

## MEMBERSHIP TERMS AND CONDITIONS

U@MQ Limited (**U@MQ**) is a controlled entity of Macquarie University. It administers the Sport & Aquatic Centre ("**Centre**") and the Macquarie University Sport Fields and grounds ("**Sport Fields**") (together, the "**Facilities**") on behalf of Macquarie University. By submitting the Membership Application Form, the person seeking membership agrees to entering into an agreement with U@MQ (referred to as a "**Membership Agreement**") on the terms and conditions set out in the Membership Application Form (including the Membership Terms and Conditions). U@MQ reserves the right to not accept a Membership Application Form in its absolute discretion in which circumstance no Membership Agreement will be formed. When a Membership Application Form is accepted by U@MQ, the person seeking membership will be referred to as a "Member" and will have the usage rights and obligations as set out in the Membership Terms and Conditions.

In this Membership Agreement, the term "Parent" refers to the legal parent or guardian of a child or of a person with a physical or mental disability who lacks capacity to understand the risk warning on the Membership Application Form ("**incapable person**"). The Parent of an incapable person enters into this Membership Agreement on his or her own behalf and as agent for each incapable person named on the Membership Application Form.

### 1. MEMBERSHIP

Membership commences on the date stated on the Membership Application Form. The Member must present their membership card or photo identification to gain entry. A \$2.50 fee will be charged to replace lost or stolen membership cards. Membership is personal to the Member and memberships cannot be assigned or transferred to another person. The General Manager, or their nominated representative, reserves the right to cancel this Membership Agreement and request return of this membership card at their discretion. MQ Sport Memberships incur an **additional** joining and renewal fee.

This Membership Agreement is legally binding whether the membership is on a term, direct debit or salary sacrifice basis.

### 2. AGE REQUIREMENT

Members must be 16 years or older. If the Member is a child over 16 years of age, or is an incapable person, a Parent must sign the Membership Agreement on their behalf. Children under the age of 16 may not be Members, and must be supervised by a Parent at all times while in or at the venue. Some parts of the Facilities and services are not available to Members under 18 years of age, incapable persons, or children under 16 years of age.

### 3. CHANGES TO MEMBERSHIP

All requests for changes to Memberships (including contact details) must be submitted on the appropriate form at the Customer Service Desk at the Centre or online. U@MQ will communicate with Members or Parents of incapable persons primarily by email and/or SMS. Members and Parents of incapable persons must inform U@MQ promptly if their contact details change.

U@MQ will not process membership changes, including but not limited to suspension and cancellation requests, over the phone.

### 4. FEES

Membership fees are set out in the Membership Application Form.

U@MQ periodically reviews its membership terms and conditions and membership fees and inclusions. U@MQ will provide at least fourteen (14) days' notice prior to any proposed change in membership terms and conditions, fees and inclusions by posting such changes on its website or by emailing Members at the contact email on record. If the Member does not wish to accept change in membership terms and conditions, they may terminate the membership with immediate effect in the manner provided in section 7.

### 5. COOLING OFF PERIOD

All U@MQ membership and registration fees are refundable during a "Cooling Off Period" of seven (7) days beginning on the date the Membership Agreement is signed. If a membership is cancelled during the Cooling Off Period, the cost of the total pro-rated payment, less the value of any goods or services received, will be refunded. The Cooling Off Period does not apply where a membership is renewed.

### 6. MEMBERSHIP SUSPENSIONS

Direct Debit Memberships and Salary Sacrifice Memberships may be suspended in accordance with this clause 6. Term memberships may not be suspended under any circumstances, excluding for medical conditions.

Suspension requests must be made for a minimum of seven (7) consecutive days. Suspension requests may take up to five (5) business days to be processed. Suspension requests cannot be backdated. Members can suspend their membership for up to twelve (12) weeks within a calendar year. Suspensions requests must be submitted on the appropriate form at the Customer Service Desk at the Centre or online.

Direct Debit Memberships cannot be suspended if the Membership account is in arrears.

Medical suspensions are available where a Member is suffering from a medical condition precluding participation in their Membership. The Member must submit a request for a suspension within four (4) weeks of incurring the medical condition, and provide a supporting medical certificate. Suspensions will be only be granted for the length of time specified in the medical certificate. Where a medical suspension is approved, the suspension will be backdated to the date of the suspension request. Refunds are not available for medical suspensions.

