

PARTICIPANT TERMS AND CONDITIONS

SHARING ROADS SAFELY COURSE

1. DEFINITIONS

In these term and conditions (**Conditions**):

AGF means the Amy Gillett Foundation (ABN 46 200 981 503) and where relevant, any employee, agent, contractor or authorised representative of AGF.

Claim means and includes any action, suit, proceeding, claim, demand, damage, penalty, cost or expense however arising from or in connection with the Course but does not include a claim against AGF by any person expressly entitled to make a claim under an AGF insurance policy.

Content means all software, technology, designs, materials, information, communications, text, graphics, links, electronic art, animations, illustrations, artwork, audio clips, video clips, photos, images, reviews, ideas, and other data or copyrightable materials or content.

Course means the 'Sharing Roads Safely' vulnerable road user training course developed by AGF.

Customer Data means your personal information (as defined in the *Privacy Act 1988* (Cth)) and any content uploaded, transmitted or posted to the Online Learning Portal by you.

Enrolment Fee means the registration and course fee payable by you (or on your behalf) for enrolment in the Course.

Materials mean documents, information, materials (including marketing materials) and communications, provided or made available by or through the Online Learning Portal in relation to the Course.

Module 1 means the online program developed and administered by AGF, which constitutes module 1 of the Course.

Module 2 means the classroom program developed and administered by AGF, which constitutes module 2 of the Course.

Module 3 means the practical component incorporating experiential cycling on public roads and related activities developed and administered by AGF, which constitutes module 3 of the Course.

Online Learning Portal means the online learning management system operated by AGF.

Privacy Policy means AGF's privacy policy as amended from time to time, and available at <http://www.amygillett.org.au/privacy-policy>.

2. TERMS OF PARTICIPATION

- (a) These Conditions comprise a contract between you and AGF which is necessary and reasonable for promoting and conducting the

Course. You acknowledge that by accepting these Conditions you will be bound by and agree to comply with these Conditions, as amended from time to time. You understand that if you fail to comply with these Conditions you may not be permitted to participate or to continue to participate in the Course and no refund will be given.

- (b) By enrolling in the Course and paying the required Enrolment Fee, you will be provided with access to the Online Learning Portal.
- (c) All learning and assessment materials for Module 1 will be provided to you via the Online Learning Portal. You will be responsible for meeting the assessment criteria set by AGF in order to satisfactorily complete Module 1.
- (d) In order to be assessed as competent in the entire Course, you must complete all modules in order, starting with Module 1.
- (e) Once your enrolment is accepted, you will be issued with a completion date for Module 1 or the Course (as applicable). You must complete: (i) Module 1 within two months of being enrolled in the Course, or within such other time as notified to you by AGF; and (ii) the Course within the period specified, failing which you will not be credited with finishing Module 1 or the Course (as applicable) and no refund will be provided. Should you wish to receive credit for completing the relevant Module and/or Course, you will be required to pay a new Enrolment Fee.
- (f) AGF reserves the right to change the Materials, modify assessment requirements for Module 1 or to discontinue the availability of the entire Course at any time (for example due to insufficient student numbers). If Module 1 or the Course is discontinued, you will be entitled to a full refund of your Enrolment Fee only if you have not yet commenced the Course.
- (g) AGF reserves the right to reschedule the delivery date for Modules 2 or 3, including for reasons of, but not limited to, insufficient numbers or illness of the facilitator. You acknowledge and agree that no compensation is payable if Modules 2 and/or 3 are rescheduled.

3. REFUNDS AND CANCELLATION

- (a) If you wish to cancel your enrolment in a Module or the Course, you must submit a request to AGF by email at sharing.roads.safely@amygillett.org.au at least two business days prior to commencing the Module or Course, or the first date you are assigned to attend a Module (whichever is earlier). Cancellation requests made within 48 hours of the commencement of the Course will not be entitled to a refund.
- (b) If you do not attend the relevant date for which you have been assigned Module 2 and/or 3, and have not cancelled your enrolment in accordance with (a) above, no refund will be provided.
- (c) Only two cancellation requests under (a) above may be made, following which any further cancellation request will not be entitled to a refund.

