

**SOUTH WEST ACADEMY OF SPORT
ATHLETE AGREEMENT
TERMS AND CONDITIONS**

1. ATHLETE'S OBLIGATIONS

The Athlete shall during the Term:

1.1 Undertake the Program

Undertake the Sports Program or accept a SWAS Sports Scholarship in an endeavour to achieve and maintain a standard of excellence in the Sport that will enhance the athletes opportunity to progress to the highest level of achievement.

1.2 Attend Training and Meetings

Attend all training sessions and meetings specified in the Program unless excused by the Program Coach, Program Coordinator or via prior notice to the SWAS CEO.

1.3 Obey Reasonable Directions

Obey all lawful and reasonable directions of SWAS or SWAS employees.

1.4 Compete in all Competitions Specified in the Program

Compete in all events in which the Athlete is selected to compete or otherwise directed by the Coach unless he/she is ruled unfit to compete by a medical officer or personnel approved by SWAS.

1.5 Preparation for Competition and Behaviour

Comply with all lawful and reasonable requirements of SWAS and the relevant State Sporting Association relating to preparations for competition, attendance at SWAS and Association functions, behaviour and dress when carrying out his/her obligations under the Agreement.

1.6 Obey Rules

Obey the Rules, Regulations of SWAS and the State Sporting Association and all resolutions of SWAS and the Association that are notified to the Athlete which may be made or passed prior to or at any time after the commencement of the Term.

1.7 No Interference with Agreement

Not enter into any agreement, or understanding, which would prevent the Athlete from complying with any of the provisions of this Agreement. Nothing in this sub-clause shall prevent the Athlete from engaging in alternate employment or business opportunities

provided this will not directly conflict with commercial sponsorship arrangements of SWAS.

1.8 Fitness

Do everything reasonably necessary to attain and maintain a level of health and physical fitness so as to comply with the provisions of this Agreement to enable the Athlete to fulfil requirements of the Program.

1.9 No Dangerous or Hazardous Activities

Not engage in any dangerous or hazardous activity which in the reasonable opinion of the Coach may affect the Athlete's ability to perform his/her obligations under this Agreement without first obtaining the consent of the Coach, which consent shall not be unreasonably withheld.

1.10 Wear Official Apparel

When representing SWAS, the Athlete will wear approved playing/training apparel as provided by SWAS.

1.11 Use of Image

Subject to the provisions of Clause 2.1 and without the prior approval of the SWAS CEO, be entitled to allow or authorise any person, corporation or entity to use his/her name, photograph, likeness, reputation and identity for commercial purposes including but not limited to licensing, endorsements, advertising, promotions, merchandising, memorabilia, events and marketing.

1.12 Physical examination

Submit to a complete physical examination upon the request of SWAS and at the expense of the party referred to in the Schedule prior to the commencement of and at any time during the Term.

- 1.12.1 Save as provided by Clause 6, if the Athlete fails to display a reasonable level of physical fitness necessary to compete, on any occasion when the Athlete is required to submit to a complete physical examination;
- 1.12.2 SWAS shall be permitted to suspend the services and support that would otherwise be paid or provided by SWAS to the Athlete under this Agreement until the Athlete submits to a further complete physical examination and is passed fit to compete;
- 1.12.3 Where the Athlete disputes that he/she has failed to display a reasonable level of physical fitness necessary to compete or train, he/she may request the CEO of SWAS to appoint an independent medical practitioner to conduct a complete physical examination of the Athlete at the cost of the Athlete. In such case, the services and support provided to the Athlete pursuant to this Agreement shall continue to be provided until the independent medical practitioner certifies that

the Athlete has failed to display a reasonable level of physical fitness necessary to compete;

- 1.12.4 Any suspension of services and support in accordance with this clause shall apply until a SWAS appointed independent medical practitioner certifies that the Athlete has achieved a reasonable level of physical fitness necessary to compete.

