

## Membership Terms and Conditions

[Click here to enter a date.](#)

Details			
Parties	Provider:	Name:	Surf Coast Shire Council (ABN 18 078 461 409) ("SCSC")
		Address:	1 Merijig Drive Torquay Vic 3228
		Phone:	5264 0600
		Email:	info@surfcoast.vic.gov.au
	Member:	Name:	("Member")
		Address:	
		Phone:	
		Email:	
Facility	Wurdi Baierr Stadium		
Location	Wadawurrung Way, Torquay, Vic 3228		
Fee	\$_____ payable weekly/monthly/annually/lump sum (circle applicable)		
Term	Multi pass / 12 months / 6 months / 3 months (circle applicable)		
Commencement Date:	The date of signing and payment of the Fee (whichever occurs last)		

### Signing

*	I/we have read the terms and conditions in full and understand my/our obligations under it.
*	By signing here, I/we agree to bound by the terms and conditions.

\* It is a condition of membership that you have read and agree to the terms and conditions. By marking both of the above two boxes, you make this acknowledgement. Memberships will not be processed where these boxes are not marked.

Member signature X\_\_\_\_\_

Print Name and Title \_\_\_\_\_

Date\_\_\_\_\_

### Privacy Statement

SCSC is committed to protecting all personal and sensitive information consistent with the principles set out in the Privacy and Data Protection Act 2014. SCSC is collecting the information on this form for the purpose of processing this application. The information will only be collected, stored, used or disclosed for the purpose for which it was collected, with your permission or as required by law.

## Terms and Conditions

### 1. Definitions

The parties agree that the following definitions apply to this agreement:

**Commencement Date** means the commencement date described in the details.

**Facility** means the Facility described in the details and includes all premises areas both internal and external, equipment, furniture, bathrooms and products.

**Fee** means the fee or fees that apply as set out in the details.

**GST Act** means *A New System (Goods and Services Tax) Act 1999* (Cth).

**Law** means the law in force in the jurisdiction in which the Project is carried out, including common or customary law, equity, judgment, legislation, orders, regulations, statutes, by-laws, ordinances or any other legislative or regulatory measures, codes and standards including the requirements of any authority having jurisdiction over the parties or the Project.

**Loss** means all costs (including legal costs and expenses on a solicitor and own client basis), fees, expenses, losses, damages (including reputational damage), charges, taxes, outgoings, claims, liabilities, causes of action, proceedings, awards and judgments.

**Membership Card** means the card provided to Members to allow them access and use of the Facility and/or Services.

**Rules** means the rules referred to in these T & C's.

**Safety Laws** means all Laws, relating to the protection and safety of persons or property including the *Occupational Health and Safety Act 2004* (Vic).

**SCSC** means the Surf Coast Shire Council (ABN 18 078 461 409).

**Services** means any program, classes or services provided by the Provider.

**T & C's** means these terms and conditions.

### 2. General

#### 2.1 Interpretation

- (a) A reference to a clause, schedule or appendix is a reference to a clause schedule or appendix is a reference to a clause, schedule or appendix in these T & C's unless otherwise stated.
- (b) No rule of contract interpretation is to be applied to the disadvantage of the Provider on the basis that it prepared, or put forward any document comprising part of, these T & C's.
- (c) The references used in these T & C's are to be interpreted as follows except where the context otherwise requires:
  - i. a reference to these T & C's, another instrument or document includes any variation or replacement;
  - ii. a reference to any statute, code, ordinance or other law includes regulations and other instruments under it and amendments, consolidations, replacements or other instruments overruling that law;
  - iii. a reference to a person will be taken to include any natural or legal person, the person's executors, administrators, successors, substitutes and permitted assigns;
  - iv. a reference to a person or body which has ceased to exist or has been reconstituted, amalgamated or merged, or other functions of which have become exercisable by any other person or body in its place, shall be taken to refer to the person or body established or constituted in its place by which it's said functions have become exercisable;
  - v. a reference to any direction, approval or requirement given by the Provider is not to be construed as the Provider participating in the supervision or control of the Member and does not infer any release of the Member or its obligations to appropriately carry out any supervision and control function; and
  - vi. a reference to a group of persons is a reference to all of them collectively, any two or more of

them collectively and to each of them individually.

