

AUSTSWIM COURSE TERMS & CONDITIONS

THIS IS AN IMPORTANT DOCUMENT AND YOU SHOULD READ IT CAREFULLY BEFORE SIGNING IT. UPON SIGNING THIS FORM AND DECLARATION, YOU ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTAND THESE TERMS AND CONDITIONS.

In consideration of your application for enrolment in the AUSTSWIM Course being accepted you acknowledge and agree to the following terms and conditions:

1 DEFINITIONS – in these terms and conditions:

- “AUSTSWIM” means and includes AUSTSWIM Limited, its subsidiaries, members, and their respective directors, officers, members, servants or agents.
- “Claim” means and includes any action, suit, proceeding, claim, demand, damage, penalty, cost or expense however arising from or in connection with the AUSTSWIM Course, but does not include a claim by any person expressly entitled to make a claim under an AUSTSWIM insurance policy;
- “AUSTSWIM Course” means the course being conducted by or on behalf of AUSTSWIM and undertaken by the applicant as set out in this application.

2 If accepted you will be permitted to participate in the AUSTSWIM Course subject to you complying with the terms and conditions of the AUSTSWIM Course, this declaration, AUSTSWIM policies which apply to course candidates, the AUSTSWIM Administrative Procedures (to the extent relevant) and any reasonable direction issued by the AUSTSWIM Course organisers or their representatives. A copy of each of these documents is available upon request from AUSTSWIM.

3 Upon executing this contract you will be bound by it and any regulations, policies or codes which apply or relate to AUSTSWIM Course candidates. You shall submit to any disciplinary measures taken against you and shall only appeal any disciplinary decision in the manner permitted under AUSTSWIM’s rules and regulations.

4 **RISK WARNING AND WAIVER** – Your participation in the AUSTSWIM Course is inherently dangerous and may involve risk. There are risks specifically associated with participation in the AUSTSWIM Course and accidents can happen which may result in personal injury, death or property damage. Prior to participating in the AUSTSWIM Course, you should ensure you are aware of all of the risks involved, including those risks associated with any health condition you may have. By signing this declaration, you acknowledge, agree, and understand that participation in the AUSTSWIM Course may involve risk. You agree and undertake any such risk voluntarily and at your own risk.

5 **RELEASE & INDEMNITY** – In consideration of AUSTSWIM accepting your application to participate in the AUSTSWIM Course, to the extent permitted by law you:

- Release and forever discharge AUSTSWIM 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 AUSTSWIM Course; and
- Release and indemnify AUSTSWIM 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 AUSTSWIM or in any other manner whatsoever; and
- Indemnify and will keep indemnified and hold harmless AUSTSWIM to the extent permitted by law in respect of any Claim by any person:
 - Arising as a result of or in connection with you undertaking the AUSTSWIM Course; and
 - Against AUSTSWIM 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 AUSTSWIM (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 AUSTSWIM.

6 **INSURANCE** – You acknowledge and agree that AUSTSWIM has arranged some limited insurance coverage which may provide you with some protection for loss, damage or injury that you may cause during your participation in the AUSTSWIM Course. However, you acknowledge and agree that the insurance taken out by AUSTSWIM may not provide full indemnity for loss, damage or injury that you may cause during your participation in the AUSTSWIM Course, and that you may have to pay the excess if a Claim is made on your behalf. You further acknowledge and agree that AUSTSWIM does not provide any insurance in relation to loss, damage or injury that you suffer during your participation in the AUSTSWIM Course. You agree that your own insurance arrangements are ultimately your responsibility and you will arrange any additional coverage at your expense after taking into account AUSTSWIM’s insurance arrangements and your own circumstances.

7 **DISCLOSURE OF MEDICAL CONDITIONS** – You warrant that prior to participating in the AUSTSWIM Course you:

- Are and must continue to be medically and physically fit and able to undertake and participate in the AUSTSWIM Course;
- Are not a danger to yourself or to the health and safety of others; and
- Are not presently receiving treatment for any condition, illness, disorder or injury which would render it unsafe for you to take part in the AUSTSWIM Course.

8 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 either you or any other person will suffer injury, loss or damage. You acknowledge that AUSTSWIM 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 AUSTSWIM Course to AUSTSWIM before you leave any relevant venue. You consent to receiving any medical treatment that the AUSTSWIM Course organisers or their authorised representatives consider necessary or desirable during or after the AUSTSWIM Course and agree to reimburse AUSTSWIM for any costs or expenses incurred in providing such medical treatment.

