

Eureka Climb 2017 Terms & Conditions - Entry and Participation Agreements

NOTE TO PARTICIPANTS: PLEASE READ THIS DOCUMENT CAREFULLY. THIS IS A LEGAL DOCUMENT THAT AFFECTS YOUR RIGHTS. YOU WILL BE AGREEING TO THESE TERMS AND CONDITIONS WHEN YOU TICK THE 'I AGREE WITH THE TERMS AND CONDITIONS' BOX AS PART AS PART OF THE REGISTRATION PROCESS. IF YOU ARE 12- 17 YEARS OLD, THESE TERMS AND CONDITIONS MUST BE AGREED TO BY A PARENT OR LEGAL GUARDIAN. CHILDREN UNDER THE AGE OF 12 ARE NOT ELIGIBLE TO PARTICIPATE IN THIS EVENT.

Definitions

The capitalised words in this document have the following meaning:

King Performance means King Performance Events Pty Ltd as trustee for King Family Trust.

Participant means an individual who is registered to take part in the Event.

Event means the stair climbing and endurance event known as Eureka Climb, to be held at the Venue on 19 November 2017

Venue means the Eureka Tower, Riverside Quay, Southbank, VIC

I ACKNOWLEDGE, UNDERSTAND AND AGREE:

Age of Participant

1. [I/the Participant] must be over the age of 12 to register and take part in the Event.
2. (if applicable) At the date of entering into this document, I am 18 years or older.
3. (If applicable) I am the parent or legal guardian of the Participant and am authorised to enter into this agreement on behalf of the Participant. I further represent and warrant that the Participant will be 12 years or older on the Event Day.

Health and Fitness

4. To the best of my knowledge, [I am/the Participant is] not suffering from a condition that would prevent and/or render [me/the Participant] unfit to participate in the Event.
5. [I have/the Participant has] trained sufficiently to participate in the Event and [I am/the Participant is] physically fit and in good health.
6. It is my sole responsibility to determine whether [I am/the Participant is] sufficiently fit and healthy enough to participate in this Event.
7. I am solely responsible for [my/the Participant's] own safety and wellbeing at all times and circumstances while at the Venue.

Event Risks and Safety

8. The Event may involve a real risk of serious injury or even death from various causes including but not limited to over exertion, dehydration, falling down or tripping over and accidents, collisions or contact with other participants, spectators or road users.
9. I voluntarily assume all risks associated with [my/the Participant's] participation in the Event or any activity associated with it. I will take all measures to protect [myself/the Participant] from the risks of participation. I accept all responsibility for

travel and medical insurance and for payment and/or reimbursement of medical/surgical expenses incurred by [me/the Participant] due to participating in the Event.

10. I hereby consent to [receiving /the Participant receiving] medical treatment that may be deemed advisable in the event of injury, accident and/or illness during the Event.
11. There is an inherent risk in climbing up and down stairs.
12. In consideration for the opportunity to participate in the Event and to the extent permitted by law, I unconditionally and irrevocably agree that I:
 - a. will not make any claims against King Performance, Interplast Australia and New Zealand and Whitelion; and
 - b. hereby release King Performance, Interplast Australia and New Zealand and Whitelion (and their directors, officers, employees, representatives, volunteers, sponsors, contractors, subcontractors (and their respective employees) or agents) (individually and collectively, the “**Released Parties**”) from and against any liability, claims, causes of action, suits or proceedings, including claims for costs or expenses of any nature for any loss, injury, damage of any description whatsoever (including but not limited to injury, death or property damage, and indirect or consequential damage) (“**Claim**”) arising out of or in connection with [my/the Participant’s] attendance and participation at the Event, howsoever caused, including due to any negligent or wilful acts or omissions by the Released Parties; and
 - c. indemnify the Released Parties from and against all claims (including negligence) whatsoever and howsoever caused arising as a result of or in connection with [my/the Participant’s] participation in the Event including any injury, death or property damage suffered by a third party.
13. I understand that an Event official has the authority to issue instructions or directions relating to the manner of [my/the Participant’s] safe participation in the Event and the authority to halt [my/the Participant’s] participation in the Event at any time they deem necessary to protect [my/the Participant’s safety] and the safety of other participants, spectators, and personnel.
14. If an Event official issues an instruction or direction relating to participant safety, [I/the Participant] will comply with this instruction or direction. In these circumstances [I/the Participant] will voluntarily remove [myself/himself or herself] from the Event and agree to be transported to the finishing area. I agree to indemnify the Released Parties from and against any Claims resulting from [my/the Participant’s] failure to comply with this condition.
15. I consent to the conduct of identity verification checks, background security checks and any other security checks (which may include inspecting my personal property) prior to [my/the Participant’s] entry into and departure from the Venue.
16. I am solely responsible for all property [I/the Participant] bring/s onto the Venue and understand and acknowledge that the Released Parties do not accept responsibility for any loss or damage to this property.
17. Provisions of the *Competition and Consumer Act 2010* (Cth) and *Australian Consumer Law and Fair Trading Act 2012* (Vic) imply into contracts for the supply of certain goods and services, warranties that services will be rendered with due care and skill and that goods supplied will be reasonably fit for purpose. Those provisions do not apply to this agreement to the extent that they can be excluded insofar as they relate to liability for death, personal or mental injury, a disease or something that is harmful or disadvantageous to an individual or the community. In particular:

- a. the application of sections 60 and 61 of the *Australian Consumer Law (Victoria)* and the provisions of the *Australian Consumer Law and Fair Trading Act 2012* (Vic) are excluded and all rights under the relevant provisions are excluded and all liability of King Performance, Interplast Australia and New Zealand and Whitelion, is excluded in relation to the supply of recreational services and in relation to a breach of any warranty implied by the relevant provisions in relation to the supply of recreational services under this agreement to the extent the exclusion, restriction and modifications is limited to liability for death or personal injury.
- b. you acknowledge that the Event constitutes a recreational service within the meaning of section 139A of the *Competition and Consumer Act 2010* (Cth) and section 22 of the *Australian Consumer Law and Fair Trading Act 2012* (Vic) as the Event is:
 - i. a sporting event or similar leisure time pursuit; and/or
 - ii. other activity that involves a significant degree of physical exertion or physical risk and is undertaken for the purpose of recreation, enjoyment or leisure.
- c. **warning under the *Australian Consumer Law and Fair Trading Act 2012* (Vic):** Under the Australian Consumer Law (Victoria), several statutory guarantees apply to the supply of certain goods and services. These guarantees mean that King Performance, Interplast Australia and New Zealand and Whitelion is required to ensure that the recreational services its supplies to [you/the Participant]:
 - i. are rendered with due care and skill; and
 - ii. are reasonably fit for any purpose which you, either expressly or by implication, make known to King Performance, Interplast Australia and New Zealand and Whitelion; and
 - iii. might reasonably be expected to achieve an result you have made know to King Performance, Interplast Australia and New Zealand and Whitelion.

Under section 22 of the *Australian Consumer Law and Fair Trading Act 2012* (Vic), King Performance, Interplast Australia and New Zealand and Whitelion is entitled to ask you to agree that these statutory guarantees do not apply to use. If you acknowledge this agreement, you will be agreeing that your rights to sue King Performance, Interplast Australia and New Zealand and Whitelion and other parties under the *Australian Consumer Law and Fair Trading Act 2012* (Vic) 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 this agreement and to the extent permitted by law. **Note:** the changes to your rights as set out in this agreement, does not apply if your death or injury is due to gross negligence on King Performance, Interplast Australia and New Zealand and Whitelion part. 'Gross negligence' in relation to an act or omission, means doing the act or omitting to do any 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*.

- 18. No warranties, implied or express, have been made to [me/the Participant] that the Event services will be provided with due care and skill or that any materials provided

in connection with the Event services will be fit and proper for the purpose for which they are supplied.

Specific Event Rules

19. [I/the Participant] agree to:
 - a. be familiar with and understand all written and/or posted rules of King Performance, Interplast Australia and New Zealand and Whitelion, as well as all written and/or posted rules of entry into the Venue;
 - b. comply with all directions, instructions and decisions of event organisers, officials and venue personnel; and
 - c. not challenge Event rules, directions, instructions, or decisions on any basis at any time.
20. If, during the conduct of the Event, an Event official directs [my/the Participant's] withdrawal because [I am/the Participant is] unable to complete the Event within the advertised time limit, I undertake [to comply with/that the Participant will comply with] this direction. In these circumstances [I/the Participant] will voluntarily remove [myself/himself or herself] from the Event and agree to be transported to the finishing area. I agree to indemnify the Released Parties from and against any Claims resulting from [my/the Participant's] failure to comply with this condition. I understand that if I have agreed to accompany and be responsible for a Participant, if either the Participant or myself are asked by an Event official to halt or withdraw our participation in the Event, that the other's participation must also be halted or withdrawn.
21. I understand that King Performance, Interplast Australia and New Zealand and Whitelion reserves the right to refuse a participant's application to register for the Event or having accepted an application, to then cancel the registration of any participant for any reason whatsoever. Reasons may include, but are not limited to; carrying of an infant, participating without appropriate footwear, carrying or wearing of any item deemed unsafe by the organisers. In such circumstances, the entry fee shall be refunded to the participant minus a \$10 administrative fee.
22. [I/the Participant] understand that [I/the Participant] must fundraise a minimum pledge of \$35 per participant prior to participating in the Event, and should [I/the Participant] not comply, [I/the Participant] understand that King Performance, Interplast Australia and New Zealand and Whitelion reserves the right to refuse [I/the Participant] participation in the Event.

