

PART 2 – TERMS AND CONDITIONS OF HIRE

1. Definitions

Unless otherwise defined in the Details Schedule, the following definitions apply to these Terms:

Agreement has the meaning given in the Details Schedule.

Australian Consumer Law means Schedule 2 of the *Competition and Consumer Act 2010* (Cth).

BLAF means the Boroondara Leisure and Aquatic Facility listed as the BLAF in the Details Schedule.

BLAF Management Policies means the policies adopted by YMCA for the BLAF from time to time, as displayed within the BLAF or on the BLAF website.

Block Out Dates means dates on which YMCA is aware in advance that the Hired Area will be unavailable for hire.

Bond means the bond, if any, listed in the Details Schedule.

Booking means the Hirer's hire of the Hired Area on the terms set out in the Details Schedule.

Business Day means day on which trading banks are open for business in Melbourne excluding a Saturday, Sunday or Public Holiday.

Casual Hirer means a Hirer who hires the Hired Area on a "one off" basis (i.e. for a specific event or activity) that do not have multiple occurrences, as set out in the Details Schedule.

Centre Manager means the manager of the BLAF.

Conditions of Entry mean the conditions of entry for the BLAF which can be found at:

- (a) Ashburton Pool and Recreation Centre - <https://ashburton.boroondaraleisure.com.au/terms-and-conditions>;
- (b) Boroondara Sports Complex - <https://bsc.boroondaraleisure.com.au/terms-and-conditions>; or
- (c) Hawthorn Aquatic and Leisure - <https://hawthorn.boroondaraleisure.com.au/terms-and-conditions>,

(as amended from time to time).

Details Schedule means the schedule to which these Terms are attached which sets out, among other things, specific details relating to the Venue and the Hirer.

Duty Manager means the person(s) specified as such to the Hirer by YMCA.

End Date means the end date set out in the Details Schedule (if relevant).

Facilities means the facilities (if any) described in the Details Schedule which are made available by YMCA to the Hirer in connection with the Booking and includes any other facilities which are available at or service the Hired Area and are reasonably required by the Hirer to enable it to use the Hired Area in accordance with this Agreement.

Force Majeure Event means any event beyond a party's reasonable control, including without limitation: acts of God, epidemic, pandemic, disease or public health alert, hostilities, war (declared or undeclared), act of terrorism or other threatened acts of violence, hijack, blockade, national strikes, riots, civil commotion or disturbance, a governmental restraint, a

court order, an act or omission of a government agency, fire, flood, storm, cyclone or earthquakes.

GST Law has the meaning given to that term in the *A New Tax System Goods and Services Act 1999* (Cth).

Hire Fees means the fees payable for the hire of the Hired Area by the Hirer, as set out in the Details Schedule.

Hire Period means:

- (a) in relation to a Casual Hirer, the period of the Booking; and
- (b) in relation to a Permanent Hirer, the period of each Individual Date.

Hired Area means the Venue or the area(s) at the Venue hired to the Hirer as set out in the Details Schedule.

Hirer means the Hirer of the Hired Area, as set out in the Details Schedule, and includes Casual Hirers and Permanent Hirers.

Hirer Representative means the Hirer Representative(s) set out in the Details Schedule.

Hypoxic Activities means any aquatic activities involving prolonged breath-holding (and any associated activities) including but not limited to intentional hyperventilation, motionless breath-holding and intentional oxygen deprivation.

Individual Dates means in relation to Permanent Hirers, each individual occurrence of a Booking. For example, if the Hirer has a Booking on Tuesday each week, the Individual Dates would be each individual Tuesday booking within the overarching Booking each Tuesday for the year.

Insolvency Event means the happening of any

of the following events:

- (a) **(administrator)** an administrator, liquidator or provisional liquidator is appointed to the party, or a resolution is passed, or any steps are taken to appoint, or to pass a resolution to appoint, any of those persons to the party;
- (b) **(creditor arrangements)** the party suspends payment of its debts generally or is unable to pay its debts as and when they fall due or is presumed to be insolvent under an applicable law, or enters into or resolves to enter into any arrangement, composition or compromise with, or assignment for the benefit of, its creditors or any class of them;
- (c) **(winding up)** an application or order is made for the winding-up or dissolution of the party or a resolution is passed, or any steps are taken to pass a resolution for the winding-up or dissolution of the party;
- (d) **(receiver)** a receiver, receiver and manager, trustee, other controller or similar officer is appointed over any of the assets or undertakings of the party, or any steps are taken to appoint, or to pass a resolution to appoint, any of those persons to the party; or
- (e) **(acts of bankruptcy)** if a party is a natural person, that party is declared bankrupt or enters into an arrangement under the Bankruptcy Act 1966 (Cth), unless the application in respect of that bankruptcy is withdrawn, struck out or dismissed within 20 days of it being made.

Loss means any loss, cost, expense, damage, claim, fine, penalty or other amount (whether contingent or otherwise).

Participant means any person invited to the Hired Area by the Hirer (including without

limitation the PIC, all other Personnel of the Hirer and all guests and participants in activities conducted by the Hirer in the Hired Area).