### 7. CANCELLATIONS & REFUNDS

It is the responsibility of the Member to cancel their membership. Requests for variances, suspensions and cancellations must be made directly with U@MQ at the Centre. Non-attendance does not warrant a refund or cancellation. Cancellation requests must be submitted on the appropriate form at the Customer Service Desk at the Centre or online.

Term Memberships may not be cancelled and are not refundable under any circumstances, including for medical conditions.

Cancellation requests for Direct Debit Memberships require fifteen (15) days' prior notice and will not be accepted if the Member is in arrears. Memberships cannot be cancelled and suspended simultaneously. The fifteen (15) days' notice period for a membership cancellation begins on the day that a membership ceases to be suspended.

Cancellation requests for Salary Sacrifice Memberships require one full fortnightly deduction period to be processed. It is the Member's responsibility to give written notice to U@MQ at the Centre to cease salary sacrifice deductions and to cancel the Authority to deduct when the Member's employment with Macquarie University is terminated. Macquarie University Human Resources will not process any changes to deductions directly.

Medical cancellations are available for Direct Debit and Salary Sacrifice Memberships where a Member has a medical condition precluding participation in the membership for a minimum four (4) consecutive weeks. Medical conditions include prolonged illness, hospitalization, broken bones and contagious diseases. The Member must submit a request for a cancellation within four (4) weeks of incurring the medical condition, and provide a supporting medical certificate covering the refund period.

### 8. BEHAVIOUR WITHIN THE CENTRE

While in or near the Facilities, Members and Parents must comply with U@MQ's Terms & Conditions of Entry, Facilities signage and the directions of Facilities staff.

U@MQ reserves the right for its staff to refuse entry, cancel a membership or direct Members and Parents to leave the premises (which they must do promptly) if they do not behave in a responsible manner, are under the influence of drugs and/or alcohol, or do not adhere to the U@MQ Terms & Conditions of Entry, Facilities signage or directions from staff.

Members and Parents will not be given a refund of fees if they are or the incapable person is refused entry or their membership is cancelled because of their inappropriate behaviour in or near the Facilities.

### 9. CLOTHING

Appropriate clothing must be worn at the Facilities at all times. Use of the Health Club, Social Sport and Group Fitness Classes require enclosed shoes. A towel must be used in the Health Club. Appropriate swimwear must be worn in the pools

#### 10. OUTSTANDING FEES

Direct Debit and Salary Sacrifice Memberships are ongoing unless the Membership is cancelled in accordance with these terms and conditions, in which case the cancellation provisions apply. Membership fees must be paid regardless of Centre usage.

##### (a). Direct Debit Memberships

Direct debit Membership will be charged fortnightly on a Thursday.

Members must have sufficient funds in their nominated account and must provide U@MQ with a direct debit authority for all membership fees and, in the case of Sports programs, any additional registration fees. Members must provide U@MQ with updated account information if their account information changes.

U@MQ may charge a **\$7.50 failed payment fee** for each unsuccessful debit transaction as well as dishonour fees charged by U@MQ's financial institution, in addition to any charges it receives from the Member's financial institution. If Members have outstanding debts, they may be denied access to the Facilities.

U@MQ will take reasonable steps to contact Members if a direct debit payment is not made. U@MQ will implement re-debit measures as necessary to recover any outstanding debts. U@MQ will continue to debit from the Member's nominated account even in circumstances where the Membership is suspended or cancelled, until all debts have been paid.

U@MQ may, at its discretion and without notice, cancel a membership if fees are in arrears. The amount owing may be passed on to a debt collection agency for recovery. Any costs associated with this are at the Member's expense. If Members have a query regarding payments, U@MQ will use reasonable endeavors to respond within five (5) business days.

U@MQ's primary method for communicating with Members about the recovery of outstanding fees is by email and/or SMS. It is the responsibility of the Member to advise U@MQ of changes to their contact information.

##### (b). Salary Sacrifice Memberships

Salary Sacrifice fees are deducted from the Member's pre-tax salary on a fortnightly basis.

