

PENINSULA AQUATIC RECREATION CENTRE

MEMBERSHIP TERMS AND CONDITIONS



Peninsula Aquatic Recreation Centre is operated by Peninsula Leisure Pty Ltd ACN 160 239 770 ("PARC").

PARC provides health, fitness and wellness services and facilities to the regional community ("Facilities"). Your use of the Facilities are governed by the terms and conditions set out below ("this Agreement"). This Agreement forms a binding legal agreement between you and PARC. You should read the terms and conditions of this Agreement carefully.

Without limiting the way in which you may be bound by this Agreement, by signing the Membership Application Form or by proceeding to use the Facilities, you will be deemed to have accepted and will be bound by the terms and conditions of this Agreement.

1. Membership

- 1.1. Subject to the terms of this Agreement, PARC agrees to provide you with access to use the Facilities (or part of the Facilities) for the Membership Fee (as that term is described in **clause 2.1**).
- 1.2. PARC offers a number of membership packages. These packages may be viewed on the website or can be provided to you by one of our staff members. These packages permit you access to use some or all of the Facilities subject to these terms and conditions and the conditions of entry.
- 1.3. PARC offers concession and corporate memberships to those who meet the eligibility requirements. To apply, you must provide PARC with sufficient proof of your entitlement to obtain the concession or corporate membership. The extent of the proof required by PARC is at PARC's sole and absolute discretion. During the Membership Period we may ask you to provide PARC with evidence of your continued right to the concession or corporate membership. If you are unable to

provide PARC with sufficient proof then you, if you are a:

- a) concession membership holder, agree to pay the full rate from the date upon which you ceased to hold a valid concession card; or
- b) corporate membership holder, agree to pay the full rate at the expiration of the Membership Period.

- 1.4. Details of your membership fee ("Membership Fee"), period of membership ("Membership Period") the first direct debit date ("First Debit Date") and the billing date and billing period ("Billing Period") and minimum term period ("Minimum Term") are set out in the Membership Application Form.
- 1.5. You are only permitted access to use the areas in the Facilities to which your membership relates. If you wish to use other Facilities then you may do so as a casual user and you must pay the requisite fee.
- 1.6. Your membership cannot be transferred or assigned to another person without PARC consent.
- 1.7. By becoming a member of PARC you agree to abide by all of PARC's rules and PARC's conditions of entry ("Rules"). The Rules are displayed on the front door and can be viewed on the website.

2. Payment

- 2.1. In consideration of us granting you access and use of the Facilities, you agree to pay the Joining Fee and the Membership Fee in the way specified in the Membership Application.
- 2.2. You may pay the Membership Fee by instalments ("Instalment") via direct debit or in full upon joining. The instalment period will be stated on the Membership Application. Should you wish to change your payment