Permanent Hirer means a Hirer who hires the Hired Area on an ongoing basis (i.e. multiple Individual Dates over a period of time which comprise a Booking), as set out in the Details Schedule.

Permitted Use means the Hirer's permitted use of the Hired Area, as set out in the Details Schedule.

Person in Charge or PIC has the meaning given to that term in clause 9.

Personnel means any officer, employee, volunteer, consultant, contractor, subcontractor or agent of a party.

Related Body Corporate has the meaning given to that term in the *Corporations Act 2001* (Cth).

Special Conditions means the special conditions, if any, set out in the Details Schedule.

Terms means the terms and conditions of hire that make up this Part 2 of the Agreement comprising clauses 1 to 32.

Unacceptable Condition means:

- (a) leaving rubbish out;
- (b) leaving the Venue untidy or leaving lost property lying around the Venue;
- (c) leaving the Venue in a condition worse than what it was prior to use (subject to fair wear and tear);
- (d) leaving spills or food items at the Venue;
- (e) any kind of damage to the Venue and/or its Facilities; or
- (f) anything that causes the YMCA to incur additional costs to rectify the Venue to

its condition prior to the Hirer's use (subject to fair wear and tear).

Venue means the venue listed in the Details Schedule.

YMCA means The Young Men's Christian Association of Victoria Incorporated ABN 81 174 456 784.

YMCA Representative means the YMCA Representative as set out in the Details Schedule.

YMCA Safeguarding Children & Young People Policy means YMCA's Safeguarding Children & Young People Policy that can be found on YMCA Victoria's website here: <https://victoria.ymca.org.au/about-us/safeguarding> (as amended from time to time).

2. Term of the Agreement

2.1 The Agreement will commence on the date that it is signed by both parties and expire on:

- (a) in respect of Permanent Hirers, and subject to clause 2.3, the earlier of the End Date or the last day of the calendar year in which the Agreement commenced; and
- (b) in respect of Casual Hirers, on the completion of the relevant Booking.

2.2 For the avoidance of doubt, Casual Hirers will be required to enter into a new agreement each time they wish to arrange a booking.

2.3 In respect of Permanent Hirers:

- (a) the Agreement will continue on a month by month basis following the expiration of the Agreement pursuant to clause 2.1(a) until a party notifies the other of its desire to terminate the Agreement

by providing at least 14 days written notice (which notice is to be provided either prior to the end of the calendar year, in which case the Agreement will end at the end of the calendar year, or during any further one (1) month extension period in which case the Agreement will end at the cessation of that extension period);

- (b) the Hirer acknowledges and agrees that YMCA may (acting reasonably) increase the Hire Fee at any time following the expiry of the initial term by notice in writing to the Hirer; and
- (c) if the Hirer does not agree with the increase in the Hire Fee determined in accordance with clause 2.3(b), it is entitled to terminate the agreement in accordance with clause 2.3(a)(in which case the increased Hire Fee will not apply during the 14 days' written notice period).

3. Hire of the Hired Area

- 3.1 Subject to the Hirer's compliance with the Agreement and payment of the Hire Fees, YMCA agrees to grant the Hirer a license to access and use the Hired Area and the Facilities on the basis of the terms set out in the Details Schedule.
- 3.2 Unless otherwise specified in the Details Schedule, the Hirer acknowledges that other parts of the Venue that do not form part of the Hired Area may be used by YMCA or other participants or hirers at the same time that the Hirer uses the Hired Area. The Hirer must use its best endeavours not to obstruct the activities of such other persons and must cooperate with any reasonable directions provided by YMCA in respect of any necessary

interactions or cooperation between the Hirer and those persons.

- 3.3 YMCA will also use best endeavours to ensure that the activities of other persons referred to in clause 3.2 do not obstruct the activities of the Hirer.
- 3.4 The Hirer's rights exist in contract only and do not create in or confer upon the Hirer any estate, right, interest or tenancy in or over the Hired Area and/or the Venue.
- 3.5 The Hirer acknowledges that YMCA will not be actively monitoring or supervising the Hirer's activities during the Hirer's use of the Hired Area. As such, the Hirer's access and use of the Hired Area and Facilities is at its own risk and, to the extent permitted by law and subject to clause 18, the Hirer releases YMCA and its Personnel and its Related Bodies Corporate and their officers, agents, employees, contractors and invitees (collectively, the **Released Parties**) from any claims and demands from, or incidental to, any accident, damage or injury occurring in, on or about the Hired Area and/or Venue (including surrounding areas such as carparks), except to the extent caused or contributed to by the Released Parties.
- 3.6 The Agreement is formed between the Hirer and YMCA when both parties duly sign the execution panel.
- 3.7 The Hirer acknowledges and agrees that YMCA's obligations are limited by the Agreement to the provision of the licence set out in this clause 3 and this Agreement, and that YMCA will not otherwise provide the Hirer with any services except as provided by the Agreement, including any Special Conditions to be provided by YMCA contained in the Details Schedule.

