

MEMBERSHIP APPLICATION FORM AND DECLARATION

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

In consideration of your application for membership being accepted you acknowledge and agree to the following terms and conditions:

Definitions

1. In these terms and conditions:
 - a. "**Affiliated Clubs**" has the same meaning as the KAL Constitution.
 - b. "**Claim**" means and includes any action, suit, proceeding, claim, demand, damage, penalty, cost or expense however arising from or in connection with any Kiteboarding Activities, but does not include:
 - i. a claim against KAL by any person expressly entitled to make a claim under a KAL insurance policy; or
 - ii. a claim against KAL under any right expressly conferred by its Constitution or regulations.
 - c. "**Event**" means a Kiteboarding event which you have entered in compete in.
 - d. "**Kiteboarding Activities**" means competing or participating in any capacity in any authorised or recognised KAL or Kiteboarding Organisation activity, including any Event.
 - e. "**KAL**" means Kiteboarding Australia Limited ABN 92 159 967 101.
 - f. "**Kiteboarding Organisation**" means and includes KAL and members recognized under the Constitution or regulations including State Association, Club and any Affiliated Member and where the context so permits, their respective directors, officers, members, servants or agents.

Risk Warning and Waiver

2. Your participation in the recreational activities supplied by the Kiteboarding 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.
3. By signing this form, you acknowledge, agree, and understand that participation in the recreational services provided by the Kiteboarding 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. 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).
5. If you sign this form, 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 in Schedule 1

Rules of membership and participation

6. Upon executing this form you will become a member of KAL and where deemed to be relevant and appropriate by KAL, an affiliated Kiteboarding association. You acknowledge, agree and consent to becoming a member of these Kiteboarding Organisations. Upon becoming a member of KAL and any other Kiteboarding Organisation, the relevant Kiteboarding Organisations' Constitutions will comprise a contract between you and the relevant Kiteboarding Organisation and you will be bound by it and any regulations or by-laws made under it. For the avoidance of doubt, this includes but is not limited to, being bound by the Yachting Australia Member Protection Policy (which the KAL Board has adopted and issued as being the member protection policy to bind and apply to KAL members). You shall submit to any disciplinary measures taken against you and shall take any appeals and litigation before the authorities provided for in the relevant

Constitutions and By-Laws. You will pay on demand the prescribed or stated fees for the Kiteboarding Activities and/or any relevant Kiteboarding Organisation. Such fees may be notified to you verbally or by letter or memorandum or by notice displayed in the relevant Kiteboarding Organisation's premises or premises occupied by the Kiteboarding Organisation.

Event Entries

7. Entries to Event are non-transferable to other events or to other people. Any attempt to transfer your entry to another person without the knowledge of the relevant Kiteboarding Organisation may result in the cancellation of your entry without refund and you may not be permitted to participate in further Kiteboarding Activities. You also accept that your entry fees are non-refundable.

Disclosure

8. You warrant that you:
 - a. are and must continue to be medically and physically fit and able to undertake and participate in the Kiteboarding Activities;
 - b. are not a danger to yourself or to the health and safety of others; and
 - c. have not at any time suffered any blackout, seizure, convulsion, fainting or dizzy spells.
9. 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.
10. You acknowledge that the Kiteboarding Organisations rely on information provided by you and that all such information is accurate and complete.
11. You agree to report any accidents, injuries, loss or damage you suffer during any Kiteboarding Activities to the relevant Kiteboarding Organisation before you leave any relevant venue.

Exclusion of Applicant

12. You warrant that you have not at any time been excluded from Kiteboarding Activities by a medical practitioner or any person or entity including but not limited to KAL or any other Kiteboarding Organisation. You acknowledge and agree that KAL and/or any other Kiteboarding Organisation may demand a medical certificate/clearance or opinion as to your fitness from a qualified medical practitioner PRIOR to you undertaking any Kiteboarding Activities.

Safety

13. You understand and acknowledge the dangers associated with the consumption of alcohol or any mind-altering substance before or during any Kiteboarding Activity, and you accept full responsibility for injury, loss or damage associated with the consumption of alcohol or any other mind-altering substance.
14. You agree to follow any rules set by any Kiteboarding Organisation in connection with any Kiteboarding Activities. If you fail to comply with KAL's rules and/or directions, or the rules and directions of any other relevant Kiteboarding Organisation, you will not be permitted to participate or to continue to participate in the Kiteboarding Activities and no refund will be given.

Luck of prevailing conditions

15. You acknowledge and agree that:
 - a. Kiteboarding Activities 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 Kiteboarding Activities over which the Kiteboarding Organisations have no control.

Release and indemnity

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

17. If you suffer any injury or illness, you agree that the relevant Kiteboarding Organisation may provide evacuation, first aid and/or medical treatment at your expense and that your acceptance of these terms and conditions constitutes your consent to such evacuation, first aid and/or medical treatment. If you do not wish provide your consent to medical treatment, please contact KAL. In such circumstances, your membership application will be processed manually (and you will not be able to apply for membership online).

