

## COACHING PARTICIPANT AGREEMENT, RISK WARNING, RELEASE AND INDEMNITY (AGREEMENT)

THIS IS AN IMPORTANT DOCUMENT AND YOU SHOULD READ IT CAREFULLY BEFORE SIGNING IT. UPON SIGNING THIS AGREEMENT, YOU ACKNOWLEDGE THAT YOU HAVE READ, UNDERSTOOD AND AGREE TO BE BOUND BY THE TERMS AND CONDITIONS (**TERMS**) IN IT.

YOU COVENANT AND WARRANT THAT YOU ARE EITHER 18 YEARS OF AGE OR OLDER OR THAT YOU HAVE AGREED TO THE TERMS IN THIS AGREEMENT AS THE PARENT OR LEGAL GUARDIAN OF A PARTICIPANT UNDER 18 YEARS OF AGE.

NOTE IF THE APPLICANT IS UNDER 18 YEARS OF AGE THESE TERMS MUST BE AGREED BY THE APPLICANT'S PARENT OR GUARDIAN.

IN CONSIDERATION OF THE COACH PROVIDING SERVICES TO ME, I ACKNOWLEDGE AND AGREE TO THE FOLLOWING:

### Definitions

In these Terms:

- (a) **Claim** means and includes any action, suit, proceeding, claim, demand, damage, penalty, cost or expense however arising including but not limited to negligence or under the Australian Consumer Law.
- (b) **Coach** means the person(s) or entity supplying the Equestrian Activities and who has elected to participate in the EA National Coaching Programme and is acting in their capacity as an EA registered coach or trainee coach.
- (c) **Equestrian Activity/Activities** includes performing, participating or spectating in any capacity, including as a Member, in any activity authorised or recognised by Equestrian Australia (**EA**) or any of its Member Branches (including online and/or at home).
- (d) **Member Branches** means Equestrian Victoria, Equestrian NSW, Equestrian Western Australia, Equestrian South Australia, Equestrian Queensland, Equestrian Tasmania and Equestrian Northern Territory.
- (e) **Recreational services** has the same meaning as defined in the Australian Consumer Law (being Schedule 2 to the *Competition and Consumer Act 2010 (Cth)*) (**ACL**), being:
  - sporting activity or similar leisure-time pursuit; or

- any other activity that involves a significant degree of physical exertion or risk and is undertaken for the purposes of recreation, enjoyment or leisure.
- (f) **Reckless Conduct** means the supplier is aware, or should reasonably have been aware, of a significant risk that the conduct could result in personal injury to another person; and engages in conduct despite the risk and without adequate justification.

### Declaration

1. I declare that I am not aware of any reason why I should not undertake Equestrian Activities.
2. I will be bound by and abide by the Constitution and Regulations of EA and its Member Branches. I shall participate in Equestrian Activities in a fair and sporting manner. I will comply with all reasonable directions of the Coach whilst I am undertaking Equestrian Activities under the Coach's supervision and/or direction, and agree that any failure to do so could result in the cancellation of my participation in the Equestrian Activity and my immediate removal from the Equestrian Activity.

### Risk Warning

3. I acknowledge that Equestrian Activities are inherently dangerous recreational activities and involve the risk of serious injury (including spinal injury, brain or head injury, fractures, soft tissue injury and mental anguish and emotional disturbance) or death.
4. I acknowledge that participating in recreational services provided by the Coach including the Equestrian Activities can result in me suffering serious injury or death, or my property being damaged. Prior to undertaking any Equestrian Activities, I acknowledge that I have considered and am aware of all of the risks involved, including those risks associated with any pre-existing health condition, injuries or disabilities I may have.
5. I agree to participate in the recreational services provided by the Coach including the Equestrian Activities voluntarily and at my own risk.
6. I acknowledge that the assumption of risk and warning above constitutes a 'risk warning' for the purpose of relevant civil liability legislation.

