

# AGENCY AGREEMENT

## ENTRYBOSS PTY LTD ACN 607 407 812

### RECITALS:

- A. The Event Organiser organises competitive sporting and other events.
- B. EntryBoss provides online entry and other services for the management of competitive sporting and other events.
- C. The Event Organiser has agreed to appoint EntryBoss as its agent to provide services from time to time on behalf of the Event Organiser to customers of the Event Organiser in strict accordance with the terms of this Agreement.

### AGREEMENT:

#### 1. Definitions

In this Agreement unless the context clearly indicates otherwise:

- (a) **“Entrant”** means a person who is nominated for an Event using the Services;
- (b) **“Event”** or **“Events”** means any sporting, related or similar events, details of which are provided to EntryBoss via the EntryBoss website;
- (c) **“Fees”** means EntryBoss’s fees and charges which may be charged to the Event Organiser for providing the Services. Fees include merchant fees charged by any third party payment service provider. The Fees are set out on EntryBoss’s Website;
- (d) **“Funds”** means any and all monies collected from or on behalf of Entrants in relation to an Event, whether for entry fees, donations or otherwise;
- (e) **“Scratching”** means any withdrawal of an Entrant from an Event within terms permitted between the Event Organiser or EntryBoss and the Entrant; and
- (f) **“Services”** means accepting and processing entries, accepting information necessary to stage the Event (including personal information), collection of entry fees and donations and associated services provided by EntryBoss via its website and any other services provided to the Event Organiser in respect of an Event.

#### 2. Appointment of Agent

- 2.1 The Event Organiser appoints EntryBoss as its agent to provide the Services for the Event/Events.
- 2.2 The agency in clause 2.1 shall terminate in relation to an Event on:
  - (a) a termination date agreed by the parties;
  - (b) termination of this Agreement in accordance with clause 8; or
  - (c) the later of the conclusion of the Event or final distribution of Funds for an Event under this Agreement.

#### 3. Takings

- 3.1 EntryBoss shall receive and hold all Funds pending distribution in accordance with the terms of this Agreement.

3.2 EntryBoss may engage a third party payment service provider to receive and hold Funds.

#### **4. Conditions of Entry into Event**

4.1 The Event Organiser acknowledges that entry to an Event is offered by EntryBoss on the terms and conditions from time to time appearing on the EntryBoss website.

4.2 No other terms and conditions of entry to an Event shall be imposed unless agreed between the parties.

#### **5. Refunds**

5.1 If an Event is cancelled, delayed or substantially altered (in the opinion of EntryBoss) or EntryBoss believes that an Event may be cancelled, delayed or substantially altered, or there is any Scratching, then EntryBoss, may in its absolute discretion refund any payments it has received in relation to the Event [**"Refunds"**].

5.2 If any Funds have been transferred to the Event Organiser in accordance with clause 7 the Event Organiser shall immediately upon request return the Funds to EntryBoss for the purposes of refunds to Entrants in accordance with clause 5.1.

5.3 Fees are still payable to EntryBoss notwithstanding any Scratching or Refunds.

#### **6. Fees**

6.1 EntryBoss may deduct its Fees from the Funds before Funds are distributed in accordance with clause 7.

6.2 EntryBoss may invoice the Event Organiser for Fees at any time and such invoices are payable within seven days.

#### **7. Disbursement of Funds**

7.1 EntryBoss shall pay Funds to the Event Organiser in either of the following methods (the method is at the discretion of EntryBoss):

(a) per event transfer – within the later of:

(i) seven (7) days of successful completion of the Event (successful completion is to the satisfaction of EntryBoss); or

(ii) upon receipt of Funds from any third party payment service provider; or

(b) periodic transfer – once each banking day (or otherwise as agreed between the parties) upon receipt of Funds from any third party payment service.

7.2 Prior to disbursement of Funds pursuant to clause 7.1, EntryBoss may deduct the Fees, any Refunds and any fees payable to any third party payment service provider.

7.3 EntryBoss may in its discretion make advance payment of any monies which are to become due to the Event Organiser under clause 7.1. Any advance payment is repayable to EntryBoss on demand. EntryBoss may use future payments due under clause 7.1 to repay any advance or to fulfil Refunds.

7.4 The Event Organiser acknowledges the potential for delays in transfer of funds due to banking requirements and delays.

7.5 Payments by EntryBoss will only be made to an Australian bank account.

#### **8. Termination**

8.1 Either party may terminate this Agreement upon written notice to the other party.

8.2 Upon termination EntryBoss may invoice the Event Organiser for any Fees and/or Refunds and Funds shall be dealt with in accordance with clause 7.

