

Section 1: ACTIVE MONASH GENERAL TERMS AND CONDITIONS

1. YOUR MEMBERSHIP AGREEMENT

Your Active Monash membership agreement is made up of these Active Monash General Terms and Conditions, the Direct Debit Request Form, the Membership Schedule and, for specialty program memberships only, the part of the current PT Brochure describing the specialty program(s) you have signed up for. The Membership Schedule is the form with that name signed by you and us.

In these terms and conditions, "we", "us" and "our" are references to Monash City Council, and "you" and "your" are references to the member. 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, less the administration fee specified in the Membership Schedule.

3. MEMBERSHIP PLANS

Your membership plan is identified in your Membership Schedule. You have a choice of the following membership plans, which give you the access rights specified for that plan below:

- a) BLUE which gains you access to Monash Aquatic & Recreation Centre (MARC), Oakleigh Recreation Centre (ORC) and Clayton Aquatics & Health Club (CAHC) through your Standard, PT Plus membership or Results membership types (membership types are described in clause 4 below).
- b) ORANGE which gains you access to Oakleigh Recreation Centre and Clayton Aquatics & Health Club through your Standard or PT Plus membership types.
- c) RED which gains you access to Clayton Aquatics & Health Club through your Standard or PT Plus membership types.

4. MEMBERSHIP TYPES

Your membership type is identified in your Membership Schedule. If you are eligible, you have a choice of the following membership types, which give you the following benefits and are subject to the following conditions:

a) PT PLUS MEMBERSHIP

The PT Plus membership is a fortnight-by-fortnight option that covers a designated number of Personal Training Sessions each week. Should you wish to cancel your PT Plus Membership you are required to give 14 days' written notice.

PT Plus members must give personal trainers 24 hours notice of cancellations or the session will be forfeited. Personal training sessions will start at scheduled times. Sessions will not run over time for late starts.

b) STANDARD MEMBERSHIP

- **CLUB MEMBERSHIP (12 MONTH MINIMUM)**

Club membership entitles you to a lifestyle consultation and a tailored fitness program. You have access to ongoing lifestyle consultation and fitness program re-assessments at your discretion.

MEMBERSHIP ELIGIBILITY– To be eligible for this membership you must be 16 years or over.

MEMBERSHIP USAGE– Club members have unlimited access to the gymnasium, group exercise classes and aquatics areas (ORC seasonal).

- **FLEXI MEMBERSHIP (FORTNIGHT BY FORTNIGHT)**

Flexi membership entitles you to a lifestyle consultation and a tailored fitness program. You have access to ongoing lifestyle consultation and fitness program re-assessments at your discretion.

MEMBERSHIP ELIGIBILITY– To be eligible for this membership you must be 16 years or over.

MEMBERSHIP USAGE– Flexi members have unlimited access to the gymnasium, group exercise classes and aquatics areas (ORC seasonal).

- **RESULTS MEMBERSHIP (FORTNIGHT BY FORTNIGHT)**

Results membership includes all the benefits of our Blue membership plan as well as the added benefit of access to the Results timetable. Results membership entitles you to a lifestyle consultation and a tailored fitness program. You have access to ongoing lifestyle consultation and fitness program re-assessments at your discretion.

MEMBERSHIP ELIGIBILITY– To be eligible for this membership you must be 16 years or over.

MEMBERSHIP USAGE– Results members have unlimited access to the gymnasium, group exercise classes and aquatics areas (ORC seasonal).

- **PRIME OF LIFE MEMBERSHIP (FORTNIGHT BY FORTNIGHT)**

MEMBERSHIP ELIGIBILITY– To be eligible for this membership you must possess a Seniors Card (60+). This card must be presented at the time of purchase of the membership.

MEMBERSHIP USAGE– Prime of Life Members are eligible to use the gymnasium, group exercise classes and aquatics areas Monday to Friday from 8am to 4pm, Saturday and Sunday all day.

- **TEEN MEMBERSHIP (FORTNIGHT BY FORTNIGHT)**

MEMBERSHIP ELIGIBILITY– Teen Members must be between 13-17 years of age inclusive.

