

UNISPORT AUSTRALIA (UNISPORT) Participation agreement

2019

This is an important document and you should read it carefully before agreeing to the following terms and conditions. Upon agreeing, you acknowledge that you have read and understand these terms and conditions.

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The following terms and conditions must be read carefully:

In consideration of your application for registration in the UniSport Activity being accepted you acknowledge and agree to the following terms and conditions:

1) **Definitions** – in these terms and conditions:

- a) "UniSport" means and includes UniSport Australia, its subsidiaries, members, and their respective directors, officers, members, servants or agents.
- b) "UniSport activity" means any authorised or recognised event or activity conducted by UniSport including, but not limited to, the UniSport Nationals and other events conducted by UniSport.
- c) "Claim" means and includes any action, suit, proceeding, claim, demand, damage, penalty, cost or expense however arising from or in connection with the UniSport activity, but does not include a claim against UniSport.
- d) by any person expressly entitled to make a claim under a UniSport insurance policy; or
- e) under any right expressly conferred by its constitution or regulations.
- f) "Educational Institution" means the educational institution at which you are a student and will be representing at the UniSport activity.
- g) "Organisers" means UniSport and the educational institution collectively.

2) If accepted you will be permitted by UniSport to participate in the UniSport activity subject to you complying with the terms and conditions of the UniSport activity and the terms and conditions of the relevant venue from which the UniSport activity is being conducted, these terms and conditions, UniSport's policies, including the UniSport Anti-Doping Policy, and your educational institution's policies which apply to participants in the relevant UniSport activity and any reasonable direction issued by the organisers or their representatives. A copy of each of these documents is available upon request from the organisers.

3) Upon acceptance of your application to participate in the UniSport activity, these terms and conditions and your registration application will constitute a contract

PRINCIPAL PARTNER

between you and UniSport. Accordingly, you agree to be bound by these terms and conditions and any regulations, policies or codes of UniSport which apply or relate to participants in the UniSport activity, including the UniSport Code of Behaviour and Anti-Doping Policy. Further, you agree that UniSport may report any behaviour by you which may be a breach of the UniSport Code of Behaviour to your educational Institution. You agree to submit to any disciplinary measures taken against you by the educational institution for an alleged breach of the UniSport Code of Behaviour or Anti-Doping Policy and shall only appeal any disciplinary decision in the manner permitted under the educational institution's rules and regulations. This may include the Educational Institution's Code of Behaviour, Code of Conduct or similar policies, as well as any applicable disciplinary regulations. You agree that UniSport may initiate disciplinary proceedings against you for an alleged breach of the UniSport Code of Behaviour or Anti-Doping Policy under UniSport' rules and regulations, regardless of whether your educational Institution proceeds with its own disciplinary proceedings against you. You agree and acknowledge that upon acceptance of your application you will be bound by the policies of both UniSport and the educational institution in relation to the UniSport activity, including those outlined in paragraph two and three of these terms and conditions. By submitting this application, you declare that you have not engaged in doping and that you are not currently subject to any sanctions for being in breach of any applicable anti-doping rules.

- 4) **Risk Warning:** your participation in the UniSport activity supplied by the organisers is inherently dangerous and may involve risk. There are risks specifically associated with participation in the UniSport activity and accidents can and often do happen which may result in personal injury, death or property damage. Prior to participating in the UniSport activity, you should ensure that you are aware of all of the risks involved, including those risks associated with any health condition you may have. By agreeing to these terms and conditions, you acknowledge, agree, and understand that participation in the UniSport activity 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' in accordance with relevant legislation, including the Civil Liability Act 2002 (NSW), Civil Liability Act 2002 (WA) and Civil Liability Act 2002 (Tas).

- 5) **Waiver:** It is possible for a supplier of recreational services or recreational activities to 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). By agreeing to these terms and 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) to sue the supplier in relation to recreational services or recreational activities that you undertake because the services or recreational activities provided were not in accordance with the guarantees are excluded, restricted or modified as set out below and in Schedule 1 to these terms and conditions.

