

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 Swim School Membership Schedule (**Membership Schedule**), and a General Medical Conditions Form. 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 you, 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 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:

i) 60 minutes before each swimming lesson commences; and

ii) 60 minutes after each swimming lesson has concluded,

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.

c) A 10% discount will apply if your membership includes 3 or more Students.

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 \$15.00 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) The member 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 Rules 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 reception at the Centre you attend 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) Family Passes are non-transferable and are valid for a period of six months from the date of issue. They are not redeemable for cash and cannot be used with any other offer.
- e) 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 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. If we provide a refund, an administration fee equal to the value of two swim lessons will apply.
- 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 Rules. An administration fee equal to the value of two swim lessons will apply in the event that we terminate your membership.

7. SUSPENSION OF MEMBERSHIP

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

8. MEMBERSHIP TYPES

a) UP FRONT MEMBERSHIP

- i) Your up front 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 or over the phone after the completion of the Membership Schedule.

b) DIRECT DEBIT MEMBERSHIP

- i) Your direct debit membership is ongoing for each Student specified in the Membership Schedule unless the 'Terminate my membership at the end of the first swim lesson term' box is ticked in the Membership Schedule.
- ii) Upon joining, you will be charged the initial debit amount specified in the Membership Schedule. You will have the option to pay this at the time of the sale or add it to your first debit.
- 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).

9. CONCESSIONS

- a) You may be eligible for discounted membership fees if you hold a valid concession card and you give us details of this concession card.
- b) A 10% discount will apply for each Student if you hold a current concession card. The concession card must be presented upon booking and payment.
- 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.

10. PAYMENTS

- a) You must pay all membership fees in accordance with the terms of your membership type, as specified in clause 11.
- 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) We take no responsibility for your financial institution passing on any overdrawn charges.
- f) 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 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 Membership 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 Request 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.

membership agreement means the agreement set out in Section 1 of this document.

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

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 clause 13 of your membership agreement); 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. CONFIDENTIALITY

- 7.1 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.

7.2 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).

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.