

PARTICIPANT TERMS AND CONDITIONS

THIS IS AN IMPORTANT DOCUMENT AND YOU SHOULD READ IT CAREFULLY BEFORE ACCEPTING IT. UPON ACCEPTING THIS FORM AND DECLARATION, YOU ACKNOWLEDGE THAT YOUR LEGAL RIGHTS ARE AFFECTED AND THAT YOU HAVE READ AND UNDERSTAND THESE TERMS AND CONDITIONS.

The following terms and conditions must be read carefully:

You hereby agree to be bound by the terms of this contract with the Providers in the definitions at clause (a). The Providers agree to permit You to participate in the Relevant Activities upon and subject to the following terms and conditions:

(a) Definitions: in these terms and conditions:

AusCycling means AusCycling Limited (ACN 70 644 149 351).

Claim means and includes any action, suit, proceeding, claim, demand, damage, penalty, cost or expense however arising from or in connection with any Relevant Activities, but does not include:

- (i) a claim against the Providers by any person expressly entitled to make a claim under a Provider insurance policy; or
- (ii) a claim against the Providers under any right expressly conferred by their constitution.

Program means the Australia-wide bike education program known as "AusBike" developed by AusCycling and administered by the Providers.

COVID-19 means SARS-CoV-2 (severe acute respiratory syndrome coronavirus 2), coronavirus disease 2019 or COVID-19, including any future resurgence or evolutions or mutations thereof or any related or associated epidemic, pandemic or disease outbreak.

Relevant Activities means performing or participating in any capacity, in any authorised or recognised Relevant Activities, including but not limited to participating in the Program and otherwise participating in cycling drills or training and other related activities, as administered by the Providers.

Participant means You (or, if the participant is under the age of 18, Your child) who wishes to participate in the Program.

Providers means jointly and severally the following providers:

- (i) AusCycling; and
- (ii) The trustee for Belgravia Leisure Unit Trust trading as Belgravia Leisure (ABN 18 118 940 063); and
- (iii) each of their applicable directors, officers, members, servants or agents.

You/Your/Yourself means the Participant, or if the Participant is under the age of 18 years, each of the Participant and their parent or legal guardian.

(b) Agreement: Your participation in the Relevant Activities is conditional on You checking the box below acknowledging that You make the declaration contained in this document. You acknowledge and agree to these terms and conditions and

confirm the acknowledgements made by You, and will carry out Your obligations under these terms and conditions.

(c) Participant Acknowledgements:

You undertake, acknowledge and agree that You:

- (i) will, at Your own cost, travel to and depart from the Program upon the dates and in the manner determined by the Providers;
- (ii) will conduct Yourself in a proper manner to the absolute satisfaction of the Providers;
- (iii) will be subject to, observe and comply with, the policies, procedures and jurisdiction of the Providers, including these terms and conditions;
- (iv) have chosen to travel to and participate in the Program and the Providers have not mandated You to do so; and
- (v) will adhere to any public health and other COVID-19 directions or restrictions imposed by the Providers, the Australian government, or a State/Territory government at all times for the period of the Program.

(d) Instructions: You agree that the Participant must at all times comply with the instructions and safety procedures of the Providers and each of their authorised representatives.

(e) Risk Warning: Your participation in the Relevant Activities is inherently dangerous and may involve risk. There are risks specifically associated with participation in the Relevant Activities and accidents can and often do happen which may result in personal injury, death or property damage. These risks include, but are not limited to, falling on the ground, being hit by a bike, colliding with another cyclist or other person, crashing into or making contact with a physical structure or piece of equipment in or around the Program area, slipping or falling as a result of uneven or slippery surfaces, exposure to an outdoor environment and uncontrolled forces of nature. Prior to undertaking the Relevant Activities, You should ensure You are aware of all of the risks involved, including those risks associated with any health condition You may have. By accepting these terms and conditions, You acknowledge, agree, and understand that participation in the Relevant Activities provided by the Providers may involve risk. You agree and undertake any such risk voluntarily and at Your own risk. You acknowledge that the assumption of risk and warning above constitutes a 'risk warning' provided by the Providers in accordance with and for the purposes of the relevant legislation.

