

Welcome to Kwinana Recquatic!

We're glad to have you here. Please be aware that participation in any recreational activities at Kwinana Recquatic involves inherent risks, including the risk of personal injury or death. By entering and using these facilities, you acknowledge and accept these risks and voluntarily assume personal responsibility for your participation.

Agreed terms

1. DEFINITIONS

City means the City of Kwinana

Centre means the Kwinana Recquatic Centre including its staff, facilities, and services, where the context permits.

Member means the person listed on the membership and includes their parent or guardian if they are less than 18 years old.

Membership Agreement means this document, including each Annexure, as varied, novated or replaced from time to time.

Membership means membership to the Centre.

Membership Category means the membership type you have entered into agreement with us.

Business Day means any day except a Saturday, Sunday or a public holiday in Perth, Western Australia.

Commencement Date means the date that the last of the Parties signs this Agreement.

Loss means any loss, damage, liability, lawsuit, action, proceeding, cost or expense.

Patron means any user of the Centre's facilities.

Terms and Conditions means these Terms and Conditions.

2. YOUR MEMBERSHIP

- (1) During your Term, you may access and use the Facility in accordance with your Membership Type and this Membership Agreement.
- (2) Your Membership Type refers to the membership type you have selected and the conditions for that type found at www.recquatic.com.au
- (3) Your membership of the Facility under this Membership Agreement:
 - (a) Is subject to the terms and conditions of this Membership Agreement;
 - (b) Is subject to any limitations and exclusions applicable to your Membership Type;
and
- (4) Is not transferrable to another person.
- (5) You acknowledge and agree that your membership access card cannot be shared with another person, friend or family member. If you breach this term you will be notified by us and/or have your membership frozen or cancelled.
- (6) 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 with our Customer Experience Team to discuss this.
- (7) If your membership type is "Youth" – a legal guardian / parent must be included on membership sign up and sign Terms and Conditions.

3. YOUR MEMBERSHIP ACCESS CARD

- (1) You will need your membership access card to access the Facility and must swipe this each time you use the facilities and services.
- (2) If you lose or forget your membership access card you may access the Facility by signing in at reception. You cannot ask or expect another person to let you into the Facility at any time.
- (3) You must not let anyone else into the Facility at any time or let anyone else use your access card.
- (4) If your access card is lost or stolen you must notify us immediately and get a replacement in 14 days or you may be refused access to the Facility; A replacement fee applies.

4. DURATION OF YOUR MEMBERSHIP

Commencement

- (1) This Membership Agreement will commence on the Start Date.

Expiry

- (2) If your Membership Type is 'Paid in Full / Upfront', this Membership Agreement will, unless terminated by you or us, expire at the end of the Paid in Full Term.
- (3) If your Membership Type is 'Direct Debit', this Membership will, unless terminated by you or us, not expire at the end of the Direct Debit Minimum Term but will automatically continue, on an ongoing basis until cancelled by you or us.

Minimum Term

- (4) All direct debit memberships are ongoing with a 28-day minimum term.

Cooling Off Period

- (5) The cooling off period for memberships is seven (7) days from when the agreement is signed.
- (6) 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 19.3.
- (7) If you terminate this Membership Agreement during the Cooling Off Period under clause 4.5:
- (a) This membership agreement will be terminated on the date your written notice is received by us; and
 - (b) We will refund you any unused Day Fees you have paid to us under this Membership Agreement, excluding joining fee. Unused Day fees are calculated at fortnightly cost divided by 14 days, to determine the daily rate.
 - (c) If you do not terminate this Membership Agreement during the Cooling off Period under clause 4.5, this Membership Agreement will continue in accordance with clause 2.1.

5. CHANGES TO YOUR MEMBERSHIP

- (1) We may amend the terms of this Membership Agreement from time to time, including:
- (a) the Membership Terms and Conditions; and/or
 - (b) the Facility Rules.
- (2) We will give at least 10 Days' notice of any changes to this Membership Agreement and the date they are to take effect.
- (3) If we change this Membership Agreement under clause 5.1 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 changes taking effect.
- (4) If you terminate the Membership Agreement under this clause 5.1, 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) Unless and until we give you notice that we have accepted that the change adversely affects you, this Membership agreement will continue in accordance with clause 2.1. If you terminate this Membership Agreement under clause 5.3;
- (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
- (6) If you do not seek to terminate your membership in accordance with clause 5.3 you will be deemed to have accepted any change we have made to this Membership Agreement.

