



1. DEFINITIONS

Administration Fee means the Fee payable under this Agreement as set out in the Details.

Agreement means this Agreement as described in the Important Notice.

Leopold Swim School means Leopold Swim School Pty Ltd, ACN 092 507 894 which owns the Leopold Swim School, trademark and other intellectual property.

ACL means the Australian Consumer Law in the CCA.

Biller means our third-party biller, EZIDEBIT Australia Pty Ltd, ACN 096 902 813.

Biller's Failed Payment Fee means the Fee charged by the Biller under this Agreement as set out in the Details.

Cancellation Fee means the Fee payable under this agreement as set out in the Details.

CCA means the Competition and Consumer Act 2010 (Cth).

Frequency of Direct Debit Amount means what you agree to pay by direct debit each Direct Debit Payment Period as set out in the Details.

Direct Debit Payment Agreement means the periodic billing agreement you enter with our third party Biller **EZIDEBIT** for periodic billing services.

Direct Debit Payment Period means the frequency of your direct debit payments as set out in the agreement.

Essential Term means a term of this Agreement that is so important you would not have signed the Agreement without it, for example, a requirement that the Leopold Swim School instructors hold the necessary qualifications to provide swimming lessons. If there is a disagreement as to whether a term is an Essential Term, the matter will be reasonably determined by Leopold Swim School.

Facilities and Services means includes premises and all areas of the property including the car park, change rooms, equipment, any programs, products, classes and services that you may use.

Fees means fees that apply under this Agreement as set out in the Details and referred to in this Agreement.

Important Notice means the part of this Agreement described as this.

Joining Fee means the Fee payable under as set out in the Details.

Key Terms means the part of this Agreement described as the "Details".

Member means a Leopold Swim School member.

Membership means another word used to refer to this Agreement.

Membership Fees means the Fees you pay to access the Facilities and Services as referred to in the Agreement and set out in the Details.

Minimum Term means the minimum term as set out in the Details being 12 weeks.

Ongoing Agreement means an agreement that continues an ongoing basis after the Minimum Term until terminated in accordance with the requirements of this agreement.

Start Date means when this Agreement starts as set out in the Details.

Terms: the part of this Agreement described as the "Key Terms or Details".

2. JOINING

2.1 When you join our Swim School, you will need to give us information noted in the Details and provide us with photographic identification and sign all necessary documents.

3. COOLING OFF

3.1 If you change your mind after joining, you have 7 days to cool off or cancel your Membership starting from the Start Date. To be effective, you must let us know in writing using the appropriate Membership Cancellation form at any time during this 7-day cooling off period. Your written cancellation can be given to us personally, by post or by email.

3.2 If you cancel your Membership under clause 3.1, we will charge you the initial deposit and administration fee which are not refundable.

4. HEALTH AND SAFETY AND ACCEPTABLE CONDUCT

(a) When you sign this Agreement and each time you use the Facilities and Services, you must ensure you and your child/children are in good physical condition and know of no medical or other reason why you or your child/children should not partake in our classes or services. If unsure, you should not use the Facilities and Services until you have sought appropriate medical guidance and been given the go-ahead.

(b) You agree to give us all relevant personal, health and fitness information both before and during any term of the Swim School. In some cases, responses you give may require that you get medical guidance before commencing lessons. You acknowledge that past performance is not a substitute for medical advice and does not guarantee against injury or death.

(c) You promise that the information you give us will be true and accurate and not misleading in any way.

(d) You must not use the Facilities and Services if you or your child/children are suffering from any illness, disease, injury or other condition that could be a risk to your health or safety or that of other Members and others.

(e) We may suspend or cancel your Membership if we have reason to suspect that you have not complied with clause 4.

5. LEOPOLD SWIM SCHOOL RULES

(a) Swim School Rules apply to everyone using the Facilities and Services. They are usually displayed in and around the Swim School.

(b) Swim School Rules form part of this Agreement so you must make sure you read, always understand and follow them.

(c) If you or any of your children break any of the Leopold Swim School Rules we will respond in a way we consider fair and appropriate. For example, in less serious cases, we may give you a warning but in serious cases or where you have repeatedly broken Swim School Rules we may suspend or cancel your Membership. If your breach causes us or another person costs, loss or damages, you agree to pay for these.

(d) Some of the Swim School rules but not all and subject to change include the following:

- No running in all areas of the Swim School;
- Entering pool area unsupervised;
- Leaving premises (car park) not supervised;
- No jumping on change room benches, toilets and change tables (babies);
- Supervision for young children to avoid getting limbs stuck in doors;
- Supervision for young children to avoid them getting locked in toilet cubicles;
- Lack of information regarding additional medical needs for any swim lesson participant;
- Must provide constant supervision of siblings not engaging in swim lessons; and
- Must provide constant supervision of children in change room facilities.