4. Permitted Use

- 4.1 The Hirer must only use the Hired Area and Facilities for the Permitted Use. The Hirer

represents and warrants that the Details Schedule accurately reflects its intended use of the Hired Area and Facilities.

- 4.2 The Hirer must ensure that the requested time slot in the Details Schedule provides it with adequate time to set up and pack up, and for all Participants to exit the Hired Area and the Venue.
- 4.3 Facilities and equipment must be maintained in good condition. Replacement of Facilities and equipment damaged through misuse will be the responsibility of the Hirer (save for any damage that amounts to fair wear and tear).
- 4.4 Block Out Dates apply. YMCA will notify the Hirer of any Block Out Dates.

5. Fees and charges

- 5.1 Subject to clause 10, Bookings will be processed in increments of time as set out in the Details Schedule and will be charged based on the Hire Fees.
- 5.2 The Hirer will be liable to pay for all time booked as part of the Booking irrespective of whether it completes the Booking before the end of the time slot.
- 5.3 If any amounts owing to YMCA from the Hirer remain outstanding for 10 Business Days after YMCA has provided the Hirer with written notice of those outstanding amounts, YMCA may, (acting reasonably) refer those outstanding amounts to an external debt collection agency for collection.
- 5.4 YMCA may charge the Hirer interest at a rate of 2.5% above the Commonwealth Bank of Australia business overdraft rate on any outstanding amount until payment is made by the Hirer.

6. Payment

Bond

- 6.1 If set out in the Details Schedule, a Bond may be required from the Hirer.
- 6.2 The Bond will be refunded within 14 days after the end of the Booking, the cancellation of the Booking or the expiry or termination of the Agreement, subject to any amounts reasonably deducted by YMCA to cover any costs referred to in clauses 4.3, 7.13, 7.15, 13.1, 15.4, 21.1(q) or any other costs YMCA is entitled to recover under this Agreement (**Recoverable Amounts**).
- 6.3 If the Bond is less than the amount required to be paid to YMCA for any Recoverable Amounts, the Hirer will pay the difference to YMCA.
- 6.4 If the Bond is not paid by the Hirer in accordance with these terms, YMCA will provide notice to the Hirer that it will cancel the Booking after 28 days if the Bond is not paid. Where Bond payment is not made after notice has been provided, the Hirer will be deemed to have cancelled the Booking in accordance with clause 10.

Permanent Hirer Fees

- 6.5 Invoices for a Permanent Hirer will be issued in accordance with the Details Schedule.
- 6.6 A Permanent Hirer must pay any invoice rendered by YMCA within 14 days of the date on the invoice.
- 6.7 A receipt will be issued upon payment if requested by the Hirer.

Casual Hirer Fees

- 6.8 Payment in full of the balance of the Hire Fee is required on the day of the Hire.
- 6.9 Invoices will not be issued for a Casual Hirer.
- 6.10 A receipt will be issued upon payment if

requested by the Hirer.

7. Conditions and Obligations of Hirer

- 7.1 The Hirer must not participate in or allow any Participant to participate in any form of Hypoxic Activities at the Venue without the prior written consent of YMCA which YMCA may withhold in its absolute discretion. Any breach of this clause may result in the immediate termination of this Agreement (in which case clause 11.2, 11.4 and 11.5 will apply) and the Hirer being banned from the Venue.
- 7.2 The Hirer must not use or allow the Hired Area or Venue to be used for any purpose other than the Permitted Use and must not invite any Participants to the Venue or into the Hired Area that are not attending the Hired Area and/or the Venue for the Permitted Use.
- 7.3 When using the Hired Area, the Hirer must at all times exercise due care and skill.
- 7.4 The BLAF Management Policies and Conditions of Entry, as applicable, set out additional requirements that must be met and complied with at all times by the Hirer and Participants when using the Hired Area.
- 7.5 The YMCA Safeguarding Children & Young People Policy sets out requirements in respect of the protection of children. If applicable, the Hirer must comply with the YMCA Safeguarding Children & Young People Policy and must procure that all Participants comply with such policy.
- 7.6 The Hirer must report any damage that occurs to the Venue, Hired Area or Facilities (whether caused by the Hirer, Participant or otherwise) to YMCA immediately after it becomes aware of any such damage.
- 7.7 The Hirer cannot charge an entry fee when using the Hired Area without prior written consent from YMCA, which will not be

unreasonably withheld.