PENINSULA AQUATIC RECREATION CENTRE

MEMBERSHIP TERMS AND CONDITIONS



- method please see one of our staff members to assist with this process.
- 2.3. If you elect to pay the Membership Fee by instalment via direct debit you agree and authorise PARC:
- to debit the Instalment from your nominated account for the Membership Period each fortnight from the First Debit Date until you give notice of cancellation in accordance with **clause 1.1.a)**; and
 - debit the Joining Fee from your nominated account.
- 2.4. If you pay by Instalments and you apply (and obtain our consent) to suspend your membership in accordance with **clause 5**, PARC will suspend payments for that period, save where you are required to pay the fee described in **clause 5.2**.
- 2.5. If we are unable to debit your account for any reason then you are liable for and indemnify PARC against and you agree to pay to PARC any resulting fees, interest, penalties or charges which are charged to PARC by any person or third party. You also agree to pay PARC's rejection administration fee ("**Rejection Administration Fee**") and you agree that this amount may be deducted from your nominated account. The current Rejection Administration Fee is displayed on our website.
- 2.6. We may from time to time change the Membership Fee and the terms applying to your Agreement with PARC. Any change relating to the Membership Fee is effective 28 days after PARC notifies you of that change.
- 2.7. The Membership Fee includes GST except for PARC Swim. Your Membership Fee will change in proportion to any government GST rate changes.
- 2.8. Payment of the Membership Fee is not dependent on your frequency of use of the Facilities. Membership Fees are due and payable in full, without deduction or off set irrespective of your frequency of use of the Facilities during the Membership Period.
- 3. PARC Programs**
- 3.1. PARC offers programs from time to time which do not form part of your Membership with PARC. These programs include personal training and other programs which we may introduce or offer ("**PARC Programs**").
- 3.2. PARC Programs are subject to their own terms and conditions.
- 4. Cooling off period**
- 4.1. PARC allows a 7 day 'cooling off' period whereby you may terminate your Membership for any reason whatsoever within 7 days of signing the Membership Application.
- 4.2. If you elect to terminate this Agreement in accordance with **clause 4.1**, PARC will refund both the Joining Fee and the Membership Fee to you in full less the pro rata amount for the number of days for which you were a member of PARC.
- 5. Voluntary Suspension**
- 5.1. Subject to clause 5.2, you may suspend your membership (with the exception of PARC Swim) for a maximum of 26 weeks in aggregate in each calendar year by providing us with 3 business days written notice of your intention to suspend. This can be done via our website. For PARC Swim memberships, suspension periods must be a minimum of 1 week. If you suspend for more than 4 weeks during non-school holiday periods, you will not be guaranteed the same lesson day and time upon your return. A maximum of 8 weeks suspension is permitted in any calendar year for PARC Swim memberships.
- 5.2. You may suspend your membership without charge for 28 days of each calendar year ("**Free Suspension Period**"). For each day in excess of the Free Suspension Period you will be charged on a daily rate (we reserve the right to change this fee and if we do so, we will notify you of that change) ("**Suspension Fee**"). If you pay via direct debit, you agree and authorise PARC to invoice you and deduct the Suspension Fee from your nominated account. If you pay in

PENINSULA AQUATIC RECREATION CENTRE

MEMBERSHIP TERMS AND CONDITIONS



advance, you agree to pay the Suspension Fee to PARC within 14 days of being invoiced for the Suspension Fee. The current Suspension Fees are displayed on our website.

5.3. If you are sick or incapacitated and you provide us with a medical certificate from a qualified practising medical practitioner which states that you are unable to exercise for a specified period, then PARC will allow you to suspend your membership for that period without incurring the costs set out in **clause 5.2** and these days will be included in your Free Suspension Period.

5.4. If you suspend your fixed Term upfront membership in accordance with this **clause 5**, you agree that your Membership Period will increase by the corresponding amount of time.

6. Breach of this Agreement

6.1. PARC may, at its sole and absolute discretion, suspend or cancel your membership if:

- a) you do not pay your Membership Fees by the due date; or
- b) you breach the Rules; or
- c) you breach any other terms of this Agreement.

6.2. If we cancel your membership in accordance with **clause 6.1** then you agree that:

- a) if you pay by Instalment via direct debit, we will charge you until the end of the Instalment period as specified in the Membership Application form; and
- b) if you pay in full then we will refund you pro rata for the days remaining in your Membership Period.

7. Cancelling your membership

7.1. Subject to clauses 7.2 and 7.3, you may only cancel your membership if:

a) you are sick or incapacitated and you provide us with a medical certificate from a qualified medical practitioner which states that you are unable to exercise; or

b) your membership has no Minimum Term Membership Period, you provide us with at least 28 days prior written notice of your intention to cancel your membership. This includes PARC Swim memberships.

7.2. If you cancel your membership in accordance with **clause 7.1.a)** then you agree to pay the Membership Fees due up to and including the date of the medical certificate.

7.3. If you cancel your membership in accordance with **clause 1.1.a)**, then you agree to pay the Membership Fee to the end of the 28 day notice period.

8. Fitness to use the PARC Facilities

8.1. You acknowledge and agree that:

- a) We are not obliged to offer you any exercise guidance, training or instruction;
- b) our employees and contractors may not be medically trained nor qualified to assess if you are in good physical condition and can exercise without causing damage to your health, safety, comfort or physical condition each time you use the Facilities; and
- c) you will take all reasonable precautions against and not use the Facilities whilst suffering from any infection, contagious illness or disease or any other physical ailment which may put you or any other user of the Facilities at risk.