Insurance

18. You understand that subject to paragraph 19, KAL through a National Insurance Scheme may arrange some limited insurance coverage which may provide you with some protection for loss, damage or injury that you may suffer during your participation in Kiteboarding Activities. However, you acknowledge and accept that insurance taken out by KAL may not provide full indemnity for loss, damage or injury that you may suffer during your participation in the Kiteboarding Activities, and that you may have to pay the excess if a claim is made on your behalf. 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 KAL's insurance arrangements and your own circumstances. Details of the insurances (if any) provided by KAL under the National Insurance Scheme are available at <https://vinsurancegroup.com/kiteboarding/>
19. You acknowledge and agree that for the purposes of the insurance (if any) referred to in paragraph 18:
 - a. the insurance policy or policies (if any) placed by KAL under the National Insurance Scheme annually expire on or around 1 September;
 - b. KAL reserves the right to amend, change, replace, renew or fail to renew any current insurance policy at its absolute discretion;
 - c. the level of coverage and benefits provided to you under the KAL insurance (if any) in place as at the date you become a member of KAL will only be available to you until the date of expiry of that insurance policy, on or around 30 August annually, and not for the duration of your membership of KAL;
 - d. the level of coverage and benefits provided to you under the KAL insurance (if any) placed on or around 1 September annually may be different, less than or entirely removed, compared with the level of coverage and benefits provided to you under the KAL insurance (if any) in place immediately prior to 1 September, and/or in place at the time you became or renewed your membership of KAL; and
 - e. you release, will release and indemnify KAL from all Claims that you may have or may have had but for this release arising from or in connection with any change to the insurances (if any) provided by KAL under paragraphs 18 and 19.

Use of image

20. You acknowledge and consent to photographs and electronic images being taken of you during your participation in Kiteboarding Activities. You acknowledge and agree that such photographs and electronic images are owned by the relevant Kiteboarding Organisation and KAL or other parties may use the photographs for promotional or other purposes without your further consent being necessary.

Privacy

21. You understand that the personal information you have provided in your membership application is collected, used and disclosed in accordance with the KAL Privacy Policy (available from www.kiteboardingaus.com.au/policy). The Kiteboarding Organisations may use and disclose your personal information for the purposes of conducting and administering kiteboarding and other related activities across Australia, providing you with member services or promotional material, complying with legal obligations or otherwise in accordance with the KAL Privacy Policy. The Kiteboarding Organisations may share your information with third parties such as:
 - a. Affiliated clubs and other organisations involved in kiteboarding in Australia;
 - b. KAL (including for direct marketing purposes);
 - c. companies engaged by the Kiteboarding Organisations to carry out functions and activities on their behalf including direct marketing;
 - d. government agencies; and
 - e. the Kiteboarding Organisation's professional advisers, including their accountants, auditors, lawyers and insurers,

however your information is not generally disclosed to anyone outside Australia. The KAL Privacy Policy contains information about how you may access and request correction of your personal information held by the Kiteboarding Organisations or make a complaint about the handling of your

personal information, and provides information about how a complaint will be dealt with by KAL. Your membership application may be rejected if the information is not provided. If you do not wish to receive promotional material from the Kiteboarding Organisation's sponsors and third parties you must advise the relevant Kiteboarding Organisation via email or telephone or via the specific opt-out procedures provided in the relevant communication.

Bar to proceedings

22. Any relevant Kiteboarding Organisation 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 a Kiteboarding 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 the Kiteboarding Organisation) to move those proceedings to the jurisdiction in which any incident occurs including consenting to any application made by a Kiteboarding Organisation to remove the proceedings to the jurisdiction in which any incident occurs;
 - d. will pay the costs of any application made by a Kiteboarding Organisation under paragraph 22(c) and will consent to any application for security of costs made at any time by a Kiteboarding Organisation; and
 - e. consent to paying the relevant Kiteboarding Organisation's legal defence costs of the proceedings (on a solicitor client basis) where the Kiteboarding Organisation successfully defends the proceedings.

Governing Law

23. The governing law of this agreement is the law of the 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.

Entire Agreement

24. This agreement (and the documents to which it refers) constitutes the entire agreement between the parties in respect of the Kiteboarding Activities and supersedes all other agreements, understandings, representations and negotiations in relation to Kiteboarding Activities.
25. 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.

DECLARATION

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

Signed:

Name:

Date:

***Where the applicant is under 18 years of age a separate declaration must also be signed by the applicant's parent or legal guardian:

I.....[insert name] of
.....[insert address] am the parent or guardian of the applicant. I authorise and consent to the applicant undertaking the Kiteboarding Activities. In consideration of the applicant's membership with KAL and any other Kiteboarding Organisation 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 membership declaration. In addition, I agree to be bound by and to comply with the KAL Constitution and any by-laws and policies made under it.

Schedule 1

For recreational services or activities provided throughout Australia:

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

By signing this form, you agree that the liability of any Kiteboarding Organisation 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;
 - 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 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 signing this form, you agree that the liability of any Kiteboarding Organisation 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:
 - iii. that is or may be harmful or disadvantageous to you or the community;
 - iv. 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 Kiteboarding 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 sign this form, 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 signing this form, you agree that the liability of the Kiteboarding Organisations 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 signing this membership application form 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 Kiteboarding Organisations flowing from them, are expressly excluded to the extent possible by law, by this membership application form and declaration. To the extent of any liability arising, the liability of the Kiteboarding Organisations will, at the discretion of the Kiteboarding 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.

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. 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 sign this form, 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 signing this form. The supplier may refuse to provide you with the services if you do not agree to exclude, restrict or modify your rights by signing this form. Even if you sign this form, 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: I agree that the liability of the Kiteboarding Organisations 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:

- d. 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.
- e. 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 signing this form, 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 Kiteboarding Organisations 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 signing this document 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.