

# MEMBERSHIP TERMS AND CONDITIONS

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## 1. Overview

- 1.1 In this Membership Agreement:
- 1.1.1 "You" means you, the member, as specified in item 1 of the Membership Details; and
  - 1.1.2 "Us" or "we" means Western Leisure Services Pty Ltd ACN 169 311 693 of 80-82 Derrimut Road, Hoppers Crossing, Victoria 3029.
- 1.2 We operate the Facility.
- 1.3 This Membership Agreement sets out the terms and conditions of your membership of the Facility.
- 1.4 This Membership Agreement includes the Membership Details, the Facility Rules and these Membership Terms and Conditions, as varied in accordance with this Membership Agreement.

## 2. Your membership

- 2.1 During the Term, you may access and use the Facility in accordance with your Membership Type and this Membership Agreement.
- 2.2 Your membership of the Facility under this Membership Agreement:
- 2.2.1 is subject to the terms and conditions of this Membership Agreement;
  - 2.2.2 is subject to any limitations and exclusions applicable to your Membership Type; and
  - 2.2.3 does not entitle you to any access or use of the Facility other than in accordance with clause 2.1 or any other goods or services from us or any third party (including any services provided by third parties at the Facility) – such as personal training services.
- 2.3 If you wish to use or access any part of the Facility or receive any goods or services from us outside the scope of this Membership Agreement, you will need to enter into a separate agreement with us. Please speak to a member of our Member Relations Team to discuss this.

## 3. Duration of your membership

### Commencement

This Membership Agreement will commence on the Start Date.

### Expiry

- 3.2.1 If your Membership Type is 'Paid in Full', this Membership Agreement will, unless terminated earlier by you or us, expire at the end of the Paid in Full Term.
- 3.2.2 If your Membership Type is 'Direct Debit', this Membership will, unless terminated earlier by you or us:
- (a) at the end of the direct debit minimum term if you have not marked 'Yes' to 'Rollover' in item 10 of the Membership Details; or
  - (b) will **automatically** continue after the end of the direct debit minimum term on an ongoing basis until terminated by you or us if you **have** marked 'Yes' to 'Rollover' in item 10 of the Membership Details form.

## 4. Cooling Off Period

- 4.1 You may terminate this Membership Agreement at any time prior to the close of business on the last day of the Cooling Off Period by giving us written notice. You must give us notice in accordance with clause 14.2.
- 4.2 If you terminate this Membership Agreement during the Cooling Off Period under clause 4.1:
- 4.2.1 this Membership Agreement will be terminated on the date your written notice is received by us; and
  - 4.2.2 we will refund to you all Fees you have paid to us under this Membership Agreement.
- 4.3 If you do not terminate this Membership Agreement during the Cooling Off Period under clause 4.1, this Membership Agreement will continue in accordance with clause 3.

## 5. Changes to your membership

### Changes to this Membership Agreement

- 5.1.1 We may amend the terms of this Membership Agreement from time to time, including any or all of:
- (a) the Membership Terms and Conditions; and/or
  - (b) the Facility Rules.
- 5.1.2 We will give you at least 10 Business Days' written notice of any changes to this Membership Agreement and the date they are to take effect.
- 5.1.3 If we change this Membership Agreement under clause 5.1.2 and you are adversely affected by the change, you may terminate this Membership Agreement by giving us written notice of the adverse effect prior to the date the changes take effect. If you terminate the Membership Agreement under this clause 5.1.3, the Membership Agreement will be terminated on the date we give you written notice that we have accepted that the change adversely affects you.
- 5.1.4 Unless and until we give you written notice that we have accepted that the change adversely affects you, this Membership Agreement will continue in accordance with clause 3.1.
- 5.1.5 If you terminate this Membership Agreement under clause 5.1.3:
- (a) you must pay us all outstanding Fees for the period up to and including the date of termination;
  - (b) we will refund to you any Membership Fees you have already paid for the period after the date of termination; and
  - (c) we will not refund to you the Joining Fee or any other Fees paid for the period up to and including the date of termination.
- 5.1.6 If you do not seek to terminate your membership in accordance with clause 5.1.3, you will be deemed to have accepted any change we have made to this Membership Agreement.