MEMBERSHIP USAGE– Teen members are eligible to use the Centre facilities Monday to Friday from 6am to 5pm, Saturday and Sunday all day. Age restrictions do apply to some services. Teen members aged 16 and over receive access to ALL centre services. Teen Members under 16 years of ages receive access to services excluding; Spa, Sauna, Steam Room, Resistance Machines and Free Weights, Body Pump, Boxing and Circuit.

c) SPECIALTY PROGRAMS

For detailed information about specialty programs, refer to the current PT Brochure. This brochure outlines cost, program length, session durations and other important information that will apply to your Membership Agreement. Specialty program members will receive Standard membership access for the duration of the program selected, as identified on the Membership Schedule.

5. MEMBER OBLIGATIONS

- a) Membership gives you (the named member) access to the centre(s) (MARC/ORC/CAHC) (**Centre**) covered by your membership type (Blue/Orange/Red) on the condition that you comply with the Centre rules for that Centre (**Centre Rules**).
- b) You must pay all fees applicable to your membership in accordance with your nominated membership payment type. All fees quoted are GST inclusive.
- c) Members are required to scan their membership card, band, or keychain, on each visit to a Centre, and at any other time if requested by Centre staff.
- d) Members are required to ensure their membership is financial.
- e) Members are required to immediately notify Centre staff of lost or stolen membership cards. A \$15.00 fee will apply for the issue of a replacement card.
- f) Applicants between 16 and 18 years of age must have the endorsement of a parent or legal guardian.
- g) Smoking and the consumption of alcohol is prohibited in all internal and external areas of the Centre.
- h) Monash City Council reserves the right to suspend, expel or terminate the membership of any member who fails to comply with the Centre Rules or who otherwise behaves improperly or inappropriately.

6. SUSPENSION OF MEMBERSHIP

- a) Suspension of membership is available at no cost subject to the completion of a Membership Alteration Form and giving three days' notice. Retrospective or back dated suspensions will not be approved.
- b) The minimum period a membership can be suspended for is one week. The maximum period that a membership can be suspended for is two months.
- c) Membership will automatically recommence at the conclusion of an approved suspension period.
- d) The length of suspension will be added to the minimum term period.
- e) Suspensions can only be approved and entered when there is no outstanding balance.
- f) Pro-rata fees will apply during periods of membership suspension.

7. MEMBERSHIP CANCELLATION

- a) If your minimum membership term (as set out in your Membership Schedule) has expired, you may cancel your active membership by giving 14 days written notice to the Centre staff at a Centre you attend.
- b) You will be entitled to use the facilities over the 14 day notice period.
- c) If your minimum membership term has not expired, we will consider your request for early cancellation if there are exceptional medical circumstances and you give a doctor's certificate supporting the reasons for cancellation.
- d) 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 more than 5 days, we will arrange for you to access an alternative Centre for the duration of the repairs or redevelopment.

8. CONCESSION ELIGIBILITY

Concession discount is available for members and programs upon presentation of an appropriate concession card. Concession memberships (where applicable) are only available to cardholders with a valid Student Card, international student Card, Centrelink Health Care Card, Pensioner Concession Card, Seniors Card, Commonwealth Seniors Card, Companion Card or Carers Card. Holders of concession memberships are required to present current evidence of concession status on completion of membership application. There will be a 30 day grace to provide updated concession details failure to do so will result in the membership automatically reverting to the appropriate non-discounted price.

9. EARLY TERMINATION

You may release yourself from any responsibility of a 'minimum term' agreement by transferring the membership to a non member or by paying a cancellation fee. The cancellation fee will be a fee equal to 30% of the fees that you would be required to pay during the remainder of minimum term of your membership agreement.

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 fail to comply with the Centre Rules. The minimum term cancellation fee of 30% (described in the previous paragraph) will apply in the event that we terminate your membership.

10. EXCLUSION OF LIABILITY

- a) To the maximum extent permitted by law, Monash City Council excludes 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**.

11. UP FRONT TERM MEMBERSHIPS

Up front term memberships must be paid for in full at the time of purchase.

