

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).

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

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 in that city.

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.

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.

Electronic Signature means a digital signature or a visual representation of a person's handwritten signature or mark which is placed on a physical or electronic copy of this agreement by electronic or mechanical means, and "electronically signed" has a corresponding meaning.

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. For the avoidance of doubt **Facilities** include equipment.

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 and includes the Storage Fee (if applicable), as set out in the Details Schedule.

Hired Area means the Venue or the area(s) at the Venue hired to the Hirer as set out in the Details Schedule, and includes the Storage Area (if applicable).

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

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 into the Hired Area by the Hirer (including without limitation the PIC, all other Representatives 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 Bookings over a period of time), 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.

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

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

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

Special Event means a special event as defined in the Booking Form.

Storage Area means the storage area at the Venue, as set out in the Details Schedule.

Storage Fee means the fees payable for the hire of the Storage Area, as set out in the Details Schedule.

Venue means the venue listed in the Details Schedule.

YMCA means

YMCA Code of Conduct means YMCA's Code of Conduct which can be found at

(as amended from time to time).

YMCA Conditions of Entry and Code of Behaviour means YMCA's Conditions of Entry and Code of Behaviour which can be found at

(as amended from time to time).

YMCA Safeguarding Children & Young People Policy means YMCA's Safeguarding Children & Young People Policy that can be found at [Safeguarding Children and Young People Policy](#) (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 (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 1 month extension period in which case the Agreement will end at the cessation of that extension period); and
 - (b) the Hirer acknowledges and agrees that YMCA may increase the Hire Rate at any time following the expiry of the initial term by notice in writing to the Hirer.

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 licence 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 hires 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 interaction or cooperation between the Hirer and those persons.

3.3 YMCA may, in its sole discretion, permit the Hirer and all Participants to also use the change rooms at the Venue for an agreed period of time following completion of any Booking. For the avoidance of doubt, the Hirer must vacate the Hired Area before the standard closure time at the Venue. The Hirer may be charged an additional amount (based on the rates set out in the Details Schedule) for any period during which it or its Representatives or Participants are at the Venue beyond closure time.

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'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 19.2, the Hirer releases YMCA and its Related Bodies Corporate and their officers, agents, employees, contractors and invitees 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).

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/Special Requirements 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 Subject to any other express term set out in the Agreement, YMCA reserves the right to amend or cancel any Booking at its discretion in circumstances where the Booking is unable to proceed due to any urgent or scheduled repair or maintenance work or due to any other emergency. In such circumstances, YMCA will use its best endeavours to find a suitable alternative date for the relevant Booking in collaboration with the Hirer.

4.3 Block Out Dates apply. YMCA will attempt to notify the Hirer of any Block Out Dates within a reasonable timeframe of being requested (or where a specific Booking falls on a Block Out Date(s)).

