

SECTION 1: LEARN TO SWIM GENERAL TERMS AND CONDITIONS

1. YOUR LEARN TO SWIM MEMBERSHIP AGREEMENT

Your Learn to Swim Membership Agreement (**Membership Agreement**) is made up of these Learn to Swim General Terms and Conditions, the Direct Debit Service Agreement and the Swim School Membership Schedule (**Membership Schedule**).

In these terms and conditions, "we", "us" and "our" are references to Monash City Council, and "you" and "your" are references to you, the responsible person. Terms that are defined in one clause of this document, have a corresponding meaning in all other clauses of this document.

2. COOLING OFF PERIOD

You are entitled to cancel your membership during the 7 day cooling off period, that commences at the close of business on the date you sign the Membership Schedule. All cancellations must be in writing.

If you cancel your membership during the cooling off period, you can obtain a refund of any membership fees paid by you in advance.

3. MEMBERSHIP BENEFITS

- a) By entering into this Membership Agreement:
 - i. each of the students listed in the Membership Schedule (**Students**) is entitled to attend swim lessons at the centre(s) specified in the Membership Schedule, which include Monash Aquatic & Recreation Centre (**MARC**), Oakleigh Recreation Centre (**ORC**) and Clayton Aquatics & Health Club (**CAHC**) (**Centre**); and
 - ii. you are entitled to non swim entry during the Student's swim lessons.
- b) In addition to the swim lessons, membership gives the Students access to the Centre outside of their swim lessons during normal operation hours:

Access is on the condition that you and the Students comply with the Centre rules for that Centre (**Centre Rules**). You will not be charged for non swim entry during these periods, however standard swim only fees apply for use of aquatic facilities.

4. OBLIGATIONS

- a) You must pay all fees applicable to your membership in accordance with the membership payment type nominated in the Membership Schedule. All fees quoted are GST inclusive.
- b) Students are required to scan their membership card prior to each swim lesson, and at any other time if requested by Centre staff.
- c) You are required to ensure your membership is financial.
- d) You must immediately notify Centre staff if your or any Student's membership card is lost or stolen. A fee will apply for the issue of a replacement card.
- e) Applicants or Students under 18 years of age must have the endorsement of a parent or legal guardian to become a member or Student.
- f) You must ensure that a parent or guardian provides active supervision at all times for Students under 10 years of age, including during swim lessons.
- g) Outside of swim lessons, the member must ensure that an adult is in the water with all Students under 5 years of age.
- h) Smoking and the consumption of alcohol is prohibited in all internal and external areas of the Centre.
- i) We reserve the right to suspend, expel or terminate your membership if you do not comply with the Centre terms and conditions of entry or you or any Student otherwise behaves improperly or inappropriately.

5. MISSED LESSONS

- a) If a Student is unable to attend a swim lesson during a swim lesson term, we will provide you with a Family Pass (providing access to a Centre for 2 adults and 3 children) where you provide us with a medical certificate for the Student. We will also provide one Family Pass per Student, per swim lesson term, if a Student misses a swim lesson and does not have a medical certificate.
- b) To claim a Family Pass, you must contact the Centre you attend in person at reception, phone or writing and, if applicable, provide a copy of the medical certificate.
- c) Make up lessons, credits or refunds are not otherwise provided for missed swim lessons during the swim lesson term.
- d) We may, in our sole discretion, provide you with a credit for pre-paid fees if a Student is unable to attend a lesson due to a medical reason, in the case where a medical certificate has been provided.
- e) Family Passes are non-transferable and are valid for a period of six (6) months from the date of issue. They are not redeemable for cash and cannot be used with any other offer.
- f) Swim lessons will be held on all public holidays that fall within the swim lesson term, with the exception of Good Friday.

6. WITHDRAWAL FROM SWIM LESSONS

- a) You may withdraw a Student from swim lessons as follows:
 - I. if the minimum term (as set out in your Membership Schedule) has expired, by giving 14 days written notice to the Centre staff at a Centre you attend; or
 - II. if the minimum term has not expired, only where there are extenuating medical circumstances and you provide written notice to the Centre staff at a Centre you attend.
- b) We will process the withdrawal from the date it is submitted. A withdrawal notice must be submitted 24 hours prior to the Student's next swim lesson for that swim lesson to be included in the withdrawal.
- c) We will credit your membership account for all pre-paid swim lessons scheduled after the withdrawal has been processed. The credit expires six (6) months after the date that the withdrawal is processed.
- d) We may, in our sole discretion, provide you with a refund for pre-paid fees if a Student is withdrawn from swim lessons, for example, where you provide us with a medical certificate.
- e) You may terminate your membership if the Centre you attend is permanently closed. Where the Centre you attend is closed for repairs or redevelopment for a period of more than 5 days, we will arrange for you to access an alternative Centre for the duration of the repairs or redevelopment.
- f) We may terminate your Membership Agreement immediately by written notice to you if you fail to comply with any term of this Membership Agreement (including in relation to payment) or you or any Student fails to comply with the Centre Terms and Conditions of entry.

7. SUSPENSION OF MEMBERSHIP

You are not entitled to suspend your membership at any time.

8. CONCESSION Eligibility

- a) You may be eligible for discounted membership fees if you hold a valid concession card and you provide us details of this concession card.
- b) A 40% discount will apply for each Student if you hold a current Health Care concession card. The concession card must be presented upon booking and payment in Centre.
- c) If you are issued with a new or updated concession card, you must provide us with details of the new or updated card. If we do not receive these details prior to the expiry of the concession card we have on file for you, your membership will revert to the full membership fee for your membership type at the time your next payment is due.

