

**The Swim Club @ The Drifter Hotel**  
Membership Terms & Conditions

The terms and conditions set forth here are the Membership Terms and Conditions (sometimes referred to herein as the “Membership Terms and Conditions”, “Membership Agreement”, or “Agreement”) for The Drifter Hotel’s (“The Drifter”) Swim Club. Unless otherwise specified, all capitalized terms used here have the meanings ascribed to such terms in the Member Agreement or House Rules, as applicable. The Drifter may make changes to these Membership Terms and Conditions from time to time in its sole discretion, and will make an effort to send notice to you via email to the email address set forth in your Member Application or by other means. Any such changes will become effective when such changes are sent to you or on such later date as may be specified by The Drifter.

You acknowledge and agree to the following terms and conditions:

**I. Membership Fees and Charges**

The same Membership Fee will apply to each renewal term of the Membership. If you fail to pay any Membership Fees or other charges on time, your privileges will be suspended until your account is brought current. If you repeatedly fail to pay or make payment late of any Membership Fees or other charges, The Drifter may terminate your Membership immediately upon notice to you, and all Members on your account will also be terminated, notwithstanding any other provision herein. The Drifter will have no obligation to refund any Membership Fees or other amounts, even if you don’t use your Membership or terminate it before the end of the then-current term. You agree to pay any sales, use, value-added and other taxes or governmental charges related to the Membership or any other products or services provided by The Drifter, other than any income taxes of The Drifter.

**II. Termination of Membership by The Drifter**

The Drifter may terminate your Membership at any time upon three (3) days’ prior written notice (or immediately as specified in the Agreement) to Member, if in The Drifter’s sole and absolute discretion, you commit a material breach of the Membership House Rules, or Membership Terms and Conditions. Sections I, II, V, VI, VII, VIII, IX and X shall survive any termination or expiration of the Membership Terms and Conditions. Additionally, The Drifter may cancel the Membership at any time by providing 30 days’ written notice. You may cancel the Membership at any time by providing 30 days’ written notice, however, absolutely no refund will be given.

**III. Use of the Premises**

Each Membership entitles you and one other guest (the “Guest”) to access The Drifter’s pool and courtyard area. You need to be present with the Guest when the Guest arrives at The Drifter for the Guest to get access to the Swim Club. Guests will not be allowed to enter or use the Premises free of charge without you bring present with them. If you bring other guests, they are required to pay the daily access rate for that day. For illustration purposes, if you arrive at The Drifter with four other friends, for a total of 5 people, you and the designated Guest will be able to enter free of charge, but the other three (3) guests will have to pay the applicable daily access fee.

You are entitled to use The Drifter’s pool and courtyard area solely as a swim club and for no other use whatsoever. You agree not to bring food, alcohol, drinks, ice chests, or any other prohibited items, as may be updated by The Drifter from time to time, on to the Premises. The Drifter may, at times, prohibit Members from accessing portions of the Swim Club for programming or private event purposes.

**IV. Conduct**

Neither you nor your guests may use the Swim Club or any services offered to conduct or pursue any activities prohibited by law or for which you or your guests are not authorized. You will be strictly liable for the activities of your guests.

You agree not to conduct any activity that is generally regarded as offensive to other people, such as involvement in hate groups and/or their ideologies, illegal drugs, activities involving pornographic or sexually explicit materials or obscenities, whether written, oral or in any form or medium known or to be created. No harassment, sexual or

otherwise, will be permitted in the Swim Club or at The Drifter. Any such harassment will be immediately reported to the General Manager. If the General Manager or other Drifter personnel find in their sole discretion that a complaint is justified, the offending party's Membership may be immediately terminated in The Drifter's sole and absolute discretion, without any refund of Membership Fees.

You agree not to conduct any activity that may be hazardous to property or other persons. You agree to refrain from any activities that may be disruptive, including, but not limited to, acts of disorderly nature or excessive noise. No weapons of any kind are permitted at The Drifter unless Member is a uniformed police officer and is on duty and has identified him or herself as such to the General Manager. Possession of weapons at The Drifter is grounds for immediate termination of Membership.

