



THE KOKODA CHALLENGE

WAIVER

1. RISK WARNING

1.1 The Kokoda Challenge is a Dangerous Recreational Activity that takes place on isolated, remote, rugged roads and tracks and involves activities that have a high residual risk. These activities include those identified in clause 2 below as High Risk Activities.

1.2 By participating in the Kokoda Challenge, there is a risk a Participant may suffer injury or death, or damage or loss of property.

1.3 Injury or death may occur while a Participant is engaging in or watching the Kokoda Challenge or while travelling to or from the Track. Injury or death may occur from the Participant's own actions or inaction, the actions or inactions of others or from a Potential Hazard (as defined in clause 2 below). In some cases an injury can be life threatening, or result in permanent disability or death.

2. DEFINITIONS

Agreement means the Entry Form, this Waiver and the Event Rules.

Applicant means the person that completed and signed the Entry Form and this Waiver, namely:

- (a) where the Participant is not a Minor, the party named as Participant; and
- (b) where the Participant is a Minor, the Guardian of the Participant on behalf of the Minor and in his or her own right.

Australian Consumer means Schedule 2 of the *Competition and Consumer Act 2010* (Cth).



Claim means any claim, cause of action, Liability, demand, action, remedy, suit, injury, indemnity, damage, proceeding, litigation, investigation, or judgment whether based in contract, tort, negligence, statute or otherwise whether present, unascertained, immediate, future or contingent.

Civil Liability Act means, where the Track is in:

(a) Queensland - *Civil Liability Act 2003* (Qld);

(b) Victoria - *Wrongs Act 1958* (Vic),

as varied, superseded or replaced from time to time.

Covid-19 Pandemic means the Covid-19 coronavirus pandemic as established by the World Health Organisation, and includes all regulations, sanctions, travel restrictions, forced closures, lockdowns, self-isolation, quarantine or other pandemic protocols, directions or unforeseen circumstances imposed by any government authority in respect of or in connection to the Covid-19 coronavirus pandemic.

Dangerous Recreational Activity means:

(a) in Queensland, the meaning given to that term in section 18 of *the Civil Liability Act 2003* (Qld);

(b) in Victoria, means a recreational activity involving a significant degree of risk of physical harm to a person.

Entry Fee means the fee payable and paid by the Participant to KYF for the Participant's participation in the Kokoda Challenge as notified to the Applicant.

Entry Form means the entry form for the Kokoda Challenge accessible at www.kokodachallenge.com to be completed by the Participant and which is annexed to this Waiver.

Event Rules means the codes of conduct and other terms, conditions and rules relating to participation in the Kokoda Challenge which are available at www.kokodachallenge.com/termsandconditions.

Force Majeure Event means any occurrence or omission outside a party's reasonable control, as a direct or indirect result of which the party relying on the event is prevented from or delayed in performing its obligations under this Agreement and includes:

- (a) an act of God or a disaster (whether natural or man-made) including fire, heatwave, cyclone, storm, flood, lightning or earthquake;
- (b) riot, civil commotion, act of public enemies, national emergency (whether in fact or in Law) or government declaration or direction; and
- (c) epidemic, pandemic (including the Covid-19 Pandemic) or quarantine restriction.

Guardian means the parent or legal guardian of a Minor.

Health encompasses both physical and mental health and capacity.

High Risk Activity includes without limitation:

- (a) large amounts of walking and physical exertion;
- (b) the extremely strenuous nature of covering kilometres on foot (including running or walking at night);
- (c) activities (including but not limited to trekking, hiking, climbing, navigating rocky or dangerous terrain) requiring a high degree of care, skill, balance, control or coordination;
- (d) travelling and navigating unfamiliar, remote and dangerous terrains, sometimes at night or with limited visibility and/or during inclement weather;
- (e) confrontation with natural environmental and manmade challenges requiring greater reliance on personal resources (including mental capacity) than would normally be required in day-to-day life; and
- (f) less than normal contact by person or by telephone, with medical and other public services available in normal day-to-day life.

Kokoda Challenge means the endurance event coordinated and held by KYF from time to time.

KYF means the Kokoda Youth Foundation Inc ABN 39 367 906 920, its Related Entities and its employees, directors, officers and volunteers.