1.13 Drug/Alcohol testing

In accordance with SWAS' Anti-Doping Policy and SWAS Alcohol and Drugs in the Workplace Policy, if and whenever required by SWAS to submit to random out of competition and in competition drug testing and provide a biological sample (including without limitation blood, tissue or urine) at the request, expense and under the direction of SWAS.

- 1.13.1 The parties acknowledge and declare that the covenant of the Athlete contained in this clause is necessary to ensure that the Athlete's performance is achieved on the basis of athletic prowess and natural levels of fitness and development which are not enhanced by any means which would contravene SWAS' Doping Policy.
- 1.13.2 The Athlete agrees with SWAS to provide all reasonable assistance and comply with all directions of a SWAS appointed Medical Coordinator and any representatives of the Australian Sports Drug Agency given in accordance with SWAS' Doping Policy.
- 1.13.3 Please refer to the Alcohol and Drugs in the Workplace Policy.

1.14 Sport Science Testing

Submit to anthropometric, biomechanical, physiological, psychological and strength assessments throughout the Term of this agreement where required.

- 1.14.1 Data collected from these assessments will be treated in the strictest confidence and will only be provided to persons other than the personal coach, SWAS coach and staff collecting the data, at the request of the Athlete.

1.15 Residency

Reside in Western Australia. If the Athlete during the Term, does not reside in Western Australia the Athlete shall:

- 1.15.1 Submit to the SWAS CEO or Program Manager monthly (or as agreed) a report, in a form approved by the SWAS CEO or Program Manager, prepared by the Athlete's Coach specifying the status of the Athlete's performance in the Program and an opinion from the Athlete's Coach as to whether the Athlete is fulfilling the requirements of the Program;
- 1.15.2 When requested by SWAS, attend and participate in, at the Athlete's own expense, any Western Australian State championship or such other event as is specified by the Program Manager.

1.16 No Gambling

- 1.16.1 Not participate or engage directly or indirectly in any relevant bet, wager or gamble in connection with any sport for which SWAS provides any services and support, either directly or indirectly.
- 1.16.2 Not accept or agree to accept either directly or indirectly, any bribe, pecuniary or other gift or other consideration or benefit whether in cash or kind associated with or connected with or relating to the ability of the Athlete to exercise control over or influence a competition so as to bring about a result other than that which would be achieved in a fair contest.

2. RESTRICTIONS ON USE OF IMAGE

No conflict with SWAS Sponsors or prejudice SWAS

- 2.1 Without prior approval, the Athlete shall not be entitled to exercise his/her rights under Clause 1.11 where such use or utilisation of the name, signature, photograph, likeness, reputation and identity:
 - 2.1.1 Would conflict with or in any manner prejudice the name, reputation, image, products or services of any Sponsor of SWAS. The Athlete agrees that SWAS may nominate persons, corporations or entities who make a substantial contribution to SWAS to be its Sponsors from time to time;
 - 2.1.2 Would be prejudicial to the interests of SWAS or the Association, or which may bring the Sport into disrepute.

2.2 Prior Agreements

The provisions of Clause 2.1 shall be subject to any agreement in relation to use or utilisation of the name, signature, photograph, reputation, likeness and identity of the Athlete existing between the Athlete and any other person, corporation or entity as at the date of the execution of this Agreement PROVIDED THAT the Athlete shall not renew or renegotiate any such agreement with such person, corporation or entity during the Term unless the Sponsors have been given the right of first refusal in relation to such renewal or renegotiation and all have declined to match the offer of renewal or renegotiation.

2.3 Intellectual property of SWAS

The Athlete shall not use or utilise any intellectual property of SWAS including without limitation any registered trademark, logo, design or any item of Academy playing apparel or any component of such intellectual property without the written consent of SWAS as the case may be, first had and obtained, nor shall the Athlete grant any rights to use or utilise his/her name, signature, photograph, likeness, reputation and identity or endorse any product or service in trade or commerce in such a way as to connote the sponsorship,

approval or affiliation of SWAS without the prior written consent of SWAS first had and obtained.