Violation of rules of conduct may result in The Drifter reporting same to appropriate law-enforcement agencies.

## **V. Indemnity**

You agree to indemnify, defend and hold The Drifter and its affiliates and its and their respective officers, directors, members, managers, employees, consultants, contractors and agents (collectively, the "Indemnitees") harmless from any and all actions, suits, proceedings, claims and demands brought or made by any third party (including, for the avoidance of doubt, any of: your respective officers, directors, employees, contractors, visitors, invitees and/or agents; any employees, contractors or agents of The Drifter; and any of The Drifter's other members and their respective personnel) ("Third Party Claims") and to pay any settlements, awards, costs and expenses (including reasonable attorneys' fees and disbursements) in connection with such Third Party Claims (collectively, "Losses"), to the extent such Third Party Claim arises out of or relates to: (i) any breach of the Agreement (including the Member Agreement, the House Rules and these Membership Terms and Conditions) by Member, (ii) any violation of the Agreement by any of your guests, invitees or visitors or (iii) any other conduct, acts or omissions by Member or any of its guests, invitees or visitors in connection with the Membership or any of their respective use of the House, including, but not limited to, any violation of applicable laws or regulations, negligence or misconduct by Member or by any of its guests, invitees or visitors. For purposes of this section "you" includes the individual Member and any company for which such member works having a presence at The Drifter.

## **VI. Liability**

You agree that you are fully aware of the risks involved and the hazards connected with your Membership, the Swim Club, and The Drifter, including without limitation, the use of and presence around a pool with no lifeguard on duty, the entering upon certain property which may contain art installations or other hazards, the risk of eating food prepared by food trucks, pop-ups, or other circumstances outside of a traditional restaurant setting, the participation in any Swim Club or Drifter events, all including, but not limited to the risk of injury to yourself, your guests, you property, your invitees, and third parties. You hereby agree that you are electing to voluntarily participate in said activities and join the Swim Club with full knowledge that said activities and Membership may be hazardous to you and your property. YOU HEREBY VOLUNTARILY ASSUME FULL RESPONSIBILITY FOR ANY RISKS OF LOSS, PROPERTY DAMAGE OR PERSONAL INJURY, INCLUDING DEATH, that may be sustained by you, your invitees, guests or agents, or any loss or damage to property owned by you, your invitees, guests or agents, as a result of being engaged in such an activity or of entering upon The Drifter.

THE DRIFTER WILL NOT BE LIABLE TO YOU (NOR TO ANY OF YOUR STAFF, INVITEES OR VISITORS OR ANY OTHER PERSON CLAIMING RIGHTS DERIVED FROM YOUR RIGHTS) FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, PUNITIVE, SPECIAL OR EXEMPLARY DAMAGES OF ANY KIND, OR FOR ANY LOST REVENUES OR PROFITS, LOSS OF USE, LOSS OF COST OR OTHER SAVINGS OR LOSS OF GOODWILL OR REPUTATION, WITH RESPECT TO ANY CLAIMS BASED ON CONTRACT, TORT OR OTHERWISE (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE AND STRICT LIABILITY) ARISING FROM, RELATING TO OR IN CONNECTION WITH THE MEMBERSHIP, THE DRIFTER, THE SWIM CLUB, THE MEMBERSHIP AGREEMENT, HOUSE RULES OR THE TERMS AND CONDITIONS, REGARDLESS OF WHETHER THE DRIFTER WAS ADVISED, HAD OTHER REASON TO KNOW, OR IN FACT KNEW OF THE POSSIBILITY THEREOF. YOU FURTHER HEREBY RELEASE, WAIVE, DISCHARGE AND AGREE NOT TO SUE THE DRIFTER, TULANE AVENUE INNS, LLC, TAI MANAGING MEMBER, LLC OR ANY OF ITS AFFILIATES, OFFICERS, AGENTS, SERVANTS, EMPLOYEES, MEMBERS, MANAGERS,