6. CHANGES TO FACILITIES

- (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) Change the name of the Facility; and
 - (c) Temporarily or permanently closing parts of the Facility (including the circumstances described in clause 13.
- (2) Any change to the Facility as described in clauses 6.1a and 6.1b, without limiting clause 13, does not constitute a change to this Membership Agreement and does not entitle you to terminate this Membership Agreement under clause 5.3.

7. CHANGES TO YOUR MEMBERSHIP TYPE

- (1) You are required to ensure that all changes to your membership are completed prior to your next scheduled membership direct debit. These changes include - altering payment details, upgrading or downgrading your membership.
- (2) If your membership type is "Youth", your membership will be upgraded to the equivalent full priced membership on the first direct debit after your 18th birthday.

8. PAYMENTS

- (1) **Fees**
 - (A) If your Membership Type is Paid in Full, you must pay all relevant Fees up front for the Paid in Full Term by the Payment Method.
 - (B) If your Membership Type is Direct Debit, you must pay the pro rata amount upfront
- (2) **Direct Debit**
 - (A) Direct debit payment for Fees is managed by us. We will debit your nominated bank account or credit card on a fortnightly basis throughout the Term of the membership for your Membership and/or Freeze Fees, as varied in accordance with clause 8.17.
 - (B) If the due date for payment of any Membership Fees or Freeze Fees falls on a day which is not a Business Day, we will direct debit your nominated bank account or credit card on the next Business Day.
 - (C) It is your responsibility to ensure you have adequate funds available in your account. Failure to do so will result in additional fees.
- (3) **Access Card**
 - (A) You will be issued a facility access card on joining and is required for your facility access and is non-refundable. If you need a replacement access card, a replacement fee is applicable, outlined in the Fees and Charges for the current financial year.

(4) **Changes to Payment Method and payment details**

(A) If you wish to change the details relating to your Payment Method, you must update these through your client portal prior to the scheduled fortnightly Direct Debit to ensure we receive payment of your Fees. Any failed payment as a result of changes to payment method and details, will result in additional fees.

(5) **Payment Method Fees**

(A) 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.

(6) **Other charges**

(B) 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.

(C) 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.

(7) **Refunds**

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

Dishonored payments

(2) If your payment method fails for any reason;

a. We will freeze your account from facility access as soon as your bank has informed us that a payment has been dishonored. We will notify you by SMS and/or email when a payment has been dishonored.

b. You will be charged an administration fee for each time a payment dishonors. This is in addition to your outstanding fees. The administration fee is outlined in the Fees and Charges for the current financial year.

(3) You must pay us on demand all resulting fees and charges; and

(4) Your membership will be cancelled after two (2) consecutive failed debits if we have been unable to contact you. Outstanding fees will need to be paid on re-joining.

GST

(5) Your fees are inclusive of goods and services tax (GST).

Adjustment to Fees

- (6) We may adjust your fees by no more than 10% on any one occasion in any one given financial year by giving you at least 10 Days' notice of the date from which the adjusted Fees take effect. You are required to:
- a. pay any adjusted Fees from the date the adjustment takes effect; and
 - b. authorise us to change any debit from your Payment Method to accord with any adjustment to your Fees under clause 8.17.
- (7) An increase of your Fees under clause 8.17 will not constitute a change with an adverse effect for the purpose of clause 5.3.

9. YOUR MEMBERSHIP OBLIGATIONS

Facility Rules

- (1) You must:
- (a) comply with the Facility Rules at all times;
 - (b) comply with instructions given by our staff in relation to the Facility;
 - (c) not interfere with the use of the Facility by any other period (including any Facility members and hirers of equipment or areas in the Facility); and
 - (d) not behave in a way which is inappropriate, risky or detrimental to the safe enjoyment of the Facility by others.

Access

- (2) 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;
- (3) In addition to our rights under clause 14.6, 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;
 - (b) Is inappropriate, risky or detrimental to the safe enjoyment of the Facility by yourself or others.
 - (c) Exercise of our rights under clause 9.3 will not entitle you to a refund of any Fees or grant you any right to terminate this Membership Agreement.

10. FITNESS PROGRAMS AND RECOMMENDED ACTIVITIES

- (1) Our employees or contractors may, on your request, develop a fitness program and/or recommended activities for you at the Facility. You acknowledge and agree that:
 - (a) Our employees and contractors, unless we give you written notice otherwise, hold no medical qualifications;
 - (b) You provide us with any known medical conditions that may impact your ability to carry out certain programs and or activities; and
 - (c) 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.

