

# SHELTER

## **Shelter At Home Terms and Conditions**

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Updated October 2020

These Terms and Conditions apply to all Members who subscribe to a Membership with Shelter for the provision of Services and/or Equipment.

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# Shelter At Home Terms and Conditions

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## 1 General Provisions

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### 1.1 Definitions

The following terms have the following meaning in the Shelter At Home Terms and Conditions:

- (a) **Account** means the registered Shelter account of a Member with respect to its Membership.
- (b) **Alteration** means an alteration to a Membership held by a Member in accordance with clause 2.3.
- (c) **Additional Services** means any additional services provided by Shelter to the Member in accordance with clause 4.3.
- (d) **AEST** means Australian eastern standard time.
- (e) **AEDT** means Australian eastern daylight savings time.
- (f) **Application Form** means the online application form to be completed by certain Members as referred to in clause 2.3.
- (g) **Billing Cycle** means the weekly billing cycle pursuant to each Membership commencing on the Delivery Date and continuing for the Term.
- (h) **Business Day** means a day other than a Saturday, Sunday or a public holiday in New South Wales.
- (i) **Commencement Date** means the Delivery Date or Service Start Date, whichever is the earlier date.
- (j) **Consequential Loss** means expenses incurred, loss of revenue, loss of profits, loss of anticipated savings or business, pure economic loss, loss of data, loss of goodwill, loss of value of equipment (other than cost of repair), loss of opportunity or expectation loss, and any forms of special, indirect, punitive or exemplary loss or damages, and any penalties or fines imposed by a regulator, (even if such loss arises directly, naturally or in the usual course of things from any breach, action or inaction in question).
- (k) **Content** means text, graphics, images, music, software, audio, video, works of authorship of any kind, and information or other materials that are posted, generated, provided or otherwise made available through the Services.
- (l) **Damage** means any damage to the Equipment, whatsoever, that in Shelter's reasonable discretion renders the Equipment unfit for its proper purpose or requires repair.
- (m) **Delivery Date** means the date the Equipment is delivered to the Location.
- (n) **Digital On-Demand Membership** means a membership that allows the Member to only access the Services for the Term as described on Shelter's website from time to time.

- (o) **Equipment** means the health, fitness or wellness equipment provided by Shelter to Members with certain levels of Membership, as described on Shelters website from time to time.
- (p) **Essential Membership** means the essential Membership, as described on Shelter's website from time to time.
- (q) **Expert** has the meaning given in clause 11.1.
- (r) **Equipment and Services Agreement** means an agreement between an Existing Member and Shelter for the provision of Services and for the lease of the Equipment previously offered by Shelter.
- (s) **Equipment Membership** means any Membership option that includes Equipment.
- (t) **Equipment Repayment Balance** means any outstanding balance remaining to be paid with respect to the Equipment, determined by deducting the actual amount a Member has paid towards the Equipment Repayment Fee from the total Equipment Repayment Fee.
- (u) **Equipment Repayment Fee** means the total Equipment repayment component of the Subscription Fee as set out on the Shelter website from time to time.
- (v) **Existing Member** means a Member that has entered into an agreement to upgrade its leasing arrangement pursuant to the Equipment and Services Agreement to a Pro Membership.
- (w) **Expiry Notice** is a Notice given by Shelter to a Member at least 28 days from the end of any Term.
- (x) **Flow At Home** means the online fitness class operated by Shelter comprising a Yoga fundamental class using the trainer, breath and music to guide the FLOW, or as otherwise described on the Shelter website from time to time.
- (y) **Force Majeure Event** has the meaning given to that term in clause 13.2 of these Terms and Conditions.
- (z) **Free Trial** means the 7 day free trial offered to Members who sign up to a Digital On-Demand Membership with Shelter.
- (aa) **GST** means the Goods and Services Tax, defined pursuant to section 195-1 of the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- (bb) **Initial Term** means the initial 12 month term, or such other of a Membership commencing on the Commencement Date.
- (cc) **Intellectual Property Rights** means any intellectual or industrial property rights (including any registered or unregistered trademarks, patents, designs, or copyright).
- (dd) **Location** means the location or locations where the Equipment will be delivered as specified by a Member when subscribing for a Membership.
- (ee) **Loss** means any loss, cost, liability or damage, including reasonable legal costs and disbursements on a solicitor/client basis and does not include Consequential Loss.
- (ff) **Meditation At Home** means meditation style class guided by Shelter At Home trainer, or as otherwise described on the Shelter website from time to time.

- (gg) **Member** is a person who has an Account with Shelter or a who is a Membership Holder.
- (hh) **Membership** means either a Digital On-Demand Membership, Essential Membership or Pro Membership, as the case may be.
- (ii) **Membership Holder** is a Member who subscribes to a Membership with Shelter.
- (jj) **Minimum Subscription Term** means the minimum period of time that a Member is required to hold a Membership commencing on the Commencement Date and expiring on the date specified by the Membership.
- (kk) **Notice** means a written notice.
- (ll) **Online Termination Notice** means the online termination tool that allows Members to terminate their Digital On-Demand Membership with Shelter.
- (mm) **Party** means Shelter or the Member and a reference to Parties means both Shelter and the Member.
- (nn) **Policies** means the Privacy Policy, Warranty Policy, Returns Policy and/or any other policy included on Shelter's website from time to time.
- (oo) **PPSR** means a personal property securities registration made under the relevant provisions of the *Personal Property Securities Act 2009* (Cth).
- (pp) **Registered Design** means design number 202015190 for the Shelter At Home Bike, filed on 22 September 2020 with IP Australia.
- (qq) **Related Bodies Corporate** of an entity means a body corporate that is related to that entity in any of the ways specified in section 50 of the *Corporations Act 2001* (Cth).
- (rr) **Returns Policy** means Shelter's returns policy, administering all returns of the Equipment, as set out on Shelter's website (as amended from time to time).
- (ss) **Ride At Home** means the online fitness class operated by Shelter comprising of a spin bike class driven by the rhythm of music, or as otherwise described on the Shelter website from time to time.
- (tt) **Sculpt At Home** means the online fitness class operated by Shelter comprising a workout driven by the rhythm of music that blurs the lines between Pilates and body conditioning, or as otherwise described on the Shelter website from time to time.
- (uu) **Service Start Date** means the date that the Member is granted access to the Services.
- (vv) **Services** means the delivery of Content and the online health and fitness services operated by Shelter through the User Interface comprising, but not limited to:
- (i) Ride At Home;
  - (ii) Sculpt At Home;
  - (iii) Strength At Home;
  - (iv) Flow At Home; or
  - (v) Meditation At Home.