- 7.8 The Hirer cannot sell any food, drink or merchandise products without prior consent, in writing, from YMCA.
- 7.9 The assignment, transfer, subletting or sublicensing of the Hirer's Booking is not permitted without prior written consent from YMCA, which will not be unreasonably withheld.
- 7.10 The Hirer must comply with all reasonable directions provided by YMCA and its Personnel in respect of the Hirer's use of the Hired Area, access to the Venue and use of the Facilities, including without limitation any directions concerning occupational health and safety.
- 7.11 The Hirer will ensure all rubbish is disposed of appropriately and that the Hired Area, Facilities and Venue are left in a clean and tidy condition at the conclusion of the Hire Period. The Hirer is not permitted to use garbage bins on site for disposal of excess rubbish.
- 7.12 All Facilities must be left in the condition they were in at the commencement of the Hire Period, fair wear and tear excepted.
- 7.13 If the Hired Area and/or Venue is left in an Unacceptable Condition at the end of the Hire Period, the Hirer will be responsible for all costs associated with engaging cleaners to return the Hired Area and/or Venue to an acceptable, clean condition, unless otherwise agreed by YMCA.
- 7.14 The Hirer must not interfere with the use or occupation of the Venue by any other person or entity (whether YMCA, its Personnel, members of the public or otherwise).
- 7.15 The Hirer must supervise and control all Participants. Any Loss caused or contributed to by the Hirer or any Participant will be the sole responsibility and liability of the Hirer, and a debt due and owing to YMCA, except to the extent

the Loss is caused or contributed to by YMCA or any of its Personnel.

- 7.16 Any hut, stall or marquee set up without prior written consent from YMCA is prohibited.
- 7.17 Except in respect of any Facilities listed in the Details Schedule, the Hirer is required to provide its own equipment unless YMCA agrees to provide its own equipment to the Hirer, in which case YMCA may require that the Hirer enter into a separate equipment hire agreement.
- 7.18 The Hirer will not bring or store any hazardous goods or materials into the Hired Area or Venue.
- 7.19 The Hirer must make available for inspection by YMCA, upon request, all licences, permits and registration required for the carrying on of any activity by the Hirer in the Hired Area.
- 7.20 Neither party may do or omit to do anything which could result or does result in any damage to the reputation or brand of the other party or any of its Related Bodies Corporate.
- 7.21 Both parties will, at their own cost, observe and comply with all applicable laws and, as applicable, all directions, notices and requirements of any government agency relating to the use and hire of the Hired Area and access to the Venue which are publicly available or otherwise made known to the Hirer or YMCA (as applicable).
- 7.22 The Hirer must observe fire precautions and procedures as directed at the Venue or advised by the YMCA.
- 7.23 No fixtures or fittings are to be installed in the Hired Area or at the Venue.
- 7.24 All electrical items brought into the Hired Area and/or Venue must be tagged and tested as required by a licenced electrician and, if applicable, must not be brought within two (2) meters of any pool area at

the Venue.

8. Marketing and Fundraising

- 8.1 Any signage erected for advertising the Hirer's service must be approved by YMCA unless the information is regarding schedule of games/fixtures/results which may displayed on approved notice boards. Only approved advertising/information can be displayed on designated notice boards. YMCA will act reasonably in considering whether any such advertising is approved.
- 8.2 YMCA will provide generic information to new customers regarding the Hirer. It is the responsibility of the Hirer to maintain an up-to-date contact list.
- 8.3 The Hirer must not, and must ensure that all Participant's do not, conduct any promotional or fundraising activity at the Venue or within the Hired Area without the prior written consent of YMCA, which will not be unreasonably withheld or delayed.

9. Person in Charge (PIC)

- 9.1 The Hirer must nominate a person as its representative in respect of the relevant Booking (**Person in Charge or PIC**). The PIC will be the key point of contact in relation to all queries, consents, approvals, complaints and disputes required or arising under or in connection with the Booking. The Hirer must notify YMCA if there is a change to the PIC, and the new PIC must be approved in writing by YMCA. YMCA will not unreasonably withhold or delay consent.
- 9.2 All Personnel of the Hirer including without limitation the PIC and parent volunteers (if relevant) must hold a valid working with children check. The working with children checks must be presented to YMCA upon request.

- 9.3 The PIC must attend a BLAF induction, which outlines expectations of behaviour, health and safety, and emergency procedures, prior to the commencement of the Booking.
- 9.4 Any newly appointed PIC (if the Hirer changes the PIC and that change is approved by YMCA in writing) will be required to attend inductions in accordance with clause 9.3.
- 9.5 The Hirer must procure that the PIC ensures that the use of the Hired Area is safe and carried out in compliance with all laws and for the Permitted Use.
- 9.6 If specific legal requirements apply in respect of the Hirer's use of the Hired Area (for example, sign in and sign out procedures when conducting children's sporting activities or clinics), the Hirer must procure that the PIC ensures such requirements are carried out at all times.
- 9.7 The Hirer must procure that the PIC supervises all children under 10 years of age at or around the Hired Area at all times during the Agreement.

10. Cancellation of Bookings

Cancellation by Casual Hirers

- 10.1 If a Booking is cancelled by a Casual Hirer YMCA may attempt to re-book the Booking for an alternative date. If re-booking does occur, any amount of the Hire Fee previously paid by the Hirer for the Booking will be applied to the new Booking.
- 10.2 If re-booking does not occur and the Casual Hirer informed YMCA of the cancellation:
 - (a) 48 hours' or more before the Booking is due to commence, the Casual Hirer will receive a refund of the Hire Fee paid under clause 6; and

- (b) less than 48 hours before the Booking is due to commence, the Casual Hirer will forfeit the Hire Fee paid under clause 6.