3. PROMOTION AND PUBLICITY

3.1 Appearances, Photos and Film

- 3.1.1 The Athlete shall make himself/herself available on reasonable notice at any time during the Term for appearances or photography or motion picture sessions for SWAS, on up to three occasions in each year.
- 3.1.2 Where the Athlete has a reasonable excuse for his/her inability to participate in any such appearance or session he/she shall make himself/herself available at the next earliest opportunity suitable to the Athlete or SWAS as the case may be.
- 3.1.3 The Athlete shall make such personal appearances, or attend such photography or motion picture sessions as requested by SWAS in accordance with this clause at no cost or charge to SWAS other than the reasonable expenses incurred by the Athlete in complying with his/her obligations to SWAS under this clause approved by the Chief Executive Officer.

3.2 Promotion of SWAS

The Athlete hereby authorises SWAS to use and utilise the Athlete's name, signature, photograph, likeness, reputation and identity on any number of occasions and without cost or charge to SWAS for promoting SWAS. The Athlete acknowledges that the promotion of the name, reputation, product or service of any Sponsors of SWAS shall be deemed to be a promotion of SWAS.

3.3 Assignment of Copyright

The Athlete hereby irrevocably assigns to SWAS as the case may be, all and any copyright or other rights whatsoever arising out of such personal appearances, photography or motion picture sessions or the use of the Athlete's name, signature, photograph, likeness, reputation and identity pursuant to this clause.

4. USE OF IMAGE BY SWAS

Consent of the Athlete

- 4.1 Save as is otherwise provided in this Agreement, SWAS may use and utilise the Athlete's name, signature, photograph, likeness, reputation and identity for promotional purposes and for advertising the business and undertaking of SWAS including but not limited to licensing, endorsements, advertising, promotions, merchandising, memorabilia, events and marketing, provided that SWAS has obtained the consent of the Athlete.

- 4.2 The Athlete shall not unreasonably refuse consent to any request by SWAS for use of the Athlete's name, signature, photograph, likeness, reputation and identity in accordance with this clause and SWAS shall not be prevented from using or utilising the Athlete's name, signature, photograph, likeness, reputation and identity where the Athlete has unreasonably refused his/her consent.
- 4.3 The parties further agree that in the event that SWAS requests consent from the Athlete in accordance with this clause, such consent shall be deemed to have been given if the Athlete does not refuse his/her consent within fourteen (14) days from the date of request.
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5. INJURY/ILLNESS

- 5.1 If the Athlete suffers an injury or illness as a result of which he/she is unfit to train and/or compete in the Sport and where such injury or illness was incurred by the Athlete in a competition or at an official training session of SWAS or the Association, or by attending a SWAS or Association function or while on official duties at the direction of SWAS or the Association, the Athlete shall, provided that he/she has not caused such injury or illness by his/her own negligence, be compensated as follows:
- 5.1.1 So much of the Scholarship amount specified in the Schedule (if any) as has not been paid to the Athlete;
- 5.1.2 The obligations of SWAS to pay injury or illness payments shall be subject to and conditional upon the Athlete using his/her best endeavours to rehabilitate himself/herself and return to competition fitness as soon as possible. The obligation of the Athlete in this clause shall without limitation, include the Athlete observing all reasonable directions of the Coach and SWAS in relation to the Athlete's rehabilitation including diet, exercise, special training and attendance for medical or paramedical treatment.
- 5.2 Where the Athlete is entitled to injury or illness benefits payments under this clause, the Athlete shall, in addition to the payments described in Clause 6.1, be paid the difference between the amount recoverable under any claim from the relevant hospital and medical benefits fund and the amount actually payable for the cost of treatment provided that such treatment was first approved by SWAS and such treatment was directly referable to the injury or illness PROVIDED THAT the total payments made under this clause will not exceed the Scholarship amount provided in the Schedule.
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6. FACILITIES

6.1 Training and Sports Science Facilities

SWAS shall make available or procure where possible for the benefit of the Athlete such training and sport science facilities and staff as are available to SWAS.