- (ww) **Shelter** means Shelter At Home Pty Ltd ACN 640 329 022, including its officers, employees, servants and agents.
- (xx) **Strength At Home** means the online fitness class operated by Shelter comprising a workout driven by body weight exercises to improve strength, or as otherwise described on the Shelter website from time to time.
- (yy) **Shelter At Home Bike** means either the essential or pro versions of the exercise bike sourced by Shelter
- (zz) **Stripe** means Stripe, Inc.
- (aaa) **Subscription Fee** means the fee payable by a Member for a Membership, which includes any Equipment Repayment Fee, as set out on Shelter's website from time to time.
- (bbb) **Subsequent Term** means each further term of twelve (12) months commencing on the expiry of the Initial Term or each prior Subsequent Term (as applicable).
- (ccc) **Term** means the Initial Term and any Subsequent Term, commencing on the Commencement Date.
- (ddd) **Terms and Conditions** means the terms and conditions (as amended from time to time) set out in this document.
- (eee) **Trial Period** means, with respect to a Digital On-Demand Membership, the period commencing on the Delivery Date and concludes 7 days after the Delivery Date.
- (fff) **Upfront Payment** means the option for a Member to pay for its Membership outright upon subscribing for a Membership.
- (ggg) **User Interface** means the user interface provided by Shelter for the provision of the Services which may be accessed through the Shelter website and mobile, desktop or other device applications, including the Shelter mobile application and/or the MindBody application.
- (hhh) **Weekly Payment Option** means the payment option whereby a Member pays its Subscription Fee in arrears in equal weekly instalments at the conclusion of each Billing Cycle.
- (iii) **Warranty** means the warranty offered by Shelter on the Equipment (as applicable) as set out in the Warranty Policy.
- (jjj) **Warranty Period** means the length of time that the Warranty will apply to certain Equipment as set out in the Warranty Policy.
- (kkk) **Warranty Policy** means Shelter's warranty policy for the Equipment provided to the Member pursuant to their Membership.

## 1.2 Interpretation

In these Terms and Conditions, unless the context otherwise requires:

- (a) headings or subheadings are inserted for guidance only and do not govern the meaning or construction of any provision of these Terms and Conditions;
- (b) a reference to any document is to that document as amended, novated, supplemented or replaced from time to time;

- (c) words expressed in the singular include the plural and vice versa;
- (d) words expressed in one gender include the other gender;
- (e) a 'person' includes a company, partnership, firm, joint venture, association, authority, corporation or other body corporate;
- (f) a reference to a party includes that party's successors and permitted assignees and, in the case of a natural person, includes that person's personal representatives and administrators;
- (g) a reference to any thing or any amount is a reference to the whole and each part of it. A reference to a group of persons is a reference to all of them collectively, to 2 or more them collectively and to each of them individually;
- (h) references to time are to time in Sydney, New South Wales;
- (i) where a day, which is not a Business Day, is specified by or on which a thing must be done, that thing that must be done by or on the next succeeding Business Day; and
- (j) a covenant or document made by, or for the benefit of, two or more persons binds, and is enforceable against, or may be exercised by (as the case may be), those persons jointly and each of them severally.

### 1.3 Application

- (a) These Terms and Conditions apply to all Memberships to the exclusion of all other terms and conditions, including any terms and conditions which the Member purports to apply or which are endorsed on any correspondence or documents issued by the Member irrespective of their date of communication to Shelter.
- (b) The Member must accept these Terms and Conditions in order to subscribe to a Membership. If the Member does not wish to be bound by these Terms and Conditions, the Member is prohibited from subscribing to a Membership.

### 1.4 Initial Term

The Membership commences on the Commencement Date and continues for the Initial Term, unless terminated prior in accordance with clause 12.

### 1.5 Subsequent Term

- (a) Not less than 28 days before the conclusion of the Initial Term and each Subsequent Term (as applicable), Shelter will notify the Member that their Membership is due to expire (**Expiry Notice**).
- (b) In the event the Member holds a Digital On-Demand Membership and does not respond to the Expiry Notice before the end of the relevant Term, Shelter will automatically renew the Membership for a further Subsequent Term.
- (c) In the event the Member holds a Pro Membership or Essential Membership and does not respond to an Expiry Notice before the end of the relevant Term, Shelter will automatically convert their Membership to a Digital On-Demand Membership for a further Subsequent Term. For the avoidance of doubt, during any Subsequent Term, the Member will not be required to pay any fees for any Equipment Received during the Initial Term.



## 2 Membership and Payment

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### 2.1 Becoming a Member

- (a) Any person must register an Account to become a Member online through the Shelter website. In order to become a Membership Holder, the Member must subscribe to a Membership through the Account. Depending on the Membership, the Membership will be given access to certain Equipment and Services.
- (b) All information provided by the Member to Shelter, including when the Member registers an Account, must be true, accurate and not misleading, including the Member's name, address and relevant payment information. The Member is responsible for keeping such information up to date.
- (c) Notwithstanding clause 2.1(a), an Existing Member who previously entered into an Equipment and Services Agreement with Shelter will be deemed to be a Member for the purposes of these Terms and Conditions. Therefore, such persons are not required to register an Account online to become a Member and may subscribe to a Membership by written notice to Shelter.