### Changes to Facilities

- 5.2.1 We may change all or part of the Facility at any time, including by:
- (a) adding, removing or replacing equipment (whether available for use by your Membership Type or not);
  - (b) changing the name of the Facility; and
  - (c) temporarily or permanently closing parts of the Facility (including in the circumstances described in clause 8.5).
- 5.2.2 Any change to the Facility as described in clauses 5.2.1(a) and 5.2.1(b) and, without limiting clause 8.5, does not constitute a change to this Membership Agreement and does not entitle you to terminate this Membership Agreement under clause 5.1.3.

## 6. Payments

### 6.1 Fees

- 6.1.1 If your Membership Type is Paid in Full, you must pay the Fees up front for the Paid in Full Term by the Payment Method.
- 6.1.2 If your Membership Type is Direct Debit, you must pay:
- the Joining Fee up front; and
  - the Membership Fees and any Suspension Fees, as varied in accordance with clause 6.9, fortnightly in advance by the Payment Method for the Direct Debit Minimum Term and any Rollover Period.

### 6.2 Direct debit

This is your Direct Debit Service Agreement with Western Leisure Services Pty Ltd (Direct Debit User ID A06065 & ABN 97 169 311 693) 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 or we mean Western Leisure Services Pty Ltd (the Debit User) you have authorised by requesting a Direct debit request.

**you** mean 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.

- 6.2.1 Direct debit payments for Fees are managed by us. If your Membership Type is Direct Debit, we will debit your nominated bank account or credit card throughout the Term for the Membership Fees and any Suspension Fees, as varied in accordance with clause 6.9, in accordance with the Direct Debit Request Service Agreement.
- 6.2.2 If the due date for payment of any Membership Fees or Suspension Fees falls on a day which is not a Business Day, we will direct debit our nominated bank account or credit card on the next Business Day.
- 6.2.3 **Debiting you account**
- 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.
  - We will only arrange for funds to be debited from your account as authorised in the *Direct debit request*. 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.
  - 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 DDR account has or will be debited, you should ask your financial institution.
- 6.2.4 **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.
- 6.2.5 **Amendments by you**
- You may change, stop, or defer a *debit payment* by providing us with at least 3 days notification or terminate this agreement by providing us with at least 3 business days notification by writing to: Western Leisure Services Pty Ltd 80 – 82 Derrimut Road, Hoppers Crossing, 3029
- or by telephoning us on (03) 8734 5678 during business hours;
- 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 Western Leisure Services Pty Ltd of your new account details.*
- 6.2.6 **Your obligations**
- 6.2.6.1 It is your responsibility to ensure that there are sufficient clear funds in your account to allow a *debit payment* to be made in accordance with the *Direct debit request*.
- 6.2.6.2 If there are insufficient clear funds in your account to meet a *debit payment*:
- you may be charged a fee and/or interest by your financial institution.
  - you may also incur fees or charges imposed or incurred by us; and
  - 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*
- 6.2.6.3 You should check your account statement to verify that the amounts debited from your account are correct.
- 6.2.7 **Dispute**
- 6.2.7.1 If you believe that there has been an error in debiting your account, you should notify us directly on (03) 8734 5678 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.
- 6.2.7.2 If we conclude as a result of our investigation 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 notify you in writing of the amount by which your account has been adjusted.
- 6.2.7.3 If we conclude as a result of our investigation that your account has not been incorrectly debited, we will respond to your query by providing you with reasons and any evidence for this in finding in writing.

#### Accounts

You should check:

- with your financial institution whether direct debiting is available from your account as direct debiting is not available through BECS on all accounts offered by financial institutions.
- your account details which you have provided to us are correct by checking them against a recent account statement; and
- with your financial institution before completing the Direct debit request if you have any queries about how to complete the Direct debit request.

6.2.8

#### **Confidentiality**

6.2.8.1 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.

6.2.8.2 We will only disclose information that we have about *you*:

to the extent specifically required by law; or

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

#### **Notice**

If *you* wish to notify *us* in writing about anything relating to this agreement, *you* should write to Western Leisure Services Pty Ltd

80 – 82 Derrimut Road, Hoppers Crossing, 3029.

6.2.9.1 We may send notices either electronically to *your* email address or by ordinary post to the address *you* have given *us*.

6.2.9.2 Any notice will be deemed to have been received on the third *banking* day after emailing or posting.

### **6.3 Changes to Payment Method and payment details**

If *you* wish to change the details relating to your Payment Method, *you* must give *us* written notice of the new Payment Method details prior to *your* next scheduled payment date and do everything we reasonably require to ensure that we continue to receive payment of your Fees.

