

**THIS AGREEMENT** is made on the date specified in the Facility Hire Agreement Document between **WAVES FITNESS AND AQUATIC CENTRE** (ABN 25 034 494 656) of 44 Mileham Ave Baulkham Hills and the **HIRER** named on the (the 'Hirer') subject to the terms and conditions specified in this Agreement.

## **PERMISSION TO USE PREMISES**

Waves Fitness and Aquatic Centre (WFAC) grants permission to the Hirer to use the Premises for the Permitted Purpose(s) and for the Permitted Period of Hiring all described below on the terms and conditions specified in this Agreement (including but not limited to the payment by the Hirer to WFAC of the Hiring Fee as well as any other sums due and payable to WFAC as and when required).

## **1. DOCUMENTATION – TERMS AND CONDITIONS OF HIRE**

*SWIMMING CARNIVALS ONLY – (Applicable to schools)*

The following documentation and applicable booking fee is to be attached with your original signed Hire Agreement and returned to the **WAVES FITNESS AND AQUATIC CENTRE**:

- (a) A copy of your current Public Liability Insurance which provides insurance for an amount not less than \$20,000,000 for any one claim and includes The Hills Shire Council as an interested party.
- (b) Payment Confirmation and/or receipt of payment of the Hire fee and any other applicable charges are to be paid in advance of the date of hire by no less than 14 working days prior to the hire date.
- (c) Risk Management and Safety Plan for your hire; and
- (d) Details of nominated supervisors and/or organisers for your hire.

As part of the agreement of hire for all school swimming carnivals the attending school must guarantee that under the state education guidelines:

- (a) the activity at the time of hire will be structured in an orderly race, age format with finals and relays conducted only if time permits.
- (b) the appropriate risk management plan and discipline policy is defined, in place and enforced throughout the entire duration of the activity; and
- (c) nominated teachers are first aid accredited and the appropriate staff to child ratio will be provided throughout the entire activity whereby teachers must be always actively supervising students and must not congregate in areas away from children.

## **2. GENERAL HIRE**

The following documentation is to be signed by your principal, company director, authorised employee, governing body or association and attached with your original signed Hire Agreement and returned to the **WAVES FITNESS AND AQUATIC CENTRE**.

- (a) details as to precisely how your competition/activity will be structured and programmed from the beginning of each hire period to the end.
- (b) Specific details as to which areas of the aquatic centre your group will want access to.
- (c) date(s) booking is required.
- (d) time requested to use the premises.

- (e) a risk management plan (eg: applicable to schools as detailed in DET excursions policy).
- (f) a copy of your certificate of incorporation or your articles of association (not applicable to schools).
- (g) a copy of your current Public Liability Insurance which provides insurance for an amount not less than \$20,000,000 for any one claim and includes The Hills Shire Council as an interested party.

### **3. HIRER'S GENERAL OBLIGATIONS**

The Hirer agrees with WFAC:

- (a) not to use the Premises for any purpose other than for the Purpose of Hiring specified in this Agreement.
- (b) not to make any alteration or addition to the Premises without the prior written consent of WFAC.
- (c) to always keep the Premises clean and tidy and not to place, leave or permit to be placed or left any debris or rubbish on any part of the Premises.
- (d) to pack away all equipment used for its various activities so as not to obstruct or hinder other users of the Premises.
- (e) not to erect or display any sign or notice on the Premises without the prior written consent of WFAC.
- (f) not to use the WFAC logo on any documentation without the prior written consent of WFAC.
- (g) not to rehire or otherwise part or purport to part with the possession occupation or use of the Premises
- (h) to use its best endeavours to ensure that there is no diving into shallow water during any competitive races, carnivals, events and the like, training and otherwise
- (i) to always obey the regulations and all signage displayed throughout the venue and any reasonable directions that WFAC staff may give during the hire period.
- (j) to give all such warnings as are or may be necessary, to ensure, to the fullest extent possible and practicable, that no such diving occurs
- (k) to assume full responsibility for the competency of all participants in any competitive races, carnivals, events and the like, training and otherwise
- (l) to identify all non-swimmers within the hire group with a yellow wristband as is provided by the school for that purpose of identification of non-swimmers in the group, in particular if the hirer is a school, then it must ensure that it carries this out according to the Department of Education (DET) guidelines.
- (m) to ensure that employees of the Hirer, whether paid or unpaid, who work with children understand their obligations under child protection laws including but not limited to the Child Protection (Working with Children) Act 2012.

### **4. PERMITTED USE**

- (a) The Hirer shall not use the Premises or any part of the same for any purpose other than the Permitted Purpose(s).
- (b) The Hirer shall use the Premises or any part of the same in accordance with the Conditions of Use of the Waves Fitness & Aquatic Centre document.
- (c) The Hirer shall not do, or permit, or suffer to be done at the aquatic centre, or any part thereof, anything which may be or become a nuisance, or disturbance, or cause damage, or inconvenience to the Waves Fitness and Aquatic Centre, or to persons residing in any adjoining property, or to members of the public using any public space in the vicinity of the aquatic centre, or to other authorised users or staff of the aquatic centre.