- 4.4 YMCA reserves the right to reschedule a Booking due to a Special Event. YMCA will use its best endeavours to find an alternative date for the Hirer and may agree a reasonable discount on the Hire Fee for the rescheduled date (in recognition of the change).
- 4.5 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.
- 4.6 At the end of each Booking, the Hirer must return any equipment to the location at which they were stored before the Booking commenced.
- 4.7 Equipment must be maintained in good condition. Replacement of equipment damaged through misuse will be the responsibility of the Hirer.
- 4.8 Subject to clause 3.3, the Hirer must vacate the Hired Area and the Venue at the end of the Booking (and ensure all Participants also vacate). The Hirer may be charged an additional amount based on the Hire Fees if it or any Participants occupy the Hired Area or stay at the Venue beyond such period.
- 5. Fees and charges**
- 5.1 Subject to clauses 4, 10 and 19.2, Bookings will be processed in increments of time as set forth 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.
- 6. Payment**
- 6.1 Bookings with a Hire Fee of less than \$200 must be paid prior to the commencement of the Booking.
- 6.2 Bookings with a Hire Fee of \$200 or more will be invoiced by YMCA.
- 6.3 Invoices will be issued in accordance with the Details Schedule.
- 6.4 The Hirer must pay any invoice rendered by YMCA within 14 days of the date on the invoice.
- 6.5 A receipt will be issued upon payment if requested by the Hirer.
- 6.6 YMCA may refer any outstanding debt to an external debt collection agency for collection.
- 6.7 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.
- 7. Conditions and Obligations of Hirer**
- 7.1 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.
- 7.2 When using the Hired Area, the Hirer must at all times exercise due care and skill.
- 7.3 The YMCA Code of Conduct sets out additional requirements that must be met by the Hirer and Participants when using the Hired Area. The Hirer must comply with the YMCA Code of Conduct, and must procure that all Participants comply with the YMCA Code of Conduct.
- 7.4 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.
- 7.5 The Hirer must report any damage that occurs to the Venue, Hired Area or Facilities (whether caused by the Hirer, a Participant or otherwise) immediately to YMCA.
- 7.6 The Hirer cannot charge an entry fee when using the Hired Area without prior consent, in writing, from YMCA.
- 7.7 The assignment, transfer, subletting or sublicensing of the Hirer's Booking is not permitted unless express written permission is given by YMCA.
- 7.8 The Hirer must comply with all directions provided by YMCA and its Representatives 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.
- 7.9 YMCA is not responsible for any costs or expenses incurred by the Hirer in connection with its use or hire of the Hired Area and access to the Venue and Facilities.
- 7.10 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 Booking.
- 7.11 All Facilities must be left in the condition they were in at the commencement of the Booking, fair wear and tear excepted.
- 7.12 If the Hired Area and/or Venue is left in an unacceptable condition, 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.
- 7.13 The Hirer must not interfere with the use or occupation of the Venue or Hired Area by any other person or entity (whether YMCA, its Representatives, members of the public or otherwise).
- 7.14 The Hirer must supervise and control all Participants. Any Loss caused by 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 immediately on demand to YMCA.
- 7.15 Any hut, stall or marquee set up without prior written approval from YMCA is prohibited.
- 7.16 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 or hire its equipment to the Hirer, in which case YMCA may require that the Hirer enter into a separate equipment hire agreement.
- 7.17 The Hirer will not bring or store any hazardous goods or materials into the Hired Area or Venue.
- 7.18 The Hirer must not do or omit to do anything which could result or does result in any damage to the reputation or brand of YMCA or any of its Related Bodies Corporate.
- 7.19 The Hirer at its own cost will observe and comply with all laws and all directions, notices and requirements of any government agency relating to its use and hire of the Hired Area and access to the Venue.
- 7.20 The Hirer must make available for inspection by YMCA, upon request, all licences, permits and registrations required for the carrying on of any activity by the Hirer in the Hired Area.
- 7.21 The Hirer must observe fire precautions and procedures as directed at the Venue or advised by YMCA.
- 7.22 No fixtures or fittings are to be installed in the Hired Area or at the Venue.
- 7.23 Any 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 2 metres of any pool area at the Venue.
- 7.24 At the completion of the Booking, subject to any storage arrangement in relation to a Storage Area, the Hirer must remove all its property from the Hired Area and Venue and ensure that the Hired Area and Venue is left in the same condition as it was at the start of the Booking.
- 7.25 The Hirer must ensure that:
- (a) Participants have appropriate written parental/guardian consent as required by law or as otherwise required by YMCA at the Venue (including for example if the relevant Council has specific requirements it imposes at the Venue) to attend the Venue, access the Hired Area and participate in the Permitted Use;
 - (b) the Hirer's supervisor, the PIC and all other Representatives of the Hirer who attend the Venue and/or access the Hired Area adequately supervise Participants at all times;
 - (c) neither the Hirer's Representatives nor Participants smoke outside of designated outdoor areas where smoking is expressly permitted;
 - (d) vehicles are parked only in areas designated for parking; and

- (e) no alcohol is brought onto except with YMCA's express written consent or consumed in or around the Venue, and only if the Venue holds the appropriate liquor licence.

7.26 The Hirer must comply with:

- (a) all applicable laws, codes and standards applicable to the Hirer's use of the Hired Area and access to the Venue, including those relating to occupational health and safety, emergency procedures and noise; and
- (b) any policies and procedures of YMCA notified to the Hirer.

8. Marketing and Fundraising

- 8.1 YMCA must approve all promotional and fundraising activities occurring within the Venue, including all social media promotions.
- 8.2 Any signage elected for advertising the Hirer's service must be approved by YMCA unless the information is regarding schedule of games/fixtures/results which may be displayed on approved notice boards. Only approved advertising/information can be displayed on designated notice boards. Any information displayed on the reception counter must be first approved by YMCA.
- 8.3 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.
- 8.4 The Hirer must not, and must ensure that all Participants do not, conduct any promotional or fundraising activity at the Venue or within the Hired Area without the prior written approval of YMCA.