6. EMERGENCIES

6.1 Training

(a) All Leopold Swim School trainers hold the necessary training qualifications to administer swimming lessons and a Swim School member who is qualified to perform CPR if required is also always present during business hours.

(b) In an emergency you agree to follow all directions that are given to you by any employee of the Swim School.

(c) The Swim School may also have an emergency or crisis response procedure displayed which must be followed in emergencies.

6.2 Be cautious

You must be cautious when entering, leaving and using the Swim School.

6.3 Following Directions

You agree to follow any reasonable direction of a Swim School employee relating to health, safety or security or related matters.

7. PRIVACY

7.1 Your personal information

From when you apply for Membership, you will need to provide us with, and we will have access to personal information about you, including information relating to your health and finances. Your personal information may be:

- (a) transferred to and stored out of Australia, including to a country that does not have the same level of privacy protection as Australia; and
- (b) may be disclosed to and used by an affiliate or third party as required by EZIDEBIT.

7.2 General consent

By signing this Agreement, you consent to us collecting, using, disclosing and dealing with your personal information in accordance with our privacy policy. In particular, you consent to the transfer and storage of your personal information, and to the disclosure and use of your personal information to other applicable third parties.

7.3 Up to date contact information

You must tell us promptly if you change your contact or payment details or if there is a change to other relevant personal information, including anything that may affect health or safety.

7.4 Consent to use yours and your child's/children's images

You understand that photos, films, videos or audio recordings are sometimes taken by Swim School Employees for promotional purposes. Your permission will first be obtained where possible if this is done. By signing this Agreement, you agree to allow yours and your child's image, recording or likeness to be used for any legitimate purpose by us and you assign your rights in any of these materials to Leopold Swim School Pty Ltd.

8. PUTTING YOUR MEMBERSHIP ON HOLD

8.1 In any 12-month period you can only 'freeze' your **Agreement** once for a period of 4 weeks and 14 days' written notice must be given using the required forms which can be found at our office.

8.2 If we agree, you may freeze your **Agreement** more than this for travel, medical or hardship reasons but must provide us with proof and the decision will remain at our discretion. Your **Membership** will be extended by the freeze period. This means while your Membership is frozen, the Minimum Term will be extended for the same time as the freeze period

9. WHEN YOU CAN END THIS AGREEMENT

9.1 Notice

If you need to notify or tell us anything in writing under this clause:

- (a) you can give this to us in person, by e mail or post;
- (b) It is required that you complete any standard documentation we may have such as a cancellation form and notify your bank that the direct debit is to cease (once confirmed by us);
- (c) if you do not use our standard documentation, your notice must include your name, address, phone, email, ID details and signature and explain why you wish to cancel; and
- (d) you must also attach required proof such as a medical certificate.

9.2 Cancelling your Membership on or after end of the Minimum Term

(a) If this is a Fixed Term Agreement, you do not need to do anything, as your Membership will end when the Minimum Term ends. We may contact you before your Agreement ends to discuss renewal. If you choose to renew your Membership or sign a new agreement before the Minimum Term ends, a Joining Fee may not apply.

(b) If this is an Ongoing Agreement, it will continue after the Minimum Term unless you tell us in writing at any time (but at least 14 days) before the end of the Minimum Term that you wish to cancel your Membership. If you tell us before the end of the Minimum Term but it is less than 14 days before, your Membership will continue for another 14 days before it ends.

(c) If this is an Ongoing Agreement and it has continued beyond the Minimum Term, you can cancel any time by giving us at least 14 days prior written notice.

9.3 Cancelling for Medical Reasons

(a) You can cancel your Membership at any time by telling us in writing if you or your child/children cannot use the Facilities and Services because you contract a serious illness or a permanent physical incapacity during the term of your Membership. This must be confirmed in writing by a doctor or other medical professional we reasonably agree to and you agree that we may contact the doctor or other professional for verification purposes.

(b) If you cancel under clause 9.3(a), we can charge you the Administration Fee. You will also be liable for Fees incurred, i.e. your Membership Fees for the time you were a Swim School Member (calculated on a pro rata basis), the Joining Fee, and Fees for services already supplied.

9.4 Other ways you can cancel this Agreement in the Minimum Term

You can also cancel your Membership in the following ways and without paying a Cancellation Fee:

(a) When prior notice is NOT required

You may cancel without giving us prior notice if:

- (i) we break an Essential Term and have not fixed this in a reasonable time of you asking us in writing;
- (ii) you become bankrupt and give us proof (such as supporting documents) to our reasonable satisfaction;
- (iii) we change this Agreement in a way that adversely affects you (this does not include a variation of Fees); or
- (iv) you become entitled to cancel under consumer laws.