(f) Waiver: A supplier of recreational services or recreational activities can ask You to agree that statutory guarantees under the Australian Consumer Law (which is Schedule 2 to the Competition and Consumer Act 2010 (Cth)) do not apply to You (or a person for whom or on whose behalf You are acquiring the services or activities, or to whom the services or activities are supplied).

If You accept these terms conditions, You will be agreeing that Your rights (or the rights of a person for whom or on whose behalf You are acquiring the services, or to whom the services are supplied) to sue the supplier because the services or recreational activities provided were not in accordance with the guarantees, are excluded, restricted or modified as set out below.

(g) For recreational services or recreational activities to which the Australian Consumer Law (Commonwealth) applies: By accepting these terms and conditions, You agree that the liability of the Providers in relation to recreational services (as that term is defined in the Competition and Consumer Act 2010 (Cth)) for any:

- (i) death;
- (ii) physical or mental injury (including the aggravation, acceleration or recurrence of such an injury);
- (iii) the contraction, aggravation or acceleration of a disease;
- (iv) 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:
 - (A) that is or may be harmful or disadvantageous to You or the community;
 - (B) that may result in harm or disadvantage to You or the community, that may be suffered by You (or a person for whom or on whose behalf You are acquiring the services) resulting from the supply of recreational services or recreational activities,

is excluded and the application of any express or implied term or any guarantee under the Australian Consumer Law that any services will be provided with due care and skill is hereby excluded.

(h) Physical Fitness: You declare and warrant that the Participant is medically and physically fit and able to undertake and participate in the Program and the Participant is not a danger to themselves or to the health and safety of others. You acknowledge that You must, and You agree that You will, disclose any pre-existing medical or other condition that may affect the risk that the Participant will suffer injury, loss or damage. You acknowledge that the Providers rely on information provided by You and that all such information is accurate and complete.

(i) Consent to Medical Treatment: If the Participant suffers any injury or illness, You agree that the Providers may provide evacuation, first aid and/or medical treatment (including ambulance transportation) for the Participant at Your expense and that Your acceptance of these terms and conditions constitutes Your consent to such evacuation, first aid and/or medical treatment. You agree to reimburse the Providers for any cost or expenses incurred in providing such medical treatment. You authorise and consent to any treatment of the Participant deemed necessary being taken by the Providers.

(j) Release & Indemnity: In consideration of the Providers permitting the Participant to attend the Program, You, to the extent permitted by law:

- (i) release and forever discharge the Providers from all Claims that You may have or may have had but for this release, but only where such Claims result from Your death or personal injury, arising from or in connection with the Participant undertaking the Relevant Activities, whether caused by the negligence or breach of contract by the Providers or in any other manner whatsoever; and

- (ii) release and indemnify the Providers against any Claim which may be made by You or on Your behalf for or in respect of or arising out of Your death or personal injury whether caused by:
 - (A) the negligence or breach of contract by the Providers or in any other manner whatsoever; or
 - (B) any breach by You of the warranties given in clauses 1(l)1(l)(i)-1(l)(iv),

save that the above releases and indemnities shall not apply to the extent that the loss, damage or injury that is the subject of the Claim is caused or contributed to by the grossly negligent act or omission of the Providers.

Release and Indemnity: In consideration of the Providers permitting the Participant to attend the Program, You, to the extent permitted by law, release and forever discharge, and indemnify and will keep indemnified and hold harmless the Providers in respect of any Claim by any person:

- (i) arising as a result of or in connection with the Participant attending or participating in the Program or undertaking the Relevant Activities, whether caused by the negligence or breach of contract by the Providers or in any other manner whatsoever; and
- (ii) against the Providers in respect of any injury, loss or damage arising out of or in connection with your failure to comply with the Providers' rules and/or directions or with any applicable public health or other COVID-19 directions or restrictions imposed by the Providers, the Australian government or a State/Territory government or other relevant health authority, including at the place of the Program, whether caused by the negligence or breach of contract by the Providers or in any other manner whatsoever;
- (iii) arising out of or connected with any breach by you of the warranties given in clause 1(l)1(l)(i)-1(l)(iv),

save that the above releases and indemnities shall not apply to the extent that the loss, damage or injury that is the subject of the Claim is caused or contributed to by the grossly negligent act or omission of the Providers.

