

MEMBERSHIP TERMS OF USE

This document outlines Your rights and responsibilities relating to Your use of the UniSport Facilities. It also relates to Your authority to Us to directly debit Your nominated bank account or credit card for any instalments or fees due under this Agreement.

WARNING UNDER THE AUSTRALIAN CONSUMER LAW AND FAIR TRADING ACT 2012

Under the Australian Consumer Law (Victoria), several statutory guarantees apply to the supply of certain goods and services. These guarantees mean that the supplier named on this form is required to ensure that the recreational services it supplies to you-

- a. are rendered with due care and skill;
- b. are reasonably fit for any purpose which you, either expressly or by implication, make known to the supplier; and
- c. might reasonably be expected to achieve any result you have made known to the supplier.

Under section 22 of the **Australian Consumer Law and Fair Trading Act 2012**, the supplier is entitled to ask you to agree that these statutory guarantees do not apply to you. If you sign this form, you will be agreeing that your rights to sue the supplier under the **Australian Consumer Law and Fair Trading Act 2012** if you are killed or injured because the services provided were not in accordance with these guarantees, are excluded, restricted or modified in the way set out in this form.

NOTE: The change to your rights, as set out in this form, does not apply if your death or injury is due to gross negligence on the supplier's part. Gross negligence, in relation to an act or omission, means doing the act or omitting to do an act with reckless disregard, with or without consciousness, for the consequences of the act or omission. See regulation 5 of the **Australian Consumer Law and Fair Trading Regulations 2012** and section 22(3)(b) of the **Australian Consumer Law and Fair Trading Act 2012**.

1. DEFINITIONS

In this Agreement:

Agreement means the Membership Form, these Terms and Conditions and the Direct Debit Request Form.

Business Day means a day that is not a Saturday, Sunday or public holiday in Ballarat, Victoria.

Commencement Date means the date specified as such on the Membership Form.

Direct Debit Request means the section on the Membership Form completed by You, and the separate EZYPAY Direct Debit Request Form completed by You.

Facilities means the facilities that You are permitted to use according to the "Membership Type" shown on the Membership Form.

Membership Fees means the fees set out in the Membership Form that are payable by You for the use of the Facilities.

Membership Form means the Membership Form completed by You and attached to these Terms and Conditions.

Minimum Term means the minimum number of payments described in the "Payment Details" section of the Membership Form. The Minimum Term will begin on the Commencement Date.

Regular Debit amount means the fortnightly debit amount described on the Direct Debit Request form.

University means Federation University Australia.

"We", "Us" or "Our" means UniSports Limited ABN 51 818 692 256 of Building P, University Drive Mt Helen, Victoria 3350;

Website means www.federation.edu.au.

"You" or "Your" means the person described in the "Member Details" on the first page of this Agreement and includes Your parent or guardian if You are under 18 years of age.

2. LEGALLY BINDING AGREEMENT

Subject to clause 5.1, this Agreement is legally binding on You for the Minimum Term and any period after the expiry of the Minimum Term during which You continue to use the Facilities.

3. TERM

a. This Agreement will commence on the Commencement Date and continue for the Minimum Term and any period after the expiry of the Minimum Term during which You continue to use the Facilities, unless terminated earlier in accordance with this Agreement.

b. Membership is not transferrable.

4. FEES

a. It is a condition of this Agreement that You pay the Membership Fees either by an up-front lump sum payment or by direct debit, by completing the Direct Debit Request Form. All queries about the direct debit billing service should be directed to Us. You can contact Us by:

- i. attending Our office at Building P, University Drive Mt Helen, Victoria 3350; or
- ii. phoning Us on 5327 9695.

b. If you elect to pay Your Membership Fees by direct debit, You agree that We will deduct the Regular Debit amount from Your nominated bank account every second Tuesday commencing on the date specified on the Direct Debit Request form until this Agreement is terminated in accordance with its terms. If the due date for payment falls on a day that is not a Business Day, the Regular Debit amount will be drawn on the Business Day immediately prior to the scheduled debit day.

c. It is Your responsibility to ensure that You have sufficient funds available in Your nominated account to pay each Regular Debit amount when due.

d. It is Your responsibility to ensure that the authorisation to draw money from Your nominated account is identical to the account signing instructions held by Your financial institution.

e. The Membership Fees include any amounts payable on account of GST. If there are any changes to the GST (for example the rate of GST changes), We reserve the right to change the Membership Fees such that the amount received by Us after accounting for GST is not reduced as a result of the change in GST. We will give You 30 days prior written notice of any such change.

If You require a replacement access card for any reason, You must pay a fee of \$10.00 for the issue of a replacement access card.

g. We may increase the Membership Fees after the expiry of the Minimum Term by giving You 30 days' written notice delivered to Your last known address. You may terminate this Agreement if You do not agree to pay the increased Instalment Amount. If You wish to terminate this Agreement in accordance with this clause, You must give Us written notice of such termination within 14 days after the date of the Our notice advising You of the increased Instalment Amount. This Agreement will terminate on the date that We receive Your notice.

h. If You do not terminate this Agreement in accordance with clause 4(g) above, this Agreement will remain in force and the Instalment Amount will increase on the date that is 30 days after the date of Our notice.