- 6) **Release & Indemnity:** in consideration of UniSport accepting your application to participate in the UniSport activity, to the extent permitted by law you:
- a) release and forever discharge UniSport from all claims that you may have or may have had but for this release arising from or in connection with this application and/or undertaking the UniSport activity; and
 - b) release and indemnify UniSport against any claim which may be made by you or on your behalf for or in respect of or arising out of your death whether caused by the negligence or breach of contract by UniSport or in any other manner whatsoever; and
 - c) indemnify and will keep indemnified and hold harmless UniSport to the extent permitted by law in respect of any claim by any person:
 - i. arising as a result of or in connection with you undertaking the UniSport activity; and
 - ii. against UniSport in respect of any injury, loss or damage arising out of or in connection with your failure to comply with the rules or directions of UniSport (or any authorised person), 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 UniSport.
- 7) **Insurance:** you acknowledge and agree that whilst UniSport maintain public liability, product liability and professional indemnity insurance cover it does not maintain any personal accident insurance. Accordingly, UniSport does not provide any insurance in relation to loss, damage or injury that you suffer during your participation in the UniSport activity. You agree that your own insurance arrangements are ultimately your responsibility and you will arrange any insurance coverage at your expense after taking into account UniSport's insurance arrangements and your own circumstances.
- 8) **Disclosure of medical conditions –** You warrant that prior to participating in the UniSport activity you:
- a) are and must continue to be medically and physically fit and able to undertake and participate in the UniSport activity;
 - b) are not a danger to yourself or to the health and safety of others;
 - c) have not at any time suffered any blackout, seizure, convulsion, fainting or dizzy spells; and
 - d) are not presently receiving treatment for any condition, illness, disorder or injury which would render it unsafe for you to take part in the UniSport activity.
- 9) You acknowledge that you must, and you agree that you will, disclose to UniSport any pre-existing medical or other condition that may affect the risk that either you or any other person will suffer injury, loss or damage. You acknowledge that UniSport relies on information provided by you and that all such information is

accurate and complete. You agree to report any accidents, injuries, loss or damage you suffer during the UniSport activity to UniSport before you leave any relevant venue. You consent to receiving any medical treatment that UniSport or its authorised representatives consider necessary or desirable during or after the UniSport activity and agree to reimburse UniSport for any costs or expenses incurred in providing such medical treatment.

- 10) **Safety:** you understand and acknowledge the dangers associated with the consumption of alcohol or any mind-altering substance before or during your involvement in the UniSport activity, and you accept full responsibility for any injury, loss or damage associated with the consumption of alcohol or any other mind-altering substance. You agree to follow any rules set by the organisers in connection with the UniSport activity. If you fail to comply with the rules and/or directions of UniSport, you will not be permitted to participate or to continue to participate in the UniSport activity and no refund will be given.

- 11) **Bar to proceedings:** UniSport 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 UniSport, you:
 - a) will commence those proceedings in the courts of the jurisdiction in which any incident occurs;
 - b) waive any right to object to the exercise of such jurisdiction;
 - c) will, where you seek to commence proceedings in another jurisdiction from where any incident occurs, consent (if required by UniSport) to move those proceedings to the jurisdiction in which any incident occurs including consenting to any application made by UniSport to remove the proceedings to the jurisdiction in which any incident occurs;
 - d) will pay the costs of any application made by UniSport under paragraph 12(c) and will consent to any application for security of costs made at any time by UniSport; and
 - e) consent to paying UniSport ' legal defence costs of the proceedings (on a solicitor client basis) where UniSport successfully defends the proceedings.

- 12) **Governing Law:** the governing law of this agreement is the law of the state of Queensland ('Jurisdiction'). You irrevocably and unconditionally consent and submit to the jurisdiction of the courts of the jurisdiction in which any incident occurs and waive any right to object to the exercise of such jurisdiction.

- 13) **Prevailing conditions:** you acknowledge and agree that:
 - a) the various physical and recreational activities offered as part of the UniSport activity, when conducted in the open environment can and will be affected by the weather which may change without warning; and

- b) there is often an element of the "luck of the prevailing conditions" when undertaking the certain elements of the UniSport activity over which UniSport has no control.

You accept that in the event of extreme weather conditions UniSport reserves the right to alter the format of, shorten, or cancel the UniSport activity in the interest of participant safety.