- (k) **Insurance:** I understand that AusCycling through a National Insurance Scheme (**NIS**) has arranged some limited insurance coverage which may provide me with some protection for injury and loss that I may suffer during my participation in the Program or while undertaking the Relevant Activities. A summary of this cover can be found on the AusCycling website. In relation to the limited insurance arranged by AusCycling through the NIS, I acknowledge, understand and accept as follows: (a) that insurance taken out by AusCycling may not provide me with full indemnity for loss, damage or injury that I may suffer during my participation in the Program or while undertaking the Relevant Activities, and that I may have to pay the excess if a claim is made on my behalf; (b) my own insurance arrangements are ultimately my responsibility and I will arrange any additional coverage (including but not limited to specific personal accident coverage and/or bike insurance coverage) at my own expense after considering AusCycling's insurance arrangements and my own circumstances; and (c). AusCycling may renew, vary or update its insurance policy and/or insurance provider during the period of my membership, participation in the Program and/or undertaking the Relevant Activities and that AusCycling reserves the right to amend, increase or decrease the level of benefits payable at any time and in its sole discretion.

(l) Disclosure of Medical Conditions: You warrant that the Participant:

- (i) is and must continue to be medically and physically fit and able to undertake and participate in the Relevant Activities;
- (ii) is not a danger to themselves or to the health and safety of others;
- (iii) has not at any time suffered any blackout, seizure, convulsion, fainting or dizzy spells; and
- (iv) is not presently receiving treatment for any condition, illness, disorder or injury which would render it unsafe for them to take part in the Relevant Activities.

You acknowledge that You must and will disclose any pre-existing medical or other condition that may affect the risk that either the Participant or any other person will suffer injury, loss or damage. You acknowledge that the Providers rely on information provided by the Participant and that all such information is accurate and complete. You must inform the Providers if any such medical or other condition arises after You agree to these terms and conditions and prior to undertaking the Relevant Activities. You agree to report any accidents, injuries, loss or damage the Participant suffers during any Relevant Activities to the Providers before the Participant leaves any relevant venue. You acknowledge that if any of the warranties You make under this clause 1(l), including those in subclauses (i)-(iv), can no longer be made by You on the date You undertake the Relevant Activities, You must inform the Providers on arrival and before the Participant participates in any Relevant Activities.

(m) Safety: You understand and acknowledge the dangers associated with the consumption of alcohol or any mind-altering substance before or during the Participant's involvement in the Relevant Activities, and You accept full responsibility for injury, loss or damage associated with the consumption of alcohol or any other mind-altering substance. You agree that the Participant will follow any rules set by the Providers in connection with any Relevant Activities. If the Participant fails to comply with the Provider's rules and/or directions, the Participant will not be permitted to participate or to continue to participate in the Relevant Activities.

(n) Relevant Activities done at the Participant's own Risk: The Participant undertaking the Relevant Activities may only occur on the distinct understanding that they do so entirely at Your own and their own risk.

(o) Bar to proceedings: The Providers may plead this contract as a bar to proceedings now or in the future commenced by or on behalf of You or by any person claiming through You. Where You seek to commence proceedings against the Providers, You:

- (i) will commence those proceedings in the courts of Victoria;
- (ii) waive any right to object to the exercise of such jurisdiction;
- (iii) will, where You seek to commence proceedings in another jurisdiction other than Victoria, consent (if required by the Providers) to move those proceedings to Victoria including consenting to any application made by the Providers or any of them to remove the proceedings to Victoria;