### Waiver, indemnity and release

7. In consideration of the Coach providing the recreational services to me, to the extent permitted by law, I agree to release and indemnify EA, the Member Branches (and affiliated clubs, servants, agents and volunteers) and the Coach (including employees, agents and assigns) from all Claims that I have or may have had but for this Agreement arising from or in connection with my participation in Equestrian Activities, including any Claim which may be made by me or on my

- behalf for or in respect of or arising out of any injury, disability or my death whether caused by the negligence, breach of contract or in any other manner whatsoever (save for any Claim arising from injury, disability or death caused by Reckless Conduct by the Coach (or their employees, agents and assigns)).
8. I acknowledge that a supplier of recreational services or recreational activities is entitled to ask me to agree that statutory guarantees under the ACL do not apply to me (or a person for whom or on whose behalf I am acquiring the services or activities).
  9. By agreeing to the Terms in this Agreement, I agree that my rights (or the rights of a person for whom or on whose behalf I am acquiring the services) to sue the supplier of recreational services or recreational activities that I undertake, because those services or recreational activities were not provided in accordance with the guarantees, are excluded, restricted or modified as set out in **Schedule 1**.
  10. I consent to my Coach using technology to film, record and/or photograph me during a virtual/online lesson on the condition that any footage will not be published or shared without my consent. I release EA, the Member Branches (and affiliated clubs, servants, agents and volunteers) and the Coach from any Claim arising from the Coach's use of technology including but not limited to defamation and/or an invasion of privacy,

### Medical Disclosure

11. I declare that I am medically and physically fit and able to participate in Equestrian Activities. I acknowledge that I must, and I agree that I will, disclose any pre-existing medical or other condition that may affect the risk that either I or any other person will suffer injury, loss or damage prior to participating in any Equestrian Activities. If I am feeling unwell in any way I will not attend any Equestrian Activity unless and until cleared to do so by a medical practitioner and if I do attend whilst feeling unwell I may be directed to leave the Equestrian Activity and if so directed I will leave immediately.
12. I acknowledge that the Coach relies on information provided by me and that all such information is accurate and complete.
13. I agree to report any accidents, injuries, loss or damage I suffer during any Equestrian Activities undertaken in the course of the recreational services provided by the Coach to the Coach or other organiser or official before I leave any relevant venue.
14. I agree that the Coach may in their absolute discretion deny me eligibility to undertake any Equestrian Activities if they consider I am not medically, mentally and physically fit and able to participate (or continue to participate) in Equestrian Activities without unreasonable risk to myself or others. The Coach is in no way liable if they choose not to exercise their discretion under this clause.

15. If a medical emergency occurs, I consent to the provision of any necessary medical treatment and will pay for any such medical treatment costs including transport by ambulance.

### Insurance

16. I acknowledge that it is my responsibility to arrange personal accident insurance coverage if I am not an EA Member.

### Safety

17. I understand and acknowledge the dangers associated with the consumption of alcohol or any mind-altering substance before or during any Equestrian Activity. I accept full responsibility for injury, loss or damage associated with the consumption of alcohol or any other mind-altering substance.
18. I will follow any rules set by the Coach in connection with any Equestrian Activities. In particular, I acknowledge I am required to wear an approved helmet at all times during the recreational services provided by the Coach, and am encouraged (and may be required by the Coach) to wear additional Personal Protective Equipment. If I fail to comply with the Coach's rules and/or directions, I will not be permitted to participate or to continue to participate in a relevant Equestrian Activity and if I am excluded I may not be entitled to a refund.

### Miscellaneous

19. This Agreement (and the documents to which it refers) constitute the entire agreement between the parties and supersedes all other agreements, understandings, representations and negotiations in relation to the Equestrian Activities.
20. To the extent that any Term in this Agreement is void or unenforceable it is severable and does not affect the remaining provisions of the agreement.

## **SCHEDULE 1**

### **For recreational services or activities provided throughout Australia:**

For recreational services to which the Australian Consumer Law (ACL) (Commonwealth) applies:

By signing this form, I agree that the liability of the Coach in relation to recreational services (as that term is defined in the Competition and Consumer Act 2010 (Cth) and the ACL) for any:

- (a) death;
- (b) physical or mental injury (including the aggravation, acceleration or recurrence of such an injury);
- (c) the contraction, aggravation or acceleration of a disease;
- (d) the coming into existence, the aggravation, acceleration or recurrence of any other condition, circumstance, occurrence, activity, form of behaviour, course of conduct or state of affairs, that is or may be harmful or disadvantageous to me or the community; that may result in harm or disadvantage to me or the community,

that may be suffered by me (or a person for whom or on whose behalf I am acquiring the services) resulting from the supply of recreational services or recreational activities is excluded and the application of any express or implied term that any services will be provided with due care and skill is hereby excluded.