4. ONLINE LEARNING PORTAL USE

- (a) Unless AGF agrees otherwise in writing, you are provided with access to the Online Learning Portal only for personal use. You acknowledge that the Online Learning Portal, related software and Materials provided by AGF are the copyrighted works of AGF.
- (b) AGF does not warrant that the Online Learning Portal will operate uninterrupted, nor does it warrant (expressly or impliedly) that the Online Learning Portal or Materials will not cause damage or are free from any computer virus or any other defects or errors.
- (c) AGF will provide you with reasonable technical support services in accordance with AGF's standard practice.
- (d) AGF may monitor your use of the Online Learning Portal and may prohibit any use of the Online Learning Portal it believes may be, in its sole discretion, or is alleged to be, in violation of these Conditions.
- (e) You will be responsible for obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use the Online Learning Portal, including, modems, hardware, servers, software, operating systems, networking, telecommunications, web servers and the like and all costs and expenses

whatsoever in relation to the equipment. You will also be responsible for maintaining the security of your username and password.

- (f) If you are approved for access to the Online Learning Portal by AGF, you must not:
 - (i) upload, post or otherwise transmit any unsolicited or unauthorised advertising, promotional materials, junk mail or spam through the Online Learning Portal;
 - (ii) post or provide any inappropriate, offensive, racist, hateful, sexist, pornographic, false, misleading, incorrect, infringing, defamatory or libellous content or information;
 - (iii) impersonate another person or gain unauthorised access to another person's account on the Online Learning Portal; or
 - (iv) introduce any virus, worm, spyware or any other computer code, file or program that may damage or is intended to damage or hijack the operation of any aspect or operation of the Online Learning Portal, or scrape, spider, use a robot or other automated means of any kind to access the Online Learning Portal.
- (g) AGF reserves the right to withdraw you from a Module or the entire Course as a result of inappropriate behaviour or offensive language towards facilitators, trainers or other students. In the event this occurs, you will not be eligible for a refund of the Enrolment Fee.

5. INTELLECTUAL PROPERTY

You acknowledge that:

- (a) AGF owns and retains all right, title and interest in and to the Online Learning Portal (including all improvements, enhancements or modifications to the Online Learning Portal) and any software, applications, inventions or other technology developed in connection with Online Learning Portal; and

- (b) AGF owns the Materials, and any intellectual property in or related to the Materials.

6. PRIVACY

- (a) The Customer Data you provide to AGF will be used to administer your enrolment and participation in a Module or the Course (as applicable). If you do not provide all the information requested by AGF, it will not be possible to enrol you in a Module or the Course.
- (b) All Customer Data collected by AGF is managed in accordance with the Privacy Policy. AGF will not provide Customer Data to unauthorised third parties unless prior written permission has been received from you.
- (c) AGF has the right to collect and analyse data and other information relating to the provision, use and performance of various aspects of the Online Learning Portal and related systems and technologies, and AGF will be free to use such information and data to improve and enhance the Online Learning Portal and for other development, diagnostic and corrective purposes in connection with the Online Learning Portal.
- (d) The Online Learning Portal may contain links to other websites operated by third parties, which are included solely for your convenience. Links to third party websites do not constitute endorsement, sponsorship or approval by AGF of the content, policies or practices of those third parties, nor the content available on or for download from those third party sites.
- (e) You agree that by accessing any third party-linked website, you do so at entirely your own risk. AGF will not be responsible or liable, directly or indirectly, for any damage or loss caused or alleged to be caused by or in connection with, use or reliance on any goods or services available on or through any third party website.

7. PAYMENT OF FEE

- (a) Your enrolment will not be accepted until you have paid to AGF the Enrolment Fee, or had such fee paid on your behalf, for the Course.
- (b) Pricing of the various Modules in the Course, and the Course itself, is published on the AGF website and is otherwise available directly from AGF.

8. RELEASE AND INDEMNITY

In consideration of AGF accepting your registration in the Course, to the extent permitted by law, you:

- (a) release and will release AGF from all Claims that you may have or may have had but for this release arising from or in connection with your participation in the Course;
- (b) release and indemnify AGF 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 AGF or in any other manner whatsoever; and
- (c) indemnify and will keep indemnified AGF to the extent permitted by law against any damages, losses, liabilities, settlements and expenses (including costs and legal fees) in respect of any Claim or action by any person:
 - (i) arising as a result of or in connection with your participation in the Course; and
 - (ii) against AGF in respect of any injury, loss or damage arising out of or in connection with your failure to comply with these Conditions or 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.