Law includes any law, whether statute or common law (including the laws of negligence and nuisance and principles of equity), ordinance, regulation, by-law, order or other determination of any government authority or statutory authority and other instruments under them, and consolidations, amendments, re-enactments or replacements of any of them.

Liability means any liability or obligation (whether actual, contingent or prospective), including for any Loss irrespective of when the acts, events or things giving rise to the liability occurred.

Loss means any loss, damage, injury, theft, permanent disability, death, compensation, fine, penalty, charge, payment, cost or expense (including any legal cost and expense) however it arises and whether it is present or future, fixed or unascertained, actual or contingent.

Moral Rights has the same meaning as in Divisions 2, 3 and/or 4 of Part IX of the *Copyright Act 1968* (Cth).

Minor means any person under the age of eighteen (18) years.

Obvious Risk means:

(a) in Queensland, the meaning given to that term in section 18 of *the Civil Liability Act 2003* (Qld); and

(b) in Victoria, the meaning given to that term in section 53 of the *Wrongs Act 1958* (Vic).

Participant means the participant named on the Entry Form.

Potential Hazards include but are not limited to:

(a) uneven or rocky terrain, roads and/or track surfaces;

(b) the presence of logs, twigs, sticks, rocks, fallen trees, branches and other natural or unnatural debris or hazards;

- (c) landslides, falling rocks, trees and other debris;
- (d) the presence of livestock and other animals;
- (e) the presence of unsupervised bodies of water (including but not limited to creeks, troughs and dams);
- (f) steep, high or unbarricaded areas on and off the Track;
- (g) damaged or deteriorated surface areas of roads and tracks;
- (h) injuries from slips and falls on and off the Track;
- (i) injuries caused by animals, snakes and insects on or off the Track;
- (j) becoming trapped or injured by forces of nature such as flooding, fires and lightning;
- (k) possibility of slips or falls to the ground from heights of varying distances;
- (l) remoteness from assistance or medical aid;
- (m) becoming lost;
- (n) exposure to outdoor elements and weather conditions (including without limitation, inclement weather, rain, storms, lightening, flooding, temperature) and their effects (including but not limited to sunburn, heat stroke, heat exhaustion, hypothermia and dehydration);
- (o) lack of sleep, fatigue or exhaustion;
- (p) vehicle traffic or the presence of vehicles or machinery;
- (q) actions of other participants;
- (r) presence of spectators;
- (s) condition of suitability of the Participant's clothing, footwear or equipment.

Related Entities has the meaning given to it in the *Corporations Act 2001* (Cth).

Releasees means the following parties jointly and severally:

(a) KYF;

(b) each other participant participating in the Kokoda Challenge; and

(c) any promoters, organisers, sanctioning organisations, rescue personnel, sponsors, advertisers, event inspectors and any others who give recommendations or engage in risk evaluation regarding the Kokoda Challenge and the owners, lessees or borrowers of any equipment, vehicles or the Track used for the purposes of the Kokoda Challenge.

Risks means the risk of injury, death, permanent disability, loss or damage to property and other Loss in connection with attendance at or participation in the Kokoda Challenge as detailed in:

(a) this Agreement;

(b) any Risk Warning; or

(c) which is an Obvious or inherent risk,

associated with attendance or participation in the Kokoda Challenge, engaging in a High Risk Activity or exposure to Potential Hazards.

Risk Warning means the risk warning given under clause 1 of this Waiver and elsewhere in the Agreement and any verbal or other warning of risks associated or in connection with the Kokoda Challenge or associated activities given by or on behalf of KYF to the Applicant and/or the Participant.

Track means the location and surrounding area of the Kokoda Challenge as determined by KYF.

Waiver means this waiver (as amended from time to time).

