

Skydive Australia

ABN 99 140 817 063

FORM - CL8 - VIC

Parachuting Contract – PARACHUTING IS DANGEROUS

THIS IS AN IMPORTANT DOCUMENT AND YOU SHOULD READ IT CAREFULLY BEFORE ACCEPTING IT. UPON ACCEPTING THIS FORM AND DECLARATION, YOU ACKNOWLEDGE THAT YOUR LEGAL RIGHTS ARE AFFECTED, AND THAT YOU HAVE READ AND UNDERSTAND THESE TERMS AND CONDITIONS.

The following terms and conditions must be read carefully:

Acceptance

I, (full name of applicant)

.....
of (residential address of applicant)
.....
.....
.....

Parent or Legal Guardian Acceptance (for applicants under 18)

I, (full name of parent or guardian)

.....
of (residential address of parent or guardian)
.....
.....
.....

You, the above named, hereby agree to be bound by the terms of this contract with Skydive Australia and the persons named, jointly and severally as, The Providers in the definitions at clause (a) below. The Providers agree to permit you to use their premises, aircraft and facilities for Parachuting Activities and to instruct you in Parachuting Activities upon and subject to the following terms and conditions:

(a) Definitions – in these terms and conditions:

- (i) **"Claim"** means and includes any action, suit, proceeding, claim, demand, damage, penalty, cost or expense however arising from or in connection with any Parachuting Activities, but does not include:
 - (a) a claim against the APF by any person expressly entitled to make a claim under an APF insurance policy;
 - (b) a claim against the APF under any right expressly conferred by its Constitution or the Regulations.
- (ii) **"Parachuting Activities"** means performing or participating in any capacity, including as a member, in any authorised or recognised APF activities, including but not limited to parachuting or skydiving, training to parachute or skydive, flying in any aircraft being used for or in connection with parachuting or skydiving and related activities.
- (iii) **"The Providers"** means, jointly and severally, in addition to Skydive Australia, the following providers:
 - (a) City of Port Phillip, Frankston City Council, Geelong Surfcoast Airpark Pty Ltd, Roger Merridew Lilydale Airport and their officers and employees where any Parachute Activities by Skydive Australia may take place;
 - (b) The staff (whether paid or volunteers), instructors, jumpmasters, coaches, ground control assistants, target or canopy control assistants, safety officers, parachute packers and riggers, and aircraft operators including but not limited to: (i) Australian Parachute Federation Ltd and its directors, officers, members, servants or agents; (ii) The Victorian Tasmanian Parachute Council; (iii) Skydive Australia; (iv) Anthony Boucaut, Anthony Ritter, Skydive the Beach and Beyond Melbourne Pty Ltd (ACN 169 446 664), Skydive the Beach and Beyond Great Ocean Road Pty Ltd (ACN 167 042 819), Skydive Holdings Pty Ltd (ACN 140 817 063), Experience Co Limited (ACN 167 320 470), Skydive the Beach and Beyond Yarra Valley Pty Ltd (ACN 167 197 864) STBAUS Pty Ltd (ACN 169 464 555).

(b) **Club Fees** – You will pay on demand the prescribed or stated fees for the Parachuting Activities. Such fees may be notified to you verbally or by letter or memorandum or by notice displayed in The Providers' premises or premises occupied by The Providers.

(c) **Federation Fees** – Upon executing this contract you will become a member of Australian Parachute Federation Ltd ("APF"). You acknowledge, agree and consent to becoming a member of the APF. Upon your becoming a member of the APF, the APF Constitution and the Regulations will comprise a contract between you and the APF and you will be bound by those documents. You shall submit to any disciplinary measures taken against you and shall only appeal any disciplinary decision in the manner permitted under the APF Constitution and the Regulations. You will pay on demand the prescribed or stated APF membership fees.

(d) **Risk Warning** – Your participation in the Parachuting Activities is inherently dangerous and may involve risk. There are risks specifically associated with participation in the Parachuting Activities and accidents can and often do happen which may result in personal injury, death or property damage. These risks include, but are not limited to, the risks arising from or connected with the Prevailing Conditions referred to in clause (r) below. Prior to undertaking the Parachuting Activities, you should ensure you are aware of all of the risks involved, including those risks associated with any health condition you may have. By accepting this form, you acknowledge, agree, and understand that participation in the Parachuting Activities provided by The Providers and the APF 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 and for the purposes of the relevant legislation. This 'risk

warning' is given by and on behalf of each of the entities, organisations and persons identified as The Providers in clause (a) above.