- (iv) will pay the costs of any application made by the Providers or any of them under paragraph (iii) and will consent to any application for security of costs made at any time by the Providers; and
 - (v) consent to paying the Providers legal defence costs of the proceedings (on a solicitor client basis) where the Providers successfully defend the proceedings.
- (p) Privacy:** You understand that the personal information You have provided in the form to which these terms and conditions apply is necessary for the conduct, management and operation of the Program and Relevant Activities and that it is collected in accordance with the Belgravia Leisure Privacy Policy (available from [[Privacy Policy \(belgravialeisure.com.au\)](http://belgravialeisure.com.au)]). You acknowledge that the Providers may use or disclose Your personal information for the purposes of facilitating the Program or conducting the Relevant Activities, or providing You with information and promotional material or otherwise in accordance with Belgravia Leisure's Privacy Policy. The Providers may share Your personal information with third parties such as sponsors, Program partners and registration software providers to carry out functions and activities on their behalf; however the personal information is not generally disclosed to anyone outside Australia. You understand that the Belgravia Leisure Privacy Policy contains information about how You may access and request correction of Your personal information held by Belgravia Leisure or make a complaint about the handling of the Participant's personal information and provides information about how a complaint will be dealt with. You acknowledge that the Participant being permitted to attend the Program and/or participate in the Relevant Activities may be revoked if the information is not provided. If You do not wish to receive material from the Providers and third parties, You must advise Belgravia Leisure in writing or via the opt-out procedures provided in the relevant communication.
- (q) Entire Agreement:** These terms and conditions constitute the entire agreement between the parties in respect to the Program and Relevant Activities and supersede all other agreements, understandings and representations and negotiations with the Providers in relation to the Program and Relevant Activities. To the extent that any clause of these terms and conditions is void or unenforceable it is severable and does not affect the remaining provisions of these terms and conditions.
- (r) Governing Law:** The governing law of these terms and conditions is the law of the State of Victoria and You submit to the exclusive jurisdiction of the courts of Victoria.
- (s) Statement of Understanding:** You have read, or have had read to You the above terms and conditions and having understood the same, You consent to the activities proposed.

PLEASE NOTE THE FOLLOWING:

If the *Competition and Consumer Act 2010* or similar State laws operates so as to prevent the exclusion, restriction or modification of warranties otherwise implied by those laws, or the liability of the Providers for failing to comply with a statutory guarantee under the *Australian Consumer Law* that services will be provided with due care and skill, then the liability of the Providers for breach of the warranties or for the failure to comply is limited to:

- (i) the re-supply of the Relevant Activities and related activities; or

- (ii) the payment of the cost of having the Relevant Activities and related activities supplied again.

DECLARATION

By checking the box below, I acknowledge that I have read, understood, acknowledge and agree to the above including the exclusion of implied terms, the exclusion of the operation of the Australian Consumer Law, the exclusion of liability in respect of the Relevant Activities, the risk warning, assumption of risk, release and indemnity:

***Where the applicant is under 18 years of age, this declaration must also be accepted by the Participant's parent or legal guardian:

I am the parent or guardian of the Participant. I authorise and consent to the Participant undertaking the Relevant Activities. In consideration of the Participant participating in the Relevant Activities, I expressly agree to be responsible for the Participant's behaviour and agree to accept in my capacity as parent or guardian, the terms set out in these terms and conditions and declaration. In addition, I agree to be bound by and to comply with the AusCycling Constitution and any rules, policies and procedures of the Providers, and I have read, understood, acknowledge and agree to the above including the exclusion of implied terms, the exclusion of the operation of the Australian Consumer Law, the exclusion of liability in respect of the Relevant Activities, the risk warning, assumption of risk, release and indemnity.

NOTES: This form is necessary for attendance and participation in the Program. Following the submission of this form, participation of the Participant will be confirmed for the Program.

SCHEDULE 1

EXCLUSION OF LIABILITY AND EXPRESS AND IMPLIED CONSUMER LAW TERMS

- (a) ***For recreational services or recreational activities to which the Australian Consumer Law (New South Wales) applies:*** By accepting these terms and conditions, You agree that the liability of the Providers 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)*) for any:

- (i) death;
- (ii) physical or mental injury (including the aggravation, acceleration or recurrence of such an injury);
- (iii) the contraction, aggravation or acceleration of a disease;
- (iv) 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:
 - (A) that is or may be harmful or disadvantageous to the Participant or the community;
 - (B) that may result in harm or disadvantage to the Participant or the community, that may be suffered by the Participant (or a person for whom or on whose behalf the Participant is acquiring the services) resulting from the supply of recreational services or recreational activities,

is excluded and the application of any express or implied term or any guarantee under the *Australian Consumer Law* that any services will be provided with due care and skill is hereby excluded.

- (b) ***For recreational services to which the Australian Consumer Law (Queensland) applies:*** By accepting these terms and conditions, You acknowledge that where the Participant is 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. You acknowledge that these implied terms and rights and any liability of the Providers flowing from them, are expressly excluded to the extent possible by law, by these terms and conditions. To the extent of any liability arising, the liability of the Providers will, at the discretion of the Providers, 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.
- (c) ***For recreational services to which the Australian Consumer Law (Northern Territory) applies:*** By accepting these terms and conditions, You agree that the provisions of Part 3.2, Division 1, sub-division B of the Australian Consumer Law (NT) do not apply to the services provided to the Participant, and the Providers incur 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 accepting these terms and conditions, You acknowledge that You 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.