## **5. STANDARD AND SPECIAL CONDITIONS OF HIRE**

- (a) The Parties agree that Waves Fitness and Aquatic Centre may vary or amend the specified Permitted Period of Hiring in this Agreement subject to the need for increased general public access to the aquatic centre during the peak summer season December to January in any year. Any variation or amendment will be advised in writing by Waves Fitness and Aquatic Centre to the Parties to this agreement, giving 7 days written notice of the variation or amendment.

## **6. COMPLIANCE WITH STATUTES, NOTICES AND DIRECTIONS**

The Hirer will at all times:

- (a) in all respects promptly comply with and observe the provisions of all policies, statutes, ordinances, rules, regulations and by-laws, present or future which in any way affect or apply to the use of WFAC by the Hirer or anything which is done by the Hirer at WFAC;
- (b) immediately comply in all respects with the terms of any lawful demand which may be made, or any notice which may be served or given (upon The Hills Shire Council/WFAC or the Hirer) by any public authority, or upon the Hirer by The Hills Shire Council (acting in its capacity as the local government authority) which in any way affects or applies to the use of WFAC by the Hirer or anything which is done by the Hirer at WFAC; and
- (c) comply with any reasonable direction of WFAC, or any authorised officer of The Hills Shire Council, in relation to the use by the Hirer of WFAC, subject to clause G(b) above.

## **7. TERMINATION OF AGREEMENT**

Termination of this agreement may occur as outlined below whereby termination must be communicated in writing unless the clause specifically does not require this:

- (a) Waves Fitness and Aquatic Centre may terminate the agreement prior to the event if any of the following occurs:
  - i. the Hiring Fee or any other sum due and payable to WFAC is or remains unpaid by the due date for that payment;
  - ii. An event or incident occurs that renders the aquatic centre in general and/or the pool/areas subject to hire unfit and/or unsafe for use by the public and whereby alternative arrangements and/or areas/pools cannot be reasonably made to accommodate the hirer whereby any hire fees paid by the Hirer will be refunded in full by WFAC;
  - iii. There has been a programming oversight or error on the part of WFAC in booking the pool and the hire date and/or times cannot be accommodated whereby any monies paid by the hirer shall be refunded in full by WFAC; or
  - iv. the Hirer fails to observe, perform or fulfil any of the terms and conditions of this Agreement (except as regards the Hiring Fee or other sum as previously referred to in this clause) and after receipt of a written notice from WFAC directing the Hirer to remedy such breach within 10 business days from the date of the notice (or immediately in the case of an emergency), the Hirer fails to remedy such breach within that time or having remedied such breach within that time, the Hirer subsequently repeats that breach, and the Hirer will not be entitled to demand or recover from WFAC a refund or any part of the Hiring Fee or any other sum due and payable to WFAC or any damages, compensation or other money in respect of or as the result of such termination or the lapsing of this Agreement under the provisions of any statute or statutory instrument.

- (b) Council may terminate the agreement on the day of the event if any of the following occurs:
- i. The Hirer is not conducting itself in a manner that promotes the safety and wellbeing of the individuals associated with the hire permitted use and in the case of schools where, in the reasonable opinion of WFAC, creates an unreasonable risk to safety of any user of WFAC swimming facility in anyway whatsoever. In this instance WFAC will not refund any fees paid by the Hirer.
- (c) The hirer may terminate the agreement in the following instances only:
- i. On 30 days' notice prior to the hire date for any reason; or
  - ii. In the case of unexpected severe or inclement weather conditions on 3 days' notice and whereby WFAC will use reasonable efforts to work with the Hirer for the postponement of the Hire permitted use for an alternative date and/or time.

In either case the Hirer will receive a full refund by WFAC for any fees paid prior to termination.

## **8. CANCELLATION BY WAVES FITNESS AND AQUATIC CENTRE**

- (a) Waves Fitness and Aquatic Centre may cancel the hiring at any time if in its reasonable opinion.
- i. the centre and its facilities will be unfitted for use during the hiring period; or
  - ii. the centre and its facilities may be unduly damaged by use for the Hiring purposes.
  - iii. the hirer fails to comply with the conditions of this agreement.

WFAC may cancel the hiring at any time up to thirty (30) days prior to the hiring period if in the reasonable opinion of WFAC the centre is required for the staging of a competition or event involving elite athletes or commercial interests during the Hiring Period. WFAC may cancel the complete or part thereof hire agreement period at any time by giving thirty (30) days' notice if in the reasonable opinion of WFAC the centre is required for WFAC programming.

Where Waves Fitness and Aquatic Centre cancels the hiring (other than in circumstances referred to in clause 1. (c) above, any deposit and other monies paid by the Hirer to WFAC, will be repaid to the Hirer.

