

## **SOCIAL 7s COMPETITION - PARTICIPANT APPLICATION AND DECLARATION**

THIS IS AN IMPORTANT DOCUMENT AND YOU SHOULD READ IT CAREFULLY BEFORE AGREEING TO THE FOLLOWING TERMS AND CONDITIONS. UPON AGREEING TO THE TERMS AND CONDITIONS CONTAINED IN THIS SOCIAL 7s COMPETITION APPLICATION AND DECLARATION, YOU ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTAND THESE TERMS AND CONDITIONS

You apply to participate in the Social 7s Competition. In consideration of this application being accepted, you acknowledge and agree to the terms and conditions below.

### **Definitions**

- 1) In this application and declaration:
  - (a) "**Associate Member**" has the same meaning as in the SA Constitution and where the context permits, the organisation through which you undertake the Social 7s Competition or the Softball Activities.
  - (b) "**Claim**" means and includes any action, suit, proceeding, claim, demand, damage, penalty, cost or expense however arising from or in connection with any Softball Activities, but does not include:
    - i. a claim against SA by any person expressly entitled to make a claim under a SA insurance policy; or
    - ii. a claim against SA under any right expressly conferred by its Constitution or regulations.
  - (c) "**Member State**" has the same meaning as in the SA Constitution and refers to the controlling body for softball in that State or Territory.
  - (d) "**SA**" means Softball Australia Limited (ABN 72 092 181 318).
  - (e) "**Social 7s Competition**" means the new version of softball developed by SA that provides for social mixed softball competition.
  - (f) "**Softball Activities**" means performing or participating in any capacity in any authorised or recognised Softball Organisation activity including but not limited to the Social 7s Competition.
  - (g) "**Softball Organisation**" means and includes SA, the Member States and Associate Members and where the context so permits, their respective directors, officers, members, servants or agents.

### **Rules of participation**

- 2) This declaration and any other terms and conditions for the Social 7s Competition comprise a contract between you and the Softball Organisations which is necessary and reasonable for promoting and conducting the Social 7s Competition. You acknowledge this application to participate in the Social 7s Competition will be accepted upon notification to you by the Softball Organisations and you acknowledge that you will be bound by and agree to comply with such rules, terms and conditions as may be imposed by the Softball Organisations with respect to the conduct and management of the Social 7s Competition, including but not limited to all relevant rules, regulations, policies and codes of conduct of the Softball Organisations, as amended from time to time. You understand that if you fail to comply with any such rules or directions you will not be permitted to participate or to continue to participate in Social 7s Competition and no refund will be given.

### **Risk Warning**

- 3) Participation in the recreational activities supplied by the Softball Organisations 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 which may result in personal injury, death or property damage. Prior to undertaking any such recreational activity, you should ensure you are aware of all of the risks involved, including those risks associated with any health condition you may have. By agreeing to this application and declaration, you acknowledge, agree, and understand that participation in the recreational services provided by the Softball Organisations 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).

### **Waiver**

- 4) 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). By agreeing to this application and declaration, 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 undertaken 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 this application and declaration.

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

- 5) By agreeing to this application and declaration, you agree that the liability of the Softball 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 you or the community; or
    - ii. 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 that any services will be provided with due care and skill is hereby excluded.

### **Release and indemnity**

- 6) In consideration of the relevant Softball Organisations accepting this application and declaration, to the extent permitted by law, you:
  - (a) release and will release the Softball Organisations from all Claims that you may have or may have had but for this release arising from or in connection with participation in the Social 7s Competition; and
  - (b) release and indemnify the Softball Organisations 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 any Softball Organisation or in any other manner whatsoever; and
  - (c) indemnify and will keep indemnified the Softball 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 your participation in any Softball Activities; or
    - ii. against any Softball Organisation in respect of any injury, loss or damage arising out of or in connection with your failure to comply with the Softball 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 a Softball Organisation.