### **6.4 Payment Method fees**

If *you* have chosen to pay by a Payment Method that causes *us* to incur any merchant or transaction fees, we may pass these fees on to *you* by deducting the fees via your Payment Method.

### **6.5 Other charges**

6.5.1 Your Membership Fees payable under this Membership Agreement only entitle *you* to use the facilities and equipment available at the Facility in accordance with your Membership Type.

6.5.2 Any charges for other services, facilities or equipment will be as agreed between *you* and *us*. This may be recorded in a separate agreement between *you* and *us*, such as for the hire of equipment at the Facility.

### **6.6 Refunds**

We are under no obligation to refund money *you* have paid to *us*, except as expressly set out in this Membership Agreement.

### **6.7 Dishonoured payments**

If your Payment Method fails for any reason:

6.7.1 *you* must pay *us* on demand all resulting fees and charges; and

6.7.2 *you* authorise *us* to charge *you* via your Payment Method for any such resulting fees and charges.

### **6.8 GST**

6.8.1 Your Fees are inclusive of goods and services tax (GST).

6.8.2 If the rate at which GST is calculated changes during the Term, your Membership Fees and any Suspension Fees will be adjusted to account for any change in the rate of calculating GST. *you* authorise *us* to change any debit from your Payment Method to account for the change in the rate of calculating GST. This clause only applies if your Membership Type is Direct Debit.

## **7. Your membership obligations**

### **7.1 Facility Rules**

*you* must:

7.1.1 comply with the Facility Rules at all times;

7.1.2 comply with instructions given by our staff in relation to the Facility;

7.1.3 not interfere with use of the Facility by any other person (including any Facility members and hirers of equipment or areas in the Facility); and

7.1.4 not behave in a way which is inappropriate, risky or detrimental to the safe enjoyment of the Facility by others.

### **7.2 Access All**

If your Membership Agreement provides for Access All, *you* must comply with clause 7.1 in relation to each Facility when using or accessing that Facility. Each Facility has its own Facility Rules.

### **7.3 Eagle Only**

If your Membership Agreement provides for Eagle Stadium only access, *you* must comply with clause 7.1 in relation to Eagle Stadium when using or accessing Eagle Stadium. Eagle Stadium Gym has its own Facility Rules.

### **7.4 Your obligations**

Your obligations (including your responsibility to pay Fees) do not depend on how often *you* use the Facility.

## **8. Your use of the Facility**

### **8.1 Access**

- 8.1.1 All or part of the Facility and any equipment of the Facility may be unavailable on a temporary basis, including for maintenance, repairs, private functions, community group programming, exclusive use and Facility programming or in the circumstances described in clause 8.5.
- 8.1.2 In addition to our rights under clauses 9.2.2 and 10.2.2, we may deny you access to the Facility or direct you to leave the Facility if we decide that your behaviour:
- (a) is inconsistent with the Facility Rules; or
  - (b) is inappropriate, risky or detrimental to the safe enjoyment of the Facility by yourself or others.
- 8.1.3 Exercise of our rights under clause 8.1.2 will not entitle you to a refund of any Fees or grant you any right to terminate this Membership Agreement.

### **8.2 Fitness programs and recommended activities**

Our employees or contractors may, on your request, develop a fitness program and/or recommend fitness activities for you at the Facility. You acknowledge and agree that:

- 8.2.1 our employees and contractors, unless we give you written notice otherwise, hold no medical qualifications; and
- 8.2.2 subject to clause 11.1, you follow the program and/or recommendations at your own risk and we are not liable to you for any claim (including any action, proceeding, debt, demand, cost or expense) resulting from you following the program and/or recommendations.
- 8.2.3 'Staff Hours' are subject to availability. These hours are located at the entrance to the gym or [www.wynactive.com.au](http://www.wynactive.com.au) for each facility. WLS reserves the right to change the staffed hours at any time without notice.

### **8.3 Medical**

You authorise us to obtain medical/ambulance assistance for you in the case of an accident or emergency involving you, and agree to reimburse us on demand for all costs we incur in obtaining such assistance.