- (d) In reading these T & C's, except where the context otherwise requires:
  - i. the headings in this document are for convenience only and do not affect the interpretation of these T & C's;
  - ii. the singular includes the plural and vice versa;
  - iii. the word 'including' means 'including without limitation';
  - iv. a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later;
  - v. a month is to be interpreted as a calendar month;
  - vi. a gender includes every other gender; and
  - vii. where a word or phrase is given a defined meaning in these T & C's, any other part of speech or other grammatical form in respect of such word or phrase shall have a corresponding meaning.

#### 2.2 Non-Merger

- (a) The warranties, undertakings and indemnities in these T & C's do not merge on expiry of the membership.
- (b) Any warranties, indemnities and all other provisions which expressly or by implication from their nature are intended to survive termination, survive termination of the expiry of the membership.

#### 2.3 Compliance

The Member:

- (a) Acknowledges and agrees that the Provider has certain statutory rights and obligations including the *Charter of Human Rights and Responsibilities Act 2006* (Vic);
- (b) Must comply with any reasonable directions issued and/or take any actions reasonably directed by the Provider to enable the Provider to comply with such obligations;
- (c) Acknowledges that, where their use of the Facility relates to First Nations People or Culture, it must demonstrate appropriate consultation with the applicable Registered Aboriginal Party (RAP), Traditional Owner consultant or First Nations organisation; and
- (d) Acknowledges that their use of the Facility must comply with child safe standards as advertised by the Commission for Children and Young People, from time to time.

#### 2.4 Entire Agreement

- (a) Subject to variations as provided for in these T & C's, this document constitutes the entire agreement and understanding between the parties as to the subject matter of these T & C's.
- (b) Any prior arrangements, agreements, representations or undertakings as to the particular subject matter of these T & C's are superseded except where explicitly stated in these T & C's.

#### 2.5 Governing Law

- (a) These T & C's are governed by and must be construed in accordance with, the Laws in force in Victoria.
- (b) The Member submits to the exclusive jurisdiction of the courts exercising jurisdiction in Victoria and the courts of appeal therein.

#### 2.6 Representations and Warranties

- (a) The Member acknowledges and warrants that, in agreeing to these T & C's, the Member:
  - i. has the power to enter into and observe its obligations under these T & C's;
  - ii. has familiarised itself with the Provider's Rules and obtained all relevant information necessary to enable it to perform its obligations under these T & C's; and
  - iii. agrees to these T & C's based on its own investigations and determinations and has used its own endeavours and efforts to verify

the accuracy of all information relied on by the Member.

- (b) The Provider will use reasonable endeavours to provide the Services subject to the following –
  - i. the Member acknowledges that the Services are subject to timetable changes and cancellations due to Facility staff or service provider availability; and
  - ii. the Member agrees not to make any complaint regarding timetable changes and cancellations;
  - iii. the Provider will give reasonable notice of timetable changes and cancellations, where possible.

### 3. Term

- (a) These T & C's apply to the Members access and use of the Facility and Services from the Commencement Date and expires at 11:59pm on the final day of the Term.
- (b) The Member may end its membership prior to the end of the Term by providing written notice to the Provider of this intention but only if it also provides a certificate from a licenced medical practitioner confirming, to the Provider's reasonable satisfaction, that the Member can no longer comply with its warranties under clause 4.3.
- (c) The Member may, by notice in writing, suspend the Term of their membership for a minimum of two (2) calendar weeks and up to a maximum of three (3) calendar months twice per calendar year but only if the Fee is paid in full as at the date of the request. The Member acknowledges that it may only make two (2) suspension request per calendar year.

## 4. Obligations

### 4.1 General

- (a) The Member must:
  - i. pay the Fee;
  - ii. provide the information required by the Details;
  - iii. Use the scanner located at the front counter in reception to scan their Membership Card each time they enter the Facility;
  - iv. not use or access the Facility and/or Services if they are suffering from any condition, injury, illness or disease, that could risk their own health and safety or the health and safety of other Members, Facility staff or others accessing the Facility;
  - v. use and access the Facility and/or Services safely and properly. When unsure about the operation of the Facility, the Member must seek Facility staff guidance;
  - vi. familiarise itself with the Facility emergency response procedure;
  - vii. follow the emergency response procedure during an emergency;
  - viii. follow the reasonable directions of Facility staff; and
  - ix. take reasonable care in maintaining and caring for its Membership Card including preventing damage and loss or theft.

- (b) Time will be of the essence in the performance of obligations under these T & C's.

- (c) The Provider may in its absolute discretion extend, any term (if applicable) under these T & C's.