12. DIRECT DEBIT MEMBERSHIPS

Upon joining a member will be levied a fee for the fortnights pro rata membership fee plus any applicable start up fees. The fees must be paid at the time of the sale. 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. Refer to Section 2: Direct Debit Request Service Agreement for debiting terms and conditions.

a) ONGOING MEMBERSHIP

Your membership will be ongoing unless the 'Terminate my membership at the end of the minimum term' box is ticked on the front of the membership application form.

b) DIRECT DEBIT MEMBERSHIP TYPES

- CLUB (12 MONTHS)
Members must commit to a minimum period of 12 months with payments being debited on a fortnightly basis.
- FLEXI/ PRIME OF LIFE/ PT PLUS/ RESULTS (14 day minimum)
Members must commit to a minimum period of 14 days with payments being debited on a fortnightly basis.

c) ANNUAL REVIEW OF FEES AND CHARGES

As a part of Monash City Council's annual review of its fees and charges, your fortnightly membership fee will increase on or after 1 July annually and will not exceed 5% of the fortnightly payments then current.

d) DISHONOURED PAYMENTS

If your debit 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. A \$10 administrative fee will be charged with your next payment and, if we have not received instructions to the contrary from you, we will arrange for the debiting of both the current due payment and now the overdue payment(s) on the same day. In the event of payments being dishonoured on two consecutive occasions we reserve the right to terminate your contract. We take no responsibility for your Financial Institution passing on any overdrawn charges.

You may be required to supply new Direct Debit Details or arrange alternate payment for any overdue fees. Debt collection activities could also occur.

13. PRIVACY

Your personal information is being collected by us for the purpose of your Active Monash membership. Your personal information will be stored by us and used to identify you when using your Active Monash membership or communicating with us about your Active Monash membership. You may access your information by contracting our privacy officer at joanne.mckay@monash.vic.gov.au. For more further information on how your personal information is handled see our privacy policy for:

- MARC at <http://www.monashaquaticrecreationcentre.com.au/Legal/Privacy-policy>
- ORC at <http://www.oakleighrecreationcentre.com.au/Legal/Privacy-Policy>
- CAHC at <http://www.claytonaquaticshealthclub.com.au/Legal/Privacy-Policy>

14. INTERPRETATION

Unless expressed or implied to the contrary in these Terms and Conditions:

- d) these Terms and Conditions are governed by and are to be construed in accordance with the laws of Victoria;
- e) headings and sub-headings are inserted for ease of reference only and do not affect the interpretation of these Terms and Conditions;
- f) any provision in these Terms and Conditions 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 these Terms and Conditions;
- g) these Terms and Conditions contain 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 these Terms and Conditions and have no effect;
- h) 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;
- i) a reference in these Terms and Conditions 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 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;
 - v) a clause, schedule or appendix is a reference to a clause, schedule or appendix in or to this Agreement;
 - vi) this or other document includes the document as varied or replaced regardless of any change in the identity of the parties;
 - vii) writing includes all modes of representing or reproducing words in a legible, permanent and visible form;
 - viii) '\$' or 'dollars' is a reference to Australian dollars;
 - ix) the singular includes the plural and vice versa; and
 - x) a gender includes the other genders.

SECTION 2: DIRECT DEBIT REQUEST SERVICE AGREEMENT

This is your Direct Debit Service Agreement with Monash City Council (ABN 23 118 071 457). LinksPay Pty. Ltd, (User ID 382220) is engaged to debit on behalf of Monash City Council. It explains what your obligations are when undertaking a Direct Debit arrangement with us. It also details what our obligations are to you as your Direct Debit provider. Please keep this agreement for future reference. It forms part of the terms and conditions of your Direct Debit Request (DDR) and should be read in conjunction with your DDR authorisation.

DEFINITIONS

account means the account held at your financial institution from which we are authorised to arrange for funds to be debited.

agreement means this Direct Debit Request Service Agreement between you and us.

banking day means a day other than a Saturday or a Sunday or a public holiday listed throughout Australia.

debit day means the day that payment by you to us is due.

debit payment means a particular transaction where a debit is made.

direct debit request means the Direct Debit Request between us and you.

us or we means Monash City Council, (the Debit User) you have authorised by requesting a Direct Debit Request.

you means the customer who has signed or authorised by other means the Direct Debit Request.

your financial institution means the financial institution nominated by you on the DDR at which the account is maintained.

1. DEBITING YOUR ACCOUNT

1.1 By signing a Direct Debit Request or by providing us with a valid instruction, you have authorised us to arrange for funds to be debited from your account. You should refer to the Direct Debit Request and this agreement for the terms of the arrangement between us and you.

1.2 We will only arrange for funds to be debited from your account as authorised in the Direct Debit Request.

or

We will only arrange for funds to be debited from your account if we have sent to the address nominated by you in the Direct Debit Request, a billing advice which specifies the amount payable by you to us and when it is due.

1.3 If the debit day falls on a day that is not a banking day, we may direct your financial institution to debit your account on the following banking day. If you are unsure about which day your account has or will be debited you should ask your financial institution.