5. TERMINATION OF THIS AGREEMENT

5.1 Cooling Off Period

a. This Agreement is subject to a cooling off period which commences on the day that you sign the Application Form and expires 72 hours later.

b. If You wish to terminate this Agreement during the cooling off period, You must give Us written notice of termination before the cooling off period expires. Notice of termination is to be submitted to unisports@federation.edu.au. On receipt of that notice We will refund any money paid by You within 21 days of termination, less any fees for fitness services supplied to You before termination.

5.2 Termination By You

Subject to clause 5.4 You may terminate this Agreement other than as set out above by submitting notice to unisports@federation.edu.au. If:

a. You terminate this Agreement during the Minimum Term You must pay the Membership Fees for the Minimum Term; or

b. You terminate this Agreement after the Minimum Term has expired – You must give Us 30 days' written notice of termination and pay the Membership Fees up to and including the date of termination.

5.3 Termination by Us

a. We may terminate this Agreement:

i. following the expiry of the Minimum Term on not less than 30 days' written notice to You; or

ii. at any time by written notice to You if You breach the terms of this Agreement. Before terminating this Agreement for Your breach, We will give You a warning that You have breached this Agreement and We will give You a reasonable time in which to rectify the breach (except in the case of serious breach, which may result in immediate termination without warning). If You do not rectify the breach, or You continue to breach the terms of this Agreement after receiving the warning, We may suspend your membership or terminate this Agreement.

b. For the purposes of this clause, a serious breach will be deemed to have occurred if You commit an illegal act, assault or abuse (physically or verbally) another member or any staff at the Facilities, You breach the privacy of another member or any staff or You allow another person to access the Facilities using Your access card.

5.4 Breach by Us

If You consider that We have breached this Agreement, You may give us written notice of the breach. You must allow Us a reasonable time in which to rectify the breach. If We do not rectify the breach complained of within the reasonable time specified in Your notice, You may terminate this Agreement by written notice to Us. Following such termination, You will be entitled to a refund of any Membership Fees paid that relate to the period after termination.

5.5 Continuing Agreement

a. This Agreement under Direct Debit arrangement is an ongoing Agreement. This means that following the expiry of the Minimum Term, this Agreement will continue on a month to month basis until terminated by You or Us in accordance with this Agreement.

b. Approximately 30 days before the date on which Your Minimum Term expires We will notify You of Your obligations under the continuing Agreement. This notice will provide You with the option to cancel the continuing Agreement and Direct Debit arrangements. If you fail to respond to this notice the University will be entitled to rely on your acceptance of the continuing agreement.

6. FACILITIES

a. The Facilities that you may access in connection with Your Membership Type (as shown on the Application

Form) are set out in the UniSport Membership Options section of the Membership Form. You may access and use these Facilities in accordance with this Agreement for the term during normal business hours for the particular Facilities. These business hours are available on the Website.

- b. You must swipe or present Your access card at entry every time You attend a Facility. Failure to present Your access card may result in access being denied.
- c. If You allow a non-member to use Your access card to enter the Facilities We may elect to terminate this Agreement by notice in writing to You.
- d. We will use Our reasonable endeavours to make the Facilities available to You for use during usual hours of business for the Facilities. However, You acknowledge that:
 - i. to keep the Facilities and equipment in good and safe order and condition, We may temporarily restrict the availability of certain services and equipment from time to time for the purposes of cleaning, repairs and maintenance. When this occurs We will endeavour to provide reasonable notice (except in an emergency, when no notice is required) on the notice boards at the relevant Facilities and We will use Our reasonable endeavours to ensure that the closed part of the Facilities or equipment is re-opened or made available for use as soon as possible;
 - ii. due to decreased demand, We may close the Facilities or operate on reduced business hours due to University holidays; and
 - iii. We may change the opening hours of any of the Facilities or the group exercise timetables from time to time as may be reasonable in accordance with the demand for those particular services and the need to utilise the Facilities to conduct relevant academic classes. We will endeavour to give You reasonable notice of any such changes by displaying notices at a prominent place at the particular Facility or by publishing any changes on Our Website.

7. GENERAL CONDITIONS OF ENTRY

- a. To ensure that We are able to provide a high level of service in a safe, healthy and pleasant environment for all members to enjoy, it is a condition of this Agreement that You must comply with the Conditions of Entry as displayed at the relevant Facility.
- b. We may amend the Conditions of Entry from time to time if necessary to ensure the safety and good operation of the Facilities, provided that the Conditions of Entry do not conflict with the terms of this Agreement. We will give You notice of any changes to the Conditions of Entry by displaying any changes in a prominent position at the relevant Facilities.
- c. We may make rules for the Facilities from time to time, provided that those rules do not conflict with the terms of this Agreement. You must comply with any rules that We make. Any new rules or changes to the rules will be displayed in a prominent position on a noticeboard at the relevant Facilities.