### 2.2 Membership levels

- (a) Shelter offers the following levels of Membership:
  - (i) an Essential Membership;
  - (ii) a Pro Membership;
  - (iii) a Digital On-Demand Membership; or
  - (iv) any other membership option either included on Shelters website or as otherwise offered by Shelter from time to time,

each of which provides the Member with access to certain Services and certain Equipment (as applicable), as outlined on Shelter's website from time to time.

### 2.3 Alteration of a Membership

- (a) A Member may alter an existing Membership online through their Account (**Account Alteration**). Any Account Alteration may be granted or denied at the sole discretion of Shelter and may be subject to additional and/or increased Subscription Fees.
- (b) If the Account Alteration results in a Membership converting from a Pro Membership or Essential Membership into a Digital On-Demand Membership, the Member will be direct debited the Equipment Repayment Balance on the date that the altered Membership commences.
- (c) Shelter, in its sole discretion (acting reasonably), may impose restrictions on the number of streams that a Member can access at any one time under a single Membership or the maximum number of users per Membership.
- (d) In the event of an Account Alteration, these Terms and Conditions will apply to the altered account and will remain binding on the Member.

### 2.4 Credit checks

Shelter may in its sole discretion conduct credit checks on certain Members before approving any Membership. If Shelter chooses to conduct a credit check on a particular Member, Shelter will request that the Member fill out a credit application form provided by Shelter (**Application**

**Form**). In conducting a credit check, Shelter may request information from Members such as payslips, bank statements, a passport, a drivers licence, or any other relevant information as determined by Shelter. If Shelter is not satisfied with a Member's credit check, it may refuse to allow the Member to subscribe for any Membership.

## 2.5 Free Trial

Each Digital On-Demand Membership will be subject to a 7 day free trial commencing on the Service Start Date (**Trial Period**). During the Trial Period, the Member may cancel their Digital On-Demand Membership at any time free of charge.

## 3 Payment

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### 3.1 General

- (a) Except with respect to a Digital On-Demand Membership, Members may elect pay the applicable Subscription Fee that relates to a Membership either:
  - (i) upfront in full at the commencement of the Term (**Upfront Payment**); or
  - (ii) on a weekly basis, payable in arrears, for the duration of the Term (**Weekly Payment**).
- (b) Upon Shelter's request and if the payment information previously provided to Shelter is no longer valid, the Member agrees to provide updated payment information to Shelter through its Account or as otherwise directed by Shelter;
- (c) Neither Shelter, nor Shelter's agents, will have any liability whatsoever for any insufficient funds or other charges incurred by the Member as a result of attempts to charge, and/or place holds on, the Member's specified payment method, as contemplated by these Terms and Conditions.

### 3.2 Equipment Memberships

- (a) A Member that opts for the Weekly Payment option with respect to an Equipment Membership agrees and acknowledges that:
  - (i) the Member will be direct debited the Subscription Fee in weekly instalments at the end of each Billing Cycle, through Stripe or any other payment processors nominated by Shelter for the duration of the Initial Term; and
  - (ii) has the legal right and authority to use all payment information that the Member has provided to Shelter.
- (b) A Member that opts for the Upfront Payment option with respect to an Equipment Membership will be directed debited the entire Subscription Fee on the Commencement Date.
- (c) As set out in clause 1.5(c), all Equipment Memberships will automatically transfer to a Digital On-Demand Membership upon the commencement of any Subsequent Term in which event the Member will pay for its Digital On-Demand Membership in accordance with clause 3.3.
- (d) For the avoidance of doubt, this clause 3.2 does not apply to Digital On-Demand Memberships.

### **3.3 Payments for Digital On-Demand Memberships**

- (a) All Members that subscribe for a Digital On-Demand Membership will be deemed to have opted for the Weekly Payment option.
- (b) A Members that holds a Digital On-Demand Membership agrees and acknowledges that, following expiry of the Trial Period, the Member will be direct debited the Subscription Fee in equal weekly instalments at the end of each Billing Cycle, through Stripe or any other payment processors nominated by Shelter for the duration of the Term.
- (c) For the avoidance of doubt, this clause 3.3 only applies to Digital On-Demand Memberships.

## **4 Services**

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### **4.1 Provision of Services**

- (a) In consideration of the Subscription Fees, Shelter shall provide the Member with a non-transferable, non-exclusive, revocable right to access and use the Services and view the Content, which is prohibited from being assigned or sublicensed to anyone.
- (b) Shelter provides the Services on an “as is” and “as available” basis. Therefore, the Member’s access to and use of the Services is at the Member’s own risk. Shelter is not liable to the Member for any Content that is obtained or exhibited using the Services or for any interruption to or failure to provide the Services.
- (c) To the extent that a third party is given access to the Services through the Membership of a Member, the Member is solely responsible for informing the third party of all the disclaimers and warnings in these Terms and Conditions.
- (d) The Member is responsible for providing its own technology to access and use the Services, such as its own computer, mobile device and/or internet connection, as may be required from time to time.
- (e) Shelter does not guarantee that the Services are suitable for all Members.

