



**SURF LIFE SAVING AUSTRALIA LTD**  
**2017 AUSSIE OCEAN SWIM PARTICIPANT DECLARATION AND TERMS AND CONDITIONS**

In consideration of, and as a condition of acceptance of my entry into the 2017 Aussie Ocean Swim (**Event**), I acknowledge and agree as follows (note that for competitors under the age of 18, a parent or guardian must also acknowledge and agree to as follows):

**Definitions**

1. In this Event entry declaration:
  - a. "**Claim**" means and includes any action, suit, proceeding, claim, demand, damage, penalty, cost or expense however arising including but not limited to negligence, but does not include:
    - i. a claim against SLSA by any person expressly entitled to make a claim under an SLSA insurance policy; or
    - ii. a claim against SLSA under any right expressly conferred by its Constitution or regulations.
  - b. "**SLSA**" means Surf Life Saving Australia Limited ACN 003 147 180.
  - c. "**SLSA Organisation**" means and includes SLSA and any other person involved in the organisation, conduct or staging of the Event, whether on behalf of SLSA or otherwise and where the context so permits, their respective directors, officers, members, servants or agents.

**Rules of participation**

2. Entrants agree and acknowledge as follows:
  - a. Entrants into the Event can be either current members of SLSA or members of the general public;
  - b. Entrants must be a minimum of 15 years of age as of September 30 2016 to be eligible to compete in the Event.
  - c. All entrants who are entering in the Event enter of their own accord however must follow the Swimmer Information and Participant Declaration (as determined by SLSA prior to the event and placed on the SLSA website: [www.sls.com.au/aussieoceanswim](http://www.sls.com.au/aussieoceanswim) (**Event Rules**) and any and all directions from the Race Director and Race Officials (given in a pre-race briefing or otherwise) including but not limited to those pertaining to the course and any changes that may occur on the day due to conditions;
  - d. The age that entrants are or are turning on race day determines the category they are eligible to compete in;
  - e. It is compulsory for each entrant to wear a fluoro coloured swim cap during the event which will be provided with their competitor pack;
  - f. All competitor briefings are compulsory and each entrant must collect their timing bracelet before the start of the swim to be eligible to participate;
3. The Event Rules, this Event Entry declaration and any other terms and conditions of entry comprise a contract between me and SLSA which is necessary and reasonable for promoting and conducting the Event.
4. I acknowledge my application to enter the Event will be accepted upon notification to me by reply email and confirmation of payment via SLSA Payment Gateway. I acknowledge that I will be bound by and agree to comply with such rules, terms and conditions as may be imposed by SLSA (or its agents) with respect to the conduct and management of the Event, including but not limited to Event Rules and all relevant rules, regulations, policies and codes of conduct of SLSA, as amended from time to time. I agree that I will be subject to, and submit unreservedly to, the jurisdiction, procedures, penalties and any appeal mechanisms of SLSA.
5. I agree to follow any rules and/or directions set by SLSA (or its agents) in connection with the Event and understand that if I fail to comply with any such rules or directions I will not be permitted to participate or to continue to participate in the Event and no refund will be given. Further, in circumstances where I have not completed the course in the nominated Event time limit, I agree to leave the water when asked to do so by the officials or their representatives conducting the Event.



6. I acknowledge and agree that:
  - a. I have sole responsibility for my personal possessions and swimming equipment during the Event;
  - b. in the event of a cancellation of the Event due to a storm, rain, inclement weather, winds or other “acts of God”, my entry fee for the Event is non-refundable;
  - c. where the Event is cancelled, SLSA has the right to reschedule the Event to another day of their choosing.

#### **Risk Warning**

7. My participation in the recreational activities supplied by SLSA is inherently dangerous and may involve risk. There are risks specifically associated with participation in the recreational activities and accidents can and often do happen, including but not limited to being dumped by the surf, ingestion of water, exposure to the natural marine environment including ocean predators and hypothermia which may result in personal injury, death or property damage. Prior to undertaking any such recreational activity, I should ensure I am aware of all of the risks involved, including those risks associated with any health condition I may have.
8. By agreeing to these terms and conditions, I acknowledge, agree, and understand that participation in the recreational services provided by the SLSA Organisations may involve risk. I agree and undertake any such risk voluntarily and at my own risk. I acknowledge that the assumption of risk and warning above constitutes a 'risk warning' in accordance with relevant legislation.