### **Bar to Proceedings**

- 7) You acknowledge that the Softball Organisations 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 commence proceedings against any Softball Organisation, 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 any Softball Organisation) to move those proceedings to the jurisdiction in which any incident occurs including consenting to any application made by any Softball Organisation to remove the proceedings to the jurisdiction in which any incident occurs;
  - (d) will pay the costs of any application made by any Softball Organisation under paragraph ( 7)(c) and will consent to any application for security of costs made at any time by any Softball Organisation; and

- (e) consent to paying any Softball Organisations' legal defence costs of the proceedings (on a solicitor client basis) where any Softball Organisation successfully defends the proceedings.

**Insurance**

- 8) Insurance is in place that may provide you with limited cover whilst participating in the Social 7s Competition. You understand that this insurance may not cover you for all injury, loss or damage sustained and you acknowledge that the Softball Organisations do not make any representations about the suitability of any insurance. You also understand you can, in your own interests and at your own expense, seek and obtain personal insurances over and above any cover that may be provided by the Softball Organisations.

**Fitness to Participate**

- 9) You declare that you are medically and physically fit and able to participate in the Social 7s Competition and the Softball Activities. You are not and must not be a danger to yourself or to the health and safety of others. You will immediately notify the Softball Organisations in writing of any change to your medical condition, fitness and ability to participate. You understand and accept that the Softball Organisations will continue to rely upon this declaration as evidence of your fitness and ability to participate in the Social 7s Competition. You will report to the relevant Softball Organisations any accidents, injuries, loss or damage suffered by you during the Social 7s Competition before you leave any relevant venue.

**Medical Treatment**

- 10) You consent to receiving any medical treatment that a Softball Organisation reasonably considers necessary or desirable for you during participation in the Social 7s Competition, including evacuation. You agree that your acceptance of this application and declaration constitutes your consent to such evacuation or medical treatment. You also agree to reimburse the relevant Softball Organisation for any costs or expenses incurred in providing you with medical treatment.

**Exclusion of Applicant**

- 11) You warrant that you have not at any time been excluded from Softball Activities by a medical practitioner or any person or entity including but not limited to SA and its constituent Member States and Associate Members. You acknowledge and agree that the Softball Organisations may demand a medical certificate or opinion as to your fitness from a qualified medical practitioner PRIOR to you undertaking the Social 7s Competition.

**Safety**

- 12) You understand and acknowledge the dangers associated with the consumption of alcohol or any mind-altering substance before or during the Social 7s Competition or any Softball Activity, and you accept full responsibility for any injury, loss or damage associated with the consumption of alcohol or any other mind-altering substance.

**Prevailing conditions**

- 13) The Social 7s Competition and other Softball Activities and the conduct of, and participation in them may be affected by weather and associated conditions. Given there is often an element of "luck of the prevailing conditions" in participating in Softball Activities you acknowledge and agree organisers cannot control the weather and associated conditions. You accept that in the event of extreme weather conditions the Softball Organisation reserves the right to alter the format of, shorten, or cancel the Social 7s Competition or Softball Activities in the interest of participant safety. You acknowledge that the Softball Organisations will use all reasonable efforts to conduct the Social 7s Competition and any Softball Activities in the planned format if safe to do so. Should prevailing weather conditions force any change you accept that the Softball Organisation is not obliged to provide you with any refund, or provide a credit or transfer you to another Softball Activity, or to restage the Social 7s Competition or a Softball Activity, as weather and associated conditions are beyond the control of the Softball Organisations.

**Right to Use Image**

- 14) You acknowledge and consent to photographs and electronic images being taken of you during your participation in the Social 7s Competition or a Softball Activity. You acknowledge and agree that such photographs and electronic images are owned by the Softball Organisations and that the Softball Organisations may use the photographs for promotional or other purposes without your further consent being necessary. Further, you consent to the Softball Organisations using your name, image, likeness and performance in the Social 7s Competition or Softball Activities, at any time, by any form of media, to promote Softball Activities or Softball Organisations.

