



Swim Atlantis Aqua Centre t/a
Ryk Neethling Swimming Stars™
Reg. Nr 2010/053151/23

1. INTERPRETATION

In these Terms and Conditions –

- 1.1. clause headings are for convenience and shall not be used in their interpretation unless the context clearly indicates otherwise;
- 1.2. an expression which denotes any gender includes the others and a natural person includes an artificial person and *vice versa* and the singular includes the plural and *vice versa*;
- 1.3. the following expressions shall bear the meanings assigned below and cognate expressions bear corresponding meanings:
 - 1.3.1. **“Affiliation Fees”** shall mean a non-refundable administrative fee payable on signature hereof and such fee is inclusive of a Starter Pack;
 - 1.3.2. **“Commencement Date”** shall mean the date provided by the Payee, either telephonically or via email/fax to be a Member’s starting date for swimming lessons. The Payee will be billed from this date;
 - 1.3.3. **“Membership Evaluation”** shall mean an individually written evaluation/progress card completed by the Member’s swimming instructor pertaining to the Member’s progress which will be provided to the Payee during the months of April, August, and December each year;
 - 1.3.4. **“Fixed On Hold Membership Fee”** shall mean the administration fee payable to reserve a Members regular timeslot and swimming instructor during a period that the Member is unable to attend swimming lessons, which period shall not exceed 3 (Three) months. The Payee is to provide RNSS with no less than 1 (One) months written notice requesting that his Membership be placed on hold;
 - 1.3.5. **“Inactive Periods”** shall mean those periods during which RNSS is closed, which periods will only be during the months of December, January and July each year, and the specific dates during which this will apply will be determined in the sole discretion of RNSS;
 - 1.3.6. **“Member”** shall mean any individual that has enrolled at a Ryk Neethling Swimming Stars (RNSS) branch or franchise for swimming lessons;

- 1.3.7. **“Membership”** shall mean the period a member actively receives swimming instruction;
- 1.3.8. **“Membership Fees”** shall mean the amount payable by the Payee to RNSS for swimming lessons conducted by their instructors at a specific branch or franchise. The Membership Fees are subject to annual change at the sole discretion of RNSS. Membership Fees will be posted on the www.learntoswim.co.za website and in the various RNSS branches. Any change will be communicated to the Payee as indicated on the Membership Application Form;
- 1.3.9. **“Payee”** shall mean the person(s) responsible for paying the Membership fee as indicated on the Membership Application Form. (Identity Number: _____) with current residential address at:

and banking details for debit orders to be processed:

_____;
- 1.3.10. **“Parties”** shall mean all signatories hereto;
- 1.3.11. **“RNSS”** shall mean Swim Atlantis Aqua Centre CC t/a Ryk Neethling Swimming Stars with Registration Number: 2010/053151/23;
- 1.3.12. **“Registration”** shall mean the date of signature hereof;
- 1.3.13. **“Starter Pack”** shall mean the pack provided to a Member upon payment of the Affiliation Fee. If the Member is under 2 (Two) years old, this shall consist of a hooded towel and wet bag and if the Member is older than 2 (Two) years old, this shall consist of a wet bag and swimming cap
- 1.3.14. **“The Premises”** shall mean any property on which RNSS conducts business;
- 1.3.15. **“Writing”** shall mean hand delivered letters, facsimiles, telefaxes, telegrams or phonograms; and
- 1.3.16. **“Validation”** shall mean the receipt by RNSS of the Payees proof of banking details, proof of address and copy of Identity Document.

2. **CONDITIONS**

The Membership will be approved subject to the payment of the Membership Fees; Affiliation Fees, Validation and upon signature of this Agreement.

3. **VARIATIONS**

These Terms and Conditions constitute the whole agreement between the Parties relating to the subject matter hereof and no amendment to, cancellation or variation of these Terms and Conditions or any waiver or indulgence which would otherwise give rise to estoppel, shall be binding, unless recorded in a written document signed by an authorised representative of RNSS.

4. **COMMENCEMENT AND DURATION**

The Membership will commence on the Commencement Date and or after the first lesson has been attended. On commencement the membership shall be fixed for a 3 (three) month period, thereafter will endure on a month to month basis indefinitely until terminated in writing via email to the respective branch accountant and or reception.

5. **MEMBER AND PAYEE INFORMATION**

The Payee shall, upon signature hereof, provide RNSS with a copy of the Member's identity document/passport or drivers licence. In the event that the member is a minor the requirements will then apply to the parent/guardian or whoever is responsible for the payment of the account.

6. **PAYMENT**

6.1. The Affiliation Fee is payable immediately upon signature hereof.

6.2. The Membership Fee is payable monthly, in advance, by no later than the 5th working day of the month. The Membership Fee is payable by the Payee with effect from the Commencement Date

6.3. A penalty of R50 shall be charged per week for any overdue amounts.

6.4. The Membership Fees and Affiliation Fees shall increase on an annual basis. The escalation rate is in the sole and absolute discretion of RNSS.