- (d) ***For recreational services to which the Australian Consumer Law (Australian Capital Territory) applies:*** By accepting these terms and conditions, You acknowledge that where the Participant is 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. You acknowledge that these implied terms and rights and any liability of the Providers flowing from them, are expressly excluded to the extent possible by law, by these terms and conditions. To the extent of any liability arising, the liability of the Providers will, at the discretion of the Providers, 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.
- (e) ***For recreational services or recreational activities to which the Australian Consumer Law (Western Australia) applies:*** By accepting these terms and conditions, You agree that the liability of the Providers in relation to recreational services (as that term is defined in the *Competition and Consumer Act 2010 (Cth)* and recreational activities (as that term is defined in the *Civil Liability Act 2002 (WA)*) for any:
- (i) death;
 - (ii) physical or mental injury (including the aggravation, acceleration or recurrence of such an injury);
 - (iii) the contraction, aggravation or acceleration of a disease;
 - (iv) 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:
 - (A) that is or may be harmful or disadvantageous to the Participant or the community;
 - (B) that may result in harm or disadvantage to the Participant or the community, that may be suffered by the Participant (or a person for whom or on whose behalf the Participant is acquiring the services) resulting from the supply of recreational services or recreational activities;
- is excluded and the application of any express or implied term or any guarantee under the *Australian Consumer Law* that any services will be provided with due care and skill is hereby excluded.
- (f) ***For recreational services to which the Australian Consumer Law (Victoria) applies:*** Warning under the Australian Consumer Law and Fair Trading Act 2012: Under the Australian Consumer Law (Victoria), several statutory guarantees apply to the supply of certain goods and services. These guarantees mean that the supplier named on these terms and conditions, the

Providers, are required to ensure that the recreational services it supplies to the Participant:

- (i) are rendered with due care and skill; and
- (ii) are reasonably fit for any purpose which You either expressly or by implication, make known to the supplier; and
- (iii) 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 the Participant. If You accept these terms and conditions, You will be agreeing that Your or the Participant's rights to sue the supplier under the *Australian Consumer Law and Fair Trading Act 2012* if the Participant is killed or injured because the services were not in accordance with these guarantees, are excluded, restricted or modified in the way set out in these terms and conditions.

Note: The change to Your or the Participant's rights, as set out in these terms and conditions, does not apply if the Participant's 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 accepting these terms and conditions, You agree that the liability of the Providers for any death or personal injury (as defined in the Australian Consumer Law and Fair Trading Act 2012) that may be suffered by the Participant (or a person from whom or on whose behalf the Participant is acquiring the services) resulting from the supply of recreational services is excluded.

- (g) ***For recreational services to which the Australian Consumer Law (Tasmania) applies:*** By accepting these terms and conditions, You acknowledge that where the Participant is 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. You acknowledge that these implied terms and rights and any liability of the Providers flowing from them, are expressly excluded to the extent possible by law, by these terms and conditions. To the extent of any liability arising, the liability of the Providers will, at the discretion of the Providers, 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.

- (h) ***For recreational services to which the Australian Consumer Law (South Australia) applies:***

Your rights: Under sections 60 and 61 of the Australian Consumer Law (SA), if a person in trade or commerce supplies the Participant with services including recreational services¹), there is:

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

- (ii) 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
- (iii) 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 accept these terms and conditions, 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 injury².

Important: You do not have to agree to exclude, restrict or modify Your rights by accepting these terms and conditions. The supplier may refuse to provide You or the Participant with the services if You do not agree to exclude, restrict or modify Your rights by accepting these terms and conditions. Even if You accept these terms and conditions, 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: You agree that the liability of the Provider for any personal injury that may result from the supply of the recreational services that may be suffered by You (or a person for whom or on whose behalf You are acquiring the services) is excluded.

Definitions:

- (i) Recreational services are services that consist of participation in -
 - (A) sporting activity or similar leisure-time pursuit; or
 - (B) any other activity that involves a significant degree of physical exertion or risk and is undertaken for the purposes of recreation, enjoyment or leisure.
- (ii) 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.