroke; heat cramp; heat exhaustion; a stroke; bleeding; convulsion; unconsciousness; abrasions; fainting; sudden illness; cramps; loss of wind.
- 7.6 The Client/Parent/Legal Guardian understands and accepts that the above list of injuries is not comprehensive but confirms that he/she now understands the type of injuries that could occur.
- 7.7 The Client/Parent/Legal Guardian understands and accepts that there is a potential for accidents and/or illness while at and/or travelling to and from gymnastics training, displays and/or other events related thereto.
- 7.8 The Client/Parent/Legal Guardian warrants that as far as he/she is aware he/she/the Child is physically capable of participating in the Club Activities and he/she/the Child is in good health. That being said, the Client /Parent/Legal Guardian nevertheless understands that Gordons Gymnastics strongly recommends that the Client/Child should undergo an annual physical examination and that the Client/Child should have personal medical and accident insurance in place prior to participating in the Club Activities and/or attending training and related activities.
- 7.9 The Client/Parent/Legal Guardian hereby agrees and authorises Gordons Gymnastics and its designated agents, representatives or employees to consent on his/her behalf to any medical and/or hospital care, including surgical intervention if, in its opinion, an emergency has arisen.
- 7.10 The Client/Parent/Legal Guardian agrees to accept responsibility for all charges incurred by any hospitalisation or treatment which he/she/the Child may receive pursuant to the authorisation contained in Clause 7.9 above.
- 7.11 The Client/Parent/Legal Guardian hereby understands and agrees that he/she/the Child



is voluntarily participating in the Club Activities and/or training and/or all activities relating thereto, with full knowledge of the potential danger which it presents, including bodily injury, property damage, and death.

- 7.12 The Client/Parent/Legal Guardian hereby understands and accepts any and all risks of such bodily injury, property damage, and death.
- 7.13 The Client/Parent/Legal Guardian agrees to release, indemnify and hold harmless Gordons Gymnastics and its officers, directors, employees, representatives and agents from all and any claim and/or demand and/or liability for bodily injury, loss, property damage or death arising from or in connection with the Client's/ Child's participation in the Club Activities and/or training and/or all activities relating thereto, which may include travelling to and from the Club, gymnastics classes and/or competitions and/or courses and/or displays, of whatsoever nature and howsoever sustained.
- 7.14 The indemnity herein contained shall endure from the Enrolment Date until such time as this agreement is cancelled or terminated by either Gordons Gymnastics or the Client/Parent/Legal Guardian.
- 7.15 By signing this agreement, you agree to receive email correspondence from Gordons Gymnastics club in respect of advertisement of future events and/or information newsletter format. Should you wish to unsubscribe, you may do so at any time by clicking "unsubscribe" at the foot of received correspondence.

8. RIGHTS TO PICTURE AND/OR VIDEO USAGE AND FEES

- 8.1 The Client/Parent/Legal Guardian hereby agrees and acknowledges that Gordons Gymnastics may use the Client/Child's name, portrait, picture and/or image and/or video footage and all reproductions thereof, either wholly or in part, in any manner or form to advertise and/or publicise and/or market itself or the Club Activities and/or the Client/Child.
- 8.2 The Client/Parent/Legal Guardian shall pay to Gordons Gymnastics an amount equal to 25% of all money, fees or contributions received by the Client/Child, directly or indirectly, under all/any contracts for the performance of, advertisement, appearances and related activities and entered into during the currency of this Agreement, specifically those originated by Gordons Gymnastics.

9. DOMICILIUM CITANDI ET EXECUTANDI

- 9.1 The Parties choose as their respective *domicilium citandi et executandi* the following addresses:



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Hill Park Lane, Mowbray
P.O. Box 13054
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Tel: 021-686 9213
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info@gordonsct.co.za
web: [HYPERLINK "http://www.gordonsct.co.za"](HYPERLINKhttp://www.gordonsct.co.za) www.gordonsct.co.za
www.gordonsct.co.za
www.gordonsct.co.za

- 9.1.1 Gordons Gymnastics Club: Gordons Sports Centre, Hill Park Lane, Mowbray, Cape Town
Tel.: 021-686 9213; Fax: 086 510 9535
- 9.1.2 The Client/Parent/Legal Guardian:
This information shall be as contained in the membership form.
- 9.2 Any party may at any time change its *domicilium citandi et executandi* by notice in writing, provided that the new *domicilium citandi et executandi* is in the Republic of South Africa and consists of, or includes, a physical address at which process can be served.
- 9.3 Any notice given in connection with this Agreement must be in writing and may be delivered by hand; or be transmitted by telefax, to the *domicilium citandi et executandi* chosen by the party concerned. Any notice or process delivered on any party in connection with any matter or subject arising out of this Agreement or any notice shall be deemed to have been delivered if handed to any responsible person at the *domicilium citandi et executandi* chosen by any party and it shall not be necessary to hand such process or notice to any party personally.
- 9.4 A notice given as set out above shall be presumed to have been duly delivered on the date of delivery if delivered by hand and on the date of transmission if transmitted by telefax/email.
- 9.5 Notwithstanding anything to the contrary herein contained or implied, a written notice or communication actually received by a party shall be an adequate written notice or communication, notwithstanding that it was not delivered or transmitted at the chosen *domicilium citandi et executandi*.

10. GENERAL

- 10.1 This Agreement constitutes the entire agreement between the Parties and no amendment, alteration, addition to, variation of or consensual cancellation of this Agreement will be of any force or effect unless reduced to writing and signed by both Parties.
- 10.2 This Agreement shall be governed by the law of the Republic of South African and the Client/Parent/Legal Guardian hereby consents to the jurisdiction of the Magistrates' Courts of South Africa having jurisdiction in respect of any dispute arising from or relating to this Agreement.
- 10.3 In the event of a breach of this Agreement by the Client/Parent/Legal Guardian, the Client/Parent/Legal Guardian shall be liable for all debt collection costs and/or attorney's



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costs which are incurred in the enforcement of the provisions of this Agreement on an attorney and own client scale, including tracing agent fees and collection commission.

- 10.5 No indulgence, leniency or extension of a right, which either of the Parties may have in terms of this Agreement, and which either party ("the grantor") may grant or show to the other party, shall in any way prejudice the grantor, or preclude the grantor from exercising any of the rights that it has derived from this Agreement, or be construed as a waiver by the grantor of that right.
- 10.6 No indulgence which either Party may grant to the other shall constitute a waiver of any of the rights of that Party, who shall not thereby be precluded from exercising any of its rights against the other Party which may have arisen in the past or which might arise in the future.
- 10.7 The Client/Parent/Legal Guardian warrants that the information set out in the Membership Form and in the Indemnity and/or in any other form or document is accurate in all respects and the Client/Parent/Legal Guardian shall notify Gordons Gymnastics of any change to such information within 7 (seven) days of such change.
- 10.8 In the event that any of the provisions of this Agreement are found to be invalid, unlawful, or unenforceable such terms shall be severable from the remaining terms, which shall continue to be valid and enforceable.

I, _____ (name of Client/Parent/Legal Guardian) the parent and legal guardian of _____ (name of child) (if applicable) confirm that I have read, understood and accept the Terms and Conditions contained herein.

THUS DONE and SIGNED at _____ on the _____ day of _____ 20____

SIGNATURE OF CLIENT/PARENT/LEGAL GUARDIAN

THUS DONE and SIGNED at _____ on the _____ day of _____ 20____

FOR AN ON BEHALF OF GORDONS



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