### 4.2 Standards for performance

- (a) The Member must conduct itself courteously and respectfully in its interactions with other Members, Facility staff and others accessing the Facility at all times and will not do or omit to do anything that may damage, bring into disrepute or ridicule the Provider's name, messages or reputation, or attract public or media attention which may be prejudicial or otherwise detrimental to the Provider's name, messages or reputation.
- (b) The Member must not participate or incite conduct that could be considered risky or seriously inappropriate.

### 4.3 Warranties and acknowledgements

- (a) The Member warrants that, when signing these T & C's and each time the Member uses or accesses the Facility and/or Services, they are in appropriate physical condition for such use and have no knowledge of any medical or other reason why they should not use or access the Facility and/or Services. The Member further warrants that, if they are unsure whether they are in the appropriate physical condition required under this clause, they will seek appropriate medical guidance prior to the use or access of the Facility and/or Services.
- (b) The Member acknowledges that the Provider has relied (and continues to rely) on the recurring warranty contained in this clause when agreeing to provide the use and access to the Facility and/or services and that but for the warranty, the Provider would not provide use and access to the Facility and/or Services.
- (c) The Member acknowledges that third parties may offer services from the Facility. In relation to third party services –
  - a. The Member may be required to pay applicable fees directly to the third party to access the third party services and agree to separate terms and conditions;
  - b. The Provider is not responsible for third party services and the Member releases the Provider from any Losses incurred by the Member due to third party services.
- (d) The Member acknowledges that provision of the Facility and/or Services is subject to events of force majeure outside the reasonable control of the Provider and the Member may not claim any Loss from the Provider caused by an event of force majeure.

### 4.4 Facility Rules

- (a) The Facility may publish or make available at the Facility the Rules governing reasonable use and access of the Facility and/or Services.
- (b) The Member must comply with the Rules.
- (c) If the Member fails to comply with the Rules, the Provider may respond as it sees reasonably appropriate, which may include cancellation of the membership.
- (d) The Provider may, in its absolute discretion and from time to time, vary the Rules and the Member must comply with the Rules, as amended.

### 4.5 Member responsibilities

- (a) The Member acknowledges that it must access and use the Facility and Services responsibly, in accordance with the Rules, these T & C's and in an appropriate and conventional manner.
- (a) The Member acknowledges that, in addition to its general responsibilities above, the Member agrees to the following responsibilities –
  - i. The Member must not allow its Membership Card to be used by any party other than the Member. The Member acknowledges that a breach of this clause will result in a fine being issued against the Member of \$150.00 plus GST per occurrence;
  - ii. The Member agrees to pay for any loss or damage to the Facility caused by the Member through wilful, wrongful or negligent conduct or otherwise caused as a result of the Member's breach of these T & C's. The Member authorises the cost of rectifying the damage to be charged to the Members account;
  - iii. The Member must pay the Fee when due. The Member agrees to reimburse the Provider for all Losses incurred (including collection costs) as a result of a breach of this clause;
  - iv. The Member must bring to the attention of Facility staff any matter the Member becomes

aware of that may cause risk or injury to those accessing and using the Facility and/or services;

- i. It is the Member's responsibility to renew its membership. The Term of the membership has expired, the Member will not be granted use and access of the Facility and/or services;
- ii. Where an incident occurs in breach or possible breach of the Safety Laws involving or witnessed by the Member, the Member must co-operate with the Provider in respect of any investigation or public statement which the Provider may, at its sole discretion, issue in respect of the incident; and
- iii. The Member must not, by action or omission, act in any manner that causes the Provider's insurance policy to be vitiated, cancelled or increases the rate of premium.

## 5 GST

- (a) Input Tax Credit, Tax Invoice and GST have the same meaning as they have under the GST Act.
- (b) Unless otherwise specified, all amounts payable in this Agreement include any amount for GST.
- (c) If a supply under this Agreement is subject to GST, the party paying for the supply must pay to the party making the supply an additional amount equal to the amount payable multiplied by the applicable GST rate.
- (d) The additional amount is payable at the same time as the consideration for the supply is payable or is to be provided. However, the additional amount need not be paid until the party making the supply gives the party paying for the supply a Tax Invoice.
- (e) If the additional amount differs from the amount of GST payable by the party making the supply, the parties must adjust the additional amount.
- (f) If a party is entitled to be reimbursed or indemnified under this Agreement, the amount to be reimbursed or indemnified does not include any amount for GST for which the party is entitled to an Input Tax Credit.