- (e) **Waiver** – 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, or to whom the services or activities are supplied).

If you accept 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, or to whom the services are supplied) to sue the supplier because the services or recreational activities provided were not in accordance with the guarantees are excluded, restricted or modified as set out below.

- (f) **For recreational services or recreational activities to which the Australian Consumer Law (Commonwealth) applies:** By accepting this form, you agree that the liability of the APF and The Providers in relation to recreational services (as that term is defined in the *Competition and Consumer Act 2010 (Cth)*) for any:

- (i) death;
- (ii) physical or mental injury (including the aggravation, acceleration or recurrence of such an injury);
- (iii) the contraction, aggravation or acceleration of a disease;
- (iv) 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:
 - (a) that is or may be harmful or disadvantageous to you or the community;
 - (b) 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 or guarantee under the *Australian Consumer Law* that any services will be provided with due care and skill is hereby excluded.

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 supplier named on this form, the APF and The Providers, are required to ensure that the recreational services it supplies 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 accept 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 accepting this form, you agree that the liability of the APF and The Providers 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.

- (g) **(i) Release and Indemnity** – In consideration of the APF accepting your membership application, you, to the extent permitted by law:

- (a) release and forever discharge the APF and The Providers from all Claims that you may have or may have had but for this release, but only where such Claims result from your death or personal injury, arising from or in connection with your membership of the APF and or undertaking the Parachuting Activities, whether caused by the negligence or breach of contract by APF or The Providers or in any other manner whatsoever; and
- (b) release and indemnify the APF and The Providers against any Claim which may be made by you or on your behalf for or in respect of or arising out of your death or personal injury whether caused by:
 - (A) the negligence or breach of contract by the APF or The Providers or in any other manner whatsoever; or
 - (B) any breach by you of the warranties given in clauses (i)(i)-(iv),

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 APF and/or The Providers.

(ii) Release and Indemnity – In consideration of the APF accepting your membership application, you, to the extent permitted by law, release and forever discharge, and indemnify and will keep indemnified and hold harmless the APF and The Providers in respect of any Claim by any person:

- (a) arising as a result of or in connection with your membership or undertaking the Parachuting Activities, whether caused by the negligence or breach of contract by APF or The Providers or in any other manner whatsoever; and

- (b) against the APF and The Providers in respect of any injury, loss or damage arising out of or in connection with your failure to comply with the APF's or the Provider's rules and/or directions, whether caused by the negligence or breach of contract by APF or The Providers or in any other manner whatsoever; and
- (c) arising out of or connected with any breach by you of the warranties given in clause (i)(i) - (iv), 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 APF and/or The Providers.

(h) **Insurance** – You acknowledge and agree that the fee for undertaking the Parachuting Activities and the fee for becoming a member of the APF does not include personal accident insurance cover. You agree that you are responsible for your own personal accident, medical and/or life insurance and any and all expenses in the event of injury or death. The APF and The Providers do offer personal accident insurance coverage for an additional fee should you choose to take up such limited APF personal accident insurance. If you consider it appropriate to take out such APF personal accident insurance, you acknowledge that before doing so you have taken into account such APF personal accident insurance cover and your own circumstances.

(i) **Disclosure of Medical Conditions** – You warrant that you:

- (i) are and must continue to be medically and physically fit and able to undertake and participate in the Parachuting Activities;
- (ii) are not a danger to yourself or to the health and safety of others;
- (iii) have not at any time suffered any blackout, seizure, convulsion, fainting or dizzy spells; and
- (iv) are not presently receiving treatment for any condition, illness, disorder or injury which would render it unsafe for you to take part in parachuting or flying including undertaking the Parachuting Activities.

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 the APF and The Providers rely on information provided by you and that all such information is accurate and complete. You must inform The Provider if any such medical or other condition arises after you agree to this Parachuting Contract and prior to undertaking the Parachute Activities. You agree to report any accidents, injuries, loss or damage you suffer during any Parachuting Activities to the APF and The Providers before you leave any relevant venue. You acknowledge that if any of the warranties you make under this clause (i), including those in subclauses (i)-(iv), can no longer be made by you on the date you undertake the Parachuting Activities, you must inform The Provider on arrival and before you participate in any Parachuting Activity.