8.2. You warrant that you believe you are:

- a) medically and physically fit and able to use the Facilities at all times;
- b) not a danger to yourself or to the health and safety of others; and

PENINSULA AQUATIC RECREATION CENTRE

MEMBERSHIP TERMS AND CONDITIONS



- c) not presently receiving treatment for any condition, illness, disorder or injury which would render it unsafe for you to use the Facilities which would put other users of the Facilities at risk.
- 8.3. You acknowledge that you must, and you agree that you will, disclose any pre-existing medical or other condition that may affect the risk that either you or any other person may suffer injury, loss or damage. You acknowledge and you warrant that PARC may rely on the information provided by you and that all such information is accurate and complete.
- 9. Risks of using the Facilities**
- 9.1. You enter, use and participate in any activities conducted at the Facilities at your own risk. You agree that you, and not PARC, are primarily responsible for your safety and the safety of any persons under your supervision.
- 9.2. You must take reasonable care for your own health and safety, and for the health and safety of any children in your care. You must actively supervise any children that accompany you to the Facilities at all times.
- 10. Limitation of Liability/Disclaimer**
- 10.1. Subject to your rights arising under the *Competition and Consumer Act 2010 (Cth)* or other similar consumer legislation, you agree that PARC will not be liable in respect of any claim by you (whether contractual, tortious, statutory or otherwise) for any direct, special, incidental, indirect or consequential damages or injury including, but not limited to, any loss of profits, contracts, revenue or data arising out of or in connection with the provision of any goods or services under this Agreement and whether as a result of any breach or default by PARC, or any negligence of PARC. The maximum liability of PARC under this Agreement for any and all breaches of this Agreement, and any negligence in relation to this Agreement, will not exceed the total amount of payments made by you to PARC under this Agreement, and if you have not paid any monies to PARC, then the maximum liability of PARC will be \$10.00.
- 10.2. If the *Competition and Consumer Act 2010 (Cth)* (or analogous legislation) applies to this Agreement and permits the limitation of liability for breach of warranty implied by statute, the liability of PARC is limited, at the option of PARC, to the supply of the services again or the payment of the cost of having the services supplied again.
- 10.3. Any of the terms and conditions of this Agreement which limit or exclude any term, condition or warranty, express or implied, or the liability of PARC will apply to the extent permitted by law and will not be construed as excluding, qualifying or limiting your statutory rights or remedies arising by virtue of the breach of any implied term of this Agreement where such exclusion, qualification or limitation would be prohibited by statute.
- 10.4. Nothing in this Agreement restricts, limits or modifies your rights or remedies against PARC for the failure of a statutory guarantee under the Australian Consumer Law where such restriction, limitation or modification would be prohibited by the *Competition and Consumer Act 2010 (Cth)*.
- 10.5. In the course of entering or using the Facilities, if you are killed or injured, PARC will not be liable except to the extent caused by PARC's gross negligence. Please refer to the warning notice in **clause 10.6** below which PARC is required to provide to you if you are in Victoria under the Australian Consumer Law and Fair Trading Act 2012 in relation to this limitation of PARC's liability.
- 10.6. Warning under the Australian Consumer Law and Fair Trading Act**
- In this warning, references to "the supplier" mean PARC, and references to "you" mean you and your child.
- 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 the Membership Application is required to ensure that the recreational services it supplies to you—
- are rendered with due care and skill;

PENINSULA AQUATIC RECREATION CENTRE

MEMBERSHIP TERMS AND CONDITIONS



- 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 the Membership Application 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. Indemnity

- 11.1. You indemnify and keep indemnified PARC for all costs, losses, expenses or damages which PARC suffers or incurs due to:
- a) your breach of this Agreement;
 - b) any damage to property or injury to another person which is wholly or

partially caused by you during your use or entry to the Facilities.

12. Privacy

- 12.1. In providing the Service, PARC may collect your personal information. You agree that PARC may collect, store, use and disclose your personal information in accordance with its Privacy Policy. A copy of PARC's privacy policy may be found at our website, www.parcfrankston.com.au.
- 12.2. We sometimes film or photograph PARC, so it is possible you will appear in the background. By signing the Membership Application Form, you allow us to use your image in promotional and other business related material.

13. General Clauses

- 13.1. The law of Victoria governs this Agreement. The parties consent to the jurisdiction of the Courts of the State of Victoria and their Courts of Appeal in relation to this Agreement.
- 13.2. If any provision of this Agreement is judged invalid or unenforceable for any reason whatsoever by a court of competent jurisdiction, such invalidity or unenforceability (unless deletion of such provision would materially adversely affect one of the parties) will not affect the operation or interpretation of any other provision of this Agreement to the intent that the invalid or unenforceable provision will be treated as severed from this Agreement.