9. MEMBERSHIP TYPES

UP FRONT MEMBERSHIP

- I. Your upfront membership is valid for the swim lesson term(s) you pay for at the time of booking. You must pay the upfront fee specified in the Membership Schedule in full at the time of booking.
- II. In certain circumstances, we may, in our sole discretion, accept a non refundable deposit of 50% towards your membership fees. If we accept a deposit, you must pay us the remaining membership fees within 14 days of the date you signed the Membership Schedule.
- III. Credit card payments (Visa/Mastercard) can be made at the Centre, over the phone, and via online after the completion of the Membership Schedule.

DIRECT DEBIT MEMBERSHIP

- I. Your direct debit membership is ongoing for each Student specified in the Membership Schedule unless the term payment option is ticked online.
- II. Upon joining, you will be charged the initial debit amount specified in the Membership Schedule. You will pay this at the time of the sale.
- III. Debits will be processed fortnightly (or the next business day), with all payments made one fortnight in advance. Where the due date does not fall on a business day, we will draw the amount on the next business day. You will not be charged for swim lessons when there is no class scheduled (for example, during school holidays).

10. PAYMENTS

- a) You must pay all membership fees in accordance with the terms of your membership type, as specified in clause 8.
- b) As a part of our annual review of our fees and charges, we may increase your direct debit membership payments on or after 1 July annually, with that increase not exceeding 5% of your direct debit membership payments prior to the increase.
- c) If your direct debit membership payment is rejected or dishonoured by your financial institution, a second attempt to debit your account will be made on the next business day. Following a second dishonour, we will attempt to contact you advising you that your payment has been rejected and to arrange alternative payment. A \$10 administrative fee will be charged with your next payment, even if we have contacted you and arranged alternative payment or we have not been able to contact you. If we have not received instructions to the contrary from you, we will arrange for the debiting of both the current due payment and the overdue payment(s) on the date of your next payment.
- d) In the event of payments being dishonoured, on two consecutive occasions, we reserve the right to terminate your contract.

- e) All memberships will be signed up at a full price. In the case where concession discount is eligible, this will be applied once concession has been presented and sited.
- f) We take no responsibility for your financial institution passing on any overdrowncharges.
- g) You may be required to supply new direct debit details or arrange alternate payment for any overdue fees. Debt collection activities could also occur.

11. EXCLUSION OF LIABILITY

- a) To the maximum extent permitted by law, we exclude liability for any death or personal injury for a breach of a condition implied by section 60 or section 61 of the Australian Consumer Law (Victoria) in relation to the supply of the recreational services at a Centre, which includes where the services are not supplied with the due care and skill or are not reasonably fit for their purpose.
- b) Warning under the Australian Consumer Law and Fair Trading Act 2012: Under the Australian Consumer Law (Victoria), several statutory guarantees apply to the supply of certain goods and services. These guarantees mean that the supplier named on this form is required to ensure that the recreational services it supplies to you:
 - are rendered with due care and skill; and
 - are reasonably fit for any purposes which you, either expressly or by implication, make known to the supplier; and
 - might reasonably be expected to achieve any result you have made known to the supplier.

Under section 22 of the **Australian Consumer Law and Fair Trading Act 2012**, the supplier is entitled to ask you to agree that these statutory guarantees do not apply to you. If you sign this form, you will be agreeing that your rights to sue the supplier under the **Australian Consumer Law and Fair Trading Act 2012** if you are killed or injured because the services provided were not in accordance with these guarantees, are excluded, restricted or modified in the way set out in this form.

NOTE: The change to your rights, as set out in this form, does not apply if your death or injury is due to gross negligence on the supplier's part. **Gross negligence**, in relation to an act or omission, means doing the act or omitting to do an act with reckless disregard, with or without consciousness, for the consequences of the act or omission. See regulation 5 of the Australian Consumer Law and Fair Trading

Regulations 2012 and section 22(3) (b) of the Australian Consumer law and Fair Trading Act 2012.

12. INTERPRETATION

Unless expressed or implied to the contrary in Membership Agreement:

- a) this Membership Agreement is governed by and is to be construed in accordance with the laws of Victoria;
- b) headings and sub-headings are inserted for ease of reference only and do not affect the interpretation of this Membership Agreement;
- c) any provision in this Membership Agreement that is held to be illegal, invalid, void, voidable or unenforceable must be read down to the extent necessary to ensure that it is not illegal, invalid, void, voidable or unenforceable and if it is not possible to read down the provision, that provision is severable without affecting the validity or enforceability of the remaining part of that provision or the other provisions in this Membership Agreement;
- d) this Membership Agreement contains the entire understanding between the parties as to the subject matter contained in it and all previous agreements, representations, warranties, explanations and commitments, expressed or implied, affecting this subject matter are superseded by this Membership Agreement and have no effect;
- e) if a payment or other act is required to be made or done on a day which is not a business day, the payment or act must be made or done on the next following business day;
- f) a reference in this Membership Agreement to:
 - I. a statute includes regulations under it and consolidations, amendments, re-enactments or replacements of any of them;
 - II. a person includes a firm, partnership, joint venture, association, corporation or other corporate body;
 - III. a person includes the legal personal representatives, successors and assigns of that person;
 - IV. any body which no longer exists or has been reconstituted, renamed, replaced
 - V. or whose powers or functions have been removed or transferred to another body or agency, is a reference to the body which most closely serves the purposes or objects of the first-mentioned body;
 - VI. a clause, schedule or appendix is a reference to a clause, schedule or appendix in or to this Membership Agreement;
 - VII. this or other document includes the document as varied or replaced regardless of any change in the identity of the parties;
 - VIII. writing includes all modes of representing or reproducing words in a legible, permanent and visible form;
 - IX. '\$' or 'dollars' is a reference to Australian dollars;
 - X. the singular includes the plural and vice versa; and
 - XI. a gender includes the other genders.