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 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.
- 9.2 The following requirements apply in respect of any Hirer that invites more than people (including the PIC and all Participants) into the Hired Area:
- (a) all Representatives 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 by YMCA;
 - (b) the PIC must attend a facility induction, which outlines expectations of behaviour, health and safety, and emergency procedures, prior to the commencement of the Booking;

- (c) any newly appointed PIC (if the Hirer changes the PIC and that change is approved in writing by YMCA) will be required to attend inductions in accordance with clause 9.2(b); and
 - (d) an individual qualified in first aid must be present for the duration of each Booking (ideally the PIC).
- 9.3 At all times during the Booking, the PIC must be present (he or she must be the first to arrive at the Hired Area, before any Participant, and the last one to leave the Hired Area and Venue) and be contactable by telephone. The PIC must ensure that all Participants vacate the Hired Area and Venue within 30 minutes of completion of the relevant Booking, subject to any directions by YMCA which may be given in YMCA's absolute discretion.
- 9.4 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.
- 9.5 If specific legal requirements apply in respect of the Hirer's use of the Hired Area (for example, sign in and sign out procedures), the Hirer must procure that the PIC ensures such requirements are carried out at all times.
- 9.6 Building maintenance issues are to be reported to the YMCA manager on duty for actioning.

10. Cancellation of Bookings

Cancellation by the Hirer

- 10.1 The following will apply if a Booking is cancelled by a Casual Hirer:
- (a) no charge will apply if written notification of the cancellation is provided to YMCA at least four (4) weeks prior to the Booking commencement;
 - (b) a fee equal to 50% of the Hire Fees for the Booking will apply if written notification of the cancellation is provided to YMCA between 14 to 27 days prior to the Booking commencement; and
 - (c) the full applicable Hire Fee for the Booking will apply if the cancellation is notified to YMCA less than 14 days prior to the Booking commencement.
- 10.2 Bookings by Permanent Hirers are fixed and cannot be cancelled (either the entire Booking or any particular date within the overall Booking) except with the express written consent of YMCA.
- 10.3 The following will apply if a Booking is cancelled in respect of a Special Event:
- (a) no charge will apply if written notification of the cancellation is provided to YMCA at least eight (8) weeks prior to the Booking commencement;

- (b) a fee equal to 50% of the Hire Fees for the Booking will apply if written notification of the cancellation is provided to YMCA between 14 to 27 days prior to the Booking commencement; and
- (c) the full applicable Hire Fee for the Booking will apply if the cancellation is notified to YMCA less than 14 days prior to the Booking commencement.

Cancellation by YMCA

- 10.4 YMCA reserves the right to cancel Bookings (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 impacted part of its Booking), and, subject to clause 19.2, YMCA will not be responsible or liable for any Loss suffered or incurred by the Hirer as a result of such cancellation. Such 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; or
 - (e) plant, pool or equipment shutdown or failure.
- 10.5 In the circumstances outlined in clause 10.4, YMCA will endeavour to offer alternative dates or times for the Booking to the Hirer where reasonably available.

11. Termination of Agreement

Default

- (a) Either party (**non-defaulting party**) may immediately terminate the Agreement by written notice to the other party (**defaulting party**) if:
 - (i) the defaulting party is in breach and fails to remedy the breach to the reasonable satisfaction of the non-defaulting party within 14 days of notification;
 - (ii) any act or omission of the defaulting party endangers the health or safety of any person or the Hired Area or the Venue or the environment; or
 - (iii) an Insolvency Event occurs in relation to the defaulting party.

- (b) 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 or part of the Booking that has been completed but has not yet been paid for) up to the date of termination.
- (c) All other accrued rights and liabilities of the parties will not be affected by the termination.

