



# Terms & Conditions

## 2019 MDC Melbourne Participant Terms and Conditions

I apply for entry to the Event. In consideration of my application to enter the Event being accepted, I acknowledge and agree that (for competitors under the age of 18 a parent or guardian must also make this declaration). I also understand that I will be contacted by a representative of the Mother's Day Classic regarding the fundraising for the event. Although encouraged it is not compulsory to fundraise for the Mother's Day Classic to participate on the day.

### 1. Definitions

#### a. In this Event Entry Declaration:

- i. "Claim" means and includes any action, suit, proceeding, claim, demand, damage, penalty, cost or expense however arising from or in connection with any Event Activities, but does not include:
  1. a claim against Mother's Day Classic Foundation by any person expressly entitled to make a claim under a Mother's Day Classic Foundation insurance policy; or
  2. a claim against Mother's Day Classic Foundation under any right expressly conferred by its Constitution or regulations.
- ii. "Event" means The Mother's Day Classic.
- iii. "Event Organiser" means Sole Motive Pty Ltd, as trustee for the Sole Motive Unit Trust ABN 95 410 987.
- iv. "Walk/Run Activities" means performing or participating in any capacity in any authorised or recognized Event Organisation activity.
- v. "Mother's Day Classic Foundation" means Mother's Day Classic Foundation Ltd ATF Mother's Day Classic Foundation ABN 16 179 157 565.
- vi. "Event Organisations" means and includes the Event Organiser, Mother's Day Classic Foundation, and where the context so permits, their respective directors, officers, members, servants or agents.

### 2. Rules of participation

- a. The Event rules, this declaration and any other terms and conditions of entry comprise a contract between me and the Event Organisations which is necessary and reasonable for promoting and conducting the Event.
- b. I acknowledge my application to enter the Event will be accepted upon notification to me by the Event Organisations and I acknowledge that I will be bound by and agree to comply with such rules, terms and conditions as may be imposed by the Event Organisations with respect to the conduct and management of the Event, including but not limited to competition rules and all relevant rules, regulations, policies and codes of conduct of the Event Organisations, as amended from time to time. I agree that I will be subject to, and

# Terms & Conditions

submit unreservedly to, the jurisdiction, procedures, penalties and any appeal mechanisms of the Event Organisations. I agree to follow any rules and/or directions set by Mother's Day Classic in connection with the Event and understand that if I fail to comply with any such rules or directions I will not be permitted to participate or to continue to participate in the Event and no refund will be given.

### 3. Risk Warning

- a. My participation in the recreational activities supplied by the Event Organisations is inherently dangerous and may involve risk. There are risks specifically associated with participation in the recreational activities and accidents can and often do happen which may result in personal injury, death or property damage. Prior to undertaking any such recreational activity, I should ensure I am aware of all of the risks involved, including those risks associated with any health condition I may have.
- b. By agreeing to these terms and conditions, I acknowledge, agree, and understand that participation in the recreational services provided by the Event Organisations may involve risk. I agree and undertake any such risk voluntarily and at my own risk. I acknowledge that the assumption of risk and warning above constitutes a 'risk warning' in accordance with relevant legislation.

### 4. Waiver

- a. It is possible for a supplier of recreational services or recreational activities to ask me to agree that statutory guarantees under the Australian Consumer Law (which is Schedule 2 to the Competition and Consumer Act 2010 (Cth)) do not apply to me (or a person for whom or on whose behalf I am acquiring the services or activities).
- b. By agreeing to these terms and conditions, I will be agreeing that my rights (or the rights of a person for whom or on whose behalf I am acquiring the services) to sue the supplier in relation to recreational services or recreational activities that I undertake because the services or recreational activities provided were not in accordance with the guarantees are excluded, restricted or modified as set out below.

### 5. For recreational services or recreational activities to which the Australian Consumer Law (Commonwealth) applies:

By agreeing to these terms and conditions, I agree that the liability of the Event Organisations in relation to recreational services (as that term is defined in the *Competition and Consumer Act 2010 (Cth)* and the Australian Consumer Law) for any:

- a. death;
- b. physical or mental injury (including the aggravation, acceleration or recurrence of such an injury);
- c. the contraction, aggravation or acceleration of a disease;
- d. the coming into existence, the aggravation, acceleration or recurrence of any other condition, circumstance, occurrence, activity, form of behaviour, course of conduct or state of affairs:

# Terms & Conditions

- i. that is or may be harmful or disadvantageous to me or the community; or
- ii. that may result in harm or disadvantage to me or the community, that may be suffered by me (or a person for whom or on whose behalf I am acquiring the services) resulting from the supply of recreational services or recreational activities;

is excluded and the application of any express or implied term that any services will be provided with due care and skill is hereby excluded.