Cancellation by Permanent Hirers

- 10.3 If a Permanent Hirer cancels an Individual Date 7 days or more before the Individual Date is due to commence, YMCA will reduce the Hire Fee charged to the Hirer in the next month by the cost of that Individual Date (i.e. the Hirer will not be charged for that Individual Date).
- 10.4 If a Permanent Hirer cancels an Individual Date less than 7 days before the Individual Date is due to commence, YMCA will work with the Permanent Hirer to attempt to re-book that Individual Date. If re-booking is not possible, as determined by YMCA in its reasonable opinion, the Permanent Hirer may be charged 50% of the Hire Fee for that Individual Date (and this will be reflected in the Hire Fee charged to the Hirer in the next month).
- 10.5 YMCA understands that from time-to-time Permanent Bookings (i.e. all remaining Individual Dates) need to be cancelled. When this occurs, the Hirer must notify YMCA as soon as possible (**Cancellation Date**) and YMCA will:
 - (a) charge the Hirer the full Hire Fee for any Individual Date scheduled to commence within 7 days of the Cancellation Date;
 - (b) charge the Hirer an amount reflecting 50% of the Hire Fee for any Individual Date scheduled to commence within 8 - 14 days of the Cancellation Date; and
 - (c) not charge the Hirer (and refund any applicable Bond) for any Individual Dates which are scheduled to commence more than 15 days after the Cancellation

Date.

Cancellation by YMCA

10.6 YMCA reserves the right to cancel Bookings of Casual Hirers or Individual Dates (including on short notice) if an occupational health and safety issue or matter develops that YMCA determines, acting reasonably, poses a safety risk to the Hirer and/or patrons and/or Participants and/or members of the public, and in such instance the Hirer will not be charged for the relevant Booking (or Individual Date) and YMCA will refund any Hire Fee already paid by the Hirer in respect of the cancelled Booking or Individual Date. Examples of such safety risks may include, but are not limited to:

- (a) external hazards (e.g. bomb threat);
- (b) inclement weather conditions, including extreme heat, lightning strikes, poor visibility and fire danger ratings;
- (c) chemical imbalance in relation to a pool;
- (d) poor or compromised air quality;
- (e) the need for urgent or scheduled repair or maintenance work; or
- (f) plant, pool or equipment shutdown or failure.

10.7 In the circumstances outlined in clause 10.6, YMCA will offer alternative dates and/or times for the Booking or Individual Date (as applicable) to the Hirer where reasonably available.

11. Termination of Agreement

Default

11.1 Either party (**Non-Defaulting party**) may immediately terminate the Agreement by written notice to the other party

(**Defaulting Party**) if:

- (a) the Defaulting Party is in breach of this Agreement and fails to remedy the breach to the reasonable satisfaction of the Non-Defaulting Party within 14 days of notification;
- (b) any act or omission of the Defaulting Party endangers the health or safety of any person, the Hired Area, the Venue or the environment; or
- (c) an Insolvency Event occurs in relation to the Defaulting Party.

11.2 Upon termination of the Agreement, the Hirer must pay YMCA such amounts owing to YMCA in respect of the agreement (including in respect of any prior Booking, part of the Booking or Individual Date that has been completed but has not yet been paid for) up to the date of termination.

11.3 Upon termination of the Agreement by the Hirer under clauses 11.1 or 29(b) or termination by either party under 11.8 all Hire Fees and any applicable Bond paid by the Hirer for any Booking, part of a Booking or Individual Date which has yet to occur will be refunded to the Hirer.

11.4 Upon termination of this Agreement by YMCA under clauses 7.1 or 11.1 or termination by either party under clause 2.3(c) YMCA is entitled to claim from the Hirer (or retain if already paid) any Hire Fees;

- (a) (for Casual Hirers) which relate to Bookings within 48 hours of the date of termination; or
- (b) (for Permanent Hirers) which relate to Individual Dates within 7 days of the date of termination.

The Y must refund to the Hirer any Hire Fees in excess of what the Y is entitled to under this clause 11.4.

11.5 All other accrued rights and liabilities of the parties will not be affected by the termination.

Force Majeure Events

11.6 A party affected by a Force Majeure Event must give written notification to the other party as soon as reasonably possible, providing details of the Force Majeure Event and (to the extent reasonably ascertainable) the obligations from which it is being prevented from discharging.

11.7 If a Force Majeure Event prevents or delays a party from performing its obligations under the Agreement, then the requirement to perform that obligation is suspended and neither party shall be liable for any delay or default in performance of its obligations for so long as the Force Majeure Event continues.