8. LOCKERS (WHERE PROVIDED)

- a. All items stored in the lockers are at Your risk and to the extent permitted by law, We do not accept responsibility for personal items that are lost, damaged or stolen from the Facilities.

9. YOUR AGE, HEALTH AND PHYSICAL CONDITION

- a. All members must be a minimum of 16 years of age. All minors under the age of 18 must have a guardian or parent co-sign the Membership Form. No person under the age of 16 is allowed in the Facilities unless accompanied by a guardian or qualified instructor and that person has the consent of the Manager.
- b. You warrant to Us that unless specifically disclosed in writing to Us, You are 18 years of age or older at the time of signing, and You are not under any other legal disability that would prevent You from being legally bound under this Agreement.
- c. Your health and safety is important to Us. You must tell Us in writing if You are aware of any condition or risk that may affect Your ability to safely use the Facilities or to take part in an exercise or fitness program, prior to commencing to use the Facilities or commencing the exercise or fitness program. If You do not tell Us of any such condition or risk, We will be entitled to assume that You are not affected by such a condition or risk. You acknowledge that:
 - i. We have recommended that You seek medical advice prior to commencing a new exercise program;
 - ii. neither We nor Our staff gave You medical advice before using the Facilities and neither We nor our staff can give You medical advice after You use the Facilities; and
 - iii. if You have any medical concerns now or after commencement of this Agreement, You must discuss those concerns with Your doctor before using the Facilities.

10. DAMAGE TO THE FACILITIES

You must pay for any damage if You willfully or negligently cause damage to the Facilities or any property in the Facilities.

11. SUSPENSION

- a. You may ask Us to suspend Your membership from time-to-time. To request suspension of Your membership, You must submit notice in writing to unisports@federation.edu.au at least 14 days prior to the commencement of the suspension period.
- b. You may ask Us to suspend Your direct debit membership for a minimum of 2 weeks, but no more than 16 weeks in any 12 month period.
- c. You may ask us to suspend Your up-front membership for a minimum of 2 weeks at a time, so long as the total time suspended does not exceed:
 - i. 2 weeks – for 3 month up-front membership;
 - ii. 4 weeks – for a 12 month up-front membership;
- d. Any period of suspension will be added onto the Minimum Term of the Agreement.
- e. Suspension is at the discretion of UniSports management. Permission to suspend shall not be unreasonably withheld.

FedUni Well memberships cannot be suspended.

12. DAMAGE AND PERSONAL INJURY

- a. To the extent permitted by law, You agree that Your use of the Facilities is at Your own risk. You acknowledge that Your use of the Facilities may involve physical exertion and physical risk and could result in death, physical or mental injury, the contraction of a disease or any other condition, circumstance or impairment that is harmful or disadvantageous to You.
- b. Subject to clause 13(c), You acknowledge and agree that neither We nor Our employees, agents or contractors will be responsible or liable for and You forever release Us from, hold Us harmless and waive all rights in respect of any loss, damage, expense, liability, action, claim or proceeding suffered or incurred by You or any other party in connection with Your use of the Facilities as a result of:
 - i. death;
 - ii. physical or mental injury (including the aggravation, acceleration or recurrence of such an injury);
 - iii. the contraction, aggravation or acceleration of a disease; or
 - iv. the coming into existence, the aggravation, acceleration or recurrence of any other condition, circumstance, occurrence, activity, form of behaviour, course of conduct or state of affairs that may be harmful or disadvantageous, or may result in harm or disadvantage, to You or another person.
- c. Clause 13(b) does not apply to the extent that You suffer significant personal injury that is caused by Our reckless conduct. Our conduct is deemed to be reckless if We are aware, or should reasonably have been aware, of a significant risk that the conduct could result in personal injury to another person and We engage in the conduct despite the risk and without adequate justification.

- d. You agree to indemnify Us and Our employees, agents and contractors from and against any loss, damage, expense, liability, action, claim or proceeding suffered or incurred by Us in connection with Your negligent use of or willful misuse of the Facilities or Your breach of this Agreement, except to the extent that the loss, damage, expense, liability, action, claim or proceeding is caused by Our negligent conduct or willful misconduct.
- e. Nothing in this Agreement is intended to exclude or limit Your rights under any law that cannot be excluded or limited and this Agreement is to be read and construed accordingly.

13. GENERAL

- a. Your "personal information" (as that term is defined in the Privacy Act 1988 (Cth)) will only be used by Us:
 - i. to provide You with the services contemplated by this Agreement;
 - ii. to provide information about Our business to a potential purchaser or transferee of any of the Facilities, provided that the potential purchaser or transferee is under an obligation of confidentiality to Us;
 - iii. to effect direct debit payments under this Agreement (which may involve providing your personal information to Our financial institution and/or Your financial institution); or
 - iv. otherwise as permitted by You or by law.
- b. A copy of Our Privacy Policy can be obtained from our website at www.federation.edu.au