6.5. All amount not paid by the due date will result in these accounts being handed over to our registered Debt Collecting company

6.6. All payments made late for 3 consecutive months will result in a compulsory debit order payment method.

6.7. Fees for the months of December and January are payable in full as a result of our 45 week lesson cycle, this in other words is compensation for the months where 5 lessons are received and you are invoiced for 4 lessons.

7. **BREACH**

- 7.1. Should the Payee commit any breach of these Terms and Conditions and fail to remedy such breach within 10 (Ten) days of receiving written notice from RNSS to do so, RNSS shall be entitled, without prejudice to its other rights in law or in terms of this Agreement, to cancel this Agreement or to claim specific performance of all of the Payees obligations whether or not such obligations would otherwise then have fallen due for performance, without prejudice to RNSS's right to claim damages (including all costs relating to collection of overdue moneys, legal costs on the scale between attorney and own client and collection commission) which it may have suffered as a result of the Payee's breach of the Agreement. In such circumstances RNSS shall be entitled to charge and claim interest on any overdue amounts.
- 7.2. Should the Payee breach these Terms and Conditions and RNSS decides not to cancel this Agreement, RNSS shall be entitled to deny the Member and/or Payee access to RNSS facilities until such time as the Payee has complied with all its obligations in terms of the Agreement.

8. **CANCELLATION**

- 8.1. RNSS is entitled, in its sole discretion, to cancel this Agreement as a result of any breach of the Agreement as aforementioned.
- 8.2. RNSS will be entitled, in its sole discretion, to cancel the Agreement if it finds the Member to be unable, physically or mentally, to proceed with swimming lessons.
- 8.3. In the event that the Payee provides false or incorrect bank details and/or personal details to RNSS, then in such event RNSS will be entitled to cancel this Agreement. However if the aforementioned details of the Payee change at any time then written notice of such change must be provided to RNSS by no later than the 25th (Twenty Fifth) day of the calendar month following such change.

9. **MAKE-UP LESSON POLICY**

- 9.1. The Member will be limited to 2 (Two) lessons per calendar month in which to make-up for lessons missed by virtue of illness ("Make-Up Lessons").
- 9.2. In order to be eligible for Make-Up Lessons, the Payee must provide the instructor with a doctor's certificate for the Member for the missed lesson/s.
- 9.3. The Payee must further provide the instructor with a written request to make-up the aforesaid lesson/s.
- 9.4. The lesson/s must be made-up within 1 (One) calendar month after the original missed lesson/s, after which he/she will no longer be able to attend a Make-Up Lesson.
- 9.5. The Member is not able to make-up a Make-Up Lesson.

- 9.6. The Instructor is obligated to reasonably try and accommodate any lesson/s missed by the Member within the 1 (One) month period. Should the instructor be unable to accommodate the Member during this period, RNSS shall take reasonable steps to accommodate the Member with an alternative instructor.
- 9.7. If the instructor and RNSS, after such reasonable endeavours, are unable to accommodate the Member then the Payee will not be entitled to a refund for the missed lesson/s.
- 9.8. In the event of lightning we do not teach swimming , land drills will be done with swimmers to focus on any swimming technique which can be taught outside the pool, no make up lessons will be given for days such as these as it is natural causes for cancellation as well as the land drills and fitness exercises will be sufficient to compensate the lesson.

10. **FIXED ON HOLD MEMBERSHIPS**

- 10.1. If the Member does not wish to terminate his/her Membership however intends on suspending his/her Membership for a period in excess of 1 (One) calendar month, but not exceeding 3 (Three) calendar months, then the Payee must provide RNSS with 1 (One) calendar months advance written notice of such request to place the Membership on hold.
- 10.2. Changes in membership where a member changes their membership from twice a week to once week or 3 times a week to once a week or twice a week will also require a calendar months notice.
- 10.3. During the above mentioned period RNSS agrees to put such Membership on hold, and will reserve the Members regular timeslot and swimming instructor.
- 10.4. The aforementioned period has a Fixed On Hold Membership Fee which is subject to annual escalation at RNNS's absolute discretion, and will be payable monthly in advance on the last working day of every calendar month.
- 10.5. No notices will be accepted from the 1st November until 1st January of the following year. We are unable to place memberships on hold during these months.
- 10.6. Any member who cancels their membership and then wishes to reregister, will have to pay the affiliation fees upon registration.

11. **RNSS'S OBLIGATIONS**

- 11.1. RNSS will present classes for 45 (Forty Five) weeks annually.
- 11.2. There will be no swimming lessons on public holidays, however RNSS has the discretion to hold lessons on such days if it deems necessary to do so.
- 11.3. RNSS will be closed for a 1week period during July as well as over the Easter weekend and 2 weeks during December and a week in January, Inactive Periods, as defined in 1.3.5 herein.

