

EXCLUSION OF LIABILITY RELEASE & ASSUMPTION OF RISK
DEED POLL



THIS IS AN IMPORTANT LEGAL DOCUMENT. IT IS VERY IMPORTANT THAT YOU READ IT (TOGETHER WITH THE ANNEXURE) CAREFULLY AND THAT YOU ARE SATISFIED THAT YOU UNDERSTAND ALL OF IT BEFORE YOU SIGN. WE ENCOURAGE YOU TO OBTAIN INDEPENDENT LEGAL ADVICE PRIOR TO SIGNING.

In conjunction with **MALLALA MOTORSPORT PARK PTY LTD ABN 64 618 849 433** (“**MMSP**”) allowing me to attend and or participate in the Activity, I make this deed poll in favour of, and for the benefit of, the Indemnites jointly and severally and understand, acknowledge, and agree:

- (motor sport can be dangerous)** Participation in motor sport or other activity at Mallala Motorsport Park, whether as a driver, passenger, participant, or spectator, under the conditions created for the Activity, can be dangerous. I accept the venue of the Activity as it stands with all or any defects hidden or exposed.
- (injury, death, loss of property)** My participation in the Activity carries with it the potential for personal injury to me and/or others, and also for loss or damage to my property and the property of others. Accidents causing harm can and do occur and may happen to me.
- (own choice)** I am attending the Activity out of my own choice and for my personal enjoyment. I acknowledge that I have an obligation to myself and to others to act safely and within relevant rules and regulations.
- (follow directions)** During my participation in the Activity and at all times while I am at the venue at which the Activity is conducted, I will follow the directions of any employee, contractor, or agent of MMSP. I acknowledge that, subject to clause 6 below, such directions are given free of any warranty to me and that even if I do follow directions, accidents may happen.
- (no duty of care)** During my preparation for, and participation in, the Activity and at all times while I am at the venue, I acknowledge that to the maximum extent permitted by law the Indemnites do not owe me a duty of care under contract, applicable legislation, equity or at common law. For the avoidance of doubt, I acknowledge that any directions given (including any given in accordance with clause 4 above) do not operate to give effect to such a duty of care and in the case of any proceedings, cannot be used as evidence of such duty.
- (Australian Consumer Law & recreational services)** I acknowledge that in accordance with the Australian Consumer Law, there are certain guarantees that a supplier of services in trade or commerce must comply with when providing services (“**Statutory Guarantees**”).

Section 42 of the Fair-Trading Act 1987 (SA) allows the supplier of recreational services to exclude certain Statutory Guarantees and specifically any liability for any personal injury suffered by me or another person for whom or on whose behalf of I am acquiring their recreational services.

I acknowledge that to the extent that MMSP and/or the Landowner (as defined in clause 7 below) supply recreational services (as defined in Appendix A), the terms and conditions of the Recreational Services Fair Trading Act Waiver set out in Appendix A will apply to exclude their liability for any personal injury suffered by me or another person for whom or on whose behalf I am acquiring their recreational services.

Nothing in this deed poll is intended to exclude the operation of the Statutory Guarantees which cannot be excluded at law.

- (release and indemnity)** To the maximum extent permitted by law and subject to clause 6 above, I release, forever hold harmless and indemnify MMSP, Mallala Land Pty Ltd ABN 49 618 852 163 (“**Land Owner**”) and each of the related entities and associated entities (as those terms are defined in the Corporations Act 2001 (Cth)) of MMSP and the Land Owner (“**Associated Companies**”) and the directors, officers, employees, agents, contractors, partners, shareholders, representatives and members of MMSP the Land Owner and the Associated Companies and any sponsors, promoters, or organisers of the Activity (“**Associated Entities**”) from and against all and any claims, actions, suits, costs, legal fees, damages, judgements, orders and liabilities of whatever kind or nature, arising out of or in connection with my preparation for and participation in the Activity, whether occurring before, during or after my actual participation in the Activity. This release and indemnity covers all claims that I or anyone acting on my behalf is able to exclude, release liability or indemnify at law, and without limiting this, I agree that this deed poll will be binding on my heirs, next of kin, executors and administrators.
- (no existing medical conditions)** As at today, I am not aware of any existing condition or conditions (including without limitation any physical and/or mental or physical or mental illness or disease, heart condition, back injury and/or pregnancy) that may be affected by my preparation for and participation in the Activity. I acknowledge that it is my responsibility to inform the Indemnites of such conditions and that the Indemnites will continue to rely upon this declaration as evidence of my fitness and ability to participate. Participation in the Activity even after my disclosure of such conditions is at my own risk.
- (damages to property)** MMSP may require me to cease participation in the Activity if MMSP considers that my participation in the Activity is likely to cause damage to Mallala Motorsport Park. I further acknowledge that no refund of any fees paid for my participation in the Activity will be given in these circumstances.