### **4.2 Acknowledgements and covenants**

- (a) Shelter will provide the Services in accordance with the Membership and will exercise a reasonable degree of skill, care and diligence as may be expected of a professional providing services of the same kind.
- (b) The Member acknowledges and covenants that:
  - (i) the Services will only be used for their intended purpose, such use to be conducted in a proper manner for the purpose and within the capacity for which it was designed;
  - (ii) the use of the Services may cause significant strain, exertion or other health related risks to the Member;
  - (iii) the Member’s use of the Equipment and Services is at the Member’s own risk;
  - (iv) the Member has considered and acknowledges the health and safety risks contained in clause 8 of these Term and Conditions;

- (v) the Member will promptly notify Shelter in writing of any fault or interference that it becomes aware of in relation to the Services whatsoever;
  - (vi) the Services will not be used or received by unauthorised persons or for any unauthorised use whatsoever;
  - (vii) the Member will not, nor will the Member authorise others to, unlawfully copy, record, retransmit, videotape, split, redirect, redistribute or otherwise reproduce, offer or supply the Services or any part thereof;
  - (viii) to take reasonable security measures to prevent any unauthorised receipt of the Services; and
  - (ix) not to duplicate, alter, retransmit or redistribute Equipment or Content provided by Shelter through the provision of the Services.
- (c) The Parties acknowledge that Shelter is not granting reproduction rights of any kind, and the rights granted are to enable use of the Services and Equipment to the extent permitted by all applicable laws.
  - (d) The Member is solely liable for any unauthorised use of Content. The Member agrees to indemnify Shelter against any Loss suffered by Shelter as a result of any unauthorised use of Content by the Member.

#### 4.3 Additional Services

- (a) The Member may request Shelter to provide additional services in addition to the Services provided under the Membership (**Additional Services**).
- (b) Where Shelter agrees to provide the Additional Services:
  - (i) all reference to the term “Services” will include such Additional Services as are agreed to be provided to the Member by Shelter; and
  - (ii) the payment of the Subscription Fees will be adjusted by the Subscription Fees, or any other fees, applicable to the Additional Services.

#### 4.4 Service changes

- (a) Shelter reserves the right to modify the Services, including, but not limited to updating, adding to, enhancing, modifying, removing or altering any content or features of the Services, at any time, in its sole discretion.
- (b) Shelter does not guarantee that the Services available at the Commencement Date will continue to be available for the entirety of the Term.
- (c) Shelter may change the Services at any time without notice, including, but not limited to, changing the scheduled timing for provision of certain Services, or withdrawing, any Content from the Services, restricting certain features and/or adding, withdrawing or changing features of functionality of the Services.
- (d) If Shelter changes the Services, resulting in them becoming “unfit for purpose” and Shelter fails to restore the Service to a fit for purpose state within 28 days of being notified by the Member, the Member may terminate their Membership forthwith.
- (e) In determining whether the Service is “unfit for purpose”, Shelter will have regard to the Service available at the Commencement Date and will determine in their reasonable opinion whether the Service is now “unfit for purpose”. If Shelter

determines that the Service is not “unfit for purpose”, the Member will have no termination right so far as it related to this clause.

- (f) The Member acknowledges that the Services may from time to time rely on rights granted by third party licensors to Shelter and are subject to change without notice. As such, Shelter may at any time make alterations to the Services or change, implement or impose additional restrictions on the Services.

## **5 Equipment**

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### **5.1 Grant of Equipment**

Members who subscribe to an Equipment Membership will be granted certain Equipment, as set out on the Shelter website from time to time, pursuant to their relevant Membership.

### **5.2 Delivery**

- (a) The Parties acknowledge that, in certain instances, the Equipment may be procured through third-party manufacturers and that the supply and delivery of Equipment to the Member will, in all cases, be subject to availability.
- (b) Any estimated times of delivery of the Equipment to the Member will be a non-binding estimate and not a firm deadline.
- (c) Shelter will use its best endeavours to have the Equipment delivered to the Location in a timely manner, however Shelter will have no liability whatsoever for delivery or procurement delays in relation to the supply of the Equipment.

### **5.3 Warranty**

- (a) The Equipment (as applicable) is subject to the Warranty for the duration of the Warranty Period. Shelter in no way guarantees the Warranty.
- (b) During the Warranty Period, Shelter will arrange for a technician to attend to the location of the Equipment to remedy any faults and/or repair any damage to the Equipment or provide replacement Equipment pursuant to the Warranty.
- (c) If the Member fails to keep and maintain the Equipment in proper working order and in good and substantial repair during the Warranty Period, Shelter may determine in its reasonable opinion that the Member has voided the Warranty.
- (d) If a Member repeatedly requests Shelter to remedy any damage, faults and/or repair any equipment pursuant to the Warranty which Shelter (acting reasonably) determines is unreasonable, the Member may be in breach of these Terms and Conditions and Shelter may refuse to provide the requested services to the Member. Damage, faults and/or repairs that may be deemed by Shelter to be unreasonable include those that are caused by the negligence or misuse of the Equipment by a Member.
- (e) For more information on the Warranty of the Equipment, please refer to Shelter's Warranty Policy.

### **5.4 Acknowledgements and covenants**

- (a) The Member acknowledges and covenants that it is a material breach of the Membership where there is an improper use of the Equipment, including (without limitation) any:

- (i) unauthorised use of the Equipment, including by any third party other than an immediate family member of the Member, or any other person agreed in writing by Shelter;
  - (ii) use of the Equipment by a person under the age of 18 years of age, unless that person is accompanied by an adult and is at least 14 years of age;
  - (iii) use of or permission to a third party to use the Equipment in order to copy, reproduce, republish, post broadcast transmit, split record, decrypt, re-code or affect a Service, which is intended to override any content protection measure;
  - (iv) attempt by the Member to affix the Equipment to any property without Shelter's consent; and
  - (v) attempt by the Member to alter, interfere with or modify the Equipment or any connections to the Equipment or adding hardware to the Equipment without Shelter's prior written consent.
- (b) The Member will be fully responsible for any loss of or Damage to the Equipment however occasioned except as a direct result of any act or omission on the part of Shelter (including its employees, agents, contractors or other personnel).
  - (c) The Member acknowledges and agrees that the Equipment will only be used in accordance with the Shelters' instructions and recommendations.