SUCCESSORS, SUBSIDIARIES, OR ASSIGNS (HEREINAFTER REFERRED TO AS "RELEASEES") FROM ANY AND ALL LIABILITY, CLAIMS, DEMANDS, ACTIONS AND CAUSES OF ACTION WHATSOEVER ARISING OUT OF OR RELATED TO ANY LOSSES, DAMAGES, OR INJURIES, INCLUDING DEATH, THAT MAY BE SUSTAINED BY YOU, YOUR GUESTS, BY ANY THIRD PARTIES OR TO ANY OF THE PROPERTY BELONGING TO YOU OR YOUR GUESTS, WHETHER CAUSED BY THE NEGLIGENCE OF THE RELEASEES, OR OTHERWISE, ARISING OUT OF OR CONNECTED TO YOUR MEMBERSHIP OR PRESENCE IN, ON, OR ABOUT THE DRIFTER.

THE DRIFTER'S MAXIMUM LIABILITY ARISING FROM RELATING TO OR IN CONNECTION WITH THE MEMBERSHIP, THE DRIFTER, THE SWIM CLUB, THE MEMBERSHIP AGREEMENT, HOUSE RULES OR THE TERMS AND CONDITIONS, REGARDLESS OF THE CAUSE OF ACTION (WHETHER IN CONTRACT, TORT, INDEMNITY, BREACH OF WARRANTY OR OTHERWISE), WILL NOT EXCEED, IN THE AGGREGATE, THE MEMBERSHIP FEES PAID BY YOU TO THE DRIFTER FOR THE MEMBERSHIP PERIOD IMMEDIATELY PRECEDING THE DATE ON WHICH SUCH CLAIM ARISES.

To the extent that any items set forth in this section are determined to be not enforceable under applicable law, such exclusions and limitations of liability shall be enforced to the fullest extent permitted under applicable law.

## **VII. Legal**

Member agrees to hold all Confidential Information (defined as information not generally known to the public) of at The Drifter and other Members in strict confidence and to take all reasonable precautions to protect Confidential Information. Member acknowledges that any disclosure or unauthorized use of Confidential Information will constitute a material breach of these Terms and Conditions and cause substantial harm to the injured party for which damages would not be a fully adequate remedy. In the event of any such breach, at The Drifter shall have, in addition to other available remedies, the right to injunctive relief (without being required to post any bond or security). at The Drifter reserves the right at all times to disclose any information about you as at The Drifter deems necessary to satisfy any applicable law, regulation, legal process or governmental request, or to edit, refuse to post or to remove any information or materials from its systems, in whole or in part, in at The Drifter sole discretion. You shall, during and after the Membership term, refrain from making any statements or comments of a defamatory or disparaging nature to any third party regarding at The Drifter, or any of The Drifter's officers, directors, employees, members, managers, personnel, agents, policies, services or products, other than to comply with law.

You may not use pictures or illustrations of the at The Drifter (including any images from The Drifter sites) in any advertising, publicity or other purpose without the prior written consent of at The Drifter, in its sole discretion. Further, you agree that no press release, advertising, sales literature or other publicity statements relating to the existence or substance of the Agreement or the relationship of the parties created by it, shall be made by you without the prior written approval of The Drifter, in its sole discretion.

You are responsible for the actions of all persons that you, your agents, your guests, assigns or invitees allow or invite to enter The Drifter.

You acknowledge that The Drifter may, at its sole discretion, implement Membership cards (including, but not limited to, keys, key cards, key fobs and other such items used to gain physical access to The Drifter), if any, remain the property of The Drifter. You shall make efforts to safeguard The Drifter's property and shall be liable for replacement fees and any related damages should any such property be lost.

