

## Big Brothers Big Sisters Aquathon Wangaratta Terms & Conditions Sunday 5<sup>th</sup> March 2023

### WAIVER for recreational services or activities provided in Victoria:

For recreational services to which the Australian Consumer Law (Victoria) applies:

#### 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 Big Brothers Big Sisters of Australia (BBBSAU) (both as defined in the Terms and Conditions below) are required to ensure that the recreational services it supplies to You:

- (a) are rendered with due care and skill; and
- (b) are reasonably fit for any purpose which you, either expressly or by implication, make known to BBBSAU; and
- (c) might reasonably be expected to achieve any result you have made known to BBBSAU.

Under section 22 of the Australian Consumer Law and Fair Trading Act 2012, BBBSAU is entitled to ask You to agree that these statutory guarantees do not apply to You. If you accept and agree to the Terms and Conditions, you will be agreeing that Your rights to sue BBBSAU under the Australian Consumer Law and Fair Trading Act 2012 if You are killed or injured because the services provided were not in accordance with these guarantees, are excluded, restricted or modified in the way set out in the Terms and Conditions.

NOTE: The change to Your rights, as set out in the Terms and Conditions, does not apply if Your death or injury is due to gross negligence on BBBSAU' 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 and section 22(3)(b) of the Australian Consumer Law and Fair Trading Act 2012.

### WAIVER

By clicking "I accept the Waiver for this event" You warrant and represent to BBBSAU that:

- You are eligible to apply for participation in the Event;
- You have read and understood and agree to be bound by the Waiver (as defined below); and
- You acknowledge and agree that if You are accepted to participate in the Event, You must comply with the Waiver (as defined below).

NOTE: Competitors under the age of 18 years can only participate where a parent or guardian accepts the Consent

## 1 Definitions

1.1 “Associates” means BBBSAU and its respective directors, employees, agents, contractors, and volunteers, including any medical personnel appointed for the Event, the owners, licensees and occupiers of land upon which the Event or any part of it is conducted, any statutory body or local authority having control over any land upon which the Event or any part of it is conducted, Event sponsors, or any other person or organisation, which is directly or indirectly involved with the promoting, staging, administering, running or controlling of Event.

1.2 “Claims”; means and includes any action, suit, proceeding, claim, demand, damage, penalty, cost or expense however arising including but not limited to negligence.

1.3 “Consent” means the form provided in the online entry system for parent or guardian acceptance and acknowledgement of the Waiver.

1.4 “Eligibility Requirements” means the requirements that must be satisfied for You to enter and participate in the Event, details of which are provided in paragraph 2 of the Waiver.

1.5 “Event” means the **Big Brothers Big Sisters Aquathon Wangaratta Event**

1.6 “Event Day” means the day or days that the Event competition is held on

1.7 “BBBSAU” means Big Brothers Big Sisters of Australia, our subsidiaries and authorised representatives. All references to “We”, “Us” or “Our” are references to BBBSAU as defined in this clause.

1.8 “Waiver” means these terms and conditions and the warning note provided in accordance with the Competition and Consumer Act 2010 Cth and the relevant state legislation allowing recreational service providers to limit their liability to You and where the context allows, any policies and rules applicable to the Event including those stipulated in the Event Details/

1.9 “You” means the person named on the Event application being the applicant and where accepted by BBBSAU, becoming a competitor in the Event. Where You are under 18 years of age, You also refers to the consenting parent or guardian who completes or provides the Consent. You also refers to your agents or anyone who is directed by you to act on your behalf

## 2 Eligibility to participate

2.1 You must be at least 13 years of age on the 31st December 2022 to participate in the Marlin or Clownfish Category. You must be under 12 years of age on the 31st December 2022 to participate in the Goldfish Category.

2.2 If You are under 18 years of age on the date of the Event, a parent or guardian must accept the Waiver and acknowledge the Warning Note. Where no consent is provided, You warrant that You are 18 years of age or older on the date of the Event.

2.3 You must be medically and physically fit and able to participate in the Event. You acknowledge that the Event exposes you to a range of lighting effects including laser and strobe lighting which could affect existing medical conditions you may have including epilepsy.

2.4 You must not be a danger to Yourself or to the health and safety of others.

2.5 If You are unsure about your medical and physical fitness to participate in this Event You must seek advice from a medical practitioner before attending the Event.

### 3 Refusal of applications

3.1 BBBSAU reserves the right to refuse any application for entry into the Event for any reason, including where:

3.1.1 an applicant does not meet the Eligibility Requirements;

3.1.2 an application is not completed by the nominated completion date ;

3.1.3 the maximum amount of entries has been reached, regardless of the circumstances; or

3.1.4 an application is made on the Event Day, unless BBBSAU makes a specific exception allowing the application.

3.2 BBBSAU accepts no liability for any late, lost or misdirected entries due to technical disruptions, network connections or any other reason outside the control of BBBSAU.

### 4 Your obligations.

4.1 If Your application to participate in the Event is accepted You will be permitted to participate in the Event on the condition that You comply with the Waiver and any reasonable direction issued by the Event Organisers or their representatives.

4.2 You must immediately notify BBBSAU in writing of any change to Your fitness and ability to participate in the Event. Where You do not provide any written notice to BBBSAU, BBBSAU will rely upon this as evidence of Your fitness and ability to participate.

4.3 In applying to participate in this Event You consent to receiving any medical treatment that the Event organisers or their authorised representatives (including emergency services providers) consider reasonably necessary or desirable during or shortly after the Event. You must reimburse the Event organiser and BBBSAU for any costs or expenses incurred in association with providing you with medical treatment.

4.4 You must pay the fees due at the time of submitting Your application. No applications will be accepted or considered unless and until all fees have been received by BBBSAU.