### **8.4 Programs and activities run by third parties**

From time to time third parties may, at your request, provide goods and services to you at the Facility, such as personal training. You acknowledge and agree that:

- 8.4.1 all third-party providers must have entered a hire agreement with WLS before services are provided
- 8.4.2 we are not responsible for any such goods or services;
- 8.4.3 you must pay these providers directly for any such goods or services; and
- 8.4.4 we are not liable to you for any claim (including any action, proceeding, debt, demand, cost or expense) resulting from the provision of such goods and services to you.

### **8.5 Emergencies and natural disasters**

- 8.5.1 We may be required to use all or part of the Facility during emergencies and natural disasters, including to provide and coordinate support for those affected by bushfires or heatwaves. You may not be able to access or use all or part of the Facility during these periods.
- 8.5.2 We will use reasonable endeavours to provide you with written notice of any Emergency Period in accordance with clause 14.3.
- 8.5.3 We may suspend your membership during an Emergency Period under clause 9.2.5.
- 8.5.4 An Emergency Period does not constitute a change to this Membership Agreement and does not entitle you to terminate this Membership Agreement under clause 5.1.3.

## **9. Suspension of your membership**

### **9.1 Suspension by you**

- 9.1.1 You may voluntarily suspend your membership (other than any Swimming Lessons unless eligible for clause 9.1.4 to be provided under this Membership Agreement) from time to time for one or more periods not exceeding a total of 13 weeks per 12 months of your membership by giving us at least 10 Business Days' written notice. Any suspensions beyond the first 28 days will incur a suspension fee of \$0.86 per day.
- 9.1.2 We may agree that a Suspension Period will commence up to one month prior to the date you give us written notice, if you provide us with a certificate from a qualified medical practitioner stating that you could not exercise during that period.
- 9.1.3 You may not suspend your membership if either you or we have given written notice terminating this Membership Agreement.
- 9.1.4 If this Membership Agreement includes Swimming Lessons, you cannot suspend your Swimming Lessons unless you provide us with a medical certificate.

### **9.2 Suspension by us**

We may suspend your membership from time to time for a period chosen by giving you written notice:

- 9.2.1 if you fail to pay the Fees (or any instalment of the Fees), or part thereof, when due;
- 9.2.2 if we decide that you have behaved in a way which is inappropriate, risky or detrimental to the safe enjoyment of the Facility by others;
- 9.2.3 if we consider your use or access of the Facility poses a health risk to you or any other person and you have not provided us with the evidence as we reasonably require (including a medical certificate) to the contrary;
- 9.2.4 if you breach any term of this Membership Agreement, and either:
- (a) you do not remedy the breach within 10 Business Days of written notice from us; or
  - (b) the breach is incapable of being remedied; or
- 9.2.5 if the Facility is unavailable or unfit for use, including during an Emergency Period.

### **9.3 Effect of suspension**

- 9.3.1 During any Suspension Period:
- (a) you must not use the Facility under this Membership Agreement;
  - (b) you will not pay the Membership Fees for the Suspension Period; and
  - (c) you will pay the Suspension Fees for the Suspension Period.
- 9.3.2 We will make a pro-rata adjustment to your Membership Fees and, if applicable, credit or refund to you any part of the Membership Fees applicable for a Suspension Period.
- 9.3.3 If your Membership Type is Paid in Full – your Paid in Full Term will be extended by an amount of time equivalent to each Suspension Period during the Paid in Full Term.
- 9.3.4 If your Membership Type is Direct Debit – your Direct Debit Minimum Term will be extended by an amount of time equivalent to each Suspension Period during the Direct Debit Minimum Term.

## 10. Termination of your membership

### 10.1 Termination by you

You may terminate Membership Agreements:

- 10.1.1 if your Membership Type is Direct Debit – at any time prior to the end of the Direct Debit Minimum Term; your membership will be terminated 14 days from the day we receive written notice, subject to clause 10.3.1;
- 10.1.2 if your Membership Type is Direct Debit – at any time after the end of the Direct Debit Minimum Term; your membership will be terminated 14 days from the day we receive written notice;
- 10.1.3 if your Membership Type is Paid in full – at any time prior to the end of the term of the agreement; your membership will be terminated 14 days from the day we receive written notice;
- 10.1.4 written notice to us, if we breach a material term of this Membership Agreement (other than during a Suspension Period) and do not remedy that breach within 20 Business Days after written notice from you;
- 10.1.5 immediately on giving written notice to us, if you become sick or incapacitated and you provide us with a certificate from a qualified medical practitioner stating that you cannot exercise for a period of at least 3 months; or
- 10.1.6 otherwise with our agreement in writing, which we may provide in our absolute discretion;
- 10.1.7 if you are withdrawing due to medical reasons we will action your cancellation as soon as we receive notification in writing accompanied by an appropriate medical certificate;
- 10.1.8 any outstanding amounts owing by you must be paid in full or, where you are entitled to a credit or refund, will be deducted from such credit or refund;