11.2 Force Majeure Events

- (a) 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.
- (b) 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.
- (c) 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 comply with the following noise constraints and neighbourhood requirements (and procure that the PIC is aware of and complies with the following):
- (a) the level of sound coming from the Hired Area and associated carpark areas must not reach a level where it would interfere with individual or commercial residents of surrounding properties of the Venue (**Residents**) and at no time violate any applicable federal, state or local law or local council guidelines and regulations.
 - (b) the Hirer must ensure that all Participants behave in a way that would not be considered a cause of disturbance to the Residents; and
 - (c) all vehicles are permitted to be parked in designated car parking areas only and cars must not block driveways or be parked on Resident's properties.
- 12.2 If any complaints arise out of noncompliance 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. YMCA may also immediately cancel the Booking and any future Booking dates already confirmed with the Hirer without liability, in which case the Hirer must immediately vacate, and procure that all Participant's vacate, the Venue.

12.3 The Hirer must ensure that following behaviour is adhered to:

- (a) the Hirer and all Participants are prohibited from selling or consuming liquor in any area of the Venue or Hired Area including internal buildings, external grounds and car parks, unless the Venue holds the appropriate liquor licence and YMCA provides its consent in writing in advance to the Hirer (such consent may be withheld in YMCA's absolute discretion);
- (b) 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;
- (c) no chairs, tables or other furniture may be brought into the Venue or Hired Area, except with the consent of YMCA; and
- (d) no pets or animals are permitted within the Venue or Hired Area, subject to medical purposes and approved in writing in advance by YMCA.

13. Damage

- 13.1 The Hirer is responsible and liable for, and must reimburse and fully indemnify YMCA on demand in respect of, 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) where such damage is caused or contributed to by the Hirer or any Participant.
- 13.2 YMCA will conduct an investigation to any damage that has occurred at the Venue, Facilities and/or in the Hired Area.

14. Supervision

- 14.1 The Hirer is responsible for the supervision and safety of all Participants and any of its Representatives 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.
- 14.3 If a pool forms part of the Hired Area, jump and dive entries may only be performed in appropriate water depth under direct instruction and supervision of appropriately qualified Hirer personnel. This obligation is in addition to the obligations set out in clauses 7.14 and 7.25.

15. First Aid & Emergency Procedures

- 15.1 The Hirer expressly authorises YMCA to provide first aid assistance to all Participants (if required).
- 15.2 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 (signage etc.) and as directed to the PIC by the

- YMCA during site induction or otherwise during the Booking.
- 15.3 The Hirer must not obstruct any emergency or fire exit.
- 15.4 The Hirer must, and must procure that the PIC does, 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.
- 15.5 The PIC must immediately notify YMCA if any first aid or emergency incident occurs.
- 15.6 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.
- 15.7 The Hirer authorises YMCA to obtain medical, and/or ambulance assistance in the case of an accident or emergency involving the Hirer, Participant or persons associated with the Hirer and agrees that the Hirer is responsible for all costs incurred.
- 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 the 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. Indemnity

- 18.1 The Hirer must indemnify and must keep indemnified YMCA and its Representatives, and YMCA's Related Bodies Corporate and their Representatives (**Indemnified Parties**), from and against Loss that any of the Indemnified Parties suffer or incur in respect of or in connection with:
- (a) a failure by the Hirer to comply with the Agreement;
 - (b) any negligent, wilful or unlawful act or omission of the Hirer;
 - (c) any claim against YMCA by a third party in connection with the use of the Hired Area or access to the Venue by the Hirer, any Participant and the Hirer's Representatives;
 - (d) any loss, injury, illness or damage to persons (including death) including any member of the public or any third party to the extent it is caused or contributed to by the act or omission of the Hirer, any Participant or any of the Hirer's Representatives; and
 - (e) any loss of or damage to property of any kind to the extent it is caused or contributed to by the act or omission of the Hirer, any Participant or any of the Hirer's Representatives,

except to the extent that the Loss was directly caused by the negligence or unlawful conduct of YMCA.

- 18.2 The indemnity given by the Hirer under this clause 18 is a continuing obligation, separate and independent from the other obligations of the Hirer, and survives expiry or termination of the Agreement.
- 18.3 YMCA holds the indemnity in clause 18.1 for itself and on trust for each Indemnified Party.

