

**This membership agreement is an ongoing agreement with a minimum Initial Commitment Period of one 10 week term (or if your child joins part way through a term, the balance of that 10 week term). It automatically renews for successive 10 week term commitment periods unless terminated in accordance with paragraph 8.**

## 1. The Agreement between you and us

These Terms, together with the Swimsters Rules and the following completed documents:

- (a) Membership Application Form;
- (b) Payment Authority Form; and
- (c) Health Check Questionnaire;

make up all of the terms of a Membership Agreement (“Agreement”) between you as parent/guardian of the person(s) named in the Membership Application Form (“child”) and Virgin Active Australia Pty Limited (ABN 68 126 741 133 (“us”)). It is important that you have read and understood all of the terms and conditions of the Agreement before signing these Terms. If you have any questions please ask us.

## 2. Your type of Membership and your Home Club

Your child is becoming a member of Virgin Active Swimsters at the club stated in the Membership Application Form (“Home Club”).

## 3. When will your membership start?

Your child’s membership will start on the Membership Start Date (“Membership Start Date”) set out on the Membership Application Form, provided that you have signed these Terms, the Membership Application Form, the Payment Authority Form and the Health Check Questionnaire.

## 4. How long will your membership last?

### 4.1 Commitment Periods

Your child’s membership will continue:

- (a) for an initial commitment period of one 10 week term, or if the Membership Start Date is a date part way through a 10 week term, until the end of that 10 week term (“Initial Commitment Period”); and
- (b) automatically for further 10 week term commitment periods (“each an Ongoing Commitment Period”) unless your child’s membership is terminated in accordance with paragraph 8.

Each Ongoing Commitment Period will start on the first day of the 10 week term commencing immediately following the previous Commitment Period. For example, assuming your child starts lessons during week 5 of Term 3, 20XX, being 8 August 20XX, the Initial Commitment Period will start on 8 August 20XX and continue until the end of week 10 for that 10 week term, being 25 September 20XX. The first Ongoing Commitment Period will be Term 4 20XX, being the 10 week term from 10 October 20XX until 18 December 20XX.

### 4.2 What happens if you change your mind?

You may notify us by completing a Break Up Form at your Home Club that you wish to cancel your child’s membership within 7 days of the date that you sign these Terms (“Cooling Off Period”).

If you do so, we will, after you return your child’s Membership Card, gifts and any other documentation which we provided to you or your child upon joining, refund any fees which you have paid to us less a reasonable administration charge and a fee for any lessons your child may have had during the Cooling Off Period.

## 5. Membership and other fees

### 5.1 Membership Fees

You are responsible for payment to us of the Membership Fees set out in the Membership Application Form.

You must pay the Membership Fees in advance by direct debit or periodic credit card authority under the Payment Authority Form. No other form of payment will be accepted.

Membership Fees for a Commitment Period are due and payable in advance of the commencement of the first day of that Commitment Period unless the Agreement has been terminated under paragraph 8, and will be deducted from your nominated account four times per year on the dates outlined on our website.

If the Membership Start Date is part way through a 10 week term, the Membership Fees will be calculated on a pro-rata basis, and must be paid upfront by cash or card.

Your child will not be allowed to access Swimsters if Membership Fees are outstanding. We will collect any outstanding amounts and any charges we incur from late payment through the Payment Authority Form. If you have a genuine dispute in relation to the collection of outstanding amounts or the charges we incur, please contact us in accordance with the dispute procedure set out in the Payment Authority Form.

### 5.2 Changes to Membership Fees

We review our Membership Fees periodically and may change them from term to term. We will give you at least 14 days’ notice of any change and the date from which the change will apply by emailing you at the email address you have provided to us and also notify you via your member portal at virginactive.com.au or by writing to you. If you do not wish to accept an increase in the Membership Fees, you must terminate your child’s membership in accordance with paragraph 8.1. If you do not terminate your child’s membership, you must pay the revised Membership Fees for the next Commitment Period and your direct debit or credit card authority will be amended accordingly.

We may need to adjust the availability of certain facilities at your child’s Home Club on a temporary basis, including for the purposes of cleaning, refurbishment, repair, upgrade, maintenance, special functions and holidays.

### 5.3 Other fees and charges

Any fees or charges that may be payable for additional services and facilities, such as Holiday Swim Program Fees, Guest Fees, Replacement Membership Card Fees, and Transfer Fees, will be set out in the relevant Swimsters price list (as may be amended by us from time to time) available at the Reception of your child’s Home Club.