### **For recreational services or activities provided in NSW or WA:**

For recreational services or recreational activities to which the ACL applies:

By signing this form, I agree that the liability of the Coach in relation to recreational services (as that term is defined in the Competition and Consumer Act 2010 (Cth) and the Australian Consumer Law) and recreational activities (as that term is defined in the Civil Liability Act 2002 (NSW) or Civil Liability Act 2002 (WA), as applicable) for any:

- (a) death;
- (b) physical or mental injury (including the aggravation, acceleration or recurrence of such an injury);
- (c) the contraction, aggravation or acceleration of a disease;
- (d) the coming into existence, the aggravation, acceleration or recurrence of any other condition, circumstance, occurrence, activity, form of behaviour, course of conduct or state of affairs that:
  - (i) is or may be harmful or disadvantageous to me or the community;
  - (ii) may result in harm or disadvantage to me or the community, that may be suffered by me (or a person for whom or on whose behalf I am acquiring the services) resulting from the supply of recreational services or recreational activities; is excluded and the application of any express or implied term that any services will be provided with due care and skill is hereby excluded.

### **For recreational services or activities provided in Victoria:**

For recreational services to which the ACL (VIC) applies:

Warning under the Australian Consumer Law and Fair Trading Act 2012:



*Under the ACL (Victoria), several statutory guarantees apply to the supply of certain goods and services. These guarantees mean that the suppliers named on this form, the Coach, are required to ensure that the recreational services supplied to you:*

- (a) are rendered with due care and skill; and*
- (b) are reasonably fit for any purpose which you either expressly or by implication, make known to the supplier; and*
- (c) might reasonably be expected to achieve any result you have made known to the supplier. Under section 22 of the Australian Consumer Law and Fair Trading Act 2012 (Vic), the supplier is entitled to ask you to agree that these conditions do not apply to you. If you sign this form, you will be agreeing that your rights to sue the supplier under the Australian Consumer Law and Fair Trading Act 2012 if you are killed or injured because the services were not in accordance with these guarantees, are excluded, restricted or modified in the way set out in this form.*

*Note: The change to your rights, as set out in this form, does not apply if your death or injury is due to gross negligence on the supplier's part. "Gross negligence" in relation to an act or omission, means doing the act or omitting to do an act with reckless disregard, with or without consciousness, for the consequences of the act or omission. See regulation 5 of the Australian Consumer Law and Fair Trading Regulations 2012 (Vic) and section 22(3)(b) of the Australian Consumer Law and Fair Trading Act 2012 (Vic). Exclusion of rights under the Australian Consumer Law (Victoria): By signing this form, you agree that the liability of The Coach for any death or personal injury (as defined in the Australian Consumer Law and Fair Trading Act 2012) that may be suffered by you (or a person from whom or on whose behalf you are acquiring the services) resulting from the supply of recreational services is excluded.*

***For recreational services or activities provided in ACT, Queensland or Tasmania:***

*For recreational services to which the ACL (ACT), ACL (QLD) or ACL (TAS) applies: By signing these Terms and declaration, I acknowledge that where I am a consumer of recreational services, as defined by any relevant law, certain terms and rights usually implied into a contract for the supply of goods or services may be excluded. I acknowledge that these implied terms and rights and any liability of the Coach flowing from them, are expressly excluded to the extent possible by law, by this membership application form and declaration. To the extent of any liability arising, the liability of the Coach will, at the discretion of the Coach, be limited in the case of goods, to the replacement, repair or payment of the cost of replacing the goods and in the case of services, the resupply of the services or payment of the cost of having the services supplied again. For the avoidance of doubt, this exclusion does not exclude liability for recklessness as defined by any relevant law.*

***For recreational services or activities provided in South Australia:***

*For recreational services to which the ACL (SA) applies: Your rights: Under sections 60 and 61 of the ACL (SA), if a person in trade or commerce supplies you with services including recreational services), there is:*

- (a) statutory guarantee that those services will be rendered with due care and skill;*
- and*

