

MERCEDES CLUB

MEMBERSHIP AGREEMENT TERMS AND CONDITIONS

1. **MEMBERSHIP:** Your membership is a contractual privilege to use the Club facilities, equipment and services, and participate in Club sponsored activities, programs and events (collectively the "Club Facilities") offered from time to time by the Club to your type of membership during the Club's published hours of operation. The Club reserves the absolute right without notice to add, change or eliminate any Club Facilities or membership types and to change its hours of operation. Your membership does not entitle you to any interest or ownership in the Club or its property and confers no right to participate in the management or operation of the Club. The membership types, the amount of initiation fees, dues and other charges payable by the members, the suspension and termination of members, and all other matters affecting or relating to your membership shall be in the Club's sole discretion.
2. **PAYMENTS:**
 - (a) **Membership Payments.** You agree to pay the initiation fee and monthly dues rate set forth on the front of this Agreement. Monthly dues and house charges shall be debited from your account through electronic funds transfer system on a monthly basis and reflect the current month's dues and the prior month's charges. Except as stated in this Agreement, all membership fees, dues and other payments are nonrefundable. You shall not be relieved of your obligations to make any such payments and no deduction or refund of dues shall be made for your failure to attend or use the Club Facilities due to vacation, travel, or other personal commitments.
 - (b) **Adjustment to Dues Rates and Other Fees.** Monthly dues rates, charges and fees for services are subject to change, as deemed necessary by the Club. The Club may increase monthly dues rates by providing you with a minimum of thirty (30) days written notice. If you have a twelve (12) month paid commitment, the Club will not change the monthly dues rate during such initial twelve (12) month period.
 - (c) **Service Charges and Late Fees.** If any payment to the Club, including by check, charge or bank draft, is not honored, or if your account is past due, the Club shall have the right to the following remedies, in addition to any other legal or equitable rights: (1) assess a service charge of \$30.00 for each dishonored transaction and require reimbursement for cost collection; (2) assess a late fee of \$20.00 for all past due accounts; (3) collect the current and past due balance in any subsequent months; and/or (4) suspend or terminate this Agreement. The Club reserves the right to change these service fees and late fees at any time. All payment disputes must be submitted in writing to the Club within 120 days of the disputed charge, to the extent permitted by law. The Club may transfer this Agreement to a collections agency, and you will be obligated to pay any collection and/or legal costs incurred by the Club in enforcing this Agreement.
3. **CANCELLATION:**
 - (a) **Additional Rights to Cancellation.** After the initial (3) three-day cancellation period set forth on the front of this Agreement, you or your estate may also cancel this Agreement for any of the following reasons: (1) if upon a doctor's order, you cannot physically receive the services because of significant physical disability for a period in excess of six (6) months; (2) if you die, in which case your estate shall be relieved of any further obligation for payment under this Agreement not then due and owing; (3) if you move your residence more than five (5) miles from any health club operated by the Club (you must provide proof of new residence); or (4) if the services of the Club cease to be offered as stated in this Agreement. Written notice of cancellation setting forth the reason for cancellation under this section shall be delivered in person or sent by certified or registered United States mail to the Club at the address in this Agreement. If your cancellation is due to a physical disability, written verification from a licensed physician must accompany your notice of cancellation. All monies, excluding the initiation fee, paid pursuant to this Agreement canceled for any of the above reasons shall be refunded within fifteen (15) days of receipt of such notice of cancellation; provided that, the Club may (A) retain the expenses incurred and the portion of the total price representing the services used or completed; and (B) demand the reasonable cost of goods and services which you have consumed or wish to retain after cancellation of this Agreement. In no instance shall the Club demand more than the full contract price from you. If you have executed any credit or loan agreement to pay for all or part of the health club services, any such negotiable instrument by you shall also be returned within fifteen (15) days. Any reinstatement of a membership that is terminated, expired or canceled will require payment of a \$50.00 reinstatement fee.
 - (b) **Cancellation by Member.** You may cancel your membership at any time after the twelve (12) month paid commitment period, by giving the Club thirty (30) days advance written notice. If you are a Mercedes Platinum Member, you may cancel at any time by giving the Club thirty (30) days advance written notice. Such cancellation shall be **deemed effective on the first day of the calendar month following the expiration of the 30-day notice period** and all outstanding dues and charges have been paid to the Club. You will remain liable for payment of dues and other charges for periods prior to the effective date of cancellation. If you prepaid your membership dues or other charges, and are eligible to cancel your membership before the end of the prepaid period, the Club will refund prepaid amounts only for unused membership time. Any amounts due by you will be deducted from any refund due to you. Until you provide written notice of cancellation as stated above and make all outstanding payments, you will continue to be charged monthly dues.
 - (c) **Cancellation by the Club.** The Club may suspend or cancel your membership at any time for (1) failure to pay your monthly dues and other charges when due; (2) any other breach of this Agreement; or (3) any violation of the Guidelines or other rules and regulations of the Club. The Club also has the right to cancel your membership at any time without cause. You will remain liable for payment of dues and other charges for periods prior to the effective date of cancellation. No refunds shall be made for membership dues and other charges

except as specifically provided for in this Agreement. If your membership is terminated for cause, the Club reserves the right to retain the unused portion of any prepaid amounts made by you.