3. ENTRY FORM AND AGREEMENT

3.1 By submitting an Entry Form, the Applicant warrants that:

(a) the Entry Form has been completed honestly and correctly, and that the Applicant has made full disclosure in response to the matters and questions raised in the Entry Form;

(b) the Applicant has read, understood and accepted the terms of this Waiver and the Event Rules and agrees to be bound by this Agreement and to comply with the Event Rules;

(c) where the Participant is a Minor, the Applicant:

(i) is the Guardian of the Minor;

(ii) completes and executes the Entry Form and Waiver and as Guardian of the Minor and in his or her own right;

(iii) has fully explained the Event Rules to the Participant;

(iv) the Participant understands the Event Rules;

(v) the Participant has agreed to abide by the Event Rules;

(vi) has fully explained to the Participant that the Kokoda Challenge is a Dangerous Recreational Activity that involves a significant risk of injury or harm (including risks associated with the Potential Hazards and with undertaking High Risk Activities as outlined in this Waiver) and the Participant is aware of and understands those risks; and

(vii) consents to the Participant participating in the Kokoda Challenge in accordance with this Agreement;

(d) the Applicant is:

(i) the Participant and is, or will be, eighteen (18) years of age or older before the Kokoda Challenge starts; or

(ii) is the Guardian of the Participant, who will be a Minor as at the start of the Kokoda Challenge.

3.2 The Applicant acknowledges that by signing the Entry Form and Waiver:

- (a) the Applicant is bound by the terms of this Agreement; and
- (b) where the Participant is a Minor, the Applicant:
 - (i) signs this Agreement as Guardian, and on behalf, of the Participant;
 - (ii) to the extent permitted by Law, binds the Participant to the terms of this Agreement;
 - (iii) warrants that the Participant has agreed to be bound by the terms of this Agreement; and
 - (iv) is responsible for the actions, omissions or any breach of this Agreement by the Participant as if the Applicant were the Participant.

4. ACKNOWLEDGEMENT

4.1 Obvious Risk

The Applicant acknowledges and accepts that under the Civil Liability Act, KYF may not be liable for any harm suffered by the Participant due to the materialisation of an Obvious Risk.

4.2 Dangerous Recreational Activity

The Applicant acknowledges and accepts that participation in the Kokoda Challenge is:

- (a) a Dangerous Recreational Activity; and
- (b) by participating in the Kokoda Challenge, the Participant will engage in High Risk Activities and may be exposed to Potential Hazards that could result in the injury, death or permanent disability
of the Participant or loss or damage to the Participant or the Participant's property.

4.3 Risk Warning

- (a) The Applicant acknowledges that the Applicant and the Participant:

(i) have been provided with the Risk Warning;

(ii) have sought (or had the opportunity to seek, but has declined to do so) further advice or clarification from KYF as to the Risks or any other concerns in respect of potential Loss, other risks or issues associated with attendance or participation in the Kokoda Challenge, engaging in a High Risk Activity or exposure to Potential Hazards;

(iii) by participating in the Kokoda Challenge (or consenting to the Participant participating in the Kokoda Challenge), accepts all Risks, including but not limited to those associated with:

(A) engaging in High Risk Activities;

(B) the safety of any personal gear, equipment used in conjunction with the Kokoda Challenge;

(C) the Potential Hazards; and

(D) to the extent permitted by Law, defaults, acts and omissions including negligent defaults, acts and omissions of KYF.

(b) The assumption of Risk in this clause and elsewhere in this Agreement, and Risk Warning, constitutes a 'risk warning' in accordance with Law.

(c) Without limiting KYF's rights at Law or clause 4.3(a)(iii) above, the Applicant accepts and warrants that the Participant participates in the Kokoda Challenge of his or her own free will and at his or her own risk.

4.4 Fitness and medical information

(a) The Applicant acknowledges and accepts that KYF is not qualified or required, and is unable, to assess and make a determination as to:

(i) the Participant's fitness level or Health; or

(ii) whether the Participant is physically or mentally able to participate in the Kokoda Challenge.

(b) The Applicant must:

(i) truthfully and completely keep KYF informed of any pre-existing Health condition of the Participant which may reasonably be expected to increase the Participant's risk of requiring medical attention during his or her participation in the Kokoda Challenge;

(ii) ensure all Health information provided by the Applicant or Participant to KYF is up-to-date at all times; and

(iii) without limiting clause 4.4(b)(ii) above, notify KYF of any changes in the Participant's Health or other material circumstances that may affect or impact the Participant's ability to participate in the Kokoda Challenge or increase any risk to the Participant.