## **9. Representations and Warranties**

The Event Organiser represents and warrants to EntryBoss that:

- (a) it will conduct any Event as represented to Entrants and to the public;
- (b) it has (or will have) all necessary permits and consents to conduct the Event;
- (c) it will conduct the Event in a safe manner and provide Entrants with expected levels of safety;
- (d) it will make details and conditions of the Event and requirements for participation in the Event available to all Entrants;
- (e) it accepts that save for the Services, EntryBoss plays no part in organising the Event;
- (f) it accepts EntryBoss plays no part in running the Event; and
- (g) it has or will have for the Event public liability insurance cover for at least \$10,000,000.00.

## **10. Indemnity**

10.1 The Event Organiser hereby indemnifies EntryBoss against all expenses, losses, damages and costs which EntryBoss may sustain or incur as a result, whether directly or indirectly, of:

- (a) any breach, non-observance or non-performance of this Agreement by the Event Organiser;
- (b) any loss or damage to any property or injury to or death of any person during or arising out of the Event;
- (c) the cancellation, delay, interruption, performance or non-performance of the Event; and
- (d) any breach of the representations and warranties in clause 9.

10.2 The indemnities in this clause shall be continuing indemnities and shall survive termination of this Agreement.

## **11. Limitations**

11.1 To the extent permitted by the Australian Consumer Law (Schedule 2 of the *Competition and Consumer Act 2010 (Cth)*), the Event Organiser agrees to limit any claim to the re-supply of services (or the costs thereof).

11.2 EntryBoss shall not be liable for any consequential loss and/or any special and/or punitive damages through any fault and/or negligence of the Event Organiser.

11.3 EntryBoss shall not be liable for any act or omission of the Event Organiser including but not limited to the Event Organiser's failure to properly access or use the Services or stage an Event.

## **12. Notices**

Any notice which is required to be given by any party in writing may be signed by any authorised agent and may be served by hand-delivery, e-mail, fax and/or post to the last known address and the notice shall in the case of posting be deemed to have been served on the second business day following the day on which it was posted.

## **13. Dispute Resolution**

Any dispute regarding the operation, effect and/or meaning of this Agreement shall be referred to arbitration before an appropriately qualified and independent arbitrator appointed by the President for

the time being of the Institute of Arbitrators & Mediators Australia (or its equivalent). The powers of the arbitrator shall be unfettered, the arbitrator may require either or both of the parties to cover all expenses associated with the arbitration and the decision of the arbitrator shall be binding on both parties.

#### **14. Amendment**

This Agreement can only be amended, supplemented, replaced or novated by another agreement signed by both parties.

#### **15. General**

- 15.1 This Agreement shall be governed by and construed in accordance with the laws of the State of Victoria and the parties irrevocably submit to the jurisdiction of any Court of that State nominated by EntryBoss.
- 15.2 Each party shall bear and shall be responsible for that party's own costs in connection with the preparation, execution and carrying into effect of this Agreement.
- 15.3 Each party shall do and execute all acts and documents required by this Agreement to be done or executed by the other party at such time as may be reasonably necessary and/or is reasonably required for the fulfilment by the parties of their respective obligations under this Agreement.
- 15.4 The failure or omission of a party at any time and from time to time to enforce or require strict compliance with any provision of this Agreement shall not affect or impair such provision in any way or the rights of that party to avail itself of such remedies as it may have in respect of any breach or breaches of any such provision(s).
- 15.5 No variation, modification or waiver of any provision of this Agreement shall be of any force or effect unless the same shall be confirmed in writing and signed by both parties and then such variation, modification, waiver or consent shall be effective only to the extent for which it may be made or given.
- 15.6 This Agreement contains the entire agreement between the parties about its subject matter. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this Agreement and has no further effect.
- 15.7 If any provision of this Agreement shall be invalid or not enforceable in accordance with its terms all other provisions which are self-sustaining and/or capable of separate enforcement without regard to the invalid or unenforceable provision(s) shall be and continue to be valid and enforceable in accordance with their terms.
- 15.8 This Agreement may be executed in any number of counterparts.
- 15.9 Time is of the essence in the performance by the parties of their respective obligations under this Agreement.

#### **16. Entrant's Information and Privacy**

- 16.1 EntryBoss collects information as part of providing the Services. This may include personal information.
- 16.2 EntryBoss shall make available to the Event Organiser such information as is reasonably necessary for the Event Organiser to conduct the Event.
- 16.3 The Event Organiser shall deal with personal information as required by the *Privacy Act 1988* and all applicable privacy laws.