(b) Applicable Fees

If you cancel your Membership under clause 10.5(a) or (b), you will be liable for Fees incurred, i.e. your Membership Fees for the time you were a member (calculated on a pro rata basis), the initial Joining Fee, the and Fees for services already supplied. These Fees are not refundable except in very limited circumstances and at our discretion.

10. WHEN WE CAN END THIS AGREEMENT

10.1 In addition to our other rights under this Agreement, we may cancel your Membership if you breach any obligation under this Agreement that can't be fixed or if you breach an obligation that can be fixed but you do not fix it in a reasonable time.

10.2 If we cancel your Membership under clause 10.1, you will be liable for Fees incurred, i.e. your Membership Fees for the time you were a member (calculated on a pro rata basis), the initial Joining Fee, and any other Fees incurred for services already supplied. We may also charge a Cancellation Fee for the minimum period remaining and recover costs, loss or damages caused by your breach.

10.3 You promise you are not bankrupt or insolvent and are able to pay applicable Fees at the time of signing. You agree that you will tell us promptly if you believe you will be unable to pay your Membership Fees for an extended period. We may cancel your Membership if you become bankrupt or insolvent.

10.4 If we cancel your Membership under clause 11.3 you will be liable for Fees incurred, i.e. your Membership Fees for the time you were a member (calculated on a pro rata basis), the Joining Fee, the Fob Key Fee and Fees for services already supplied.

11. FEES

11.1 General

(a) The Fees you must pay are set out in the Details of the agreement. Some rights and obligations that apply in relation to Fees are set out in this clause.

(b) If you do not make any payment when it is due, your Membership may be suspended, and you could be refused access to the Swim School and its Facilities and Services until all outstanding amounts have been paid.

(c) Your Membership may also be terminated if any Fees remain unpaid for an extended period. You will still be liable for all unpaid amounts. A Cancellation Fee may also apply.

11.2 Joining Fee

We will charge you an initial deposit of \$40.00 per child to cover the set up costs for the Membership. This is not refundable except in very limited circumstances and entirely at our discretion and a small one-off family joining fee will also be charged.

11.3 Pro-Rata Fee

If you pay by direct debit and your Start Date begins after the first day of the relevant Direct Debit Payment Period, you will only be charged the applicable portion of the Periodic Direct Debit Amount. The same applies if you have a Fixed Term Agreement and the Direct Debit Payment Period ends after the last day of the Agreement.

11.4 Membership Fees

(a) If this is a Fixed Term Agreement you can pre-pay your Membership Fees (i.e. pay them entirely up front) when you sign this Agreement, or you can elect to pay by equal fortnightly or monthly payments in advance via our EZIDEBIT direct debit option.

(b) If this is an Ongoing Agreement, you must pay Membership Fees periodically in advance until your Agreement ends.

11.5 Cancellation Fee

- (a) A Cancellation Fee is payable if you want to cancel your Membership for your convenience in the Minimum Term. It is an amount equal to the balance of your Membership Fees for the remainder of the Minimum Term.
- (b) A Cancellation Fee may (at our reasonable discretion) also be payable by you if your Membership is ended by us as a result of your breach.

11.6 If you do not pay a Fee when due

- (a) If you do not pay a Fee or other amount you owe when due, we can suspend your Membership until all amounts have been paid. This is in addition to our other rights under this Agreement, including those under clause 11.1. Other consequences may also apply with respect to late or rejected direct debit payments.
- (b) Fees and charges continue to accrue during a suspension under clause 12.7(a).

11.7 Fee increases

- (a) During the Minimum Term:
 - (i) your Membership Fees will not be increased during the minimum term;
 - (ii) other Fees may, however, be varied.
- (b) After the Minimum Term, all Fees may be increased.
- (c) We will provide 30 days written notice to tell you of any Fee changes.
- (d) If your Fees are varied, you authorise any debits from your nominated account to also be varied.

11.8 Refunds and the Credit Code

We can deduct all Fees and charges that you must pay under this Agreement from any refund we give you.

12. DIRECT DEBIT

12.1 Direct Debit Payment Agreement

- (a) If you pay any Fees, including ongoing Membership Fees, by direct debit, then this will be through our Biller (not us).
- (b) You will be provided with a copy of Direct Debit Payment Agreement of the Biller (EZIDEBIT Australia Pty Ltd) which applies to any direct debit services. The Direct Debit Payment Agreement, which we are not a party to, is entirely separate to this Agreement.

12.2 Authority to deduct Fees

By nominating a credit or debit account, you authorise our Biller, to deduct from that account all Fees and other charges you are responsible for under this Agreement. You must keep your account details up to date.

12.3 Late or rejected direct debit payments

- (a) You must ensure there is enough money in your nominated account on the usual payment, or the next working day if that falls on a day when banks do not process payments.
- (b) If there is not enough money in your nominated account on the usual payment day, or there is another reason that your account was unable to be debited (except one within the Biller's control), you will be charged the Biller's Administration Fee. This will be added to your next debit amount. Prior arrears may also be included.
- (c) You authorise our Biller to deduct any unpaid arrears outstanding on your account.
- (d) Your bank or credit provider may charge you a fee for overdrawing your account if you do not have enough money in your account when payment is due.