4.5 Fitness to participate

The Applicant warrants that the Participant:

(a) is in a good state of health;

(b) is physically and mentally fit;

(c) does not suffer any significant Health issues that may impact the Participant's ability to participate in the Kokoda Challenge or increase the risks to the Participant;

(d) has undertaken sufficient training to participate in the Kokoda Challenge;

(e) has maintained the appropriate fitness level to participate in the Kokoda Challenge;

(f) has not been warned against or advised not to participate in the Kokoda Challenge by a medical or Health professional;

(g) has attended (or been given the opportunity to attend, but has declined to do so) the pre-event briefing session organised by KYF;

(h) will have a zero blood alcohol level;

(i) except as disclosed in writing to KYF before participating in the Kokoda Challenge;

(i) is not receiving any medication or taking any drugs which may affect or interfere with the Participant's ability to safely participate in the Kokoda Challenge; and

(ii) is free from any injury, medical or Health condition (including heart condition or seizures), disability, disease or illness which may be aggravated by participation in the Kokoda Challenge or which may affect or interfere with his or her ability to participate in the Kokoda Challenge.

4.6 Risks of participation

(a) Without limiting any other provision of this Agreement or under any Law (including without limitation the Civil Liability Act), the Applicant acknowledges and accepts (and warrants that the Participant is aware of and accepts) all Risks associated with or in connection with the Participant's participation in the Kokoda Challenge including but not limited to those associated with:

(i) undertaking High Risk Activities;

(ii) the safety of any personal equipment used in conjunction with the Kokoda Challenge;

(iii) the Potential Hazards; and

(iv) to the extent permitted by Law, defaults, acts and omissions including negligent defaults, acts and omissions of KYF.

(b) The Applicant acknowledges and accepts that KYF cannot control all elements of the Kokoda Challenge.

5. RELEASE AND INDEMNITY

5.1 Applicant's Release

(a) To the maximum extent permitted by Law, the Applicant releases KYF:

(i) from any Claims he or she may have (in his or her own right or as Guardian of the Participant, as the case may be) against the Releasees in respect of injury or death;
or

(ii) without excluding, restricting or modifying the rights afforded to the Applicant by virtue of any consumer guarantees or warranties applicable to the Applicant under the Australian Consumer Law, from any Claims in respect of any Loss,

suffered or incurred by the Applicant or Participant arising from or in connection with:

(iii) the Risks;

(iv) participation or attendance at the Kokoda Challenge (including but not limited to travelling to and from the Kokoda Challenge);

(v) participating in High Risk Activities; or

(vi) the existence of Potential Hazards.

5.2 Release by Minor

Where the Applicant has executed this Agreement on behalf of a Minor:

(a) the Applicant:

(i) to the fullest extent permitted by Law, waives and excludes all rights on behalf of the Participant that he or she may have against KYF in respect of any Claim against the Releasees:

(A) in respect of any injury or death; or

(B) without excluding, restricting or modifying the rights afforded to the Participant by virtue of any consumer guarantees or warranties applicable to the Applicant under the Australian Consumer Law, in respect of other Loss,

suffered or incurred by the Participant arising from or in connection with:

(A) Risks;

(B) participation or attendance at the Kokoda Challenge (including but not limited to travelling to and from the Kokoda Challenge);

(C) participating in High Risk Activities; or

(D) the existence of Potential Hazards.

(ii) is responsible for fulfilling and/or discharging any responsibilities and obligations owed by the Participant under this Agreement; and

(b) to the fullest extent permitted by Law, this Waiver binds the Participant.

5.3 Indemnity

The Applicant indemnifies, and will keep indemnified, KYF against any Liability suffered or incurred by KYF as a result of or in connection with:

(a) a breach of this Agreement by the Applicant (including without limitation, a breach of warranty given by the Applicant to KYF in respect of a Participant who is a Minor);

(b) a breach of the Entry Rules or this Agreement by the Participant;

(c) any Claim made by or against the Applicant as a result of or in connection with:

(i) the injury or death of the Applicant or Participant; or

(ii) without excluding, restricting or modifying the rights afforded to the Applicant by virtue of any consumer guarantees or warranties applicable to the Applicant under the Australian Consumer Law, Loss suffered or incurred by the Applicant or Participant,

in connection with the Participant's attendance at, and participation in, the Kokoda Challenge including without limitation, injury, death or Loss suffered or incurred by the Applicant or Participant arising from:

(i) the Risks;

(ii) engaging in one or more High Risk Activity;

(iii) exposure to Potential Hazards; or

(iv) the location of the Track,

(d) any Claim made by or on behalf of the Participant against KYF or the Releasees in connection with the Participant's attendance at and/or participation in the Kokoda Challenge including without limitation, those associated with any Loss suffered or incurred by the Participant arising from:

(i) the Risks;

(ii) engaging in one or more High Risk Activity;

(iii) exposure to Potential Hazards; or

(iv) the location of the Track.