#### **Waiver**

9. It is possible for a supplier of recreational services or recreational activities to ask me to agree that statutory guarantees under the Australian Consumer Law (which is set out at Schedule 2 to the *Competition and Consumer Act 2010 (Cth)*) do not apply to me (or a person for whom or on whose behalf I am acquiring the services or activities).
10. By agreeing to these terms and conditions, I will be agreeing that my rights (or the rights of a person for whom or on whose behalf I am acquiring the services) to sue the supplier in relation to recreational services or recreational activities that I undertake because the services or recreational activities provided were not in accordance with the guarantees are excluded, restricted or modified as set out below.

#### **For recreational services or recreational activities to which the Australian Consumer Law (Commonwealth) applies:**

11. By agreeing to these terms and conditions, I agree that the liability of the SLSA Organisations 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; or
    - 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 to which the Australian Consumer Law (Queensland) applies:**

12. By agreeing to these terms and conditions, 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 SLSA Organisations flowing from them, are expressly excluded to the extent possible by law, by this form. To the extent of any liability arising, the liability of the SLSA Organisations will, at the discretion of the SLSA Organisations, 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.



### **Release and indemnity**

13. In consideration of SLSA accepting my entry into the Event, to the extent permitted by law, I:
- a. release and will release the SLSA Organisations from all Claims that I may have or may have had but for this release arising from or in connection with my participation in the Event; and
  - b. release and indemnify the SLSA Organisations against any Claim which may be made by me or on me behalf for or in respect of or arising out of my death whether caused by the negligence or breach of contract by the SLSA Organisations or in any other manner whatsoever; and
  - c. indemnify and will keep indemnified the SLSA Organisations to the extent permitted by law in respect of any Claim by any person:
    - i. arising as a result of or in connection with my participation in the Event;
    - ii. against the SLSA Organisations in respect of any injury, loss or damage arising out of or in connection with my failure to comply with the SLSA Organisation's rules and/or directions,
- 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 SLSA Organisations.

### **Bar to Proceedings**

14. I acknowledge that the SLSA Organisations may plead this contract as a bar to proceedings now or in the future commenced by or on my behalf or by any person claiming through me. Where I commence proceedings against any SLSA Organisation, I:
- 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 I seek to commence proceedings in another jurisdiction from where any incident occurs, consent (if required by any SLSA Organisation) to move those proceedings to the jurisdiction in which any incident occurs including consenting to any application made by any SLSA Organisation to move the proceedings to the jurisdiction in which any incident occurs;
  - d. will pay the costs of any application made by any SLSA Organisation under paragraph 13(c) and will consent to any application for security of costs made at any time by any SLSA Organisation; and
  - e. consent to paying any SLSA Organisations' legal defence costs of the proceedings (on a solicitor client basis) where any SLSA Organisation successfully defend the proceedings.

### **Insurance**

15. I acknowledge and agree that SLSA has arranged some limited insurance coverage for me whilst I am participating in the Event which may provide me with some protection for loss, damage or injury that I may suffer during my participation in the Event. However, I acknowledge and agree that the insurance taken out by SLSA may not provide full indemnity for loss, damage or injury that I may suffer during my participation in the Event and that I may have to pay the excess if a claim under the insurance is made on my behalf. I agree that my own insurance arrangements are ultimately my own responsibility and I will arrange any additional coverage at my expense after taking into account SLSA's insurance arrangements and my own circumstances.

### **Disclosure of Medical Conditions and Fitness to Participate**

16. I warrant that prior to participating in the Event I:
- a. am and must continue to be medically and physically fit and able to undertake and participate in the Event;
  - b. am not a danger to myself or to the health and safety of others;
  - c. I am not presently receiving treatment for any condition, illness, disorder or injury which would render it unsafe for me to take part in an ocean swim including participating in the Event.

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. I acknowledge that the SLSA Organisations rely on information provided by me and that all such information is accurate and complete. I will report any accidents, injuries, loss or damage I suffer during the Event to the relevant SLSA Organisations before I leave any relevant venue or race area.



### **Consent to Medical Treatment**

17. If I suffer any injury or illness, I agree that the SLSA Organisations may provide evacuation, first aid and/or medical treatment at my expense and that my acceptance of these terms and conditions constitutes my consent to such evacuation, first aid and/or medical treatment (and consent to payment of the associated cost). I agree to reimburse the relevant SLSA Organisation for any costs or expenses incurred in providing me with medical treatment.

### **Exclusion of Applicant**

18. I warrant that I have not at any time been excluded from SLSA Activities by a medical practitioner or any person or entity including but not limited to SLSA and its constituent members and affiliated clubs. I acknowledge and agree that the SLSA Organisations may demand a medical certificate or opinion as to my fitness from a qualified medical practitioner PRIOR to my participating in the Event.