### 10.2 Termination by us

We may terminate Membership Agreements giving you written notice:

- 10.2.1 if you fail to pay the Fees (or any instalment of Fees) when due;
- 10.2.2 if we decide that you have behaved in a way which is inappropriate, risky or detrimental to the safe enjoyment of the Facility by yourself or others;
- 10.2.3 if you breach any term of this Membership Agreement, and either:
  - (a) you do not remedy the breach within 10 Business Days on written notice from us; or
  - (b) the breach is incapable of being remedied; or
- 10.2.4 if the Facility is unavailable or unfit for use.
- 10.2.5 if you access facilities contrary to your membership accessibility as detailed within your Membership Type.
- 10.2.6 if you let anyone else into any WLS managed facility without the approval of staff or let anyone else use your membership card or wristband.

### 10.3 Effect of termination

If this Membership Agreement is terminated:

- 10.3.1 by you under clause 10.1.1 – this Membership Agreement will be terminated 14 days from the day we receive written notice. You must pay us the lower of:
  - (a) all Fees that would be payable for the remainder of the Direct Debit Minimum Term; or
  - (b) the Cancellation Fee;
- 10.3.2 by you under clause 10.1.2 – this Membership Agreement will be terminated 14 days from the day we receive written notice from you. You must pay us any outstanding Fees for the period up to and including the date of termination;
- 10.3.3 by you under clause 10.1.3 – If your Membership Type is Paid in Full, we will refund to you any Fees you have already paid for the period after the date of termination minus the Cancellation Fee. This refund will not include any Joining Fee or any other Fees paid for the period up to and including the date of termination;
- 10.3.4 by you under clause 10.1.4 or 10.1.5 – this Membership Agreement will be terminated on the date we receive written notice from you. You must pay us all outstanding Fees up to and including the date of termination, unless otherwise agreed by you and us in writing;
- 10.3.5 by you under clause 10.1.6 – this Membership Agreement will be terminated on the date as agreed by you and us in writing. You must pay us any amounts as agreed by you and us in writing;
- 10.3.6 by us under clause 10.2.1, will be terminated within 14 days from the date payment was due, unless the Fees are paid within that period. You must pay us the total of all outstanding Fees for the period up to and including the date of termination. If the termination is prior to the end of Minimum Term, the Cancellation Fee will be applied to outstanding Fees;
- 10.3.7 by us under clause 10.2.2, 10.2.3, 10.2.5 or 10.2.6 – this Membership Agreement will be terminated within 14 days from the day nominated by us in our written notice to you. You must pay us the total of all outstanding Fees for the period up to and including the date of termination plus the Cancellation Fee, unless otherwise agreed to in writing by you and us in writing; 10.3.7.1 If your Membership Type is Paid in Full, we will refund to you any Fees you have already paid for the period after the date of termination minus the Cancellation Fee. This refund will not include any Joining Fee or any other Fees paid for the period up to and including the date of termination.
- 10.3.8 by us under clause 10.2.4 – this Membership Agreement will be terminated on the date nominated by us in our written notice to you. You must pay us all outstanding Fees for the period up to and including the date of termination. We will refund to you any Fees you have already paid for the period after the date of termination. We will not refund to you the Joining Fee or any other Fees paid for the period up to and including the date of termination.

## 11. Our liability

### 11.1 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 purpose 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.