6. BAR TO PROCEEDINGS

6.1 The Applicant acknowledges that KYF may plead the releases in clauses 5.1 and 5.2 and this Waiver generally as a bar to proceedings commenced by the Applicant (whether in his or her own right or as Guardian, and on behalf of, the Participant) in connection with the Participant's participation in the Kokoda Challenge.

7. MEDICAL EMERGENCY AND TREATMENT

7.1 The Applicant accepts (and warrants that the Participant accepts) that:

(a) it is the Participant's responsibility to continuously monitor his or her own Health while engaging in the Kokoda Challenge; and

(b) the Participant must immediately withdraw from participation in the Kokoda Challenge and notify appropriate KYF personnel or medical personnel if he or she considers, at any point during his or her participation in the Kokoda Challenge, that his or her continued participation would create a risk of danger to himself or herself or to others.

7.2 In the case of any medical or other emergency, the Applicant consents to KYF and medical personnel:

(a) taking all reasonable and practical measures to ensure the safety and well-being of the Participant;

(b) securing emergency medical care or transportation when deemed necessary by KYF or medical personnel present; and

(c) administering or performing life saving measures where practical (including, but not limited to mouth to mouth resuscitation, electric shocks to the Participant's heart, medications being injected into veins and/or a breathing tube being put into the Participant's throat).

7.3 The Applicant will be responsible for and accepts all Liability for the costs of any medical treatment, care or transportation taken administered to, performed on or taken for, the Participant (including but not limited to ambulance transport services, hospital stays, medical care and treatment, and physician and pharmaceutical goods and services) in the event of an emergency or otherwise.

7.4 To the extent permitted by Law, KYF is not responsible for (and the Applicant and Participant release KYF and the Releasees from) any life saving measures or medical procedures taken for or on behalf of the Participant in the case of emergency or otherwise.

8. COMPLIANCE WITH DIRECTIONS AND EVENT RULES

8.1 The Applicant must comply, and must ensure the Participant complies, with:

(a) all lawful and reasonable directions of KYF; and

(b) the Event Rules.

8.2 The Applicant will ensure the Participant:

(a) uses reasonable endeavours to raise the minimum fundraising amount stated in the Event Rules; and

(b) send the total of all fundraising amounts raised by the Participant in connection with the Kokoda Challenge or on behalf of KYF to Kokoda Youth Foundation Inc. by the required date, as notified by KYF (**Fundraising Amount**).

8.3 The Applicant accepts (and warrants that the Participant accepts) that the Participant (and his or her team members) may be denied entry in Kokoda Challenge if the minimum fundraising amount is not raised.

8.4 The Applicant:

(a) indemnifies, and will keep indemnified, KYF against all Liability or Loss suffered or incurred by KYF

in connection with the Participant's breach of clause 8.2(b); and

(b) must pay the total Fundraising Amount to Kokoda Youth Foundation Inc immediately on demand as a liquidated debt if the Participant fails to do so as required under this clause and the Event Rules.

9. CANCELLATION

9.1 KYF may terminate this Agreement or the Participant's entry or participation in the Kokoda Challenge at any time and/or remove the Participant from the Track, if in the opinion of KYF the:

(a) Participant is in breach of any of the terms of this Agreement;

(b) Participant's Health or safety is at risk; and

(c) Health or safety of another participant, third party, or KYF personnel is at risk due to or in connection with the Participant's attendance or participation in the Kokoda Challenge or due to the Participant's actions.

9.2 Where:

(a) this Agreement is terminated or other action is taken by KYF under clause 9.1 above; or

(b) except where due to the default of KYF under this Agreement, the Applicant cancels the Participant's registration in the Kokoda Challenge or terminates this Agreement,

the Entry Fee is non-refundable.