## **5.5 Maintenance**

- (a) Please note that clauses 5.5(b) to (e) apply to repairs and maintenance of the Equipment during the Warranty Period and clause 5.5(f) applies to repairs and maintenance of the Equipment outside of the Warranty Period.
- (b) During the Warranty Period, Shelter may repair, maintain and if necessary replace any Equipment where Shelter considers in its reasonable opinion that such repair, maintenance or replacement is necessary for the provision of the Services and where such repair or maintenance does not arise as a result of damage by the Member to the Equipment.
- (c) Where any repair or maintenance works attract a fee or charge, such repair or maintenance works must be pre-approved by the Member in writing. Any repair or maintenance must be carried out by Shelter (and/or its nominee(s)) promptly. The Member agrees that it will not unreasonably withhold any pre-approval for any repair or required maintenance work.
- (d) The Member must not permit any person to repair or interfere with any Equipment without the written authority of Shelter.
- (e) The Member acknowledges that the Equipment needs to be used and maintained correctly in accordance with Shelter's instructions. Unless otherwise agreed in writing, the Member is responsible for the operation, repair and maintenance of the Equipment once delivered by Shelter during the Term.
- (f) Outside of the Warranty Period, Shelter will use reasonable endeavours to assist the Member to find a technician to remedy any faults and/or repair any Damage to the Equipment at the Members' sole expense.

## 5.6 Title and Risk

- (a) In the event a Member opts for the Upfront Payment option with respect to its Equipment Membership, Title in the Equipment will pass to the Member on the Delivery Date.
- (b) In the event a Member opts for the Weekly Payment option with respect to an Equipment Membership, Title to the equipment will pass to the Member upon repayment in full of the Equipment Repayment Fee.
- (c) Shelter may (in its sole discretion) register a PPSR interest over any or all of the Equipment. The PPSR will remain in force until such time that the Equipment Repayment Fee has been paid in full (**Relevant Date**). On the Relevant Date title in the Equipment shall pass to the Member and Shelter will cause to have the PPSR interest over the Equipment removed.
- (d) The Parties agree and acknowledge that, to the extent permitted by law, all risk in the Equipment passes to the Member on the Delivery Date.

## 5.7 Modifications

- (a) During the Warranty Period, the Member must contact Shelter if the Member requires any changes to the Equipment. Shelter may in its sole discretion decide to approve or deny the proposed changes. If the Member makes any changes or modifications to the Equipment without Shelter's consent, Shelter may determine in its reasonable opinion that the Member has voided the Warranty.
- (b) If Shelter agrees to make any changes, Shelter will notify the Member of any revised or additional charges and any extra or changed terms that may apply. Once any modifications are complete, the Member will be responsible for adhering to any revised terms or additional payments.
- (c) Outside the Warranty Period, the Member may make changes and modifications to the Equipment at the Member's sole discretion. However, the Equipment is designed for a specific purpose and Shelter does not guarantee that the Equipment will be fit for this purpose if any modifications or changes are made to the Equipment by the Member without Shelter's consent.

# 6 Representations and Warranties

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## 6.1 Mutual warranties

In addition to all other mutual representations and warranties of the Parties mentioned throughout these Terms and Conditions, each Party represents and warrants that:

- (a) it has the right to enter into and perform fully its respective obligations pursuant to the Membership;
- (b) it has not and will not during the Term enter into an agreement or arrangement which limits the full performance of its obligations;
- (c) it is and will remain in full compliance with all applicable laws and regulations;
- (d) the Membership has been duly authorized by the Parties and constitutes a legally binding agreement, enforceable in accordance with these Terms and Conditions; and

- (e) the relevant Party will provide statements, records and other documents reasonably necessary to the other Party to demonstrate its compliance with applicable laws as and when reasonably requested in writing.

## **6.2 Shelter's warranties**

In addition to all other representations and warranties by Shelter mentioned throughout these Terms and Conditions, Shelter represents and warrants that:

- (a) it has the full right, power and authority to provide the Services and Equipment under the Membership; and
- (b) to the best of Shelter's knowledge, the Equipment and the programming on the Services do not infringe any other material, or violate or infringe any common law or statutory rights of any third party including, without limitation, contractual rights, copyrights (not including through-to-the-viewer music performance rights), trademarks and privacy rights.

## **6.3 Shelter's disclaimers**

In addition to all other Shelter disclaimers mentioned throughout these Terms and Conditions, Shelter makes no representations or warranties:

- (a) regarding the merchantability, fitness for particular purpose, non-infringement and quiet enjoyment of the Services and Equipment;
- (b) that the Service and Equipment is or will be permitted in the Member's jurisdiction;
- (c) that the Service and Equipment will be uninterrupted and error free;
- (d) concerning any Content;
- (e) that the Service and Equipment will meet the Member's personal and professional needs; and
- (f) that Shelter will continue to support any particular feature of the Service.

## **6.4 Member warranties**

In addition to all other Member representations and warranties identified through these Terms and Conditions, the Member represents and warrants that:

- (a) nothing pursuant to the Membership requires Shelter to do anything which is or will be a breach of the law;
- (b) the Member has read and understood the health and safety risks associated with the use of the Equipment and Services under the Membership as set out in clause 8; and
- (c) the Member will not use any other third party equipment with the Shelter Equipment, including, but not limited to, using third party shoes with the Equipment.

# **7 Liability and Indemnification**

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## **7.1 Limitation of liability**

- (a) To the fullest extent permitted by law, Shelter excludes itself from all liability with respect to any indirect, incidental, special, consequential, punitive, or exemplary



damage, including but not limited to damages for loss of profits, economic or pure economic losses, goodwill, use, data, service interruption, computer damage, system failure, inability to use the Services or view the Content, or other intangible losses that may have been suffered by the Member's use of the Equipment or Services.

- (b) Shelter's total liability to the Member for all claims will not exceed the amount actually paid by the Member to Shelter over the preceding 12 months from the date the claim arose.
- (c) Shelter may set off any final settled claims it may have against the Member prior to paying anything to the Member under the Membership.
- (d) The Member may set off any final settled claims it may have against the Shelter prior to paying anything to Shelter under the Membership.