(j) **Inherent Physical Contact** – You acknowledge and accept that close physical contact with The Providers is inherent in undertaking the Parachuting Activities. You accept such close physical contact is necessary to undertake the Parachuting Activities.

(k) **Exclusion of Applicant** – You warrant that you have not at any time been excluded from parachuting by a medical practitioner or any person or entity including the APF and its constituent Area Councils and Clubs. You acknowledge and agree that The Providers may demand a medical certificate or opinion as to your fitness from a qualified medical practitioner PRIOR to your undertaking the Parachuting Activities. You acknowledge that if the warranty you make under this clause (k) can no longer be made by you on the date you undertake the Parachuting Activities, you must inform The Provider on arrival and before you participate in any Parachuting Activities.

(l) **Safety** – You understand and acknowledge the dangers associated with the consumption of alcohol or any mind-altering substance before or during your involvement in undertaking the Parachuting Activities, and you accept full responsibility for injury, loss or damage associated with the consumption of alcohol or any other mind-altering substance. You agree to follow any rules set by the APF in connection with any Parachuting Activities. If you fail to comply with the APF's rules and/or directions, you will not be permitted to participate or to continue to participate in the Parachuting Activities and no refund will be given. If you suffer any injury or illness, you agree that the APF and/or The Providers 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.

(m) **Parachuting done at Parachutist's own Risk** – Any person parachuting, training to parachute, flying in any aircraft being used for or in connection with parachuting or participating in any activity carried on by Skydive Australia or organised by any of The Providers may only do so on the distinct understanding that they do so entirely at their own risk.

(n) **Acceptance** – Performance of The Providers' obligations under the contract may be effected by any one or more of The Providers either jointly or severally.

(o) **Bar to proceedings** – The Providers (or any of them including the APF) 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 The Providers or any of them, you:

- (i) will commence those proceedings in the courts of Victoria;
- (ii) waive any right to object to the exercise of such jurisdiction;
- (iii) will, where you seek to commence proceedings in another jurisdiction other than Victoria, consent (if required by The Providers or any of them) to move those proceedings to Victoria including consenting to any application made by The Providers or any of them to remove the proceedings to Victoria;
- (iv) will pay the costs of any application made by the APF and/or The Providers or any of them under paragraph (iii) above and will consent to any application for security of costs made at any time by The Providers or any of them; and

- (v) consent to paying The Providers' legal defence costs of the proceedings (on a solicitor client basis) where The Providers successfully defend the proceedings.
- (p) **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 exclusive jurisdiction of the courts of the Jurisdiction in which any incident occurs and waive any right to object to the exercise of such Jurisdiction.
- (q) **Statement of Understanding** – You have read, or have had read to you the above conditions and having understood the same, you consent to the activities proposed.
- (r) **Prevailing conditions** – You acknowledge and agree that:
 - (i) parachuting and the Parachuting Activities can and will be affected by the weather which may change without warning; and
 - (ii) there is often an element of the "luck of the prevailing conditions" when undertaking the Parachuting Activities over which The Providers or any of them have no control;
 - (iii) despite careful packing, the parachute may open abruptly (i.e. experience a hard opening) and the parachutist may suffer an injury (including injuries sustained from a hard landing); and
 - (iv) unintended incidents may occur in flight, in the descent or upon landing.
- (s) **Use of Image** – You acknowledge and consent to photographs and electronic images being taken of you during your undertaking the Parachuting Activities. You acknowledge and agree that such photographs and electronic images are owned by the APF and/or The Providers and the APF and/or The Providers may use the photographs for promotional or other purposes without your further consent being necessary.
- (t) **Privacy** – You understand that the personal information you have provided in your membership application is necessary for the conduct and management of the Parachuting Activities and for the administration of parachuting in Australia generally, and that it is collected in accordance with the APF Privacy Policy (available from <http://www.apf.asn.au/Home/Privacy-Policies/>). You acknowledge that the APF may use or disclose your personal information for the purposes of providing you with member services or promotional material or otherwise in accordance the APF Privacy Policy. The APF may share your information with third parties such as affiliates and other organisations involved in parachuting in Australia; companies engaged by the APF to carry out functions and activities on the APF's behalf including direct marketing; the APF's professional advisers, including the APF's accountants, auditors and lawyers and the APF's insurers; however, your information is not generally disclosed to anyone outside Australia. You understand that the APF Privacy Policy contains information about how you may access and request correction of your personal information held by the APF or make a complaint about the handling of your personal information, and provides information about how a complaint will be dealt with by the APF. You acknowledge that your membership application may be rejected if the information is not provided. If you do not wish to receive promotional material from APF sponsors and third parties, you must advise the APF in writing or via the opt-out procedures provided in the relevant communication.
- (u) **Entire agreement** – This agreement (together with the applicant's form M1 New or Renewing Membership Application, or form M2 Student Pro-Rata Membership Application, and the APF Constitution and the Regulations) constitutes the entire agreement between the parties in respect to the Parachuting Activities and supersedes all other agreements, understandings and representations and negotiations with The Providers or any of them in relation to the Parachuting Activities. 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.

