

THE BEND MOTORSPORT PARK

DRIVER EXPERIENCE PROGRAM TERMS & CONDITIONS- PARTICIPANTS

Vehicle Damage Waiver Fee Schedule (restrictions apply, see clause 7.4)

	Vehicle Damage Waiver Fee Options	Maximum liability
Option 1	\$0	\$50,000
Option 2	\$25	\$20,000
Option 3	\$99	\$10,000
Option 4	\$199	\$5,000
Option 5	\$299	\$1,000

1. Formation of Agreement

1.1. By participating in the Program, each Participant agrees to be bound by these Program Conditions.

2. Participants

2.1. TBMP may reject a Participant at any time prior to the Program Date if TBMP is of the view that the Participant does not meet the eligibility requirements in clause 6.1, has not provided the information required or there are other reasonable grounds for doing so.

2.2. Any Participant may nominate a substitute Participant to replace them in the Program by notice to TBMP prior to the Program Date. Any proposed substitute Participant is subject to TBMP's acceptance.

2.3. A notice under clause 2.2 must include all details required for the substitute Participant.

2.4. TBMP will have no liability to any Participant in connection with that Participant's replacement under this clause.

3. Cancellation/Rescheduling by TBMP

3.1. TBMP may cancel or reschedule an event by notice to the Participant for any reason in its discretion.

3.2. Where the Program is cancelled by TBMP under this clause 3, TBMP shall reschedule the booking or refund the Fees to the Participant as soon as reasonably possible after such cancellation.

3.3. Where the event is rescheduled under this clause 3, if a Participant is unable to attend on the rescheduled date, the Participant may, within 14 days after TBMP notifies the Participant that the date is to be rescheduled:

3.3.1. notify TBMP that it is unable to attend, in which case TBMP will refund any fees paid in respect of that Participant and that Participant's place in the Program shall be cancelled.

3.3.2. Except as set out in this clause 3, TBMP will have no liability to any Participant or Spectator in respect of any cancelled or rescheduled Program Date.

4. Cancellation/Rescheduling by Participant

The Participant may cancel the Booking by notice in writing to TBMP (**Cancellation Notice**). In the event of such cancellation, cancellation fees shall be payable as follows:

4.1. if the Cancellation Notice is given less than 5 days prior to the Program Date, the total Fees paid in respect of the cancelled Participant will not be refunded;

4.2. if the Cancellation Notice is given more than 5 days prior to the Program Date but less than 21 days prior to the Program Date TBMP is entitled to retain 50% of the Fee in respect of the cancelled Participant.

5. Price and Payment

5.1. In consideration for TBMP accepting the participation of the Participant in the Program, the Participant must pay TBMP the Fees in accordance with this clause 5.

5.2. The Participant must pay the Fee immediately when requesting the Booking.

5.3. If any portion of the Fees remain outstanding after the due date for payment of such Fees, TBMP may in its sole discretion, cancel the Booking or refuse to allow the Participant to participate in the Program, in which case, any amounts paid shall be forfeited to TBMP.

5.4. Unless expressly stated, all amounts under these Program Conditions (including Vehicle Damage Waivers) are expressed inclusive of GST.

6. Participation & Eligibility

6.1. Eligibility

6.1.1. Drive Experiences: Unless otherwise agreed by TBMP, Participants must be over the age of 21 and must hold an Australian Driver's Licence or equivalent, and must be proficient in driving a manual vehicle.

6.1.2. Hot Laps: Unless otherwise agreed by TBMP, Participants must be over the age of 14.

6.1.3. Certain vehicles may have different height and weight restrictions.

6.1.4. To ensure the safety of all Participants, TBMP reserves the right to exclude any Participant who TBMP reasonably considers may pose a risk to a vehicle used in the Program, other Participants, Spectators, or the Site. TBMP may, in its sole discretion, exclude the Participant entirely, or allow the Participant to participate in other aspects of the Program.

6.1.5. It is for each Participant to ensure that they are eligible to participate in the Program. No refund will be given if a Participant cannot take part in the Program because they do not meet the eligibility criteria.

6.2. Restrictions on Participation

6.2.1. All Participants must:

(a) arrive at the Site on the Program Date no less than 15 minutes before the scheduled time for commencement of the Program as notified by TBMP to the Participant (**Arrival Time**).

(b) Complete online participant registration using the link provided by TBMP prior to commencement of the Program;

(c) sign TBMP's standard Liability Waiver and any other Waivers requested by TBMP prior to commencement of the Program;

(d) attend the briefing at the commencement of the Program;

(e) not be under the influence of drugs (illicit or prescription drugs which include any side effects which result in driving not being

recommended) or alcohol during the Program;

- (f) ensure that all race attire provided by TBMP (including without limitation, racesuits and helmets) is worn by Participants in accordance with any directions from TBMP at all times during the Program;
- (g) wear appropriate footwear and clothing (footwear must be closed foot, flat soled and without platforms);
- (h) hold a valid current Driver's Licence;
- (i) present their Driver's Licence for inspection prior to participating in the Program;
- (j) take out any compulsory personal accident insurance required by TBMP to participate in the Program; and
- (k) strictly follow all directions from TBMP Personnel during the Program.