6.2 Safe and Healthy Practices

SWAS shall provide or will ensure a playing, training and work environment which is free of any unreasonable risk to the health, safety and welfare of the Athlete. Without limitation, SWAS shall observe and carry out its obligations under the applicable Occupational Health and Safety Act or its equivalent.

7. PLAYING APPAREL

Subject to the other provisions of this Agreement, the Athlete shall not be prohibited from acquiring (at his/her own cost) and using playing apparel suitable for the Athlete to perform his/her obligations under this Agreement provided that the same conforms with the Rules of the Association and is approved of by SWAS and the Association which approval shall not be unreasonably withheld.

8. BEST ENDEAVOURS

The parties to this Agreement shall use their best endeavours, in relation to any matter or thing directly within their control, to bring about compliance with all the provisions of this Agreement.

9. DISPUTE RESOLUTION

- 9.1 If any dispute or difference whatever shall arise between the parties with respect to or arising out of this Agreement or any part of it with respect to its construction or its effect or any matter connected with it or arising out of it or with respect to its operation or determination or the rights or duties of any party in connection with it then in any case the same maybe referred for arbitration to the Registrar of the National Sports Dispute Centre or his/her nominee in accordance with and subject to the National Sports Dispute Centre Arbitration Rules and the Commercial Arbitration Act (1985) WA.
- 9.2 No party shall be entitled to commence or maintain any proceedings in any Court with respect to such dispute or difference unless and until the arbitrator shall have published his final award and then only to recover the sum payable in accordance with that award.
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10. INDEMNITY

The Athlete agrees to:

- 10.1 Indemnify and hold harmless SWAS to the full extent allowed by the law from all claims and demands of every kind including, but not limited to negligence and breach of contract arising from or in conjunction with any damage, injury or loss which may be suffered by the Athlete during the Term howsoever caused, save as specified in Clause 6 hereof;
- 10.2 Irrevocably releases SWAS, to the full extent allowed by law, from all claims and demands of every kind including, but not limited to negligence and breach of contract arising from or in conjunction with any damage, injury or loss which may be suffered by the Athlete during the Term howsoever caused, save as specified in Clause 6 hereof

11. DEFAULT AND TERMINATION

- 11.1 This Agreement may be terminated or the services or support provided by SWAS pursuant to this Agreement may be suspended in whole or in part for such period as the Chief Executive Officer determines:

11.1.1 Athlete breach

If the Athlete is in breach of any of his/her obligations under this Agreement and the breach continues for a period of twenty-eight (28) days after notice in writing by SWAS to the Athlete requiring the breach to be remedied.

11.1.2 Misconduct

If the Athlete engages in misconduct and such misconduct continues for a period of twenty-eight (28) days after notice in writing by SWAS to the Athlete requiring the misconduct to cease.

11.2 SWAS Breach

The Athlete may terminate the Agreement if SWAS is in breach of any of its obligations hereunder and the breach continues for a period of twenty-eight (28) days after notice in writing by the Athlete to SWAS requiring the breach to be remedied.

11.3 Consent

This Agreement may be terminated by any party with the written consent of the other.

12. SUMMARY SUSPENSION/TERMINATION

This Agreement may be immediately terminated or the services and support provided by SWAS pursuant to this Agreement may be suspended in whole or in part for such period as the Chief Executive Officer determines without notice if in the reasonable opinion of the CEO of SWAS the Athlete has:

- 12.1 Failed to comply with SWAS' Anti-Doping and SWAS Alcohol and Drugs in the Workplace Policy; or

12.2 Been guilty of misconduct or such conduct which, in the reasonable opinion of SWAS and the Association, may injure the reputation of SWAS, the Association or the Sport; or

12.3 Disobeyed any reasonable lawful request by SWAS, the Association or the Coach in relation to the carrying out of the Program; or

12.4 Participated in any activity or used any substance prohibited by law.

13. NOTICES

13.1 Address

All notices and statements to be given in accordance with this Agreement shall be given to the recipient and to the Association, at its or his/her address (postal or facsimile) set out in this Agreement or such other address as it or he/she may from time to time notify.