PLEASE NOTE THE FOLLOWING:

If the *Competition and Consumer Act 2010* or similar State laws operates so as to prevent the exclusion, restriction or modification of warranties otherwise implied by those laws, or the liability of The Providers for failing to comply with a statutory guarantee under the *Australian Consumer Law* that services will be provided with due care and skill, then the liability of The Provider for breach of the warranties or for the failure to comply is limited to:

- (i) the re-supply of the parachuting instruction and related activities; or
- (ii) the payment of the cost of having the parachuting and related activities supplied again.

DECLARATION

I have read, understood, acknowledge and agree to the above including the exclusion of implied terms, the exclusion of the operation of the *Australian Consumer Law*, the exclusion of liability in respect of the Parachuting Activities, the risk warning, assumption of risk, release and indemnity:

Signed:

Name:

Date:

***Where the applicant is under 18 years of age, this declaration must also be accepted 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 Parachuting Activities. In consideration of the applicant's membership with the APF 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 APF Constitution and the Regulations, and I have read, understood, acknowledge and agree to the above including the exclusion of implied terms, the exclusion of the operation of the *Australian Consumer Law*, the exclusion of liability in respect of the Parachuting Activities, the risk warning, assumption of risk, release and indemnity.

Signed:

Name:

Date:

Skydive Australia

APF CLUB – APPLICATION FOR MEMBERSHIP

IF YOUR ANSWERS TO ITEMS 1 AND 2 BELOW CHANGE AFTER YOU ACCEPT THIS PARACHUTING CONTRACT, YOU MUST INFORM THE APF CLUB ON ARRIVAL AND BEFORE YOU PARTICIPATE IN ANY PARACHUTING ACTIVITIES.

1. HEALTH DECLARATION: Please tell us if you answer YES to the following:-

Are you prescribed drugs which may impair reaction time or judgement? YES / NO

If YES, what drugs:

Do you intend (or have you been) SCUBA diving in the last 24 hours prior to undertaking a Parachuting Activity?

YES / NO

If yes, give details of the depth and duration of the dive

Do you have any medical condition which might render it unsafe for you to go flying or parachuting? Note that you are required to respond "Yes" to this item (and provide details below) if you have previously suffered any dislocation, break or fracture to your shoulders, hips, back or legs. YES / NO

If yes, give details

Note: if the answer is YES to the medical disclosure the club may require you to obtain and provide a medical certificate.

2. EXCLUSION OF APPLICANT – Have you ever been excluded from parachuting in the past by a medical practitioner or any other person or entity? YES / NO

If yes, give details

3. DECLARATION OF UNDERSTANDING

Parachuting is Dangerous

I have read and understood the terms of the Parachuting Contract or if I did not understand the terms of the Contract, I requested an independent person to explain them to me.

Applicant Signature Dated.....

Witness Signature

4. PARENT/GUARDIAN CONSENT: (for applicants under 18 years) – I hereby certify and decree that all the information contained in the declarations above is true and accurate

Print Name:..... Signature

Relationship to Applicant Phone Contact

Address

PERSON TO NOTIFY IN THE EVENT OF AN EMERGENCY

Name

Address

Relationship..... Telephone.....