4. **GUIDELINES, RULES, AND REGULATIONS:** You agree to abide by the attached Club Guidelines, and all rules and regulations of the Club, as the same may be amended from time to time at the Club's sole discretion. Any member who, in the sole determination of the Club, violates the Club's Guidelines, rules or regulations, or is loud, offensive, uses profanity, harasses, is bothersome to other members, residents, guests or employees or otherwise behaves in an inappropriate or unbecoming manner, may be suspended or terminated by the Club.
5. **MEMBER'S HEALTH WARRANTY:** You represent that you are in good health and have no disability, impairment, injury, disease or ailment, preventing you from engaging in exercise or which could cause increased risk of injury or adverse health consequences as a result of exercise. You assume full responsibility for your use of the Club Facility and shall indemnify the Club, its affiliates, agents and employees, against any and all liability arising out of your use of the Club Facilities. A physical exam by your physician is recommended before commencing any exercise program and especially if you are elderly, pregnant, or unaccustomed to physical exertion.
6. **ACKNOWLEDGEMENT OF RISK:** You, on behalf of yourself, and any dependent(s) and guests, represent that, you understand that engaging in physical exercise and the use of the Club Facilities includes an inherent risk of minor or major life threatening injury to persons and property, and death. You understand that risk of injury to persons and property includes, but is not limited to, injuries arising from or relating to (a) the use by you, your dependent(s), guests or others of exercise equipment, locker rooms, wet areas and other Club Facilities; (b) participation by you, your dependent(s), guests or others in any supervised and unsupervised activities, programs, classes, events on or off the Club premises, including any the Club sponsored activities and events; (c) any personal training, instruction, supervision or dietary recommendations by the Club or its staff; (d) medical disorders that may occur from use of the Club Facilities such as heart attack, stroke, death, heat stress, sprains, strains, broken bones, and torn muscles, tendons and ligaments among others; (e) accidents that may occur anywhere in or around the Club (including common areas, fitness areas, locker rooms, steam rooms, pool areas, saunas, etc.) or while participating in activities or events sponsored by the Club or while traveling to or from the Club; and (f) theft or loss of property while using the Club Facilities. Accidental injuries include those caused by you or by other persons and those, for example, of a slip and fall nature. You, your dependent(s) and guests agree to use due care when using any the Club Facilities and/or when participating in any Club sponsored outside activities and events.
7. **DAMAGE TO PROPERTY:** You understand and agree that the Club is not liable for loss, damage or theft of your personal property or that of your guests while in or on the Club Facilities. You shall be responsible for any and all damage to any Club property caused by you, your guests or your dependent children.
8. **INDEPENDENT CONTRACTORS:** From time to time the Club will make available to you and your guests the services of independent contractors. The Club does not warrant or guarantee the quality of these services and does not guarantee that these services will remain available to you or your guests for any period of time, and hereby disclaims all liability arising out of such services.
9. **SEVERABILITY.** If any provision or any part of any provision of this Agreement is held unenforceable, such provision or portion thereof, shall be severed from this Agreement, and such unenforceability shall not affect the other provisions of this Agreement.
10. **NOTICES:** Please remember to inform the Club Hospitality Desk of any address or payment changes. Any notice given under this Agreement, shall be considered delivered when mailed to your address listed on the front of this Agreement or as later changed by written notice to the Club. Any notice you send to the Club shall be considered delivered only when received by the Club.
11. **ASSIGNMENT:** The Club may assign this Agreement in its sole discretion. You may not assign this Agreement. This Agreement shall be binding upon and inure to the benefit of the parties respective successors and assigns.
12. **COUNTERPARTS:** This Agreement may be signed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Counterparts may be exchanged by fax or electronic means (e.g., PDF), all of which shall be binding.
13. **ENTIRE AGREEMENT:** This Agreement contains the entire agreement of the parties with respect to the subject matter hereof and supersedes any discussions, offers, proposals, agreements or promises with respect thereto. This Agreement may be modified only by a written amendment signed by you and the General Manager. Employees are not authorized to make any independent agreement.
14. **GOVERNING LAW:** This Agreement shall be governed by and construed in accordance with the laws of the State of New York. All actions arising under this Agreement shall be exclusively brought in a state or federal court in the City of New York.
15. **ATTORNEYS' FEES.** If any action, suit, or other proceeding is brought relating to the enforcement or interpretation of this Agreement, the prevailing party shall recover all of such party's reasonable fees and expenses, including attorneys' fees and expenses incurred in connection with such action. This section shall not be deemed to provide for the award of attorneys' fees for personal injury, or non-contractual claims.

IMPORTANT NOTICE FOR HEALTH CLUB MEMBERS: NEW YORK STATE LAW REQUIRES CERTAIN HEALTH CLUBS TO HAVE A BOND OR OTHER FORM OF FINANCIAL SECURITY TO PROTECT MEMBERS IN THE EVENT THE HEALTH CLUB CLOSES. THE CLUB HAS POSTED THE FINANCIAL SECURITY REQUIRED BY LAW. YOU MAY ASK A REPRESENTATIVE OF THE CLUB FOR PROOF OF THE CLUB'S COMPLIANCE WITH THIS LAW.