13.2 Method

Any notice or statement shall be deemed to have been duly given, made or received:

13.2.1 Twenty-four (24) hours after being deposited in the mail with postage pre-paid;

13.2.2 When delivered by hand;

13.2.3 If sent by facsimile transmission, upon receipt of a facsimile transmission report from the send machine showing the transaction as complete.

14. WAIVER

A waiver by any party of any of the provisions of this Agreement in any one case shall not be deemed or construed to be a waiver of such provision for the future or for any other subsequent breach thereof.

15. ENTIRE AND ONLY ENFORCEABLE AGREEMENT

This Agreement embodies all of the terms of the agreement between the parties save for the SWAS Doping Policy. Each party acknowledges that no representation has been relied upon in entering into this Agreement which has not been referred to herein and the terms hereof shall not be varied except by an instrument in writing signed by each of the parties hereto.

16. LAW

This Agreement shall be governed by the laws of the State of Western Australia (and to the extent, if any, affected by the Trade Practices Act 1974 (Cth) or any amendment thereto) and the parties hereto agree to submit to the jurisdiction of the West Australian courts. The provisions herein contained prohibited by or void under such law, as so affected, shall be ineffective to the extent of such prohibition or as so void without invalidating the remaining provisions hereof and this Agreement shall be construed so that it shall operate in all respects to the maximum extent it can validly do so.

17. DEFINITIONS AND INTERPRETATION

In this Agreement the following expressions where the context so permits shall have the following meanings:

- 17.1 Words importing the singular shall include the plural and vice versa.
- 17.2 Words importing the first person singular shall include the third person singular and vice versa.
- 17.3 Words importing any gender shall include each other gender.
- 17.4 Words referring to any body corporate shall include also its permitted transferees, successors and assigns.
- 17.5 '**Agreement**' means the agreement comprised by the Athlete Agreement, Schedule and these Terms and Conditions.
- 17.6 '**Association**' means the Association described in the Athlete Agreement.
- 17.7 '**Athlete Handbook**' means the documents (electronic or paper) published by SWAS, provided to the Athlete and containing, inter alia,
 - 17.7.1 The Athlete Agreement;
 - 17.7.2 A copy of these Terms and Conditions;
 - 17.7.3 A copy of the SWAS Doping Policy and SWAS Alcohol and Drugs in the Workplace Policy;
 - 17.7.4 General SWAS information and other material for the information of the Athlete.
- 17.8 '**Coach**' means the person or persons specified in the Program as the Coach of the Athlete.

- 17.9 **'Duly Authorised Officers'** are the Chief Executive Officer, Program Manager and Program Consultants, authorised to sign the Athlete Agreement on SWAS's behalf.
- 17.10 **'Chief Executive Officer'** means the person designated as such by SWAS from time to time and specified in Schedule 1 or any person designated by the Chief Executive Officer to act on his/her behalf.
- 17.11 **'Program'** means the program referred to in the Schedule
- 17.12 **'Program Manager'** means the person designated as such by SWAS referred to in the Schedule or such other person as SWAS may from time to time appoint.
- 17.13 **'Schedule'** means the schedule forming part of the Athlete Agreement.
- 17.14 **'Scholarship Amount'** means the amount specified in the Schedule (if any) agreed to be paid to the Athlete.
- 17.15 **'Sponsors'** means any persons, corporations or entities designated as such by SWAS and who make a contribution to SWAS including those mentioned in the Schedule.
- 17.16 **'Sport'** means the sport defined in the Athlete Agreement.
- 17.17 **'Training Session'** means any period at any venue appointed by the Coach, Institute or the Association and where the Athlete is required to attend for the purpose of practising, training or preparing for the Sport.
- 17.18 **'SWAS' Anti-Doping Policy' and 'SWAS' 'Alcohol and Drugs in the Workplace Policy'** means the anti-doping and Alcohol and Drugs in the Workplace policies are provided to the Athlete with his/her agreement.
- 17.19 **'SWAS' Medical Coordinator'** means a duly qualified medical practitioner designated by SWAS to be SWAS' Medical Coordinator and specified in the Schedule.