4.5 You acknowledge that no alcohol may be served at and during the Event. If You are under 18 years of age You must not consume any alcohol at or during the Event. If You breach this condition you may be removed from the Event immediately by BBBSAU.

## 5 Risks, Liability and Indemnity

5.1 You acknowledge that participation in the Event can be inherently dangerous and that You may be exposed to certain risks during the Event including, but not limited to, overexertion, equipment failure, dehydration, serious accidents and risks associated with the course and adverse weather conditions. These risks can and often eventuate and they may result in You being personally injured or killed or Your property being damaged or the event being cancelled. By entering into or participating in the Event You agree that:

5.1.1 You have read and understood the risks associated with participating in the Event and this warning, and accept and assume the inherent risks in participating in the Event.

5.1.2 You are fully responsible for the security of Your personal possessions at the Event including other valuable items. You agree that BBBSAU is not responsible or liable for the repair or replacement of any personal possessions whether lost, damaged, stolen or otherwise.

5.1.3 You acknowledge that where You are a consumer of recreational services, as defined by the Competition and Consumer Act 2010 (Cth) or any relevant state law, certain terms and rights usually implied into a contract for the supply of goods or services may be excluded. You acknowledge that these implied terms and rights and any liability of BBBSAU flowing from them, are expressly excluded to the extent permitted by law. To the extent of any liability arising, the liability of BBBSAU will, at its discretion, be limited in the case of goods, to the replacement, repair or payment of the cost of replacing the goods and in the case of services, the entry fee relating to the Event.

## 6 Release and indemnity

In consideration of BBBSAU accepting Your application for entry to the Event, You, on behalf of yourself, Your heirs, executors and administrators, to the extent permitted by law:

6.1 release BBBSAU and the Associates from all Claims that You have or may have had but for this release arising from or in connection with Your participation in the Event; and

6.2 indemnify BBBSAU and the Associates and will keep BBBSAU and the Associates indemnified in respect of any Claim (including for negligence, breach of contract or breach of Statute) by any person including another participant in the Event arising as a result of, in connection with, or in

relation to Your participation in the Event or arising as a result of You Transferring Your entry in the Event to another person or arising from You permitting another person to participate in the Event in Your stead. This indemnity may be pleaded as a bar to any Claims. The releases and indemnities in the Waiver continue forever and bind You, Your heirs, executors, personal representatives and assigns.

6.3 A term of this clause 6 will not apply where the term contravenes the law of the relevant jurisdiction under which any legal action is legitimately taken however such terms are severable and do not invalidate the remaining terms.

## 7 Insurance

Registration fees do not include insurance of any kind. It is strongly recommended that all delegates take out personal insurance prior to attending the event. BBBSA will not take any responsibility for any delegate failing to insure.

You acknowledge and understand that BBBSAU will not provide any insurance to cover You for injury, loss or damage sustained by You in participating in the Event and You acknowledge that BBBSAU does not make any representations about the suitability of the insurance. You also agree that You can, in your own interests and at Your own expense, seek and obtain personal insurance.

## 8 Fees

8.1 You must pay all the fees due, including any amounts payable for additional optional services such as additional merchandise, charitable donations and other options You nominated at the time of entry into the Event.

## 9 Transfers and resale

9.1 Entries are non-transferable to other events. If you wish to switch into a different distance for the Event, you may downgrade distance before the day of the event. No refunds will be offered for a downgrade. If you wish to upgrade distance you may up to 2 days out from the event. You will need to pay the difference in fees at the time of the transfer.

9.2 Any attempt to transfer Your entry to another person without the knowledge of BBBSAU may result in the cancellation of Your entry without refund and You may be prohibited from participating in other BBBSAU events.

9.3 You must not offer Your (or any other persons) Entry for sale through any medium, including auctions (on eBay or any other auctioning or similar means). All individuals involved in such conduct will be disqualified from the Event.

## 11 Privacy

11.1 BBBSAU has a privacy policy and the information that You provide with this application is necessary for the conduct of the Event. You acknowledge and agree that the information provided will be used by BBBSAU to facilitate the administration of the Event and for future marketing and promotional purposes relating to check BBBSAU events. BBBSAU may disclose your personal information to third parties involved in the Event, including Humantix.

11.2 You understand that You will be able to access Your information through BBBSAU by email [support@bbbsau.org](mailto:support@bbbsau.org)

11.3 If the information is not provided Your application may be rejected.

11.4 You warrant that the information You provide in Your application is correct. If You provide incorrect information, BBBSAU may disqualify You from the Event and You may be ineligible to participate in future BBBSAU events.

11.5 You consent to the Event organisers using Your name, image, likeness, voice, statement and also Your performance in the Event (including the publication of Your name and/or Event result, suburb and applicable age bracket on BBBSAU's website), at any time, to promote the Event or any future similar events by any form of media.

11.6 You consent to receiving electronic newsletter material from the Event organisers or their authorised representatives prior to and after the Event. Unless You have nominated otherwise, You acknowledge and agree that Your information may also be used for marketing purposes by a third party or the Event sponsor.

## 12 Governing laws

Your participation in the Event or Series is governed by the laws of the state of Victoria, Australia or as otherwise agreed by the parties.

## 13 Amendment

You agree and accept that BBBSAU may vary the Waiver without prior notice to You provided the change is not material to Your participation in the Event. .

## 14 Severance

If any term or condition (in whole or in part) is illegal or unenforceable, that term or condition (or part) is to be severed from the Waiver to the extent that it is illegal or unenforceable. Any remaining part of a term or condition remains valid continues to operate to its full force and effect.

## 15 Disclaimer

BBBSAU takes no responsibility for any third party advertisements, links or publications which are posted on this Website or elsewhere, nor does it take any responsibility for the goods or services provided by its advertisers.