## **9. DISPUTE RESOLUTION**

If a dispute arises that impacts on the ability of the Parties to this Agreement to work cooperatively, all endeavours will be made to resolve the matter in a spirit of cooperation. If endeavours to resolve the matter do not achieve agreement between the Parties within 20 business days of the first meeting called to resolve the dispute, the Parties agree to seek the assistance of an external mediator to assist them to resolve the matter. The Parties agree to reach an agreement in writing on the choice of mediator.

## **10. MAINTENANCE**

- (a) The Hirer shall observe the requirements and directions of WFAC and any other relevant statutory or public bodies in respect of the use of WFAC.
- (b) The Hirer shall ensure that all rubbish, equipment, tools and other items brought to the Hire Area shall be cleaned up, tidied or removed upon the end of the Hire period.

- (c) The Hills Shire Council, WFAC staff, its officers, or its agents shall at any time have the right of access and entry to WFAC to view the condition and order of WFAC. A minimum number of WFAC Lifeguards will be on duty during all authorised usage times and their directions and instructions must be complied with immediately and without question on all occasions.

#### **11. NO LIABILITY FOR HIRER'S DEBTS OR PROPERTY**

Waves Fitness and Aquatic Centre will not accept liability for any debts incurred by the Hirer and WFAC shall not be in any way responsible for any property whether of the Hirer or any other person that may be placed in or left on or in the Premises or for any loss or damage of any such property by theft or otherwise.

#### **12. PUBLIC LIABILITY INSURANCE**

The Hirer must effect and maintain at all times during the Period of Hiring a current policy for public liability insurance for an amount of not less than \$20,000,000 for any one claim. A certificate of currency for the Hirer's insurance must be submitted to Council prior to the booking being approved.

#### **13. RELEASE**

The Hirer releases and shall keep released The Hills Shire Council, Waves Fitness and Aquatic Centre from all claims, suits, demands, actions or proceedings (whether at law, in equity or arising under any statute) arising out of or in connection with an act, default or omission of the Hirer or any of the Hirer's Agents. The Hirer agrees not to sue or make any claim or demand against The Hills Shire Council, Waves Fitness and Aquatic Centre in respect of matters covered by this release.

#### **14. INDEMNITY AND LIABILITY**

The Hirer indemnifies and shall keep indemnified The Hills Shire Council, Waves Fitness and Aquatic Centre from and against all actions, claims, costs, losses, expenses and damages (including the costs of defending or settling any action or claim) in respect of (a) loss of, loss of use of, or damage to property of Council, or (b) personal injury (including death) or illness to any person or loss of, loss of use of, or damage to any property, IN EITHER CASE resulting from or by reason of anything done or omitted to be done by the Hirer arising out of the Hirer's activities undertaken at or near Waves Fitness and Aquatic Centre.

The Hirer's liability to indemnify The Hills Shire Council, Waves Fitness and Aquatic Centre is reduced proportionally to the extent that a negligent act or omission of Council or its employees has contributed to the injury, damage or loss. Without limiting the generality of the foregoing, the Hirer agrees that The Hills Shire Council, Waves Fitness and Aquatic Centre shall not be liable or responsible for any loss or damage as well as any personal injury (including death) or illness to any person caused by or arising from any breach of any of the Hirer's obligations under this Agreement.

#### **15. NO LEASE OR LICENCE:**

The Parties to this Agreement expressly agree and state that it is not their intention, in entering into this Agreement, to enter into a lease or a licence, and this Agreement is not to be construed or interpreted as either a lease or a licence.

## 16. NSW DET GUIDELINES (applicable to school activities only)

In the event The Hirer is a school or is otherwise subject to the Department of Education rules and policies, then the Hirer confirms that in carrying out the Permitted Use under this Agreement it shall observe and adhere to the New South Wales Department of Education and Training (DET) guidelines for the "Safe Conduct of Sport and Physical Activity in Schools" at all times, along with the water safety guidelines for unstructured aquatic activity.

Without limiting the generality of the foregoing, particular attention must be given to the 'Swimming and Water Safety' section which includes but is not restricted to:

- supervision ratios
- qualifications of supervisors
- attire for supervising teachers
- prior knowledge of all students swimming abilities.

The latest updated version of this document can be obtained at:  
[www.sports.det.nsw.edu.au](http://www.sports.det.nsw.edu.au)

## 17. VENUE MANAGEMENT RESPONSIBILITIES

- Supervision: Lifeguards on duty during your activity:
- Risk Management Overview School Excursions - available
- Premises Usage Terms & Conditions for Hirer Groups - available
- Emergency Action Plan & Emergency procedures - available

**EXECUTED** as an Agreement.

**EXECUTED FOR & ON BEHALF OF THE HILLS SHIRE COUNCIL, WAVES FITNESS AND AQUATIC CENTRE:**

*D. Skakavac*.....

Signed under delegated authority from  
Manager Fitness and Aquatics

..Dan Skakavac.....  
Name of Manager