2. AMENDMENTS BY US

2.1 We may vary any details of this agreement or a Direct Debit Request at any time by giving you at least fourteen (14) days written notice.

3. AMENDMENTS BY YOU

You may change*, stop or defer a debit payment, or terminate this agreement by providing us with at least 14 days notification by writing to or telephoning us during business hours on:

Monash Aquatic & Recreation Centre PO Box 5062 Mt. Waverley, 3149 Phone: (03) 9265 4888	Oakleigh Recreation Centre 2a Park Road Oakleigh, 3166 Phone: (03) 8567 0333	Clayton Aquatics & Health Club Cooke Street Clayton, 3168 Phone: (03) 9541 3100
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or

arranging it through your own financial institution, which is required to act promptly on your instructions.

*Note: in relation to the above reference to 'change', your financial institution may 'change' your debit payment only to the extent of advising us Monash City Council of your new account details.

4. YOUR OBLIGATIONS

4.1 It is your responsibility to ensure that there are sufficient clear funds available in your account to allow a debit payment to be made in accordance with the Direct Debit Request.

4.2 If there are insufficient clear funds in your account to meet a debit payment:

- (a) you may be charged a fee and/or interest by your financial institution;
- (b) you may also incur fees or charges imposed or incurred by us (refer to Section 1, 11(d) Dishonoured payments); and

(c) you must arrange for the debit payment to be made by another method or arrange for sufficient clear funds to be in your account by an agreed time so that we can process the debit payment.

4.3 You should check your account statement to verify that the amounts debited from your account are correct.

5. DISPUTE

5.1 If you believe that there has been an error in debiting your account, you should notify us directly on MARC- (03) 9265 4888, ORC- (03) 8567 0333, CAHC- (03) 9541 3100 and confirm that notice in writing with us as soon as possible so that we can resolve your query more quickly. Alternatively you can take it up directly with your financial institution.

5.2 If we conclude as a result of our investigations that your account has been incorrectly debited we will respond to your query by arranging for your financial institution to adjust your account (including interest and charges) accordingly. We will also notify you in writing of the amount by which your account has been adjusted.

5.3 If we conclude as a result of our investigations that your account has not been incorrectly debited we will respond to your query by providing you with reasons and any evidence for this finding in writing.

6. ACCOUNTS

You should check:

(a) with your financial institution whether direct debiting is available from your account as direct debiting is not available on all accounts offered by financial institutions.

(b) your account details which you have provided to us are correct by checking them against a recent account statement; and

(c) with your financial institution before completing the Direct Debit Request if you have any queries about how to complete the Direct Debit Request.

7. PRIVACY AND CONFIDENTIALITY

7.1 Your personal information is being collected by us for the purpose of your Direct Debit Request. Your personal information will be stored by us and used to process your Direct Debit Request.

7.2 We will keep any information (including your account details) in your Direct Debit Request confidential. We will make reasonable efforts to keep any such information that we have about you secure and to ensure that any of our employees or agents who have access to information about you do not make any unauthorised use, modification, reproduction or disclosure of that information.

7.3 We will only disclose information that we have about you:

(a) to the extent specifically required by law; or

(b) for the purposes of this agreement (including disclosing information in connection with any query or claim).

7.4 You may access your information by contracting our privacy officer at joanne.mckay@monash.vic.gov.au. For more information on how your personal information is handled see our privacy policy for:

(a) MARC at <http://www.monshaquaticrecreationcentre.com.au/Legal/Privacy-policy>

(b) ORC at <http://www.oakleighrecreationcentre.com.au/Legal/Privacy-Policy>

(c) CAHC at <http://www.claytonaquaticshealthclub.com.au/Legal/Privacy-Policy>

8. NOTICE

8.1 If you wish to notify us in writing about anything relating to this agreement, you should write to

Monash Aquatic & Recreation Centre PO Box 5062 Mt. Waverley, 3149 Phone: (03) 9265 4888	Oakleigh Recreation Centre 2a Park Road Oakleigh, 3166 Phone: (03) 8567 0333	Clayton Aquatics & Health Club Cooke Street Clayton, 3168 Phone: (03) 9541 3100
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8.2 We will notify you by sending a notice in the ordinary post to the address you have given us in the Direct Debit Request.

8.3 Any notice will be deemed to have been received on the third banking day after posting.