#### 11. VARIATION/UNAVAILABILITY OF FACILITIES OR SERVICES

U@MQ reserves the right to vary, add, or eliminate from time to time any of the particular facilities, entitlements or services. U@MQ is not liable if the Facilities or a particular facility or service is unavailable at any particular time, including due to a prior booking, mechanical breakdown, fire, act of God, condemnation, catastrophe or any other reason. Members and Parents must not hold U@MQ responsible or liable for such occurrences.

#### 12. PARKING

U@MQ does not control the parking facilities near the Centre and accepts no responsibility if parking is not available.

Members and Parents must obey all traffic signs and parking terms and conditions in or around the Facilities.

#### 13. LOCKERS

U@MQ does not accept responsibility for items which are lost or stolen from lockers or other areas in or around the Facilities.

To the maximum extent permitted by law, the liability of U@MQ for any loss or damage to the property of Members, incapable persons or Parents that may arise from any cause (including the negligence, or any act or omission of U@MQ or its employees, servants, agents, or independent contractors), is excluded.

To the extent that the liability of U@MQ under this clause 13 cannot be excluded, the liability of U@MQ is limited in accordance with clause 19.

#### 14. COPY OF MEMBERSHIP AGREEMENT

Upon acceptance of an application for membership, U@MQ will provide the Member or Parent with a copy of the Membership Agreement. If the Member or Parent loses their copy, U@MQ may provide the Member or Parent with another copy but the Member or Parent must:

- a. request a copy in writing at the Administration Desk; and
- b. at the time the request is lodged, pay an administration charge of \$75.00.

U@MQ will then endeavour to provide the Member or Parent with a copy within 14 days of their request.

#### 15. CIVIL LIABILITY ACT 2002 (NSW)

This clause 15 applies only to harm as that term is defined in the *Civil Liability Act 2002* (NSW). In this clause 15, "recreation services", "recreational activity", "parents" and "incapable person" have the meanings given to those terms in the *Civil Liability Act 2002* (NSW).

Members and Parents of incapable persons acknowledge that participation in the health & fitness activities supplied by or on behalf of U@MQ or at the Facilities, is at the Member's or incapable person's own risk.

It is a term of this Membership Agreement for the provision of recreation services that Members or incapable persons participate in the health & fitness activities at their own risk.

#### 16. AUSTRALIAN CONSUMER LAW (Cth)

Sections 60, 61 and 62 of the *Australian Consumer Law* at Schedule 2 of the *Competition and Consumer Act 2010* (Cth) contains guarantees in relation to provision of services to consumers that the services will be:

- a. provided with due care and skill;
- b. fit for any particular purpose that the consumer has made known as the purpose for which the consumer is acquiring the services; and
- c. supplied within a reasonable time

("Consumer Guarantees").

This clause 16 applies only to liabilities out of which a party may lawfully contract pursuant to section 139A of the *Competition and Consumer Act 2010* (Cth) and is not intended to apply to (i) any liability other than a liability in section 139A(3) of the *Competition and Consumer Act 2010* or (ii) significant personal injury caused by reckless conduct.

In this clause 16, "recreational services" has the meaning given to that term in the *Australian Consumer Law*. Subject to this clause 16, it is a term of this Membership Agreement that the Consumer Guarantees are excluded and are without effect in relation to those recreational services.

#### 17. MEMBER AND/OR PARENT'S WARRANTY

By signing this Membership Agreement, Members or Parents of incapable persons warrant that they or the incapable persons are physically and mentally sound and are not suffering from any condition, impairment, disease, infirmity, or other illness that would prevent their participation in the health & fitness activities at the Facilities.

Members and Parents acknowledge that:

- a. they have been informed by U@MQ of the need for a physician's approval for participation in the health & fitness activities;
- b. it is their sole responsibility to obtain an examination by a physician prior to participation any health & fitness activities; and
- c. they or the incapable person have either had a physical examination and been given their physician's permission to participate in the health & fitness activities, or if they have chosen not to obtain a physician's permission prior to participating in the health & fitness activities, they or the incapable persons are participating in the health & fitness activities at their own risk.