11.8 Either party may terminate the Agreement if a Force Majeure Event subsists for more than two (2) months.

12. Noise and behaviour expectations

12.1 The Hirer must ensure that the following behaviour is adhered to by the Hirer and all Participants:

- (a) the consumption or selling of liquor is prohibited in any area of the Venue or Hired Area, including internal buildings, external grounds and car parks;
- (b) food and drink are not permitted on the playing surface at the Venue;
- (c) smoking is prohibited within the Venue or within 10 meters of the Venue;
- (d) the level of sound coming from the Hired Area and associated carpark areas must not reach a level where it would interfere with

individual commercial residents of surrounding properties of the Venue and at no time may violate any applicable federal, state or local law, council guidelines or regulations;

- (e) all vehicles are permitted to be parked in designated car parking areas only and cars must not block driveways or be parked on private property; and
- (f) the Participants do not behave in a way that causes a disturbance to any other user of the Venue or Hired Area or members of the public.

12.2 If any complaints arise out of non-compliance of clause 12.1, the complaints will be dealt with in accordance with the applicable law and the Hirer will be responsible for handling the complaint.

12.3 YMCA may also immediately cancel the Booking and/or any Individual Dates without liability where the Hirer fails to comply with clause 12.1, in which case the Hirer must immediately vacate, and procure that all Participant's vacate, the Venue.

12.4 The Hirer must ensure that the following behavioural rules are adhered to:

- (a) the driving of tacks, nails, screws or affixing of adhesive materials into or on any of the woodwork or walls or any part of the Venue or Hired Area must not occur;
- (b) no chairs, tables or other furniture may be brought into the Venue or Hired Area, except with the consent of YMCA; and
- (c) no pets or animals are permitted within the Venue or Hired Area, except those animals used for medical purposes or as approved in writing in advance by YMCA.

13. Damage

- 13.1 The Hirer is responsible and liable for any damage to the Venue, the Facilities and/or Hired Area, and any surrounding areas (including but not limited to any building, fixture, fitting or equipment) to the extent such damage is caused or contributed to by the Hirer or any Participant.
- 13.2 Any amounts owing by the Hirer to YMCA under clause 13.1 will first have any Bond paid by the Hirer applied to those amounts. The Hirer must reimburse and fully indemnify YMCA on demand in respect of any amounts due under clause 13.1 that remain outstanding after the Bond has been applied.

14. Supervision

- 14.1 The Hirer is responsible for the supervision and safety of all Participants and any of its Personnel present at the Venue and/or in the Hired Area.
- 14.2 The Hirer must ensure that no Participant is left unsupervised while in the Hired Area.

15. First Aid & Emergency Procedures

- 15.1 The PIC must immediately notify YMCA if any first aid or emergency incident occurs.
- 15.2 In the event of any first aid or emergency incident occurring, a formal incident report must be completed by the PIC and handed to YMCA prior to the conclusion of the activity.
- 15.3 The Hirer must not obstruct any emergency or fire exit.
- 15.4 The Hirer authorises YMCA to obtain medical and/or ambulance assistance in the case of an emergency involving the Hirer, Participant or persons associated with the Hirer and agrees that the Hirer is

responsible for all reasonable costs incurred.

- 15.5 The Hirer agrees to abide by all YMCA first aid, safety and emergency procedures as notified by YMCA to the Hirer, as outlined at the Venue and as directed to the Hirer by YMCA during any site induction or otherwise during the Hire Period.
- 15.6 The Hirer must, and must procure that the PIC, familiarise itself with the emergency exit maps located around the Venue, and must communicate the emergency exit maps (and in particular, evacuation points) to all participants at the time of use of the Venue.
- 15.7 The Hirer expressly authorises YMCA to provide first aid assistance to all Participants (if required).
- 15.8 The Hirer must do all things necessary to ensure that all Participants and guardians (if applicable) follow the directions of the YMCA staff during an emergency.

16. GST

- 16.1 Words or expressions used in this clause that are defined in the GST Law have the same meaning given to them in the GST Law.
- 16.2 Unless otherwise stated, any amount specified in this Agreement as the consideration payable for any taxable supply does not include any GST payable in respect of that supply.
- 16.3 If a party makes a taxable supply under the Agreement (**Supplier**), then the recipient of the taxable supply (**Recipient**) must also pay, in addition to the consideration for that supply, the amount of GST payable in respect of the taxable supply at the time the consideration for the taxable supply is payable.
- 16.4 Notwithstanding the foregoing, the Recipient is not obliged under the

Agreement to pay the amount of any GST payable until the Supplier provides it with a valid tax invoice for the taxable supply.

- 16.5 If an adjustment event arises in relation to a taxable supply made by a Supplier under the Agreement, the amount paid or payable by the Recipient pursuant to clause 16.2 will be amended to reflect this and a payment will be made by the Recipient to the Supplier or vice versa as the case may be.
- 16.6 If a third party makes a taxable supply and the Agreement requires a party to the Agreement (**the payer**) to pay for, reimburse or contribute to (**pay**) any expense or liability incurred by the other party to that third party for that taxable supply, the amount the payer must pay will be the amount of the expense or liability plus the amount of any GST payable in respect thereof but reduced by the amount of any input tax credit to which the other party is entitled in respect of the expense or liability.