## **VIII. Communications**

You acknowledge that you must receive community emails as part of its obligations and duties as a Member. The Drifter may provide notice of any changes to services, fees or other updates by email to the address provided by you and you agree that such notice transmitted is proper. You agree to notify The Drifter of any change to your contact information (telephone and e-mail). If you contact any other Member who has not consented to such contact, including any spamming, your membership may immediately be terminated by The Drifter.

## **IX. Representations and Warranties; Disclaimer**

Mutual Representations and Warranties. The Drifter and you each represent and warrant that it is duly authorized to perform its obligations hereunder. EXCEPT AS EXPRESSLY PROVIDED IN ABOVE, EACH PARTY HEREBY EXPRESSLY DISCLAIMS ANY AND ALL REPRESENTATIONS AND WARRANTIES OF ANY KIND OR NATURE, WHETHER EXPRESS, IMPLIED OR STATUTORY, ARISING FROM, RELATING TO OR IN CONNECTION WITH THE MEMBERSHIP, THE DRIFTER, THE SWIM CLUB, THE MEMBERSHIP AGREEMENT, HOUSE RULES OR TERMS AND CONDITIONS, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND ANY REPRESENTATIONS AND WARRANTIES ARISING FROM A COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE.

## **X. Miscellaneous**

Except for the payment of any amounts due hereunder, nonperformance of either party shall be excused to the extent that performance is prevented or delayed by strike, fire, flood, hurricane, inclement weather, epidemic, governmental acts, orders or restrictions, failure of suppliers, internet or power outages, or any other reason where failure to perform is beyond the control and not caused by the negligence of the non-performing party.

In the unlikely event that The Drifter is no longer able to provide access to the areas and/or the services (or reasonable substitutes thereto) at The Drifter, then your right to use The Drifter and any services will end and you will only have to pay Membership Fees and any charges associated with your account up to the date such use ends. The Drifter will not otherwise be liable to you for any reason.

Neither party will assign or otherwise transfer any of its rights or obligations under the Agreement without the prior, written consent of the other party. Notwithstanding the foregoing, The Drifter may, without the consent of the other party, assign or otherwise transfer the Membership Terms and Conditions: (i) to any of its affiliates or (ii) in connection with a merger, consolidation, sale of equity interests, sale of all or substantially all assets or other change of control transaction. Any assignment or other transfer not in accordance with this section will be null and void. The Membership Terms and Conditions are binding upon and will inure to the benefit of each party and their respective permitted successors or assigns.

The relationship of the parties under the Membership Terms and Conditions: (i) is one of independent contractors, and neither party has the authority to bind the other party in anyway and (ii) is non-exclusive and nothing herein shall be deemed to restrict or limit a party's ability to engage in similar relationships, agreements or arrangements with any other party. The Agreement, which is comprised of the Member Agreement, House Rules and these Membership Terms and Conditions (together with the documents referenced herein) set forth the entire agreement of the parties as to its subject matter and supersede all prior agreements, negotiations, representations, and promises between them with respect to its subject matter. A waiver of rights under the Agreement will not be effective unless it is in writing and signed by an authorized representative of the party that is waiving the rights. The Agreement, and any and all disputes directly or indirectly arising out of or relating to the Membership Terms and Conditions, shall be governed by and construed in accordance with the laws of the State of Louisiana, without reference to the choice of law rules thereof.

In the unlikely event that you and The Drifter have a dispute related to our relationship, you and The Drifter agree it will be resolved by binding arbitration under the rules and supervision of the American Arbitration Association, in New Orleans, except where the law specifically forbids the use of arbitration as a final and binding remedy. This agreement to arbitrate waives the parties' rights to litigate their disputes in court or receive a jury trial.

For avoidance of doubt, the Agreement terms are subordinate to The Drifter's leases, if any, with The Drifter's landlords, and you agree not to contact any landlord of The Drifter, if any, directly.

By payment of the Membership Fee, you hereby acknowledge that you have received this Agreement, are becoming a party thereto, and agree to be bound by these Terms and Conditions,