### **Safety**

19. I understand and acknowledge the dangers associated with the consumption of alcohol or any mind-altering substance before or during my involvement in the Event, and I accept full responsibility for any injury, loss or damage associated with the consumption of alcohol or any other mind-altering substance.

### **Prevailing conditions**

20. I acknowledge and agree that:
- the Event can and will be affected by the weather which may change without warning; and
  - there is often an element of the "luck of the prevailing conditions" when undertaking the Event over which the SLSA Organisations have no control.
- I accept that in the event of extreme weather conditions the SLSA Organisations reserve the right to alter the format of, shorten, or cancel the Event in the interest of competitor safety.

### **Right to Use Image**

21. I acknowledge and consent to photographs, videos and electronic images being taken of me during my participation in the Event. I acknowledge and agree that such photographs, videos and electronic images are owned by SLSA and that SLSA may use the photographs for promotional or other purposes without my further consent being necessary. Further, I consent to the SLSA Organisations using my name, image, likeness and also my performance in the Event, at any time, by any form of media, to promote the Event and/or the SLSA Organisations.

### **Privacy**

22. I understand that the personal information I have provided in this Event entry is necessary for the conduct and management of the Event and other related activities, and that it is collected in accordance with SLSA's Privacy Policy (available from <http://sfs.com.au/content/privacy-policy>). I acknowledge that the SLSA Organisations may use or disclose my personal information for the purposes of conducting and administering the Event, providing me with member information or promotional material or otherwise in accordance with SLSA's Privacy Policy. SLSA may share my information with third parties such as affiliates and other organisations involved in the Event or other related activities in Australia; companies engaged by SLSA to carry out functions and activities on SLSA's behalf including direct marketing; SLSA's professional advisers, including SLSA's accountants, auditors, lawyers and insurers; however my information is not generally disclosed to anyone outside Australia. I understand that the SLSA Privacy Policy contains information about how I may access and request correction of my personal information held by SLSA or make a complaint about the handling of my personal information, and provides information about how a complaint will be dealt with by SLSA. I acknowledge that my Event entry application may be rejected if the information is not provided. If I do not wish to receive promotional material from SLSA sponsors and third parties I must advise Surf Life Saving Australia in writing by emailing [events@slsa.asn.au](mailto:events@slsa.asn.au). It is my responsibility to read and understand the Privacy Policy of SLSA. I understand that if I have any concern or complaint about the way SLSA handles my personal information, I must contact SLSA.

### **Non transferable**

23. Entries are non-transferable to other events or to other people. Any attempt to transfer my entry to another person without the knowledge of the SLSA Organisations may result in the cancellation of my entry without refund and I may not be permitted to participate in further events. I also accept that my entry fees are non-refundable.



### **Entire Agreement**

24. This agreement (and the documents to which it refers) constitutes the entire agreement between the parties in respect of the Event and supersedes all other agreements, understandings, representations and negotiations in relation to the Event.

### **Severance**

25. If any provision of this event entry application and declaration is invalid or unenforceable in any jurisdiction, the phrase or clause is to be read down for the purpose of that jurisdiction, if possible, so as to be valid and enforceable. If the phrase or clause cannot be so read down it will be severed to the extent of the invalidity or unenforceability. Such severance does not affect the remaining provisions of this application and declaration or affect the validity or enforceability of it in any other jurisdiction.

### **Governing Law**

26. The governing law of this agreement is the law of the state of New South Wales ('**Jurisdiction**'). I 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.

### **Warranty**

27. I warrant that all information provided is true and correct. I acknowledge this application and declaration cannot be amended. If I do amend it my application will be null and void and cannot be accepted by the SLSA Organisations.

**All competitors must agree to the above before being allowed to compete in the event. Completing an online entry form or via carnival manager confirms competitors have read the above declaration.**

I have read, understood, acknowledge and agree to the above terms including the risk warning, exclusion of implied terms, release and indemnity.

Where the applicant is under 18 years of age this declaration must also be agreed to by the applicant's parent or legal guardian:

I am the parent or guardian of the applicant. I authorise and consent to the applicant participating in the Event. In consideration of the applicant's entry being accepted, I expressly agree to be responsible for the applicant's behaviour and agree to accept in my capacity as parent or guardian, the terms set out in this entry application and declaration, including the risk warning, exclusion of implied terms and provision by me of a release and indemnity in the terms set out above.