## **7.2 Indemnification**

- (a) The Member agrees to indemnify, defend and hold harmless Shelter, its directors, employees and agents from and against all Loss suffered or incurred by the Member concerning:
  - (i) any claims by any person, other than a Member, arising out of or arising in connection with the Equipment and/or use of the Services;
  - (ii) any negligent act or omission by the Member in connection with the Equipment and/or use of the Services; and
  - (iii) any violation of these Terms and Conditions by the Member.
- (b) Shelter agrees to indemnify the Member against all losses suffered or incurred by it for any negligent act or omission of Shelter in connection with the Equipment and/or the provision of the Services.

## **8 Health and Safety Risks**

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### **8.1 General**

Shelter provides the Services and Equipment under the Memberships to the Members for health and fitness purposes. The Member accepts that these Terms and Conditions do not constitute health advice and should not be considered a substitute for professional medical advice to decide whether to subscribe to a Membership.

### **8.2 Acknowledgements**

- (a) The Member acknowledges that there are health and safety risks associated with the use of the Services and Equipment and, as such, represents and warrants that:
  - (i) the Member has consulted the Member's general practitioner or medical professional before using the Services;
  - (ii) the Member has not relied on any information contained in the as a substitute for, or replacement for professional medical advice, diagnosis, or treatment;
  - (iii) if the Member has any concerns or questions about its health, the Member will consult with their general practitioner or medical professional;
  - (iv) the Member has not, and will not, disregard, avoid or delay obtaining medical or health related advice from its healthcare professional because of

something the Member may have read on the User Interface, Shelter's website or through the Services;

- (v) the use of the Services and Equipment is solely at the Member's own risk and does not constitute medical or healthcare advice; and
  - (vi) nothing stated or posted by Shelter or made available through the Services is intended to be, and must not be taken to be, the practice of, without limitation, psychiatry, psychology, psychotherapy, or providing health care treatment, instructions, diagnosis, prognosis or advice.
- (b) The Member acknowledges that all of the following statements are true:
- (i) no medical professional or general practitioner has ever informed the Member that the Member has a heart condition or that the Member should only do physical activities recommended by a general practitioner or medical professional;
  - (ii) the Member has never felt chest pain when engaging in physical activity;
  - (iii) the Member has not experienced chest pain when not engaged in physical activity at any time within the past 6 months;
  - (iv) the Member has never lost balance because of dizziness nor has the Member ever lost consciousness as a result of physical activity;
  - (v) the Member does not have a bone or joint problem that could be made worse by the use of the Services;
  - (vi) the Member's general practitioner or medical professional is not currently prescribing drugs for the Member's blood pressure or heart condition;
  - (vii) the Member does not have a history of high blood pressure, and no one in the Member's immediate family has a history of high blood pressure or heart problems; and
  - (viii) the Member does not know of any other reason as to why the Member should not exercise;
  - (ix) the Member's general practitioner or medical professional has been specifically consulted by you and approved of your use of the Services;
  - (x) The Member is not pregnant, breastfeeding or lactating; and
  - (xi) If the Member is pregnant, breastfeeding or lactating, the Member's general practitioner or medical professional has been specifically consulted and approved the Member's use of the Services and Equipment.
- (c) Shelter reserves the right to refuse or cancel any Membership, if the Member reasonably determines that the Member has certain medical conditions or that the abovementioned representations and warranties are untrue in any respect.

## **9 Intellectual Property**

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### **9.1 Generally**

- (a) The Member acknowledges that all Intellectual Property Rights subsisting in the Services including the User Interface are owned by Shelter, or other licensors and

suppliers, and are protected by Australian and international copyright laws as well as other laws and treaties relating to the Intellectual Property Rights. Neither Shelter nor its licensors or suppliers transfer any right, title or interest to or in the Services or User Interface to the Member.

- (b) Shelter grants the Member a limited, non-exclusive, non-transferable and revocable licence to access and use the Services on these Terms and Conditions of the Membership.
- (c) All rights in and to the Services and the Equipment not specifically granted to the Member are reserved to Shelter for its exclusive use.

## 9.2 Developed IP

- (a) All Intellectual Property Rights created during the Term in the course of the provision of the Services vests in and is owned absolutely upon creation in Shelter (**Developed IP**) and Shelter has the right to use, exploit and licence the Developed IP as it sees fit.
- (b) If necessary, the Member agrees to do all things and sign all documents required to vest all title, rights and interests in any Developed IP in Shelter. Despite the foregoing, in the event the title, rights and interests in the Developed IP does not vest in Shelter for any reason, the Member agrees to do all things and sign all documents required to transfer and/or assign all title, rights and interests in any Developed IP in Shelter.

## 9.3 Rights in the Shelter At Home Bike

The Parties agree and acknowledge that:

- (a) Shelter owns all right, title and interest in the Registered Design for the Shelter At Home Bike; and
- (b) the Intellectual Property Rights subsisting in the Shelter At Home Bike are held by its manufacturer who has granted Shelter the exclusive right to distribute the Shelter At Home Bikes in Australia subject to certain conditions being satisfied.

## 9.4 Rights in Trademarks

- (a) The Member acknowledges that, all marks relating to Shelter, the Services and the Equipment (together, the **Marks**) are the exclusive property of or are licensed for use directly by Shelter.
- (b) The Member has no right and will acquire no proprietary rights to the Marks by virtue of the Membership.

## 10 Confidentiality

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- (a) These Terms and Conditions and all information obtained by the Member or Shelter from the other party or its related parties as a result of the Member procuring the Membership constitutes confidential information.
- (b) The Member and Shelter must keep confidential and not disclose the confidential information unless:
  - (i) the disclosure is to comply with a law (including a listing rule of any stock exchange on which it is listed), in which case the disclosing party must notify the other party as promptly as practicable prior to making the disclosure;

- (ii) it is to their representatives, accountants, auditors and legal counsel who are under a duty of confidentiality; or
  - (iii) Shelter and the Member consent in writing to the disclosure of confidential information.
- (c) The Member and Shelter must not release or publish any media release or announcement in connection with the Membership or use the other party's name in any media release or announcement without the other party's prior written consent.