17. Insurance

- 17.1 The Hirer must maintain the insurances set out in the Details Schedule.
- 17.2 The Hirer must not do or permit anything to be done which may invalidate any insurance, make any insurance void or voidable or increase the rate of premium of any insurance.
- 17.3 The Hirer must provide YMCA with a copy of a certificate of currency or cover note, at YMCA's election, if set out in the Details Schedule or if requested by YMCA.

18. Limitation of liability

- 18.1 The Australian Consumer Law provides consumers (as that term is defined in the Australian Consumer Law) with a number of consumer guarantees that cannot be

excluded or limited. The limitations of liability set out in the Agreement are therefore subject to, and will not apply to the extent that they limit or exclude, such consumer guarantees applicable to consumers. However where the Australian Consumer Law permits YMCA to limit the remedies available to it for a breach of a consumer guarantee, YMCA hereby limits its remedies to such consumers for a breach of a consumer guarantee, in the case of goods, to the repair or replacement of the goods, the supply of equivalent goods or the payment of the cost of having the goods repaired or replaced or having equivalent goods supplied and, in the case of services, to supplying the services again or paying the cost of having the services supplied again.

- 18.2 Given the high level of physical danger and risk presented by Hypoxic Activities, YMCA will have no liability to the Hirer for any Loss to the extent that such Loss involves engagement in Hypoxic Activities.
- 18.3 The Hirer will fully indemnify YMCA and YMCA's Personnel against any Loss (including but not limited to, claims made by Participants) relating to the engagement in Hypoxic Activities at the Venue, except to the extent that the Loss was directly caused or contributed to by an act of YMCA or YMCA Personnel.
- 18.4 Clauses 18.2 and 18.3 will apply despite YMCA consenting to the engagement in Hypoxic Activities under clause 7.1.

19. Independent Contractors

Nothing contained in the Agreement shall be deemed or construed as creating a relationship of partnership or of principal and agent or of joint venture between the parties.

20. Media/Images/Motion Pictures

- 20.1 No radio or television broadcast, live

streaming, motion pictures or films, recordings or audio or DVD's may be made by the Hirer within the Venue and/or Hired Area without the prior express written consent of YMCA.

20.2 The use of cameras and video cameras, including by the use of mobile phones, at the Venue is conditional upon the following:

- (a) the Hirer must have all relevant individuals' written consent to take and use images and/or videos; and
- (b) under no circumstances are cameras, video cameras or mobile phones to be used in change room areas.

21. Rules of entry

21.1 The Hirer must ensure that all Participants, comply with the following rules of entry and use of the Venue:

- (a) any applicable entry fees must be paid prior to entering the Venue;
- (b) all signs displayed at the Venue and all reasonable requests made, or directions given by Personnel of the YMCA or Boroondara City Council staff must be obeyed and followed, including in the event of an emergency;
- (c) no child under 10 years of age is permitted to enter the Venue except where the child is accompanied or supervised by an adult;
- (d) whomever accompanies a child under 10 years of age must ensure that they are actively supervising the child/children at all times and ensure that they comply with the Conditions of Entry;
- (e) Participants must not bring any alcohol, drugs, weapons, glass or

other breakable objects into the Venue;

- (f) Participants must not bring any animal other than a Guide Dog into the Venue;
- (g) Participants must not use offensive language or otherwise behave offensively;
- (h) Participants must not behave in a way which:
- (i) is disrespectful of other patrons or YMCA Personnel;
- (j) interferes with the enjoyment of the Venue by other patrons;
- (k) endangers or causes injury to other patrons or YMCA Personnel;
- (l) is bullying, harassing, violent or offensive towards other patrons or YMCA Personnel;
- (m) obstructs or otherwise prevents YMCA or Council Personnel from performing their work; or
- (n) causes damage to the Venue or any property or Facilities at the Venue;
- (o) Participants must not leave their personal property unattended other than in a secured locker;
- (p) Participants must not use a camera, video-camera or other audio or visual recording devices without the prior consent of either YMCA or Council Personnel;
- (q) if a Participant or any children accompanying a Participant at the Venue wilfully or through negligence cause damage to the Venue or any property at the Venue, the Hirer will be responsible for that damage;
- (r) the Conditions of Entry must be complied with;

- (s) there must be no running or pushing at the Venue except as permitted as part of the Permitted Use;
- (t) no high voltage cables or electrical equipment is to be taken into the Venue, except in accordance with clause 7.24; and
- (u) no smoking in the Venue (or in nearby surrounds).

21.2 To the extent permitted by law, neither the YMCA nor Boroondara City Council accepts liability for any loss or damage to a Participant's or the Hirer's personal property at the Venue, except to the extent YMCA caused or contributed to the damage;

21.3 It is the Hirer's responsibility to ensure that Participants are aware that a non-compliance with clause 21.1 may result in the Participant being removed from the Venue and/or Hired Area.

21.4 Failure to comply with any of these Conditions of Entry may result in the Hirer being refused entry to, or evicted from, the Venue and the termination of this agreement in accordance with clause 11.1.