11. MEDICAL

- (1) You authorise us to obtain medical/ambulance assistance for you in the case of an accident or emergency involving you and are responsible for any costs incurred. If we incur any costs, you agree to reimburse us on demand for all costs we incur in obtaining such assistance.

12. PROGRAMS AND ACTIVITIES RUN BY THIRD PARTIES

- (1) From time to time third parties may, at your request, provide goods or services to you at the Facility, such as personal training. You acknowledge and agree that:
 - (a) We are not responsible for any such goods or services;
 - (b) You must pay these providers directly for any such goods of services; and
 - (c) 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 or services to you.

13. EMERGENCIES AND NATURAL DISASTERS

- (1) We may be required to use all or part of the Facility during emergencies or natural disasters, including providing and coordinating support to those affected by bushfire or heatwaves. You may not be able to access or use all or part of the Facility during these periods.
- (2) We will use reasonable endeavors to provide you with notice of any Emergency Period in accordance with clause 19.4.

14. FREEZING YOUR MEMBERSHIP

Freeze by you

- (1) You may voluntarily freeze your membership (other than any Swimming Lessons and stadium programs) from time to time through your Client Portal, for one or more periods of a minimum of seven (7) days up to a maximum of 12 weeks per 12 month anniversary of active membership.
- (2) Freezes can only be applied for future periods (not historical). Freeze periods can be found under your membership type, and freeze periods reset each year based on the commencement date of your membership;
- (3) We may agree that a Freeze 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.
- (4) You may not freeze your membership if either you or we have given written notice terminating this Membership Agreement.
- (5) Unused freeze periods do not roll over
- (6) If You have a medical certificate, you may freeze without impacting your annual freeze totals. The certificate must clearly outline the dates for which you are medically unfit to utilise Your membership. The medical certificate must be supplied to staff.

Freeze by Kwinana Recquatic

- (7) We may freeze your membership from time to time for a period chosen by giving you written notice:
 - (a) If you fail to pay the Fees (or any instalment of the Fees), or part thereof, when due;
 - (b) 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;
 - (c) 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 reasonable require (including a medical certificate) to the contrary;
 - (d) If you breach any term of this Membership Agreement, and either;
 - (e) You do not remedy the breach within 10 Days of written notice from us; or
 - (f) The breach is incapable of being remedied; or
 - (g) If the facility is unavailable or unfit for use, including during an Emergency Period.

Effect of Freeze

- (8) During any Freeze Period
 - (a) You must not use the Facility under this Membership Agreement; and
 - (b) You will not pay the Membership Fees for the Freeze Period;
- (9) We will make a pro-rata adjustment to your Membership Fees and, if applicable, credit you any part of the Membership Fees applicable for the Freeze Period.

15. TERMINATION OF YOUR MEMBERSHIP

Termination by you

- (1) You may terminate Membership Agreements:
 - (a) If your Membership Type is Direct Debit – at any time after the end of the minimum Term and giving us at least 28 Days' notice by providing us with written notice;
 - (b) If your membership type is 12 Months Upfront – by giving us at least 28 Days' notice by providing us with written notice. Membership will be terminated and refund of unused period, less associated cancellation and administration fees, via the City's refund means. Refunds can take up to six (6) weeks for reimbursement.
 - (c) All other upfront membership types cannot be terminated prior to end of term.
- (2) If you give Written notice, if we breach a material term of this Membership Agreement (other than during a Freeze Period) and do not remedy the breach within 20 Days after written notice from you;
- (3) If you have 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 three (3) months; or
- (4) Otherwise with our agreement in writing, which we may provide in our absolute discretion.

Termination by Kwinana Recquatic

- (5) We may terminate Membership Agreement giving your written notice:
 - (a) If you fail to pay the Fees (or any instalment of Fees) when due;
 - (b) 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;
 - (c) If you breach any term of this Membership Agreement, and either;
 - (d) If you do not remedy the breach within 10 Business Days on written notice from us, or;
 - (e) If the breach is incapable of being remedied, or;
 - (f) If the Facility is unavailable or unfit for use.