## **11 Dispute Resolution**

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### **11.1 Referral of certain disputes to an Expert**

If any dispute or difference arises between the Parties in respect of any matter referred to in the Membership, then either Party may by Notice in writing to the other specify the nature of the dispute. If the Parties cannot resolve the dispute within 10 Business Days of receiving a Notice, either Party may submit such dispute to an independent expert for determination (**Expert**).

### **11.2 Nomination of Expert**

The Expert to be appointed shall be as agreed between the Parties. If the Parties do not reach agreement on the Expert within 5 Business Days after receipt of the Notice, the Expert will be appointed by the President of the Law Society of New South Wales.

### **11.3 Expert to have appropriate experience**

The Expert shall be required to have a reasonable commercial, technical and practical experience in the area of dispute. The Expert shall be required to undertake to keep all information obtained by virtue of its position as the appointed Expert confidential.

### **11.4 Powers of Expert**

The Expert shall have the power to:

- (a) inform himself or herself independently as to facts and if necessary technical matters to which the dispute relates;
- (b) receive written submissions, sworn and unsworn written statements, photocopy documents and to act upon the same; and
- (c) take such measures as he or she thinks fit to expedite the completion of the dispute resolution including finding adversely to any party who fails to comply with a timetable reasonably set by the Expert.

### **11.5 Expert not an arbitrator**

The Expert shall act as an expert and not as an arbitrator. The determination of the Expert shall be final and binding on the Parties.

### **11.6 Procedures**

Unless the Parties otherwise agree, the Expert will accept submissions from the Parties as to the subject matter of the dispute within 14 days of his or her appointment and will state his or her determination in writing within 14 days thereafter.

## 11.7 Costs of Expert

All costs of the Expert appointed pursuant to this clause shall be paid by the Parties in equal shares.

## 12 Termination

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### 12.1 Default by Member

- (a) The Member will be in default of the Membership (each, a **Default Event**) if the Member:
- (i) fails to make any payment due under the Membership within 14 days following receipt of any notice from Shelter, or Shelters agents (including Stripe) providing details of the failed payment (**Default Notice**);
  - (ii) fails to comply with any other material condition of the Membership and these Terms and Conditions and Shelter has provided a Default Notice to the Member specifying the nature of any claimed default on which it intends to rely to terminate the Membership and the Member has not remedied the item(s) set out in the Default Notice within 14 days of receipt of the Default Notice, or further period as is agreed in writing by the parties; or
  - (iii) suffers an insolvency event.
- (b) If a Default Event occurs for an Equipment Membership subject to Weekly Payment, Shelter will notify the Member and may, in its sole discretion, do one or more of the following:
- (i) charge to the Member a reasonable late payment fee, in addition to the Subscription Fee, determined by Shelter from time to time in its sole discretion;
  - (ii) charge to the Member the amount owed to Shelter, including the Equipment Repayment Balance;
  - (iii) if there is a PPSR interest over the Equipment, seize and repossess the Equipment from the Member; and
  - (iv) immediately restrict, block, suspend or terminate the Membership and require the Member to return the Equipment in accordance with the Returns Policy.
- (c) If a Default Event occurs for an Equipment Membership subject to Upfront Payment, Shelter will notify the Member and, in its sole discretion, immediately restrict, block, suspend or terminate the Membership.
- (d) If a Default Event occurs for a Digital On-Demand Membership, Shelter will notify the Member and, in its sole discretion, do one or more of the following:
- (i) charge to the Member a reasonable late payment fee, in addition to the Subscription Fee, determined by Shelter from time to time in its sole discretion;; and
  - (ii) immediately restrict, block, suspend or terminate the Membership.
- (e) If, following a Default Event, Shelter lawfully terminates the Membership, the Members rights pursuant to these Terms and Conditions shall terminate, without

prejudice to Shelter's rights and remedies and the survival of certain clauses, as outlined in clause 13.8.

## 12.2 Default by Shelter

The Member will be able to immediately terminate the Membership if:

- (a) Shelter fails to comply with any material condition of the Membership and the Member has provided a Default Notice to Shelter specifying the nature of any claimed default on which it intends to rely to terminate the Membership and Shelter has not remedied the item(s) set out in the Default Notice within 14 days of receipt of the Default Notice, or further period as is agreed in writing by the parties;
- (b) Shelter is placed under any form of external administration (whether insolvency or otherwise) or does or suffers any act or event from which any form of external administration (whether insolvent or not) does or might follow; or
- (c) Shelter makes an assignment for the benefit of creditors, whether voluntary or involuntary.

## 12.3 Termination of an Equipment Membership by Member

- (a) To terminate an Equipment Membership whereby the Member has opted for the Weekly Payment option, the Member must provide notice in writing to Shelter informing Shelter of their intention to terminate their Membership (**Termination Notice**) at least 14 days before the intended date of termination (**Termination Date**). If the Termination Date falls within a Billing Cycle, the Termination Date will be taken to be effective at the end of the relevant Billing Cycle (**Cancellation Fee**). In the event an Equipment Membership subject to Weekly Payment terms is terminated during the Initial Term, Shelter will provide notice to the Member containing the Equipment Repayment Balance which will be direct debited from the Member prior to the Cancellation Date.
- (b) To terminate an Equipment Membership whereby the Member has opted for the Upfront Payment option, the Member must provide Shelter with a Termination Notice at least 14 days before the intended Termination Date. The Member will not be entitled to a pro-rated refund for the balance of the Subscription Fee for the remainder of the relevant Term.

## 12.4 Termination of a Digital On-Demand Membership by Member

To terminate a Digital On-Demand Membership after the Free Trial, the Member must provide Shelter with an Online Termination Notice at least 14 days before the intended Termination Date. If the Termination Date falls within a Billing Cycle, the Termination Date will be taken to be effective at the end of the relevant Billing Cycle. The Member will be required to pay the Subscription Fee up to the end of the relevant Billing Cycle.