## 11.2 Our liability

- 11.2.1 Subject to the warning in clause 11.1 and your rights under the Australian Consumer Law (Victoria), you enter into the Membership Agreement and will make use of the Facility at your sole and absolute risk. If you are killed or injured because:
- (a) any service we provide is not rendered with due care and skill; and/or
  - (b) the Facility or any part of it is not reasonably fit for the purpose for which you, either expressly or by implication, make known to us, for any reason other than our gross negligence, or otherwise suffer any other loss or damage (including indirect or consequential loss), you agree that any right you may otherwise have to sue us is excluded and you must not bring any related claim or demand against us.
- 11.2.2 We accept no liability or responsibility to you for any claim (including any action, proceeding, debt, demand, cost or expense) by you in relation to:
- (a) your access and use of the Facility;
  - (b) your use of any equipment at the Facility; and
  - (c) the loss of any of your property at the Facility (irrespective of whether the property is stored in a locker or not).
- 11.2.3 In addition, we give you no warranty or assurance that use of the Facility might cause you to achieve any result that you may intend, whether that result is made known to us or not.

## 12. Disputes and complaints

- 12.1 If a dispute arises concerning this Membership Agreement or you have any complaints about the Facility or us, please give us written notice of the dispute or complaint.
- 12.2 We will meet with you as soon as possible to discuss and endeavour to resolve the dispute or your complaint.

## 13. Privacy

- 13.1 We will have access to personal information about you, such as your name and address.
- 13.2 We will only use, disclose and deal with your personal information in accordance with our privacy policy. Our privacy policy is available on our website.
- 13.3 We may use video monitoring in and around our facilities for health, safety and security reasons. Our privacy policy details how we store, use and dispose of video monitoring footage. If you have any queries in relation to the use of monitors operating in and around our facilities, please contact us.

## 14. Notices

### 14.1 Your contact details

- 14.1.1 Your contact details are set out in item 3 of the Membership Details.
- 14.1.2 You must give us written notice of any changes to your contact details form.
- 14.1.3 If we do not receive written notice from you and your contact details change, notice given by us to the email or other address we have on record for you will constitute valid notice to you under this Membership Agreement.

### 14.2 Notices from you to us

- 14.2.1 You may serve notices on us under this Membership Agreement by any of the following methods:
- (a) by hand delivery to the Facility;
  - (b) by email to [info@westernleisureservices.com.au](mailto:info@westernleisureservices.com.au); or (c) by post to the Facility.
- 14.2.2 If your Membership Agreement provides for Access All, you may service notices on us under clause 14.2.1(a) or 14.2.1(c) by hand delivery or post to any of the Facilities.

### 14.3 Notices from us to you

We may serve notices on you under this Membership Agreement by any of the following methods:

- 14.3.1 by publishing the notice on our website;
- 14.3.2 by email, to the address listed in the Membership Details (or to any email address you have notified us of in accordance with clause 14.1); and
- 14.3.3 by post or delivery, to the address listed in the Membership Details (or to any postal or physical address you have notified us of in accordance with clause 14.1).

## 14.4 Timing of notices

A notice is deemed delivered:

- 14.4.1 if delivered personally or left at an address – upon delivery;
- 14.4.2 if posted within Australia to an Australian address – 2 Business Days after posting (and, otherwise, 5 Business Days after posting);
- 14.4.3 if sent by email – subject to clauses 14.4.4 and 14.4.5, at the time the email containing the notice left the sender's email system (unless the sender receives notification that the email was not received by the recipient); and
- 14.4.4 if received after 5.00pm in the place it is received, at 9.00am on the next Business Day; and
- 14.4.5 if received on a day which is not a Business Day, at 9.00am on the next Business Day.

## 15. General provisions

### 15.1 Governing law

This Membership Agreement is governed by the law applying in Victoria. You and we submit to the non-exclusive jurisdiction of the courts of Victoria.

### 15.2 Variation

This Membership Agreement can only be varied by a document executed by you and us.

### 15.3 Entire agreement

This Membership Agreement constitutes the entire agreement between you and us and supersedes and cancels any previous arrangements between you and us in relation to its subject matter.

### 15.4 Severability

- 15.4.1 Any provision of 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.
- 15.4.2 If it is not possible to read down a provision as required by this clause, part or all of the clause of this Membership Agreement that is unlawful or unenforceable will be severed from this Membership Agreement and the remaining provisions continue in force.

### 15.5 Waiver

The failure of a Party at any time to insist on performance of any provision of this Membership Agreement is not a waiver of the Party's right at any later time to insist on performance of that or any other provision of this Membership Agreement.

### 15.6 Assignment and subcontracting

- 15.6.1 You cannot assign this Membership Agreement without our prior written consent.
- 15.6.2 We may assign or subcontract any part of this Membership Agreement to a third party without written notice to you and you will continue as a member.