6.2.2. If a Participant fails to comply with any of the requirements in clause 6.2.1 (or in the case of the requirement in clause 6.2.1(e), if TBMP reasonably suspects that a Participant does not comply), TBMP may, in its sole discretion and without refund or recourse, refuse to allow that Participant to participate in the Program.

6.3. Compliance with Directions

At all times while on the Site in connection with the Program, each Participant, Spectator and Organiser must comply with all reasonable directions of TBMP and its Personnel. Failure to comply with such directions may (in TBMP's sole discretion) result in that person's immediate removal from the Program and/or the Site without refund or recourse.

6.4. Medical Treatment

Each Participant, and Spectator consents to any medical treatment deemed reasonably necessary by TBMP, and releases TBMP from any liability in connection with any such treatment.

6.5. Spectators

Spectators are welcome to attend the Site while Participants are engaged in the Program subject to the following conditions

- 6.5.1. children under the age of 18 must at all times be accompanied by a parent or guardian (who is not a Participant);
- 6.5.2. animals (other than guide dogs or assistance dogs) are not permitted at the site under any circumstances; and
- 6.5.3. sign TBMP's standard Liability Waiver if required by TBMP;
- 6.5.4. comply with all directions issued by TBMP Personnel while on site; and
- 6.5.5. stay at all times within the areas specified for Spectators and not enter any area unless clearly indicated to be a spectator area.

7. Liability, Release and Indemnity

- 7.1. Except to the extent caused by the negligence or wilful misconduct of TBMP, each Participant and Spectator agree that, to the fullest extent permitted by law, each of them releases and forever discharges TBMP and its Associated Companies and their respective Personnel from all claims that each may suffer or incur in connection with the Program or the Site, including without limitation in respect of (a) personal injury, (b) death, (c) property damage.
- 7.2. Subject to clause 7.3, each Participant (jointly and severally) indemnifies TBMP from and against any claim, loss or damage incurred or suffered by TBMP in

connection with the Booking and that Participant's participation in the Program.

- 7.3. Subject to clause 7.4, if the Participant has selected and paid for Vehicle Damage Waiver Option 2,3, 4, or 5, the Participant and the Organiser's liability for loss or damage caused by that Participant to a vehicle used in the Program shall be limited to the amount of the set out next to that option in the Vehicle Damage Waiver Option Schedule on the Booking Form. This limitation does not constitute insurance and the Damage Waiver Fee is not refundable if no damage is caused. To avoid doubt, payment of the Vehicle Damage Waiver applies separately to each Participant and payment by one Participant will not limit liability for damage caused by any other Participant. For clarity, the limitation of liability will not apply to damage the Participant causes to the facilities at the Site, for which the Participant's liability remains unlimited.
- 7.4. The Vehicle Damage Waiver is not available for Participants who are:
 - 7.4.1. under the age of 21; or
 - 7.4.2. under the age of 30 and who hold a motor racing competition licence.
- 7.5. Each Participant is liable to TBMP for any damage to TBMP's facility including damage to kerbing or the track that in TBMP's reasonable opinion is caused by that Participant's negligence, recklessness, indifference or non-compliance with any of the Program Conditions or any directions from TBMP's Personnel.
- 7.6. Participants acknowledge and agree that TBMP may charge the value of any damage caused by a Participant to its facility and/or equipment and/or vehicles to any credit card that TBMP holds details of on file as belonging to the Participant without notice.
- 7.7. Under no circumstances will TBMP or its Associated Companies be liable to Participants, or Participant's Personnel for indirect, special, exemplary, or consequential costs, losses, or damages whatsoever (including loss of profits).
- 8. Publicity & Privacy**
- 8.1. Each Participant and Spectator consents and authorises TBMP to collect and use all information provided by them in relation to the Booking and disclose it to its related bodies corporate, agents or contractors) for the purposes of:
 - 8.1.1. improvement of the Program and customer service, including by means of research, marketing, product development and planning;
 - 8.1.2. marketing of products or services or the products or services of third parties; and
 - 8.1.3. any services to be provided by any third party in respect of the Program.
- 8.2. Personal information will be dealt with in accordance with TBMP's Privacy Policy available at www.thebend.com.au.
- 8.3. TBMP owns all media rights in respect of the Site and Program including all video and streaming rights.
- 9. No Representations**
- 9.1. Any pictures, descriptions, and information as to duration and availability of the Program provided by TBMP is intended to be a guide only and does not form part of these Program Conditions. All equipment, track configurations and Personnel forming part of the Program are subject to change without notice and TBMP reserves the right to make amendments and changes to the Program without liability to the Participants or Spectators.
- 9.2. Notwithstanding the above, TBMP will use reasonable endeavours to ensure that the Program aligns with the general description of the Program in any advertising materials published by TBMP and to the extent