11.4. The dates of the Inactive Periods will be confirmed 1 (One) calendar month in advance, and will reflect on www.learntoswim.co.za , and displayed in all RNSS's premises so please check the notice boards regularly in the event of you not receiving any notices via email.

11.5. RNSS shall be obliged to conduct Membership Evaluations.

12. **MEMBERS OBLIGATIONS**

12.1. The Member agrees to comply with the rules and regulations that are put into place by RNSS from time to time.

12.2. The said rules and regulations will be displayed in each branch and can be found on www.learntoswim.co.za. The Payee is obliged to make note of the rules and regulations on a regular basis as RNSS has the sole discretion to change the rules from time to time.

12.3. Failure to comply with such rules and regulations will constitute a breach of this Agreement.

13. **DISCLAIMER/IDENTITY AND UNDERTAKING**

13.1. The Payee/Member acknowledge that his/her presence at RNSS premises, participation in swimming lessons at RNSS and transportation to and from RNSS's premises, are entirely at their own risk and further acknowledge and agrees that neither RNSS nor any of its employees, contractors and/or agents shall be liable for any injury, expense, loss or damage sustained by the Payee/Member or third party or to their property as a direct or indirect result for the afore described activities or conduct, whether arising out of any action, omission, intentional or negligent, breach of contract or any other cause whatsoever and the Payee/Member does hereby waive and abandon any such claims, presently existing or in the future arising.

13.2. The Payee undertakes to pay RNSS, on demand, without deduction and set off, the reasonable cost of the replacement of any item of movable property, equipment, furniture, machinery, information recording, fixture, fitting or immovable property damaged, destroyed, lost or stolen as a direct or indirect result of any intentional or negligent act or omission on the Member's or Payees part.

14. **JURISDICTION**

14.1. For the purposes of all or any proceedings herein the Payee hereby consents to the jurisdiction of the Magistrates' Court otherwise having jurisdiction under Section 28 of the Magistrate's Court Act of 1944, as amended, notwithstanding that such proceedings are otherwise beyond the jurisdiction, this clause shall be deemed to constitute the required written consent conferring jurisdiction upon the said Court pursuant to Section 45 of the Magistrate's Court Act of 1944, as amended.

14.2. Notwithstanding the provisions of clause 13.1 above, RNSS shall have the right at their sole option and discretion to institute proceedings in any other competent Court which might otherwise have jurisdiction.

15. **COSTS**

If, in order to recover any amount due by the Payee to RNSS arising out of this Agreement, RNSS institutes any legal proceedings against the Payee, RNSS shall be entitled to recover from the Payee all fees, expenses, and disbursements charged and incurred by RNSS's attorneys on an attorney and own client scale, including any collection commission and interest payable thereon at the prevailing rate then applicable.

16. **NOTICES**

16.1. The Payee chooses as its *domicilium citandi et executandi* for all purposes of this Agreement including the giving of any notice and/or the service of any process:

16.1.1. Address: _____

16.1.2. Fax No: _____

16.1.3. Email: _____

16.2. RNSS chooses as its *domicilium citandi et executandi* for all purposes of this Agreement including the giving of any notice and/or the service of any process:

16.2.1. Address: 3 Forssman Close , Kyalami

16.2.2. Fax No: 086 545 3152

16.3. Either Party to this Agreement shall be entitled to change its *domicilium citandi et executandi* to any physical address in the Republic of South Africa provided that any notice of a change of such an address shall be given in writing and shall be delivered or sent by prepaid registered post or by hand by such Party to the other Party in which case such changed address shall serve as such *domicilium citandi et executandi* of the Party who has given such notice.

16.4. Any notice or process addressed by either Party to the other shall be deemed to have been received by the addressee thereof:

16.4.1. on the date of delivery thereof if delivered by hand to the addressee; or

16.4.2. 5 (Five) days after the date of posting thereof (including the date of posting) if posted by prepaid registered post;

16.4.3. on the date of transmission thereof, if sent by means of telefax transmission.

16.5. Without derogating from the foregoing, a notice actually received by a Party shall constitute proper delivery even if not delivered in terms of the foregoing.

17. **SEVERABILITY**

If any provisions of this Agreement are for any reason held to be invalid, illegal or unenforceable same shall not affect the validity of this Agreement or any other provision hereof, and this Agreement shall be interpreted and construed as if such provision, to the extent that it is invalid, illegal or unenforceable, had not been contained herein.

Signed on this _____ day of _____ 2014.

For and behalf of Swim Atlantis t/a
RYK NEETHLING
SWIMMING STARS

Signed on this _____ day of _____ 2014.

PAYEE