## 16. Interpretation

### 16.1 Words and headings

In this Membership Agreement:

- 16.1.1 words denoting the singular include the plural and vice versa;
- 16.1.2 the word 'includes' in any form is not a word of limitation;
- 16.1.3 where a word or phrase is defined, another part of speech or grammatical form of that word or phrase has a corresponding meaning; and
- 16.1.4 headings and sub-headings are for ease of reference only and do not affect the interpretation of this Membership Agreement.

### 16.2 Specific references

In this Membership Agreement, a reference to:

- 16.2.1 a gender includes all other genders;
- 16.2.2 any legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced and includes any subordinate legislation issued under it;
- 16.2.3 any document (such as a deed, agreement or other document) is to that document (or, if required by the context, to a part of it) as amended, novated, substituted or supplemented at any time;
- 16.2.4 writing includes writing in digital form; and
- 16.2.5 '\$', '\$', 'AUD' or 'dollars' is a reference to Australian dollars.



## 17. Dictionary

In these Membership Terms and Conditions:

- 17.1 **"Access All"** means a Membership Agreement which provides for membership of all three Facilities as specified in item 4 of the Membership Details.
- 17.2 **"Business Day"** means a day other than a Saturday, Sunday or public holiday in Melbourne.
- 17.3 **"Cancellation Fee"** means the cancellation fee (if any) specified in item 7 of the Membership Details.
- 17.4 **"Cooling Off Period"** means the period of 5 Business Days beginning on the Start Date.
- 17.5 **"Direct Debit Minimum Term"** means, for a Direct Debit Membership Type, the minimum term specified in item 10 of the Membership Details, as extended in accordance with clause 9.3.4.
- 17.6 **"Direct Debit Request Service Agreement"** means the Direct Debit Request Service Agreement on page 2 of this the Membership Details.
- 17.7 **"Emergency Period"** means a period during which you are unable to access or use all or part of the Facility under clause 8.5.1.
- 17.8 **"Facility"** means:
- 17.8.1 if 'Access All' is specified in item 4 of the Membership Details – each of the Eagle Stadium, the AquaPulse and the Werribee Outdoor Pool; and
- 17.8.2 if one facility specified in item 4 of the Membership Details – that facility.
- 17.9 **"Facility Rules"** means the rules for the Facility from time to time, as available within the Facility.
- 17.10 **"Fees"** means the fees payable in relation to your membership specified in item 7 of the Membership Details, and includes the Cancellation Fee, the Joining Fee, the Membership Fees, and the Suspension Fee.
- 17.11 **"Joining Fee"** means the joining fee (if any) specified in item 7 of the Membership Details.
- 17.12 **"Membership Agreement"** means this membership agreement between you and us and includes the Membership Details, the Facility Rules and Membership Terms and Conditions, as varied in accordance with this Membership Agreement.
- 17.13 **"Membership Details"** means the table of membership details provided with these Membership Terms and Conditions and signed by you and us.
- 17.14 **"Membership Fees"** means the membership fees specified in item 7 of the Membership Details.
- 17.15 **"Membership Terms and Conditions"** means these membership terms and conditions.
- 17.16 **"Membership Type"** means the Membership Type specified in item 5 of the Membership Details.
- 17.17 **"Paid in Full Term"** means, for a Paid in Full Membership Type, the term specified in item 9 of the Membership Details, as extended in accordance with clause 9.3.3.
- 17.18 **"Payment Method"** means the payment method specified in item 8 of the Membership Details.
- 17.19 **"Rollover Period"** means the total period of rollover determined in accordance with clause 3.2.2(b).
- 17.20 **"Swimming Lessons"** means swimming lessons at the Facility. Your membership only provides for Swimming Lessons if you have a 12-month (Swimming Lessons Only) Direct Debit Membership as set out in item 10 of the Membership Details.
- 17.21 **"Staffed Hours"** means hours for the gym in which staff members will be present. This is subject to change without notice.
- 17.22 **"Start Date"** means the date specified in item 6 of the Membership Details.
- 17.23 **"Suspension Fee"** means the suspension fee (if any) specified in item 9 of the Membership Details.
- 17.24 **"Suspension Period"** means a suspension period under clause 9.1 or 9.2 (as applicable).
- 17.25 **"Term"** means the term of this Membership Agreement determined in accordance with clause 3.