21.5 The YMCA and the Council reserve the right to refuse entry to any person or evict them for any reason including if a person appears to be under the influence of drugs or alcohol.

22. Recreational Services Limitation of Liability and Safety Warning

22.1 This clause 22 applies only to the extent YMCA is providing recreational services (as that term is defined in section 22(4) of the *Australian Consumer Law and Fair Trading Act 2012* (Vic)) to the Hirer at the Venue.

22.2 The Hirer agrees that other than where YMCA has engaged in reckless conduct (being conduct that satisfies section 22(3)

of the *Australian Consumer Law and Fair Trading Act 2012* (Vic)), YMCA will not have any liability for any:

- (a) death;
- (b) physical or mental injury (including the aggravation, acceleration or recurrence of such injury);
- (c) the contraction, aggravation or acceleration of a disease; or
- (d) the coming into existence, the aggravation, acceleration or the reoccurrence of any other condition, circumstance, occurrence, activity, form of behaviour, course of conduct or state of affairs in relation to the Hirer:
 - (i) that is or may be harmful or disadvantageous to the Hirer or the community; or
 - (ii) that may result in harm or disadvantage to the Hirer or the community.

22.3 WARNING UNDER THE AUSTRALIAN CONSUMER LAW AND FAIR TRADING ACT 2012

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** are excluded, restricted or modified in the way set out in this form, if you are killed or injured because the services provided were not in accordance with the statutory guarantees outlined below.

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 exclusion of these statutory guarantees is brought to your attention by 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**.

23. Swim Club Early Entry

- 23.1 If agreed by the Duty Manager, Participants in swim club will be allowed early access at 5.20am (10 minutes before the Venue opens).
- 23.2 Despite clause 23.1, Participants in swim club are NOT ALLOWED to access the pool deck before 5.30am.
- 23.3 Participants in swim club are only allowed to access the multi-purpose room for stretching / warm up purposes.
- 23.4 The PIC for swim club must hold a valid first aid (including CPR) qualification. This qualification must be kept up to date.

24. Personal Health and Safety

- 24.1 Hirers are requested to consider appropriate warm up and cool down for all Participants to assist in the reduction of injuries.
- 24.2 YMCA aim to ensure the health and safety of Participants and encourage Hirers to eliminate health and safety risks. It is strongly recommended that all Participants engage in the following:
- (a) slowly increase heart rate to prepare the body for forthcoming exercise;
 - (b) warm up to assist with increasing blood flow to working muscles and joints;
 - (c) follow the cardiovascular warm up with some stretches of the main muscle groups;
 - (d) ensure hydration occurs before, during and after exercise; and
 - (e) ensure correct footwear and clothing is worn at all times.

25. Footwear Requirements

- 25.1 Hirers are requested to encourage all Participants to consider the stadium floor surface in the interests of health and safety.
- 25.2 It is recommended by YMCA that a second pair of footwear be changed into for use on the stadium courts to reduce dust and debris being transferred onto the court surface.

26. Use of whistles

- 26.1 There are established communication signals in which whistles are used at the BLAF as an emergency communication signal in the aquatic area of the Venue.
- 26.2 As per the Royal Life Saving Society – Australia Guidelines for Safe Pool Operation, emergency signals should only

be used when an emergency occurs. The use of whistles by Hirers is not permitted without the written approval of YMCA.

27. Dispute Resolution

- 27.1 If a dispute or difference arises between the parties out of or in connection with this Agreement which a party considers requires resolution (**Dispute**), then within five (5) Business Days of a party notifying the other party in writing of the Dispute, the PIC must meet with a senior officer of the YMCA and use all reasonable endeavours acting in good faith to resolve the Dispute by joint discussions as quickly as possible.
- 27.2 A party may not start court proceedings in relation to a Dispute except if the parties' representatives have failed to resolve the Dispute to their joint satisfaction within 15 Business Days after the commencement of discussions under clause 27.1, unless the party seeks urgent injunctive or other interlocutory relief.

28. Privacy

YMCA will handle all personal information in accordance with its privacy policy which can be found at <https://victoria.ymca.org.au/privacy-policy>.

29. Variation

- (a) Subject to clause 29(b), the Agreement can only be varied by a document duly executed by both YMCA and the Hirer.
- (b) YMCA may vary the terms by providing not less than 30 days written notice to the Hirer. If the Hirer does not wish to continue the Hire Agreement under the varied terms, the Hirer may terminate the Hire Agreement by providing written notice to YMCA before the new Hire Agreement term commences. In

this instance the Hirer will be refunded all Hire Fees already paid in respect of any Booking or Individual Date which has not taken place up to the date of termination.

30. Jurisdiction

This Agreement is governed by the Laws of Victoria and the parties submit to the jurisdiction of the Courts of Victoria.

31. Severability

Any provision in this Agreement which is invalid or unenforceable is to be read down, if possible, so as to be valid and enforceable, and, if that is not possible, the provision will, to the extent that it is capable, be severed to the extent of the invalidity or unenforceability, without affecting the remaining provisions.

32. Counterparts

The Agreement may be signed in counterpart.