#### 18. COMMON LAW RELEASE

This clause 18 applies only to liabilities out of which a party may lawfully contract and which are not the subject of clauses 15 and 16.

The Member or Parent of an incapable person now and forever releases U@MQ from all and any liability from personal injury and death howsoever arising, including in tort (including negligence), contract or pursuant to statute and waives any rights he or she may have at any time to bring a claim for the same.

#### 19. MAXIMUM LIABILITY OF U@MQ

The liability of U@MQ for loss or damage (not being a liability the subject of clauses 15,16 and 18) howsoever arising in connection with the presence of a Member, incapable person or Parent or about the Facilities or for the supply of goods or services is limited, including in tort (including in negligence), contract or pursuant to statute, to:

- a. In the case of goods, five (5) times the costs of the goods, or if the cost of the goods cannot be ascertained, five (5) times the market price of equivalent goods;
- b. In the case of services, five (5) times the costs of the services, or, if the cost of the services cannot be ascertained, five (5) times the market price of equivalent services; and
- c. In any other case, \$2,500.

#### 20. GENERAL

##### Interpretation

In this Membership Agreement:

- Words in the singular shall include the plural and vice versa save as the context may otherwise require;
- "Person" includes an individual, corporation, partnership, joint venture or other association and words importing a gender include every gender;
- References to a person includes that person's executors, administrators, successors and permitted assigns, and, in the case of a trustee, include any substituted or additional trustee;
- A reference to any legislation or to any section of provision of any legislation includes any statutory modification or re-enactment of or any statutory provision substituted for that legislation, section or provision and ordinances, by-laws, regulations and other statutory instruments issued under that legislation, section or provision;
- The words "include," "includes" and "including" and any cognate terms are to be read as if followed by the words "without limitation"; and
- The rule known as the *contra proferentem* rule does not apply to the construction or interpretation of this Membership Agreement or any provision in it.

##### a. Governing Law and jurisdiction

This Membership Agreement is governed by the law in force in New South Wales and the Member, and/or the Parent of an incapable person submits to the non-exclusive jurisdiction of the courts of New South Wales and all courts competent to hear appeals from the courts of New South Wales in respect of all proceedings arising in connection with this Membership Agreement.

##### b. Parent as agent

The Parent of an incapable person enters into this Membership Agreement on his or her own behalf and as agent for each incapable person named on the Membership Application Form and every term of this Membership Agreement (including each waiver and release) is made and given by the Parent on his or her own behalf and as agent for and on behalf of each incapable person. The Parent warrants that he or she (i) has the necessary authority to enter into and agree the terms of this Membership Agreement; (ii) will pass on to each incapable person the terms of the risk warning set out above; and (iii) has parental responsibility for each incapable person.

##### c. Waiver

Failure or delay to exercise or enforce, or the partial exercise of enforcement of, a right, power or remedy provided by law or under this Membership Agreement does not preclude, or operate as a waiver of the exercise or enforcement, or further exercise of enforcement, of that or any other rights, power, or remedy provided by law or under this Membership Agreement. A waiver or consent given under this Membership Agreement is only effective and binding if it is given or confirmed in writing.

##### d. Nothing contrary to law

Nothing in this Membership Agreement is intended to, or is construed so as to limit or exclude a liability which cannot as a matter of law be limited or excluded.

##### e. Severability

If, at any time, any provision of this Membership Agreement is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, this will not affect or impair (i) the legality, validity or enforceability in that jurisdiction of any other provision of this Membership Agreement or (ii) the legality, validity or enforceability under the law of any other jurisdiction.

#### DIRECT DEBIT REQUEST AUTHORISATION

This Authorisation is to remain in force in accordance with the Terms and Conditions on this Direct Debit Request, the provided DDR Service Agreement, and I/we have read and understand the same.

#### Terms and Conditions

**DEBITSUCCESS DIRECT DEBIT REQUEST (DDR) SERVICE AGREEMENT** This Agreement is designed to explain what your obligations are when undertaking a Direct Debit arrangement involving Debitsuccess. It also details what our obligations are to you and forms part of the terms and conditions of your Direct Debit Request (DDR) and should be read in conjunction with your Member Application.