**Privacy**

- 15) You understand that your personal information provided in this application is collected, used and disclosed in accordance with the Privacy Policy of SA (available from [www.softball.org.au](http://www.softball.org.au)). You acknowledge that the your personal information may be used and disclosed by SA for the purposes of conducting and administering the Social 7s Competition, Softball Activities and other related activities across Australia, providing member services or promotional material, complying with legal obligations or otherwise in accordance with SA's Privacy Policy. SA may share that information with third parties such as other Softball Organisations however your personal information will not generally be disclosed to anyone outside Australia. You understand that SA's Privacy Policy contains information about how you may access and request correction of your personal information held by SA or make a complaint about the handling of your personal information, and provides information about how a complaint will be dealt with by SA. You acknowledge that this application may be rejected if the information is not provided. If you do not wish to receive promotional material from SA or a Softball Organisation or their sponsors and other third parties you must advise the relevant Softball Organisation in writing or via the opt-out procedures provided in the relevant communication.

**Non transferable**

- 16) A right to participate in the Social 7s Competition is non-transferable to other programs or to other people. Any attempt to transfer to another person without the knowledge of the Softball Organisation may result in the cancellation of any rights granted by the Softball Organisation without refund and you may not be permitted to participate in further Softball Activities or programs. You also accept that fees paid for participation in the Social 7s Competition may be non-refundable, at the discretion of the Softball Organisation and SA.

**Entire Agreement**

- 17) This application and declaration (and the documents to which it refers) constitutes the entire agreement between the parties in respect of the Social 7s Competition and supersedes all other agreements, understandings, representations and negotiations in relation to the Social 7s Competition.

**Severance**

- 18) If any provision of this 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**

- 19) The governing law of this agreement is the law of the state of Victoria. You irrevocably and unconditionally consent and submit to the jurisdiction of the courts of Victoria and waive any right to object to the exercise of such jurisdiction.

**Warranty**

- 20) You warrant that all information provided is true and correct. You acknowledge this application and declaration cannot be amended. If you do amend it this application may be null and void and cannot be accepted by the Softball Organisation.

In order to proceed, you must have read and agreed to the terms and conditions of this application and declaration. By checking the box below, you declare that you have read, understood, acknowledge and agree to the terms and conditions of this application and declaration including the exclusion of implied terms, warning, assumption of risk, release and indemnity. By checking the box below, you agree that if your application for the Social 7s Competition is accepted, you will be bound by these terms and conditions.

## SCHEDULE 1

### **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 the Softball Organisations 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 you or the community;
    - ii. 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 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, the Softball Organisations, 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 this application and declaration, you will be agreeing that your rights to sue the supplier under the *Australian Consumer Law and Fair Trading Act 2012* (Vic) 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 application and declaration.

**Note:** The change to your rights, as set out in this application and declaration, 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 this application and declaration, you agree that the liability of the relevant Softball Organisations for any death or personal injury (as defined in the *Australian Consumer Law and Fair Trading Act 2012* (Vic)) 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 the 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 signing this application and declaration, 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 the Softball Organisations flowing from them, are expressly excluded to the extent possible by law, by this application and declaration. To the extent of any liability arising, the liability of the relevant Softball Organisations will, at the discretion of SA, 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 services), there is a:

- (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 this application and declaration, 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 agreeing to this application and declaration. 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 this program application and declaration. Even if you agree to this program application and declaration, 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 Softball Organisations 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:**

- (a) 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.
- (b) 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 the Northern Territory:****For recreational services to which the Australian Consumer Law (Northern Territory) applies:**

By agreeing to this application and declaration, 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 the Softball Organisation(s) 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 this program application and declaration, 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.

**Where the applicant is under 18 years of age:**

You are the parent or guardian of the applicant. You authorise and consent to the applicant undertaking the Social 7s Competition. In consideration of the application being accepted, you expressly agree to be responsible for the applicant's behaviour and agree to accept in your capacity as parent or guardian, the terms set out in this application and declaration. You have read and understood this application and declaration and have fully explained to the applicant its terms and effect. The applicant has read this application and declaration and together with your explanation the applicant has, to the best of your belief, understood the terms and effect of the application and declaration. In addition, you agree to be bound by and to comply with the rules, regulations, policies and codes of SA and the relevant Softball Organisation conducting the Social 7s Competition.