## 6 INDEMNITY AND LIMITS ON LIABILITY

- (a) Subject to clause 9(b) the Member indemnifies the Provider and its staff (together, the Indemnified Parties) from and against all Losses incurred by or sustained by the Indemnified Parties (including Losses incurred or sustained as a result of a third party claim against the Indemnified Parties) arising out of or in connection with:
  - a. a breach of these T & C's (including any express or implied warranty or representation) by the Member;
  - b. injury to or death of any person caused or contributed to by the Member in connection with these T & C's; or
  - c. Loss of any property caused or contributed to by the Member in connection with these T & C's.
- (b) The Member is not liable under clause 9(a) to an Indemnified Party to the extent to which any Losses in respect of which the Member would otherwise be liable to indemnify that Indemnified Party arise directly from any negligent act or omission or wilful misconduct of that Indemnified Party.
- (c) To the extent permitted by law, the Member releases the Provider in contract, tort, statute and in any other way for any injury, damage or loss of any kind whatsoever (including without limitation, any liability for direct, indirect, special or consequential loss or damage), sustained by the Member for any Loss arising from or in connection with these T & C's, the Facility, the Services or any act or omission of the Provider.

## 7 TERMINATION

- (a) The Provider may terminate this membership without penalty and with immediate effect by written notice to the Member if the Member:
  - i. commits a material breach of these T & C's and:
    - i. the material breach is not capable of remedy; or
    - ii. the material breach is not remedied within five Business Days of the Member receiving notice from the

Provider of the material breach (or such other period agreed between the Parties);

- ii. participates in serious inappropriate behaviour that the Provider considers, in its reasonable discretion, harassment or endangerment to others or the Facility.

- (b) If these T & C's are terminated for any reason, then:

- i. termination however caused does not affect any accrued rights, remedies or liabilities either party may have at the date of termination;
- ii. the Member is not entitled in contract, tort or otherwise to any payment or compensation as a result of the termination.

## 8 DISPUTE RESOLUTION

- (a) Disputes can be raised by either party in writing. The Parties recognise that resolving disputes between the two Parties is the preferred method of resolution rather than requiring a third party intermediary.
- (b) The following disputes management procedures will be conducted:
  - i. the party raising the dispute will provide notice of the dispute (**Dispute Notice**) to the other party;
  - ii. the Dispute Notice will be in writing, be expressed to have been issued in accordance with this clause 11(b) and set out brief details of the dispute; and
  - iii. the Parties will use reasonable endeavours to resolve the dispute within 10 business days of the Dispute Notice having been received.
- (c) Should any dispute not be resolved by the due date, or the resolution not be able to be agreed at the time the disputes is discussed by the Parties in accordance with clause 11(b), the dispute will be escalated to a senior representative of each party.
- (d) If the senior representatives of each party cannot resolve the dispute within 30 days, the Parties can agree on alternative forms of external dispute resolution.
- (e) The Parties will continue to perform their obligations under these T & C's during any dispute proceedings unless otherwise notified by the Provider.
- (f) Unless a party has complied with the provisions in this clause 11, that party may not commence court proceedings relating to any dispute under these T & C's, except where that party seeks urgent interlocutory relief.

## 9 NOTICES

### 9.6 Form of notice

A notice, approval, consent or other communication under this Agreement will not be considered valid unless:

- (a) it is in writing; and
- (b) sent or copied to the Representative of the party.

### 9.7 Delivery

- (a) Such notice must be either:
  - a. left at the property address of the receiving party;
  - b. sent by express post with delivery tracking to the property address of the receiving party; or
  - c. sent by email to the email address of the receiving party.

### 9.8 Receipt

Such notice is taken to be received:

- (a) if given or served by hand, at the time of delivery;
- (b) if express posted, on the business day (seventh business day if posted to or from a place outside Australia) after posting; or
- (c) if emailed, on received date displayed by the receiving party's system.

## 10 EXERCISE OF RIGHTS

- (a) A party may exercise a right, power or remedy at its discretion and separately or concurrently with another right, power or remedy.
- (b) A single or partial exercise of a right, power or remedy does not prevent a further exercise of that or any other right, power or remedy.

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(c) The rights, powers and remedies provided in these T & C's are cumulative with and not exclusive of the rights, powers or remedies provided by Law independently of these T & C's.

(d) Failure by a party to exercise, or delay in exercising a right, power or remedy, does not prevent its exercise.

(e) A provision of or a right, power or remedy created under these T & C's will not be waived, except in writing signed by the party granting the waiver.

(END OF TERMS AND CONDITIONS)