13. CHANGES TO YOUR AGREEMENT

13.1 We may sometimes make changes to this Agreement, including our Swim School Rules. If we do this, we will try to do this fairly and by giving you a chance to cancel your Membership if you are adversely affected by the change (which will remain at our discretion).

13.2 We will make reasonable efforts to tell you of any significant change in advance and tell you when it will take effect. Subject to other Terms, the effective date will generally be at least 30 days from the date we tell you about the change unless it is not practical for us to tell you at this time. Your Membership will be amended from the effective date.

13.3 You cannot cancel under this clause if we have to make the change to comply with a law or a direction of a relevant authority.

14. OUR LIABILITY TO YOU

14.1 Statutory guarantees

- (a) Under the ACL we guarantee that the services we supply:
 - (i) are provided with due care and skill;
 - (ii) are reasonably fit for any purpose you are using the services for or told us you wish to achieve; and/or
 - (iii) are supplied in a reasonable time.
- (b) Under certain legislative provisions, however, we can ask you to accept some limitations to the ACL guarantees.
- (c) If you sign this Agreement, you agree, to the extent allowed by section 139A of the CCA, to exclude or modify our liability to you for death or injury from our failure to comply with ACL guarantees.
- (d) This exclusion does not apply if your death or injury is caused by our “reckless conduct” (as defined in the CCA).

14.2 State based notices: Victoria Only

The ACL Exclusion Notice: “Warning Under the ACL and Fair Trading Act 2012” applies if attached to this Agreement and signed by you.

14.3 Other implied terms

Nothing in this Agreement excludes, restricts or modifies any terms, conditions, warranties, guarantees, rights or remedies which cannot lawfully be excluded, restricted or modified. Otherwise, unless expressly included in this Agreement, all implied terms, conditions, warranties, guarantees, rights or remedies that can be lawfully excluded are excluded. In particular, but subject to clause 16.1 and 16.2, we are not liable for death or injury caused by our negligence or breach of implied terms that services will be provided with reasonable care and skill at common law. This does not exclude our liability for reckless conduct.

14.4 Loss of property

You promise not to unnecessarily bring valuables into our Swim School and agree that it is not the obligation of the Swim School to look after unattended property.

15. YOUR RESPONSIBILITY FOR DAMAGE

You agree to pay for any loss or damage to the Swim School or the Facilities caused by you or your child/children through a wilful, wrongful or negligent act or as a result of your, or their, breach of this Agreement.

16. SWIM SCHOOL CLOSURES

- (a) We may need to close our Swim School for a period of time, for example, due to an emergency, or if required by a court order or by law.
- (b) We may close our Swim School for up to 14 days in any 30-day period under clause 16(a) and keep charging Membership Fees.
- (c) If we close the Swim School for between 15 and 30 days under clause 16(a) in any 30-day period, clause 16(e) applies.
- (d) We may also close the Swim School for up to 30 consecutive days if it is being refurbished, relocated or during the January School Holidays.
- (e) If we close the Swim School under clause 16(c) or 16(d), we will freeze your Membership at no cost to you and extend your Agreement for a time equal to the closed period.
- (f) We will try, but cannot promise we will be able, to tell you about any Swim School closures in advance.

17. COMPLAINTS AND FEEDBACK

17.1 If you have any concerns about the Staff, Facilities and Services or anything else in relation to your Membership, you should first raise it with one of the Directors of the Swim School.

17.2 If you are uncomfortable about approaching, or do not wish to approach, Swim School staff, or are not happy with the response given, you may send a complaint to them in writing addressed to the Leopold Swim School Pty Ltd at 1 Cypress Court, Leopold, VIC, 3224.

17.3 Complaints will be dealt with by the Directors of the Leopold Swim School and at their sole discretion.

18. GENERAL LEGAL MATTERS

18.1 Unexpected events

We are not responsible if Members cannot use the Swim School because of an event caused by a natural force (such as a fire or a flood) or a road or building closure or something similar beyond our reasonable control. If this continues for more than 30 days, then either you or we may cancel this Agreement immediately by written notice. No Fee will apply.

18.2 Severability

If a court decides that any part of this Agreement is or becomes illegal, void or unenforceable, that part is deleted and this does not invalidate the rest of this Agreement.

18.3 Waiver

If we do not enforce our rights under this Agreement at any time, it does not mean that we may not do so in future.

18.4 Entire Agreement

You agree that we have not made any representations or promises that you have relied on that are not in this Agreement.

18.5 Applicable law

The law of the state of Victoria as set out in the Details applies to this Agreement.