

## AMY'S GRAN FONDO 2015 TERMS AND CONDITIONS

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The following terms and conditions apply to all participants (as a cyclist or otherwise) in The Amy Gillett Foundation 2015 Amy's Gran Fondo (**Event**), and in the case of a child under the age of 18, the parent or legal guardian of the participant.

In consideration of my participation in the Event, by selecting the "I agree to the above terms and conditions" box below I warrant and represent to AGF that I have carefully read, understand and agree to be bound by following terms and conditions:

### **Definitions**

1. In these terms and conditions:
  - (a) "**AGF**" means and includes the Amy Gillett Foundation Pty Ltd, Cycling Australia (the Event organiser), their subsidiaries, related bodies corporate and their respective directors, officers, members, servants or agents.
  - (b) "**Claim**" means and includes any action, suit, proceeding, claim, demand, damage, penalty, cost or expense however arising from or in connection with the Event, but does not include a claim against AGF by any person expressly entitled to make a claim under an AGF insurance policy.

The inclusions and arrangements for the Event to which these terms and conditions apply are detailed on the website at [www.amysgranfondo.org.au](http://www.amysgranfondo.org.au) including, but not limited to the Home page, Event Information, Travel, Merchandise, Fundraising and Registration (via Enter Now button).

### **Rules of Participation**

2. The Event rules, this declaration and any other terms and conditions of entry comprise a contract between me and AGF which is necessary and reasonable for promoting and conducting the Event.
3. I acknowledge my application to enter the Event will be accepted upon notification to me by AGF and I acknowledge that I will be bound by and agree to comply with such rules, terms and conditions as may be imposed by AGF with respect to the conduct and management of the Event, including but not limited to competition rules and all relevant rules, regulations, policies and codes of conduct, as amended from time to time. I agree to follow any rules and/or directions set by AGF in connection with the Event and comply with all traffic and road laws and all directions issued by the Police and Event marshals. I understand that if I fail to comply with any such rules or directions I will not be permitted to participate or to continue to participate in the Event and no refund will be given.
4. I agree to abide by any decision the AGF may make in relation to my continued participation in the Event.
5. I certify that I am or shall be 18 years of age or over as on the day of the Event otherwise my parent/guardian has agreed to these Terms and Conditions. My parent/guardian agrees to release and indemnify the AGF in the same manner and to the same effect and extent as if they were the person first named on the registration form and participating in the Event.

6. If I am a cyclist participating in the Event, I understand that it is necessary for my bicycle to be in sound mechanical order and suitable for public road riding prior to commencing the Event.
7. I understand that it is compulsory for me to wear all of the participant identification items provided at all times during the Event.
8. I agree that at all times during the Event that I am responsible for my equipment and personal belongings.
9. I understand that AGF may change the Event format, course or other event conditions at its discretion.
10. I agree that if the Event is altered or cancelled for reasons including storms, rain, inclement weather, winds or other Acts of God, or any other factors beyond the control of AGF, my registration is non-refundable. I understand that unless otherwise stated in these Terms and Conditions as required by law, the AGF is under no obligation to refund monies or entry fees due to cancellation for any reason, failure to participate or dissatisfaction by the participant.
11. I acknowledge that my registration is not transferable to other people under any circumstances. Any attempt to transfer my entry or allow another person to participate under my name may result in my registration being cancelled without refund.
12. I understand that if I notify the AGF of my withdrawal from the Event on or before 11.59pm on 11 July 2015 in writing, providing my name, address and reason for cancelling, 75% of my registration fee will be refunded. After this, if I withdraw by 11.59pm on 15 August 2015, 50% of my registration fee will be refunded. Thereafter I acknowledge that no portion of my entry fee will be refunded.

***Fitness to Participate and Disclosure***

13. I declare that I am medically and physically fit and able to participate in the Event. I am not and must not be a danger to myself or to the health and safety of others. I will immediately notify AGF in writing of any change to my medical condition, fitness and ability to participate.
14. I acknowledge that I must, and I agree that I will, disclose any pre-existing medical or other condition that may affect the risk that either I or any other person will suffer injury, loss or damage.
15. I understand and accept that AGF will continue to rely upon this declaration as evidence of my fitness and ability to participate in the Event and that all such medical or other information is accurate and complete.
16. I agree to report any accidents, injuries, loss or damage I suffer during the Event to AGF before I leave the Event. If I suffer any injury or illness, I agree that AGF may provide any medical treatment that AGF reasonably considers necessary or desirable for me during my participation in the Event including evacuation, first aid and/or medical treatment. I also agree to reimburse AGF for any costs or expenses incurred in providing me with medical treatment.