- 14) **Use of Image:** You acknowledge and consent to photographs and electronic images being taken of you during the UniSport activity. You acknowledge and agree that such photographs and electronic images are owned by UniSport and UniSport may use the photographs for promotional or other purposes without your further consent being necessary. Further, you consent to UniSport using your name, image, likeness and participation in the UniSport activity, at any time, by any form of media, to promote UniSport.
- 15) **Privacy:** you understand that the personal information you have provided in this application is necessary for the conduct and management of the UniSport activity and other related activities, and that it is collected in accordance with UniSport' privacy policy (available from www.unisport.com.au). You acknowledge that UniSport may use or disclose your personal information for the purposes of conducting and administrating the UniSport activity or promotional material, referring disciplinary matters to your educational institution in accordance with these terms and conditions, liaising with third-party photographers for the purpose of contacting you to promote photographs from the UniSport activity or otherwise in accordance with UniSport' privacy policy. UniSport may share your information with third parties such as: your educational institution, affiliates; UniSport activity providers; companies engaged by UniSport to carry out functions and activities on UniSport's behalf including UniSport activity photography, direct marketing; and UniSport' professional advisers, including its accountants, auditors and lawyers and insurers; and government departments or agencies; however your information is not generally disclosed to anyone outside Australia. You acknowledge that third-party photographers may contact you via email to alert you when photos regarding the UniSport activity are available on that party's website. You understand that you may access and request correction of your personal information held by UniSport or make a complaint about the handling of your personal information, by contacting UniSport. You acknowledge that your UniSport activity application may be rejected if the information is not provided. If you do not wish to receive promotional material from UniSport' sponsors and third parties you must advise UniSport in writing.
- 16) **Entire agreement:** this agreement (and the documents to which it refers) constitutes the entire agreement between you and UniSport in respect to the UniSport activity and supersedes all other agreements, understandings and representations and negotiations with UniSport in relation to the UniSport activity. To the extent that any clause of this agreement is void or unenforceable it is severable and does not affect the remaining provisions of the agreement.

Please note the following:

If the Competition and Consumer Act 2010 or similar state laws operate so as to prevent the exclusion, restriction or modification of warranties otherwise implied by those laws then the liability of UniSport for breach of warranties is limited to the:

- i. re-supply of the UniSport activity and related activities; or
- ii. payment of the cost of having the UniSport activity or related activities supplied again.

Declaration

In order to proceed, I must have read and agreed to these terms and conditions. By checking the box below, I declare that I have read, understood, acknowledge and agree to these terms and conditions including the exclusion of implied terms, warning, assumption of risk, release and indemnity. I agree that if my application is accepted I will be bound by these terms and conditions.

**TICK HERE TO ACCEPT THESE TERMS AND
CONDITIONS**

Schedule 1 - waiver

For recreational services or activities provided throughout Australia:

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

By agreeing to these terms and conditions, you agree that the liability of UniSport in relation to recreational services (as that term is defined in the Competition and Consumer Act 2010 (Cth) and the Australian Consumer Law) 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:
 - i. that is or may be harmful or disadvantageous to me or the community;
 - ii. 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 Australian Consumer Law (New South Wales) and Australian Consumer Law (Western Australia), applies:

By agreeing to these terms and conditions, you agree that the liability of UniSport 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:
 - i. that is or may be harmful or disadvantageous to me or the community;

- ii. 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 Victoria:

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 suppliers named on this form, UniSport, 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 agree to these terms and conditions, 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 agreeing to these terms and conditions, you agree that the liability of UniSport 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 Australian Consumer Law (Australian Capital Territory), Australian Consumer Law (Queensland) or Australian Consumer Law (Tasmania) applies:

By agreeing to these terms and conditions, you acknowledge that where you are 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 UniSport 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 UniSport will, at the discretion of UniSport, 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 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 you with services including recreational services¹), 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 agree to 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 injury.²

Important: You do not have to agree to exclude, restrict or modify your rights by agreeing to these terms and conditions. The supplier may refuse to provide you with the services if you do not agree to exclude, restrict or modify your rights by agreeing to these terms and conditions. Even if you agree to 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 UniSport 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:

- 1) 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.
- 2) 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

For recreational services or activities provided in Northern Territory:

For recreational services to which the Australian Consumer Law (Northern Territory) applies:

By agreeing to 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 you, and UniSport 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 agreeing to 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.