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

- a. 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 the supplier named on this form, the Event Organisations, are required to ensure that the recreational services it supplies to me:
  - i. are rendered with due care and skill; and
  - ii. are reasonably fit for any purpose which I either expressly or by implication, make known to the supplier; and
  - iii. might reasonably be expected to achieve any result I have made known to the supplier.
- b. Under section 22 of the Australian Consumer Law and Fair Trading Act 2012 (Vic), the supplier is entitled to ask me to agree that these conditions do not apply to me. If I sign this form, I will be agreeing that my rights to sue the supplier under the Australian Consumer Law and Fair Trading Act 2012 if I am killed or injured because the services were not in accordance with these guarantees, are excluded, restricted or modified in the way set out in this form.
- c. Note: The change to my rights, as set out in this form, does not apply if my death or injury is due to gross negligence on the supplier's 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 (Vic) and section 22(3)(b) of the Australian Consumer Law and Fair Trading Act 2012 (Vic).
- d. Exclusion of rights under the Australian Consumer Law (Victoria): By agreeing to these terms and conditions, I agree that the liability of the Event Organisations for any death or personal injury (as defined in the Australian Consumer Law and Fair Trading Act 2012) that may be suffered by me (or a person from whom or on whose behalf I am acquiring the services) resulting from the supply of recreational services is excluded.

## 7. Release and indemnity

- a. In consideration of the relevant Event Organisations accepting my entry into the Event, to the extent permitted by law, I:
  - i. release and will release the Event Organisations from all Claims that I may have

- or may have had but for this release arising from or in connection with my membership or participation in the Event; and
- ii. release and indemnify the Event Organisations against any Claim which may be made by me or on my behalf for or in respect of or arising out of my death whether caused by the negligence or breach of contract by any Event Organisation or in any other manner whatsoever; and
  - iii. indemnify and will keep indemnified the Event Organisations to the extent permitted by law in respect of any Claim by any person:
    1. arising as a result of or in connection with my membership or my participation in the Event; or
    2. against any Event Organisation in respect of any injury, loss or damage arising out of or in connection with my failure to comply with Event Organisation's rules and/or directions,
- b. save that the above releases and indemnities shall not apply to the extent that the loss, damage or injury that is the subject of the Claim is caused or contributed to by the grossly negligent act or omission of a Event Organisation.

## 8. Bar to Proceedings

- a. I acknowledge that the Event Organisations may plead this contract as a bar to proceedings now or in the future commenced by or on my behalf or by any person claiming through me. Where I commence proceedings against any Event Organisation, I:
  - i. will commence those proceedings in the courts of the jurisdiction in which any incident occurs;
  - ii. waive any right to object to the exercise of such jurisdiction;
  - iii. will, where I seek to commence proceedings in another jurisdiction from where any incident occurs, consent (if required by any Event Organisation) to move those proceedings to the jurisdiction in which any incident occurs including consenting to any application made by any Event Organisation to remove the proceedings to the jurisdiction in which any incident occurs;
  - iv. will pay the costs of any application made by any Event Organisation under paragraph 11(c) and will consent to any application for security of costs made at any time by any Event Organisation; and
  - v. consent to paying any Event Organisations' legal defence costs of the proceedings (on a solicitor client basis) where any Event Organisation successfully defends the proceedings.

## 9. Disclosure of Medical Conditions

- a. I warrant that prior to participating in the Event I:
  - i. am and must continue to be medically and physically fit and able to undertake and participate in the Event;
  - ii. am not a danger to myself or to the health and safety of others;
  - iii. have not at any time suffered any blackout, seizure, convulsion, fainting or dizzy

spells; and

- iv. I am not presently receiving treatment for any condition, illness, disorder or injury which would render it unsafe for me to take part in a walk/run including participating in the Event.
- b. I acknowledge that I must, and I agree that I will, disclose any pre-existing medical or other condition that may affect the risk that either I or any other person will suffer injury, loss or damage. I acknowledge that Event Organisations rely on information provided by me and that all such information is accurate and complete. I will report any accidents, injuries, loss or damage I suffer during the Event to the relevant Event Organisations before I leave any relevant venue or race area.

## 10. Consent to Medical Treatment

If I suffer any injury or illness, I agree that the Event Organiser may provide evacuation, first aid and/or medical treatment at my expense and that my acceptance of these terms and conditions constitutes my consent to such evacuation, first aid and/or medical treatment. I agree to reimburse the relevant Event Organisation for any costs or expenses incurred in providing me with medical treatment.

## 11. Exclusion of Applicant

I warrant that I have not at any time been excluded from Walk/Run Activities by a medical practitioner or any person or entity including but not limited to Mother's Day Classic. I acknowledge and agree that the Event Organisations may demand a medical certificate or opinion as to my fitness from a qualified medical practitioner PRIOR to my undertaking any Walk/Run Activities.