If any act or omission by me, including without limitation my participation in the Activity, results in any damage to MMSP without limiting clause 7 above, I agree to pay all costs to repair such damage. If MMSP or the Landowner pays for any repair works to Mallala Motorsport Park caused by my act or omission, I agree to reimburse it promptly upon notification of the amount of such repair works.

- (coronavirus)** Coronavirus is a pandemic. I have decided to participate in the Activity in any event.

I, voluntarily and fully accept and assume all of the known and unknown risks associated with the Activity (including but not limited to those set out above) and I understand, agree, and acknowledge that the exclusion of liability, release, and assumption of risk in this deed poll expressly applies to these risks and all and any consequences of these risks.

A term of this deed poll will not apply where the term contravenes the law of the relevant jurisdiction under which any legal action is legitimately taken however such terms are severable and do not invalidate the remaining terms.

I intend this deed poll to be binding in accordance with its terms, notwithstanding any procedural irregularities including if my signature is not witnessed overleaf and delivered on the date set out overleaf.

In this deed poll:

“**Activity**” means my participation in any activity or event held or situated at Mallala Motorsport Park or my attendance at Mallala Motorsport Park (as applicable).

“**Indemnites**” means MMSP, the Landowner, the Associated Companies, and the Associated Entities; and

“**personal injury**” means bodily injury and includes mental and nervous shock and death.

**APPENDIX A
RECREATIONAL SERVICES FAIR-TRADING WAIVER – INDIVIDUAL PARTICIPANT**

[To be executed by individual participant]

FAIR TRADING REGULATIONS 2010 - Form 1 — Recreational services — Exclusion, restriction, or modification of rights under the Australian Consumer Law (SA)

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
- a 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
- 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, 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 injury².

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 **MALLALA MOTORSPORT PARK PTY LTD** and **MALLALA LAND PTY LTD** 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—

- (a) excluded
- (b) restricted as set out below:
- (c) modified as set out below: [specify the nature of the modification]

*Strike out whichever of (a), (b) or (c) do not apply and specify the nature of the restriction or modification, as is relevant.

Signature: Refer to the execution below.

Date: Refer to the execution below.

Signature of witness: Refer to the execution below.

Name & address of witness: Refer to the execution below.

Definitions

1. **Recreational services** are services that consist of participation in—
 - a 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

EXECUTION

I have read, understood, and accept the terms and conditions of my participation in the Activity and this Exclusion of Liability, Release and Assumption of Risk.

I acknowledge that to the extent that Mallala Motorsport Park Pty Ltd and Mallala Land Pty Ltd supply recreational services as defined in Appendix A, I have read, understood, and accept the terms and conditions of the Recreational Services Fair Trading Act Waiver at Appendix A.

I acknowledge that if I do not agree to the terms and conditions of this Exclusion of Liability, Release and Assumption of Risk and the Recreational Services Fair Trading Act Waiver at Appendix A and do not execute this deed poll then Mallala Motorsport Park Pty Ltd may refuse my participation in the Activity.

PLEASE MAKE SURE THAT YOU HAVE READ THIS DOCUMENT FULLY AND THAT YOU ARE SATISFIED THAT YOU UNDERSTAND ALL OF IT BEFORE YOU SIGN. WE ENCOURGAGE YOU TO OBTAIN INDEPENDENT LEGAL ADVICE PRIOR TO SIGNING.

Executed as a deed poll.

Participant (if under 18, a Parent/Guardian must also sign below)

FULL NAME: **SIGNATURE:**

EMAIL ADDRESS: **DATE:**

Parent/Guardian (where Participant under 18)

I warrant that am a parent or legal guardian of the Participant named above. In my own capacity and in my capacity as parent/guardian of the Participant, I agree that, to the extent permitted by law, this document binds each of us jointly and severally and indemnify each of the Indemnitees from and against any claim, loss, damage, or liability suffered by any Indemnitee in connection with the Participant's participation in the Activity on the terms of this document.

SIGNATURE OF PARENT/GUARDIAN: **DATE:**

NAME & ADDRESS OF PARENT/GUARDIAN:

Witness*

SIGNATURE OF WITNESS: **DATE:**

NAME & ADDRESS OF WITNESS: *

Where the Participant is under 18, the witness confirms they have witnessed both the Participant's and the Parent/Guardian's signature.

Please tick here if you do not wish to receive marketing or promotional materials from Mallala Motorsport Park Pty Ltd. Personal information collected by Mallala Motorsport Park Pty Ltd is handled in accordance with its privacy policy available at www.thebend.com.au. Please refer to the privacy policy for information about how your personal information is handled, your rights to seek access to and correct your personal information, how to complain about a breach of the Australian Privacy Principles and our Privacy Officer's contact details.