- reasonably practicable, any specific requests by the Organiser.
- 9.3. Participants and Spectators each acknowledge and agree that in making the Booking or agreeing to participate in the Program, they have relied on their own judgement and have not relied on any representation of any kind by TBMP (whether written or oral) except as expressly set out in these Program Conditions.
- 10. Site Entry Conditions**
- 10.1. Each Participant and Spectator acknowledge and agree that, by attending the Site for the purpose of the Program, they are bound by the Conditions of Entry as though a reference in the Conditions of Entry to a Patron was to the Participant or Spectator (as relevant) and a reference to the Event is to the Program.
- 10.2. To the extent of any inconsistency between the Conditions of Entry and these Program Conditions, these Program Conditions shall prevail.
- 11. General**
- 11.1. This agreement is governed by and must be construed in accordance with the laws of South Australia. The parties submit irrevocably to the exclusive jurisdiction of the courts of South Australia and all courts competent to hear appeals from those courts.
- 11.2. This agreement and the Conditions of Entry contain the entire agreement between the parties as to its subject matter and override and supersede all earlier agreements in relation to the subject matter of this agreement.
- 11.3. This agreement may only be amended or varied with TBMP's prior written consent.
- 11.4. Where a word, phrase, sentence, clause or other provision of this agreement would otherwise be unenforceable, illegal or void the effect of that provision will so far as possible, be limited and read down so that it is not unenforceable, illegal or void.
- 11.5. Any waiver in respect of this agreement must be in writing signed by the party granting it, is only effective in relation to the particular instance for which it is given and does not apply to waive that or any other right, power or remedy in any other circumstance.
- 11.6. Each party must bear its own costs for the preparation, execution, delivery and performance of this agreement.
- 11.7. The parties must do everything reasonably necessary to give effect to this agreement including the signing any documents.
- 12. Definitions**
- 12.1. **Associated Companies** means the owner of the Site and the related entities and associated entities (as those terms are defined in the *Corporations Act 2001* (Cth)) of TBMP and the owner of the Site.
- 12.2. **Booking** means the Participant's booking for the Program on the Program Date.
- 12.3. **Conditions of Entry** means TBMP's standard Conditions of Entry available at www.thebend.com.au
- 12.4. **Fee** means that amount set out on TBMP's online booking system, or an authorised agent's booking system.
- 12.5. **Liability Waiver** means TBMP's standard Exclusion of Liability, Release and Assumption of Risk document (as amended or updated from time to time) or such other waiver or release required by TBMP from time to time in respect of the Program or the Site.
- 12.6. **Motor Racing Competition Licence** means a licence issued to motorsport competitors by any motor racing sanctioning body.
- 12.7. .
- 12.8. **Participant** means a person who participates in the Program.
- 12.9. **Personnel** means the employees, agents, contractors or invitees of a party and in respect of TBMP, including suitably qualified driving instructors engaged by TBMP in respect of the Program.
- 12.10. **Program** means TBMP's driver experience program which allows participants to drive or be a passenger in a variety of different vehicles determined by TBMP (in its sole discretion) under supervision of suitably qualified instructors and drivers.
- 12.11. **Program Conditions** means these Driver Experience Program Terms & Conditions (as amended or updated from time to time).
- 12.12. **Program Date** means the scheduled date for the Program as set out in the Booking Form.
- 12.13. **Site** means The Bend Motorsport Park, 543 Dukes Highway, Taillem Bend SA 5260
- 12.14. **Spectator** means an invitee of the Organiser or any Participant who attends the Site on the Program Date to observe the Program.
- 12.15. **TBMP** means The Bend Motorsport Park Pty Ltd (ACN 609 932 685).
- 13. Interpretation**
In this agreement:
- 13.1. words in the singular include the plural and vice versa;
- 13.2. any gender includes the other genders;
- 13.3. if a word or phrase is defined its other grammatical forms have corresponding meanings;
- 13.4. "includes" means includes without limitation;
- 13.5. headings do not affect the interpretation;
- 13.6. no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it; and
- 13.7. a reference to:
- 13.7.1.a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority;
- 13.7.2.a person includes the person's legal personal representatives, successors, permitted assigns and persons substituted by novation;
- 13.7.3.any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced;
- 13.7.4.an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation;
- 13.7.5.notice, notification or consent means notice, notification or consent in writing; and
- 13.7.6.dollar or \$ is a reference to Australian Dollars (AUD).