## 6. Transfers & Refunds

6.1 Can you transfer your child’s membership to another person?

No, you may not transfer your child's membership (in whole or by individual lessons left in a term) to another person. The membership is personal to your child.

## 6.2 Refunds/Credits

No refunds are offered if your child misses a lesson for any reason, or if you terminate your child's membership part way through a Commitment Period. In extenuating circumstances, refunds or credits may be given at the discretion of the Swimsters Manager.

## 8. How can your membership be terminated?

### 8.1 Termination by you

You may terminate your child's membership at any time by completing a Break Up Form at your child's Home Club (which constitutes a valid "Notice of Termination"), which we must receive at least 3 days prior to the renewal date for the next Ongoing Commitment Period (i.e. by the end of week 7 of the current term).

### 8.2 Early termination by you

You may terminate your child's membership immediately upon giving us a Notice of Termination within 14 days of any of the following occurring:

- (a) if we increase the Membership Fees other than in accordance with paragraph 5.3;
- (b) if we change the physical location of your child's Home Club;
- (c) if we close Swimsters for any reason for a period of 30 consecutive days or longer;
- (d) if we make changes to these Terms or the Swimster Rules under paragraph 10 in a way that materially reduces the benefits of your child's membership; or
- (e) if we breach any terms of this Agreement and fail to rectify that breach within 14 days of you giving us notice to do so.

### 8.3 Termination by us:

We may terminate your child's membership immediately by emailing or writing to you at the contact addresses we have on our records if:

- (a) you or your child commit a serious or repeated breach of these Terms or the Swimster Rules;
- (b) you or your child breach these Terms or the Swimster Rules and the breach, if capable of remedy, is not remedied within 14 days of us giving you notice to do so and informing you that your child's membership will be terminated if you or your child fail to do so;
- (c) the Membership Fees remain unpaid; or
- (d) you provide us with details which you know to be false when applying for your child's membership.

If we terminate your child's membership for any of these reasons we may (without limiting any other right or remedy) recover any other reasonable costs and expenses we incur as a result of your or your child's breach and collect the full amount of any Membership Fees owing.

## 9. What are the Swimster Rules?

The Swimster Rules govern your and your child's use of Swimsters. You and your child agree to comply with the Swimster Rules, which are binding rules that apply to all members, guests and visitors. You are also responsible for the conduct of your and your child's guests and visitors while they are using the Swimster facilities. Up-to-date Swimster Rules will be published at [virginactive.com.au/swimsters](http://virginactive.com.au/swimsters) and displayed in each Club.

## 10. Changes to these Terms or the Swimster Rules

We reserve the right to make reasonable amendments to these Terms or the Swimster Rules at any time. We will give you at least 14 days' notice by emailing you, updating your member portal at [virginactive.com.au](http://virginactive.com.au), or writing to you to tell you that changes are being made and that you may see the amended Terms or Club Rules at our website or at the Club. If any amendment to these Terms or the Swimsters Rules materially reduces the benefits of your child's membership you may terminate your child's membership under paragraph 8.2.

## 11. How you should contact us?

Any written notice or completed form provided to your Home Club must be sent by post, fax or email, or given in person at Reception, with exception of a notice by you terminating this Agreement (see paragraph 8.1). Full contact details are available at your child's Home Club's Reception.

## 12. Risk and your health

Swimming at our Club may involve the risk of injury and you and your child swim and use Swimster facilities at your own risk. Please monitor your child's physical condition at all times and only allow him or her to attend lessons or Family Splash if appropriate given your knowledge of your child's health and any medical advice you have obtained for your child. If any unusual symptoms occur, please ask your child to immediately stop what he or she is doing and notify a staff member.

## 13. Liability

### 13.1 Recreational Activities

In the course of exercising or engaging in any recreational activities while using any Club facilities (including using Swimsters facilities) if you or your child are killed or injured, we will not be liable except to the extent caused by our gross negligence. In this paragraph:

- **gross negligence**, means as defined in paragraph 13.2 below; and
- **recreational activities**, means your participation in a sporting activity or a similar leisure time pursuit or your participation in any other activity that involves a significant degree of physical exertion or physical risk and is undertaken for the purposes of recreation, enjoyment or leisure. Recreational activities includes your child's participation in swimming lessons, play in the water play area or main pool or use of our Club facilities.

Please refer to the warning notice in paragraph 13.2 below which we are required to provide to you if you are in Victoria under the Australian Consumer Law and Fair Trading Act 2012 in relation to this limitation on our liability.

### 13.2 Warning under the Australian Consumer Law and Fair Trading Act 2012

In this warning, references to "the supplier" mean us, and references to "you" mean you and your child (if you have agreed to these Terms on behalf of a child).