***Exclusion of Participant***

17. If I am a cyclist participating in the Event, I warrant that I have not at any time been excluded from cycling by a medical practitioner or any person or entity. I acknowledge and agree that AGF may demand a medical certificate or opinion as to my fitness from a qualified medical practitioner PRIOR to me undertaking the Event. Failure to provide a satisfactory medical certificate may result in a decision (prior to or during the Event) to exclude me from the Event. I agree to abide by any decision AGF may make in relation to my continued participation in the Event.

18. The AGF reserves the right to refuse a participant's registration and without giving reasons for its decision.

### **Safety**

19. I understand and acknowledge the dangers associated with the consumption of alcohol or any mind-altering substance before or during the Event, and I accept full responsibility for any injury, loss or damage associated with the consumption of alcohol or any other mind-altering substance.

### **Risk Warning**

20. Participation in the Event, including undertaking cycling activities or otherwise, is inherently dangerous and may involve risk. There are risks specifically associated with participation in the Event including but not limited to physical exertion, risk of falling, colliding with other riders or road users, encountering hidden obstacles or varying terrain, the risk of injury from any failure of the bicycle or any of its components or inclement weather conditions. I acknowledge that incidents can happen which may result in personal injury, death or property damage.

21. Prior to participating in the Event, I should ensure I am aware of all of the risks involved, including those risks associated with any health condition I may have.

22. By agreeing to these terms and conditions, I acknowledge, agree, and understand that participation in the recreational services provided by AGF may involve risk. I agree and undertake any such risk voluntarily and at my own risk. I acknowledge that the assumption of risk and warning above constitutes a 'risk warning' in accordance with relevant legislation.

### **Exclusion of implied terms**

23. It is possible for a supplier of recreational services or recreational activities to ask a participant 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 the participant (or a person for whom or on whose behalf I am acquiring the services or activities).

24. By agreeing to these terms and conditions, I will be agreeing that my rights (or the rights of a person for whom or on whose behalf I am acquiring the services) to sue the supplier (in relation to recreational services or recreational activities that I undertake) because the services or recreational activities provided were not in accordance with the guarantees are excluded, restricted or modified as set out below.

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

25. By agreeing with these terms and conditions, I agree that the liability of 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 me or the community;

ii. that may result in harm or disadvantage to me or the community, that may be suffered by me (or a person for whom or on whose behalf I am acquiring the services) resulting from the supply of recreational services; 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 to which the Australian Consumer Law (Victoria) applies:**

26. **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 in these terms and conditions, being AGF, is required to ensure that the recreational services it supplies to me:

- a. are rendered with due care and skill; and
- b. are reasonably fit for any purpose which I either expressly or by implication, make known to the supplier; and
- c. might reasonably be expected to achieve any result I 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 me to agree that these conditions do not apply to me. By agreeing to these terms and conditions, I will be agreeing that my rights to sue the supplier under the Australian Consumer Law and Fair Trading Act 2012 if I am killed or injured because the services were not in accordance with these guarantees, are excluded, restricted or modified in the way set out in these terms and conditions.

**Note:** The change to your rights, as set out in these terms and conditions, does not apply if my death or injury is due to gross negligence on the supplier's part. "**Gross negligence**" in relation to an act or omission, means doing the act or omitting to do an act with reckless disregard, with or without consciousness, for the consequences of the act or omission. See regulation 5 of the *Australian Consumer Law and Fair Trading Regulations 2012 (Vic)* and section 22(3)(b) of the *Australian Consumer Law and Fair Trading Act 2012 (Vic)*.

**Exclusion of rights under the Australian Consumer Law (Victoria):** By agreeing to be bound by these terms and conditions, I agree that the liability of AGF for any death or personal injury (as defined in the *Australian Consumer Law and Fair Trading Act 2012*) that may be suffered by me (or a person from whom or on whose behalf I am acquiring the services) resulting from the supply of recreational services is excluded.

**Release and indemnity**

27. In consideration of AGF accepting my participation in the Event I, to the extent permitted by law:

- a. release and will release AGF from all Claims that I may have or may have had but for this release arising from or in connection with my participation in the Event; and
- b. release and indemnify AGF against any Claim which may be made by me or on my behalf for or in respect of or arising out of my death whether caused by negligence or breach of contract by AGF or in any other manner whatsoever; and
- c. indemnify and will keep indemnified AGF to the extent permitted by law in respect of any Claim by any person:
  - i. arising as a result of or in connection with my participation in the Event; and

ii. against AGF in respect of any injury, loss or damage arising out of or in connection with my failure to comply with AGF'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 AGF.