10. FORCE MAJEURE

10.1 KYF may delay, change or cancel the Kokoda Challenge if it considers it necessary or desirable to do so due to a Force Majeure Event.

10.2 KYF will not be in breach of this Agreement or liable for any cancellation, delay or variation in respect of the Kokoda Challenge to the extent that the failure, delay, cancellation or variation is caused, directly or indirectly, by a Force Majeure Event or any act or omission of the Participant.

11. MEDIA RELEASE

11.1 The Applicant acknowledges that:

(a) during the Kokoda Challenge or related activities, the Participant may be photographed or filmed for the purposes of creating information and promotional media for KYF, for use by KYF now and in the future (**'Photographic or Electronic Reproductions'**); and

(b) the Participant may be identifiable from the Photographic or Electronic Reproductions.

11.2 The Applicant consents to KYF:

(a) photographing or filming the Participant and taking Photographic or Electronic Reproductions; and

(b) the use of any Photographic or Electronic Reproductions of the Participant for any purpose, including, but not limited to educational and other media as may be deemed appropriate by KYF.

(c) Sportograf Digital Solutions GmbH will take participant photos at the Lake Macquarie Kokoda Challenge and will use anonymous biometrics to identify the athletes. To ensure the security of the images, all photos will be protected by a second factor authentication and will only be available for purchase to the athletes themselves or their guardians, where applicable.

11.3 The Applicant waives:

(a) any right to inspect or approve the use of the Photographic or Electronic Reproductions or of any written copy;

(b) all Moral Rights; and

(c) any right to royalties or other compensation arising from or related to the use of the Photographic or Electronic Reproductions.

11.4 To the maximum extent permitted by Law, the Applicant indemnifies, and will keep indemnified, KYF against any Claim suffered or incurred by KYF (including Claims brought by or on behalf of the Participant against the Applicant or KYF) in connection with the use of the Photographic or Electronic Reproductions of the Participant (including without limitation Claims of defamation, invasion of privacy, or rights of publicity or copyright infringement, or any misuse, distortion, blurring, alteration, optical illusion or use in composite form that may occur or be produced in taking, processing, reduction or production of the finished product of the Photographic or Electronic Reproductions, its publication or distribution).

12. MISCELLANEOUS

12.1 Changes in the Track or Kokoda Challenge

KYF may, from time to time, change the format, course or other conditions of the Track or Kokoda Challenge from time to time at their discretion. If this occurs:

- (a) KYF will notify the Applicant and Participant of the changes; and
- (b) this Agreement applies to the changed conditions.

12.2 Governing Law

- (a) The terms of this Agreement is governed by the laws of Queensland.
- (b) The parties submit to the exclusive jurisdiction of courts exercising jurisdiction in Queensland.

12.3 Severance

Any provision of this Agreement which is prohibited or unenforceable in the jurisdiction specified in clause 12.2 above will be ineffective in that jurisdiction to the extent of the prohibition or unenforceability. That will not invalidate the remaining provisions of this Agreement nor affect the validity or enforceability of that provision in any other jurisdiction.

12.4 Variation

No variation, modification or waiver of any provision in this Agreement, nor consent to any departure by any party from any such provision, will be of any effect unless it is in writing, signed by the parties or (in the case of a waiver) by the party giving it. Any such variation, modification, waiver or consent will be effective only to the extent to or for which it may be made or given.

12.5 Waivers

A party does not waive a right, power or remedy if it fails to exercise or delays in exercising the right, power or remedy. A single or partial exercise of a right, power or remedy does not prevent another or further exercise of that or another right,

power, or remedy. A waiver of a right, power or remedy must be in writing and signed by the party giving the waiver.

12.6 Survival

Any indemnity or any obligation of confidence under this Agreement is independent and survives termination of this Agreement or an agreement arising in connection with this Agreement. Any other term by its nature intended to survive termination of this Agreement survives termination of this Agreement.

CLICK BELOW TO AGREE TO THE WAIVER AND RELEASE FORM

I HAVE READ AND UNDERSTAND THE CONTENTS OF THE ACKNOWLEDGEMENT, WAIVER & RELEASE FORM*