Under the Australian Consumer Law (Victoria), several statutory guarantees apply to the supply of certain goods and services. These guarantees mean that the supplier named on 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 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.

### 13.3 Liability for supply of other services

Without limitation to paragraphs 13.1 and 13.2 and any other terms which are implied into this Agreement; or by statute in relation to the supply of services which cannot be excluded or limited, we will ensure that the services that we provide to you are provided with due care and skill, are fit for the purpose for which they are commonly bought as is reasonable to expect in the circumstances, will correspond in the nature and quality with the services demonstrated to you, and are free from any defect rendering them unfit for the purposes for which our services are commonly acquired. To the extent permitted by law, and again without limiting paragraphs 13.1 and 13.2, unless we have breached these obligations we will not be liable for any death, injury, loss, liability or damage that you may incur as a result of the services provided by us to you.

### 14. Other bits

You must keep us up to date with your contact details by completing a Change of Circumstances Form and giving it to your child's Home Club if your contact details change. In the event that we do not receive a Change of Circumstances Form from you and your contact details change, notice given by us to the email or other address we have on our records for you will constitute valid notice to you under these Terms.

We may transfer our rights and obligations under this Agreement to a third party without notice and your child will continue as a member. If the third party fails to provide the same facilities and services in all material respects as provided by us you may terminate your child's membership upon giving Notice of Termination under paragraph 8.2.

All undefined terms used in this document have the meaning set out in the Membership Application form.

### 15. Your personal information

We take the privacy of our members seriously and our Privacy Policy, which is available at [virginactive.com.au](http://virginactive.com.au), explains the ways in which we collect, use, store, protect and disclose your and your child's personal information.

We collect personal information from you regarding your child to provide you and your child with our services, to administer your child's membership with us and for the other purposes described in our Privacy Policy. In most cases, we collect your personal information directly from you (on behalf of your child), including through your Membership Application Form, a Change of Circumstances Form, Health Check Questionnaire, the member portal at [virginactive.com.au](http://virginactive.com.au) and in the course of our other communications with you, which may occur through [virginactive.com.au](http://virginactive.com.au) or when you call or contact our staff.

If you do not allow us to collect your or your child's personal information, we may not be able to provide you or your child with our services, administer your child's membership with us

or conduct some or all of the other activities described in our Privacy Policy.

With your consent, we may also collect personal information which relates to your child's physical health or condition, including (without limitation) when you complete our Health Check Questionnaire, so that we can assess your child's general health, wellbeing and readiness for physical exercise and for the other purposes set out in our Privacy Policy. If you do not provide this information, you or your child will not be able to use our club. If we believe your child has any health issue or if our Health Check Questionnaire is not fully completed, we may require you to obtain a medical certificate before we consider your child's application further.

In order to perform our services and for the purposes described in our Privacy Policy, we may disclose some of your or your child's personal information to our related bodies corporate and to other persons or entities as outlined in our Privacy Policy. Should you default on payments due to us we may disclose your personal information by notifying the default to a credit reference agency or other third party to obtain payment from you.

Other than as set out in our Privacy Policy, we will not share your or your child's personal information without your consent unless we are required to do so by law.

Our Privacy Policy explains how you may access and correct the personal information that we hold about you and your child. It also sets out how you may contact us to complain about a breach of the Privacy Act, and how we will deal with such a complaint. If you have any questions or concerns about privacy or if you would like further information about our privacy practices, please contact the Virgin Active Privacy Officer using the following details:

Email: [privacy@virginactive.com.au](mailto:privacy@virginactive.com.au)

Address: Virgin Active Central, Level 5,  
East Village, 4 Defries Ave, Zetland NSW 2017

**By signing below, you agree to be bound by this Agreement. If you are joining us as a linked member, please note that each linked member who signs below will be individually bound by the Membership Agreement.**

I am the parent/guardian of the member named in the Membership Application Form, and agree that I am responsible for all obligations of the member under this Agreement.

Name of member under 18 \_\_\_\_\_

Name of Parent/Guardian \_\_\_\_\_

Signed (Parent/Guardian) \_\_\_\_\_

Date \_\_\_\_\_

### Virgin Active Australia Pty Limited

Name of Virgin Active Representative \_\_\_\_\_

Signed (for identification purposes only) \_\_\_\_\_

(Virgin Active Representative)

Date \_\_\_\_\_

**Note that the Agreement between you and us will come into force upon you signing these Terms even if a Virgin Active Representative is not named or does not sign them.**