Rescheduling of Event

23. King Performance, Interplast Australia and New Zealand and Whitelion reserves the right to alter the format of other logistical elements of the Event if required by the Venue, police and/or other organisations associated with the Event or if reasonably deemed necessary by King Performance, Interplast Australia and New Zealand and Whitelion, in the event of unforeseen circumstances, conditions or natural or man-made emergencies make managing the Event unreasonably difficult or unsafe. In such instances, King Performance, Interplast Australia and New Zealand and Whitelion will notify me of the rescheduled event as soon as possible.
24. In the event of Event cancellation/postponement due to any occurrence outside of King Performance, Interplast Australia and New Zealand and Whitelion reasonable control, including but not limited to storm or storm damage, high winds or other acts

of God, or Venue unavailability for any reason, my entry fee shall not be refundable. Every effort will be made to reschedule the Event.

Media and Advertising

25. A person must not use the logos, trade marks, or other intellectual property of the Event, King Performance, Interplast Australia and New Zealand and Whitelion without the consent of the relevant party.
26. I hereby allow use of [my/the Participant's] name and image in any media whatsoever of [my/the Participant's] name, image, voice, statements or otherwise, pre and post the Event in perpetuity, without payment of remuneration or compensation for the purpose of promoting the Event and Venue, and promoting any products manufactured, distributed and/or supplied by and/or events conducted and/or hosted by the Released Parties, and for the purpose of allowing any person accessing any media (including without limitation the Event website, King Performance, Interplast Australia and New Zealand and Whitelion website) to purchase or download for free any images created.

Cancellation and Withdrawals

27. If [I/the Participant] withdraw/s from the Event at any time, there is no refund of any portion of [my/the Participant's] entry fee unless granted approval from event organisers. If a refund is granted then a \$10 administration fee will apply. If [I/the Participant] decides to withdraw, I agree to contact King Performance on 03 9598 5621 or events@kingperformance.com.au to notify them of the withdrawal. All teams can have up to four (4) members with a minimum of three (3) members on event day. Teams will only be awarded prizes for teams consisting of four (4) team members on event day.

Privacy and Collection of Personal Information

COLLECTION STATEMENT

Your personal information is being collected by King Performance, Interplast Australia and New Zealand and Whitelion for the purpose of conducting and approving the Event and to improve and marketing of goods and services. You will be ineligible to participate in the Event if you do not provide your personal information. King Performance, Interplast Australia and New Zealand and Whitelion may disclose your personal information to third parties such charity partners, clients, sponsors or companies who provide their services to us for the purpose of the Event or for marketing goods and services.

Please contact King Performance on events@kingperformance.com.au if you do not wish King Performance, Interplast Australia and New Zealand and Whitelion to use or disclose your personal information to provide you information, updates or news about other goods and services. King Performance, Interplast Australia and New Zealand and Whitelion is bound by the Australian Privacy Principles under the *Privacy Act 1988* (Cth). You can access the [Event Privacy Policy](#) online for more information about or privacy practices.

28. iRun – I acknowledge that [my and/or the Participant's] personal information will be collected by King Performance, Interplast Australia and New Zealand and Whitelion for the purpose of conducting the Event, including identifying participants, recording results and communicating with [me/the Participant] about this or other events.

29. I consent to King Performance, Interplast Australia and New Zealand and Whitelion disclosing [my/the Participant's] personal information to Athletics Australia Ltd for the purpose of administering the iRun program. I acknowledge and agree that in administering the iRun program, [my and/or the Participant's] personal information will be used to register [me/the Participant] as a recreational running member of Athletics Victoria.
30. I understand that by supplying King Performance, Interplast Australia and New Zealand and Whitelion [my/the Participant's] e-mail address I consent to [receiving/the Participant receiving] regular e-newsletter updates from King Performance, Interplast Australia and New Zealand and Whitelion in order to stay informed about the Event. I can opt-out of receiving e-newsletters at any time by contacting events@kingperformance.com.au

I, have read this document carefully and agree with these terms and conditions. I fully understand that I am giving up substantial rights when I agree to these terms and conditions by ticking the 'I agree to these terms and conditions' box as part of the online registration process.