**INITIAL TERMS** I/We authorise Debitsuccess Pty Limited (ACN: 095 551 581) APCA User ID 184532 to make periodic debits on behalf of the "Business" as indicated on DDR Authorisation (herein referred to as the Business). I/We acknowledge that if specified by the Business, in addition to the agreed periodic debits set out in the DDR Authorisation, administration/setup, variation, reversal, dishonour, or processing fees may also apply and be debited under the DDR as instructed by the Business.

**RELATIONSHIP** I/We acknowledge that Debitsuccess is acting as an agent of the Business and that Debitsuccess does not provide any goods or services, and has no express or implied liability in relation to the goods and services provided by the Business or the terms and conditions of any agreement with the Business.

**CLEARED FUNDS** I/We acknowledge that is my/our responsibility to ensure that there are sufficient cleared funds in the nominated account by, and at all times on, the due date of the payment ("Day to Debit") to enable the direct debit to be honoured on the Day to Debit. I/We acknowledge and agree that sufficient funds will remain in the nominated account until the direct debit amount has been debited from the account and that if there are insufficient funds available when the debit is attempted, I/we agree that I/we will be responsible for any fees and charges that may be charged by my/our Financial Institution.

##### VARIATIONS TO DEBIT TERMS

I/We authorise the Business to vary the amount of the payments from time to time as provided for within the agreement with the Business. I/We authorise Debitsuccess to vary the amount of the payments upon instructions from the Business. I/We do not require Debitsuccess to notify me/us of such variations to the debit amount. I/We acknowledge that variations to the debit arrangement will be directed to the Business. I/We acknowledge that Debitsuccess/Business is to provide 14 days' notice if proposing to vary the terms of the debit arrangements otherwise than in accordance with an agreed payment schedule.

I/We acknowledge that my/our requests to vary, defer or stop the debit arrangement will be directed to the Business.

**CANCELLING THESE DEBIT TERMS** I/We understand that I/we are able to cancel this DDR by requesting this of the Business or the Financial Institution, and I/we acknowledge that cancellation of the authority to debit my/our account will not terminate my/our agreement with the Business or remove my/our liability to make the payments I/we have agreed to.

**DISHONoured PAYMENTS** I/We acknowledge that: -if a debit is returned by my/our Financial Institution as unpaid, I/we will be responsible for any fees and charges for each unsuccessful debit in addition to any Financial Institution charges and collection fees, including and not limited to any fees of solicitors and collection agents appointed by Debitsuccess; and -Debitsuccess may attempt to re-process any unsuccessful payments as advised by the Business and/or add such unsuccessful payment to any future payments.

**ACCURACY OF INFORMATION** I/We acknowledge that it is my/our responsibility to ensure that the details entered on the DDR Authorisation are correct and that Debitsuccess is not liable to the extent that any such details are wrong and this causes a required payment to be missed. In addition, where I/we are paying the required payments by credit card and have entered the details of the credit card on the application form, I/we agree that Debitsuccess may continue to debit from a credit card in accordance with the terms of this Agreement to the extent that the credit card has expired, and that it wholly my/our responsibility to provide details of a replacement credit card to Debitsuccess via the Business.

**DISPUTES** I/We acknowledge that any disputed debit payments will be directed to the Business. If no resolution is forthcoming, I/we understand that I/we are to contact the Financial Institution.

##### OTHER AUTHORISATIONS

I/We authorise:  
The Debit User to verify details of my/our account with my/our Financial Institution; and  
The Financial Institution to release information allowing the Debit User to verify my/our account details.

##### INFORMATION SECURITY

Debitsuccess agrees that it will make reasonable efforts to keep any of your information contained in the DDR (including account details) and any other information that we have about you confidential and secure, and will ensure that any of our employees or agents who have access to information about you do not make any unauthorised use, modification, reproduction or disclosure of that information.

Debitsuccess will only disclose information that we have about you:  
to the extent specifically required by law; or for the purposes of this Agreement (including disclosing information in connection with any query or claim).

Should you have any queries in relation to these terms and conditions contact  
DebitSuccess Pty Ltd.  
PO Box 577, Mt Waverley, Vic, 3149  
Phone: 1800 148 848  
E-mail: [customerservice@debitsuccess.com](mailto:customerservice@debitsuccess.com).