9 **BAR TO PROCEEDINGS** – AUSTSWIM 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 AUSTSWIM, you:

- Will commence those proceedings in the courts of the jurisdiction in which any incident occurs;
- Waive any right to object to the exercise of such jurisdiction;
- Will, where you seek to commence proceedings in another jurisdiction from where any

incident occurs, consent (if required by AUSTSWIM) to move those proceedings to the jurisdiction in which any incident occurs including consenting to any application made by AUSTSWIM to remove the proceedings to the jurisdiction in which any incident occurs;

- Will pay the costs of any application made by AUSTSWIM under paragraph 9(c) and will consent to any application for security of costs made at any time by AUSTSWIM; and
- Consent to paying AUSTSWIM’s legal defence costs of the proceedings (on a solicitor client basis) where AUSTSWIM successfully defends the proceedings.

10 **GOVERNING LAW** – The governing law of this agreement is the law of the state of Victoria (‘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.

11 **PREVAILING CONDITIONS** – You acknowledge and agree that:

- Swimming and the teaching of swimming (and related water safety and aquatic skills) 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 certain elements of the AUSTSWIM Course over which AUSTSWIM has no control.

12 **USE OF IMAGE** – You acknowledge and consent to photographs and electronic images being taken of you during the AUSTSWIM Course. You acknowledge and agree that such photographs and electronic images are owned by AUSTSWIM and AUSTSWIM may use the photographs for promotional or other purposes without your further consent being necessary. Advise an AUSTSWIM representative if you do not agree to any such images being taken.

13 **PRIVACY** – Under the Data Provision Requirements 2012, AUSTSWIM is required to collect personal information about you and to disclose that personal information to the National Centre for Vocational Education Research Ltd (NCVER). Your personal information (including the personal information contained on this enrolment form and your training activity data) may be used or disclosed by AUSTSWIM for statistical, regulatory and research purposes. AUSTSWIM may disclose your personal information for these purposes to third parties, including: School, Employer, Commonwealth and State or Territory government departments and authorised agencies, NCVER, Organisations conducting student surveys and Researchers. Personal information disclosed to NCVER may be used or disclosed for the following purposes:

- Issuing statements of attainment or qualification, and populating authenticated VET transcripts;
- Facilitating statistics and research relating to education, including surveys;
- Understanding how the VET market operates, for policy, workforce planning and consumer information; and
- Administering VET, including programme administration, regulation, monitoring and evaluation.

You may receive an NCVER student survey which may be administered by an NCVER employee, agent or third party contractor. You may opt out of the survey at the time of being contacted. NCVER will collect, hold, use and disclose your personal information in accordance with the Privacy Act 1988 (Cth), the VET Data Policy and all NCVER policies and protocols (including those published on NCVER’s website at www.ncver.edu.au). You understand that the personal information you have provided in this application is necessary for the conduct and management of the AUSTSWIM Course and that it is collected, in accordance with AUSTSWIM’s Privacy Policy (available from austswim.com.au).

You acknowledge that AUSTSWIM may use or disclose your personal information for the purposes of conducting and administering the AUSTSWIM Course or promotional material or otherwise in accordance with AUSTSWIM’s Privacy Policy. AUSTSWIM may share your information with third parties such as: affiliates; AUSTSWIM Course providers; companies engaged by AUSTSWIM to carry out functions and activities on AUSTSWIM’s behalf including direct marketing; and AUSTSWIM’s 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 understand that AUSTSWIM’s Privacy Policy contains information about how you may access and request correction of your personal information held by AUSTSWIM or make a complaint about the handling of your personal information, and provides information about how a complaint will be dealt with by AUSTSWIM. You acknowledge that your AUSTSWIM Course application may be rejected if the information is not provided. If you do not wish to receive promotional material from AUSTSWIM’s sponsors and third parties you must advise AUSTSWIM in writing or via the opt-out procedures provided in the relevant communication.

- AUSTSWIM may collect information about race or ethnic origin and use or disclose such information to government departments or agencies (including those that have provided or will provide funding to AUSTSWIM) for statistical purposes about the demographics of participants in AUSTSWIM Courses. You are not required to provide this information and if you do not do so, your participation in an AUSTSWIM Course will not be affected.

14 **ENTIRE AGREEMENT** – This agreement (and the documents to which it refers) constitutes the entire agreement between the parties in respect to the AUSTSWIM Course and supersedes all other agreements, understandings and representations and negotiations with AUSTSWIM in relation to the AUSTSWIM Course. 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.

15 **STATEMENT OF UNDERSTANDING** – I have read, understood, acknowledge and agree to the above including the warning, assumption of risk, release and indemnity. I declare that the information I have provided to the best of my knowledge is true and correct. I consent to the collection, use and disclosure of my personal information in accordance with the Privacy notice. I understand and fully agree to all the training, assessments and additional requirements of the AUSTSWIM course as stated on the website. By enrolling in this course, I acknowledge that I am an Australian resident and do not hold a student visa. I have read, or have had read to me the above conditions and having understood the same, consent to undertaking the AUSTSWIM Course and doing so on the basis set out in the Terms and Conditions.