- (b) *statutory guarantee that those services, and any product resulting from those services, will be reasonably fit for the purpose for which the services are being acquired (as long as that purpose is made known to the supplier); and*
- (c) *a statutory guarantee that those services, and any product resulting from those services, will be of such a nature, and quality, state or condition, that they might reasonably be expected to achieve the result that the consumer wishes to achieve (as long as that wish is made known to the supplier or a person with whom negotiations have been conducted in relation to the acquisition of the services). Excluding, restricting or modifying your rights: Under section 42 of the Fair Trading Act 1987 (SA), the supplier of recreational services is entitled to ask you to agree to exclude, restrict or modify his or her liability for any personal injury suffered by you or another person for whom or on whose behalf you are acquiring the services (a third party consumer). If you sign this form, you will be agreeing to exclude, restrict or modify the supplier's liability with the result that compensation may not be payable if you or the third-party consumer suffer personal injury.*

**Important:**

*You do not have to agree to exclude, restrict or modify your rights by signing this form. The supplier may refuse to provide you with the services if you do not agree to exclude, restrict or modify your rights by signing this form. Even if you sign this form, you may still have further legal rights against the supplier. A child under the age of 18 cannot legally agree to exclude, restrict or modify his or her rights. A parent or guardian of a child who acquires recreational services for the child cannot legally agree to exclude, restrict or modify the child's rights.*

**Agreement to exclude, restrict or modify your rights:**

*I agree that the liability of the Coach for any personal injury that may result from the supply of the recreational services that may be suffered by me (or a person for whom or on whose behalf I am acquiring the services) is excluded.*

**Definitions:**

*Recreational services are services that consist of participation in -*

- sporting activity or similar leisure-time pursuit; or*
- any other activity that involves a significant degree of physical exertion or risk and is undertaken for the purposes of recreation, enjoyment or leisure.*

*Personal injury is bodily injury and includes mental and nervous shock and death.*

**Further information:**

*Further information about your rights can be found at [www.ocba.sa.gov.au](http://www.ocba.sa.gov.au)*

**For recreational services or activities provided in Northern Territory:**

*For recreational services to which the ACL (NT) applies: By signing this form, I agree that the provisions of Part 3.2, Division 1, subdivision B of the ACL (NT) do not apply to the services provided to me, and the Coach incurs no liability with respect to death or personal injury for a failure to comply with a guarantee under that sub-division in relation to supply of these recreational services. By signing this document, I acknowledge that I have been made aware of the general effect of this exclusion, restriction or modification, have had a reasonable opportunity to consider whether or not to enter into this contract on that basis and have decided to enter into the contract.*

I have read the Terms in this Agreement, which include a release and waiver of liability, assumption of risk and indemnity agreement, and I fully understand its terms, and understand that I have given up substantial rights by signing it, and have signed it freely and voluntarily without any inducement, assurance or guarantee being made to me and intend my signature to be a complete and unconditional release of all liability to the greatest extent allowed by law.

**BY SIGNING HEREUNDER I CONFIRM HAVING READ AND UNDERSTOOD THE CONTENTS OF THIS AGREEMENT.**

\_\_\_\_\_  
NAME (BLOCK LETTERS)

\_\_\_\_\_  
SIGN HERE

\_\_\_\_\_  
DATE

**PARENT/GUARDIAN CONSENT FOR UNDER 18 YEAR OLD PARTICIPANTS**

I,

\_\_\_\_\_  
being the parent/guardian of the abovenamed

\_\_\_\_\_  
confirm that I have read the Agreement and have taken all necessary actions to ensure I am aware of the activity which the above named, will be asked to participate in and consent to him/her participating. In doing so, I acknowledge that Equestrian Activities are dangerous and involve the risk of death, bodily injury, disability and property damage. I agree that neither EA, the Member Branches (and affiliated clubs, servants, agents and volunteers) and the Coach shall be under any liability whatsoever for the death or any bodily injury which may be suffered or incurred by the abovenamed or by me in or being present at any Equestrian Activity conducted by the Coach.

**BY SIGNING HEREUNDER I CONFIRM HAVING READ AND UNDERSTOOD THE CONTENTS OF THIS AGREEMENT .**

\_\_\_\_\_  
NAME (BLOCK LETTERS)

\_\_\_\_\_  
SIGN HERE

\_\_\_\_\_  
DATE