## 12.5 Termination in all other cases

- (a) Without limiting any rights of Parties under the Membership, either party may terminate the Membership upon 14 days' written Notice if a Force Majeure event has been subsisting for at least 30 days.
- (b) A failure of the Member to comply with clause 12.5(a) will be considered a Default Event for the purposes of clause 12.1(a), resulting in Shelter's right to terminate the Membership.

## 12.6 Accrued rights

The termination of the Membership for any reason shall not relieve either party of any of its liabilities or obligations under the Membership that accrued on or prior to the date of such termination. Termination of the Membership is in addition to any other rights or remedies that it may have in law or equity.

## 13 Miscellaneous

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### 13.1 Assignment

Neither Party is permitted to assign its rights or obligations under the Membership without the prior written consent of the other Party which must not be unreasonably withheld.

### 13.2 Force Majeure

- (a) The Parties will be not be liable to the other for any delays, pre-emption's or other failure to perform when such delays, pre-emption's or failures are due to any cause beyond the reasonable control of the party whose performance is so affected, including, without limitation, fire, war, terrorism, strike, riot, labour dispute, blackout, government intervention, natural disaster, civil disturbance, technical failure, an act of God (**Force Majeure Event**) or other cause (except financial inability) beyond the party's reasonable control.
- (b) In the event of any such delay, pre-emption or failure due to a Force Majeure Event, the affected performing party will promptly notify the other party of the nature and anticipated length of continuance of such Force Majeure Event, and during such period both Parties will be excused from their performance in accordance with these Terms and Conditions. The affected party must use its best endeavours to remove or remedy the Force Majeure Event to mitigate the losses incurred by both Parties.

### 13.3 Agency

The Membership does not create any relationship of partners, joint ventures or agency as between the Member and Shelter.

### 13.4 Entire Agreement

- (a) These Terms and Conditions incorporate Shelter's policies or procedures, referenced throughout these Terms and Conditions. The following policies are incorporated into these Terms and Conditions:
  - (i) Privacy Policy;
  - (ii) Warranty Policy;
  - (iii) Returns Policy; and
  - (iv) Any other policy included on Shelter's website from time to time.
- (b) To the extent that there are any inconsistencies between these Terms and Conditions and any of the Policies, these Terms and Conditions will prevail to the extent of the inconsistency.
- (c) The combination of these Terms and Conditions and the Policies represent to the entire understanding of the Parties with respect to the Membership and supersedes all prior written agreements or understanding between the Parties so far as it relates to the Membership.

### **13.5 Severability**

The invalidity or unenforceability of any of these Terms and Conditions will not affect the validity of any of these Terms and Conditions, and in the event that any provision is determined to be invalid or otherwise illegal, the Membership will remain in effect and will be construed in accordance with its terms as if the invalid or illegal provision were not contained herein; provided that the Parties will negotiate in good faith an equitable adjustment to the Membership so as to give effect to the intent so expressed and the benefits so provided.

### **13.6 Amendment**

- (a) These Terms and Conditions and all Policies constitute the entire agreement and understanding between the Parties with regard to the subject matter of the Membership, Services and Equipment and supersedes all prior or contemporaneous oral or written proposals, agreements and representations between the Parties.
- (b) Shelter reserves the right to unilaterally amend these Terms and Conditions and the Policies from time to time. The onus is on any Member to revisit these Terms and Conditions and the Policies to keep themselves informed of such Terms and Conditions.
- (c) When Shelter makes amendments to the Terms and Conditions and the Policies, Shelter notify Members by uploading updated versions of the Terms and Conditions and Policies to Shelter's website. The amendments will be effective from the date the amended Terms and Conditions and Policies are uploaded to Shelter's website.

### **13.7 Waivers**

None of these Terms and Conditions or the Policies will be deemed waived, and no breach will be excused, unless such waiver or excuse is in writing and signed by the party against whom such waiver or excuse is claimed. The captions and headings in the Membership are intended only for convenience, and will in no event be construed to define, limit or describe the scope or intent of the Membership, or of any provision of the Membership, nor in any way affect the interpretation of the Membership.

### **13.8 Survival**

The following clauses survive the termination or expiration of the Membership:

- (a) Clause 7 – Confidentiality;
- (b) Clause 8 – Intellectual Property; and
- (c) Clause 9 – Health and Safety Risks.

### **13.9 Taxes**

The Member must pay Shelter an additional amount for GST payable by Shelter for any taxable supplies made by Shelter pursuant to the Membership. All Subscription Fees for Memberships will be displayed as GST inclusive, unless stated otherwise. The GST amount must be paid at the same time as the Subscription Fee.

### **13.10 Non-Recourse**

Notwithstanding anything contained in these Terms and Conditions or the Policies to the contrary, it is expressly understood and agreed by the Parties hereto that each and every representation, warranty, covenant, undertaking and agreement made pursuant to the Membership was not made nor intended to be made as a personal representation, undertaking, warranty, covenant, or agreement on the part of any incorporator, member,



stockholder, director, officer, partner, employee or agent, past, present or future, or any of them, and any recourse, whether in common law, in equity, by statute or otherwise, against any of them is hereby forever waived and released.

### **13.11 Notices**

A Notice required by these Terms and Conditions must be in writing and provided to the addresses set out in the Members Account (or notified from time to time by the parties in writing), and is deemed given:

- (a) if personally delivered, at the time of delivery;
- (b) if mailed, on the day of receipt of the mail or within 3 Business Days of when the notice is posted if there is no evidence of receipt to of the mail;
- (c) if by facsimile transmission, on the day of transmission (or the next Business Day if the transmission was effected after 5pm AEST or AEDT, as the case may be); or
- (d) if by email, as soon as it enters the recipient's information system.

### **13.12 Governing law**

The Membership is governed by the laws of New South Wales and the parties submit to its non-exclusive jurisdiction.