### ***Bar to Proceedings***

28. I acknowledge that AGF may plead this contract as a bar to proceedings now or in the future commenced by or on my behalf or by any person claiming through me. Where I commence proceedings against AGF, I:

- 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 I seek to commence proceedings in another jurisdiction from where any incident occurs, consent (if required by AGF) to move those proceedings to the jurisdiction in which any incident occurs including consenting to any application made by AGF to remove the proceedings to the jurisdiction in which any incident occurs;
- d. will pay the costs of any application made by AGF under paragraph 28.c and will consent to any application for security of costs made at any time by AGF; and
- e. consent to paying AGF's legal defence costs of the proceedings (on a solicitor client basis) where AGF successfully defends the proceedings.

### ***Insurance***

29. I understand that AGF has arranged some limited insurance coverage which may provide me with some protection for loss, damage or injury that I may suffer during my participation in the Event. For full policy information, please contact Cycling Australia on ph: 02 9339 5800 or email: [membership@cycling.org.au](mailto:membership@cycling.org.au). However, I acknowledge and accept that insurance taken out by AGF may not provide full indemnity for loss, damage or injury that I may suffer during my participation in the Event, and that I may have to pay the excess if a claim is made on my behalf. I agree that my own insurance arrangements are ultimately my responsibility and I will arrange any additional coverage at my expense after taking into account AGF's insurance arrangements and my own circumstances.

### ***Use of image***

30. I acknowledge and consent to photographs and electronic images being taken of me during my participation in the Event. I acknowledge and agree that such photographs and electronic images are owned by AGF and AGF may use the photographs for promotional or other purposes without my further consent being necessary. Further, I consent to AGF using my name, image, likeness and also my performance in the Event, at any time, by any form of media, to promote the Event or AGF.

### ***Privacy***

31. I understand that the personal information I have provided in my membership application is collected, used and disclosed in accordance with the Privacy Policy of AGF (available from <http://www.amygillett.org.au/privacy-policy>). I acknowledge that the Event organiser and AGF may use and disclose my personal information for the purposes of conducting and administering the Event, providing me with services or promotional material, complying with legal obligations or otherwise in accordance with the Event organiser's Privacy Policy and/or AGF's Privacy Policy. The Event organiser or AGF may share my information (including name, date of birth, emergency contact

details and suburb of residence) with third parties such as sponsors (including for marketing and promotional purposes), event timing companies and first aid and medical services. For Amy's Gran Fondo 2015, these sponsors/third parties include Cycling Australia, UCI, Wiggle (which is a company based in the United Kingdom), Jump Media and Subaru. I understand that AGF's Privacy Policy contains information about how I may access and request correction of my personal information held by AGF or make a complaint about the handling of my personal information, and provides information about how a complaint will be dealt with by AGF. I acknowledge that my Event entry application may be rejected if the information is not provided. If I do not wish to receive promotional material from AGF or its sponsors or other third parties I must advise AGF in writing or via the opt-out procedures provided in the relevant communication.

***Governing Law***

32. The governing law of this agreement is the law of the state of Victoria ('Jurisdiction'). I irrevocably and unconditionally consent and submit to the Jurisdiction of the courts in which any incident occurs and waive any right to object to the exercise of such Jurisdiction.

***Entire Agreement***

33. This agreement (and the documents to which it refers, including the Event inclusions and arrangements agreed to when registering to participate in the Event) constitutes the entire agreement between the parties in respect to the Event and supersedes all other agreements, understandings and representations and negotiations with the Event.

34. If any provision of this Event entry application and declaration is invalid or unenforceable in any jurisdiction, the phrase or clause is to be read down for the purpose of that jurisdiction, if possible, so as to be valid and enforceable. If the phrase or clause cannot be so read down it will be severed to the extent of the invalidity or unenforceability. Such severance does not affect the remaining provisions of this application and declaration or affect the validity or enforceability of it in any other jurisdiction.

***Warranty***

35. I warrant that all information provided is true and correct. I acknowledge this application and declaration cannot be amended. If I do amend it my application will be null and void and cannot be accepted by AGF.

I have read, understood, acknowledge and agree to the above terms and conditions including but not limited to the warning, exclusion of implied terms, release and indemnity).