19. Limitation of liability

- 19.1 Subject to clause 19.2:
- (a) all conditions, warranties and implied terms, whether statutory or otherwise, are excluded in relation to the Agreement; and
 - (b) the Hirer releases YMCA from any liability for legal costs and disbursements and, without limitation,

- any indirect or consequential expense, loss or damage, loss of profits, revenue, use, expectation or opportunity, wasted expenditure, lost production or similar losses suffered by the Hirer under or in connection with the Agreement; and
- (c) YMCA's liability for any Loss suffered or incurred by the Hirer, howsoever caused, which arises out of or in connection the Agreement, is limited to (at the option of YMCA), in the case of the supply of services (i) the resupply of the services, or (ii) the payment of the cost of resupply of the services; and in the case of the supply of goods, the resupply of the goods.
- 19.2 The ACL 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.
- 19.3 The Hirer acknowledges that no warranties have been given by YMCA that the Hired Area is suitable for the Permitted Use.

20. 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.

21. Media / Images / Motion Pictures requirements

- 21.1 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.
- 21.2 The use of cameras and video cameras, including by the use of mobile phones, at the Facilities 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.

22. Conditions of entry

- 22.1 The Hirer must ensure that all Participants comply with the following conditions of entry and use of the Venue:
- (a) pay any entry fees determined by YMCA as required prior to entering the Venue;
- (b) comply with any conditions of entry located at the Venue;
- (c) conduct themselves in a civil and inoffensive manner (including no bullying, harassment, violent or offensive behaviour or language towards any other person using the Venue, including but not limited to YMCA staff, Participants, the Hirer and the PIC);
- (d) no running or pushing, except as permitted as part of the Permitted Use;
- (e) no high voltage cables or electrical equipment in the Venue, except in accordance with clause 7.23;
- (f) no alcohol, drugs, weapons, glass or other breakable objects, food or drinks brought into the Venue except as otherwise permitted in accordance with this Agreement or YMCA's written direction;
;no smoking in the Venue (or nearby surrounds) as required by law;
- (g) any individual or group, which through their behaviour limits the enjoyment of other users, will be asked to leave the facility;
- (h) Participants must not be intoxicated;
- (i) no damage or misuse of the Venue or any equipment within the Venue;
- (j) compliance with all directives given by the YMCA, the PIC, the Hirer and any other relevant staff;
- (k) compliance with YMCA's Code of Conduct and camera / video requirements as outlined in clause 21; and
- (l) appropriate footwear and clothing is to be worn in respect of the relevant activities being undertaken.

22.2 It is the Hirer's responsibility to ensure that Participants are aware that a non-compliance with this clause 22 may result in the Participant being removed from the Venue and/or Hired Area.

23. Dispute Resolution

- 23.1 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 5 Business Days of a party notifying the other party in writing of the Dispute, the PIC must meet with a

senior officer of YMCA and use all reasonable endeavours acting in good faith to resolve the Dispute by joint discussions as quickly as possible.

- 23.2 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 23.1, unless the party seeks urgent injunctive or other interlocutory relief.

24. Privacy

YMCA will handle all personal information in accordance with its privacy policy which can be found at [YMCA Victoria Privacy Policy](#).

25. Variation

- (a) Subject to clause 25(b) the Agreement can only be varied by a document duly executed by both YMCA and the Hirer.
- (b) YMCA may vary the YMCA Code of Conduct from time to time. It is the Hirer's responsibility to check the most recent version of the code before the Booking.

26. Jurisdiction

The Agreement is governed by the laws of Victoria and the parties submit to the jurisdiction of the Courts of Victoria.

27. Severability

Any provision of the 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.

28. Counterparts

The Agreement may be signed in counterpart

29. Electronic Signatures

This clause permits the execution of this Agreement by the use of Electronic Signatures in accordance with the following:

- 29.1 the parties consent to this Agreement being signed by or on behalf of a party by an Electronic Signature;
- 29.2 where this Agreement is electronically signed by or on behalf of a party, the party warrants and agrees that the Electronic Signature has been used to identify the person signing and to indicate that the party intends to be bound by the Electronic Signature;
- 29.3 this Agreement may be electronically signed in any number of counterparts which together will constitute the one and the same document;
- 29.4 each party consents to the exchange of counterparts of this Agreement by delivery email or such other electronic means as may be agreed in writing; and
- 29.5 each party must upon request promptly deliver a physical counterpart of this Agreement with the handwritten signatures of the party and all written evidence of the authority of a person signing on their behalf, but a failure to comply with the request does not affect the validity of this Agreement.