9. BAR TO PROCEEDINGS

You acknowledge that AGF 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 AGF, you:

- (a) will commence those proceedings in the courts of Victoria, Australia;
- (b) waive any right to object to the exercise of such jurisdiction;
- (c) will, where you seek to commence proceedings in a jurisdiction outside Victoria, consent (if required by AGF) to move those proceedings to Victoria, including consenting to any

application made by AGF to move the proceedings to the Victoria;

- (d) will pay the costs of any application made by AGF under clause 9(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.

10. INSURANCE

During your participation in Module 3, you will be provided with limited insurance cover while participating in Module 3. You understand that this insurance may not cover you for all injury, loss or damage sustained and that you may have to pay the excess if a claim is made on your behalf and you acknowledge that AGF does not make any representations about the suitability of any insurance. You also understand you can, in your own interests and at your own expense, seek and obtain personal insurances over and above any cover that may be provided by AGF.

11. FITNESS TO PARTICIPATE

You declare that you are medically and physically fit and able to participate in Module 3. You are not and must not be a danger to yourself or to the health and safety of others. You understand and accept that AGF will continue to rely upon these Conditions as evidence of your fitness and ability to participate in Module 3. You will report to AGF any accidents, injuries, loss or damage suffered by you during Module 3 before you leave any relevant Course location.

12. MEDICAL TREATMENT

You consent to receiving any medical treatment that AGF (or any instructors engaged by AGF) reasonably consider necessary or desirable for you during participation in Module 3, including evacuation and transport to medical facilities. You agree that your acceptance of these Conditions constitutes your consent to such evacuation or medical treatment. You also agree to reimburse AGF for any costs or expenses incurred in providing you with medical treatment.

13. EXCLUSION OF PARTICIPANT

You warrant that you are not currently excluded from walking, jogging, riding a bicycle or running by a medical practitioner. You acknowledge and agree that AGF may demand a medical certificate or opinion as to your fitness from a qualified medical

practitioner PRIOR to you undertaking Module 3.

14. SAFETY

You understand and acknowledge the dangers associated with the consumption of alcohol or any mind-altering substance before or during your participation in Module 3, and you accept full responsibility for any injury, loss or damage associated with the consumption of alcohol or any other mind-altering substance.

15. PREVAILING CONDITIONS

Participation in Module 3 may be affected by weather and associated conditions. Given there is often an element of "luck of the prevailing conditions" in participating in Module 3, you acknowledge and agree that organisers cannot control the weather and associated conditions. You accept that in the event of extreme weather conditions AGF reserve the right to alter the format of, shorten, or cancel Module 3 in the interest of participant safety. You acknowledge that AGF will use all reasonable efforts to conduct Module 3 in the planned format if safe to do so. Should prevailing weather conditions force any change you accept that AGF will once only reschedule Module 3 to an alternative date, and if such rescheduled date cannot occur for any reason outside AGF's control, AGF is not obliged to provide you with any refund, or provide a credit, or to restage Module 3, as weather and associated conditions are beyond the control of AGF.

16. RIGHT TO USE IMAGE

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

17. GENERAL

- (a) A right to participate in the Course is non-transferable to another person. Any attempt to transfer to another person without the knowledge of AGF may result in the cancellation of any rights granted by AGF without refund and you may not be permitted to participate in further programs. You also accept that fees paid for participation in the Course may be non-refundable.

- (b) These Conditions (and the documents to which they refer) and if you pay the Enrolment Fee on your own behalf, the purchase terms and conditions (available at <https://www.amygillett.org.au/wp-content/uploads/2021/06/SRS-purchase-TCs-final-16.06.21.pdf>) constitute the entire agreement between the parties in respect of the Course and supersede all other agreements, understandings, representations and negotiations in relation to the Course.
- (c) If any provision of these Conditions is invalid or unenforceable in any jurisdiction, the phrase or clause is to be read down for the purposes of that jurisdiction, if possible, 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 these Conditions or affect the validity or enforceability of it in any other jurisdiction.
- (d) The governing law of these Conditions is the law of the State of Victoria, Australia. You irrevocably and unconditionally consent and submit to the exclusive jurisdiction of the courts of Victoria and waive any right to object to the exercise of such jurisdiction.
- (e) You warrant that all information provided by you in relation to these Conditions is true and correct.