Effect of termination

- (6) By you under clause 15.1 – this Membership Agreement will be terminated 28 days from date written confirmation has been received by the City. You must pay us any outstanding Fees for the period up to and including the date of termination;
- (7) By you under clause 15.2 or 15.3 – this Membership Agreement will be terminated on the date we receive written notice from you. You must pay all outstanding Fees up to and including the date of termination. We will refund any Fees you have already paid for the period after the date of termination;
- (8) By you under clause 15.4 – this Membership Agreement will be terminated on the date as agreed by you and us in writing. You may pay us any amount as agreed by you and us in writing;

- (9) By us under clause 15.5a, 15.5b and 15.5c – this Membership Agreement will be terminated on the date 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 Early Exit Fee.
- (10) If your Membership Type is Paid in Full, we will not refund to you any Fees you have already paid for the period after the date of termination unless in accordance of clause 15.3 or 15.4 If your Membership Type is not Paid in Full, we will not refund to you any Fees you have already paid for the period after the date of termination, or;
- (11) By us under clause 15.5d – 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.

16. LIABILITY

- (1) By signing this Membership Agreement, you:
 - (a) Are declaring that you are medically and physically able to participate in physical activity and understand and accept the inherent risks of undertaking exercise.
 - (b) Acknowledge and agree that you enter the Facility and surrounds and/or participate in programs, utilise the equipment and/or take advantage of services offered by us absolutely at your own risk.
 - (c) Acknowledge and agree that you release and discharge us from all liability for loss, damage or injury that you may sustain.
 - (d) You indemnify us to the extent permitted by law in respect of any claim by any person as a result of or in connection with your Membership Agreement and/or participation in any of our activities.
 - (e) This release and indemnity shall not apply to the extent that the loss, damage or injury which is the subject of the claim is caused, or contributed to, by the neglect act of omission by us.

17. DISPUTES AND COMPLAINTS

- (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.
- (2) We will contact you as soon as possible to discuss and endeavor to resolve the dispute or your complaint.

18. PRIVACY

- (1) We will have access to personal information about you, such as your name and address.
- (2) We will only use, disclose and deal with your personal information in accordance with our privacy policy.
- (3) We may sometimes film or photograph the facilities. It is possible you may appear in the background. You agree to allow us to use your image in promotion and other business related materials.

19. NOTICES

Your contact details

- (1) Your contact details are set out in the account details in your client portal.
- (2) You are responsible for ensuring contact details are up to date in your client portal.

Notices from you to Kwinana Recquatic

- (3) You may serve notices on us under this Membership Agreement by any of the following methods:
 - (a) Through the applicable online form on our website: or
 - (b) By email to Recquatic@kwinana.wa.gov.au or
 - (c) By hand delivery to the Facility

Notices from Kwinana Recquatic to you

- (4) We may serve notices on you under this Membership Agreement by any of the following methods:
 - (a) By email (Our primary option), to the address listed in the Membership Details (or to any email address you have notified us of in accordance with clause 19.1;
 - (b) By SMS, to the mobile number listed in the Membership Details (or to any mobile number you have notified us of in accordance with clause 19.1;
 - (c) By publishing the notice on our website and/or social media channels;
 - (d) By publishing signage in the centre;

20. MISCELLANEOUS

Governing Law

- (1) This Membership Agreement is governed by the law applying in Western Australia. You and we submit to the non-exclusive jurisdiction of the Courts of Western Australia.

Membership Identification

- (2) A photo is required at the time of joining to verify the identity of the membership holder.
- (3) We reserve the right to refuse entry to the centre in the case you refuse to have your photo taken.

21. SERVICE DISRUPTIONS

- (1) While every effort is made to provide access to advertised Centre's facilities and services, they may be unavailable at times due to mechanical breakdown, staff illness or other unforeseen reasons. The Centre will not be held responsible or liable for such occurrences.
- (2) In the event of a planned facility closure or disruption to service, we will always tell you in advance.
- (3) We may close off areas of the facility for refurbishment for extended periods of time.
- (4) In the event of an unforeseen facility closure or disruption to service of more than 4 days without prior written notification, we may issue credits to memberships for lost time.
- (5) We will try but cannot promise we will be able to tell you about any facilities closure in advance, such as unexpected Events.
- (6) We are not responsible if members cannot use our facilities 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.

22. Crèche

- (1) The crèche is an unlicensed service. Parents or guardians must remain within the Centre while their child is in the crèche and there is a limit of 2 hours per child per day.
- (2) Please refer to Creche Terms and Conditions for clarification.