## 12. Safety

I understand and acknowledge the dangers associated with the consumption of alcohol or any mind-altering substance before or during my involvement in the Event, and I accept full responsibility for any injury, loss or damage associated with the consumption of alcohol or any other mind-altering substance. I agree to follow any rules set by any Event Organisation in connection with the Event. If I fail to comply with the rules and/or directions of any relevant Event Organisation, I will not be permitted to participate or to continue to participate in the Event and no refund will be given.

## 13. Prevailing conditions

- a. I acknowledge and agree that:
  - i. the Event can and will be affected by the weather which may change without warning; and
  - ii. there is often an element of the "luck of the prevailing conditions" when undertaking the Event over which the Event Organisations have no control.
- b. I accept that in the event of extreme weather conditions the Event Organisations reserve

the right to alter the format of, shorten, or cancel the Event in the interest of competitor safety.

## 14. Right to Use Image

I acknowledge and consent to photographs and electronic images being taken of me during my participation in the Event. I acknowledge and agree that such photographs and electronic images are owned by the Event Organisations and that the Event Organisations may use the photographs for promotional or other purposes without my further consent being necessary. Further, I consent to the Event Organisations using my name, image, likeness and also my performance in the Event, at any time, by any form of media, to promote the Walk/Run Activities or the Event Organisations.

## 15. Privacy

- a. I understand that the personal information I have provided in this Event entry is necessary for the conduct and management of the Event and other related activities, and that it is collected in accordance with Mother's Day Classic's Privacy Policy (available from [www.mothersdayclassic.com.au/privacy](http://www.mothersdayclassic.com.au/privacy)) or the Event Organiser's Privacy Policy. I acknowledge that Event Organisations may use or disclose my personal information for the purposes of conducting and administering Walk/Run Activities, providing me with information or promotional material or otherwise in accordance with Mother's Day Classic's Privacy Policy. The Event Organiser or Mother's Day Classic may share my information with third parties such as affiliates and other organisations involved in the Event or Walk/Run Activities or other related activities in Australia; companies engaged by Mother's Day Classic to carry out functions and activities on Mother's Day Classic's behalf including direct marketing; Mother's Day Classic's professional advisers, including Mother's Day Classic's accountants, auditors and lawyers and Mother's Day Classic's insurers; however my information is not generally disclosed to anyone outside Australia.
- b. I understand that the Mother's Day Classic Privacy Policy contains information about how I may access and request correction of my personal information held by Mother's Day Classic or make a complaint about the handling of my personal information, and provides information about how a complaint will be dealt with by Mother's Day Classic. I acknowledge that my Event entry application may be rejected if the information is not provided. If I do not wish to receive promotional material from Mother's Day Classic sponsors and third parties I must advise Mother's Day Classic in writing or via the opt-out procedures provided in the relevant communication. It is my responsibility to read and understand the Privacy Policy of the Event Organiser (if any). I understand that if I have any concern or complaint about the way the Event Organiser handles my personal information, I must contact the Event Organiser.

## 16. Refunds

I acknowledge and agree that, subject to the Competition and Consumer Act 2010 and any other applicable law:

# Terms & Conditions

- a. Mother's Day Classic Foundation is under no obligation to refund any entry fees or other monies paid by me or any other person in connection with my participation in the Event, including in circumstances where I change my mind regarding my participation in the Event, fail to participate in the Event, am dissatisfied by my participation in the Event, or the Event is rescheduled; and
- b. any refund of any entry fees or other monies shall be at Mother's Day Classic's sole discretion.

## 17. Non transferable

Entries are non-transferable to other events or to other people. Any attempt to transfer my entry to another person without the knowledge of the Event Organisation may result in the cancellation of my entry without refund and I may not be permitted to participate in further Walk/Run Activities or events.

## 18. Entire Agreement

This agreement (and the documents to which it refers) constitutes the entire agreement between the parties in respect of the Event and supersedes all other agreements, understandings, representations and negotiations in relation to the Event. To the extent that any clause of this agreement is void or unenforceable it is severable and does not affect the remaining provisions of the agreement.

## 19. Governing Law

The governing law of this agreement is the law of the state of Victoria ('Jurisdiction'). I irrevocably and unconditionally consent and submit to the jurisdiction of the courts of the Jurisdiction in which any incident occurs and waive any right to object to the exercise of such Jurisdiction.

### **PLEASE NOTE THE FOLLOWING:**

If the Competition and Consumer Act 2010 or similar State laws operate so as to prevent the exclusion, restriction or modification of warranties otherwise implied by those laws then the liability of the relevant Event Organisation for breach of warranties is limited to the:

- (i) re-supply of Walk/Run Activities and related activities; or
- (ii) payment of the cost of having the Walk/Run Activities or related activities supplied again.

### **DECLARATION**

In order to proceed, I must have read and agreed to the terms and conditions of entry. By checking the box, I declare that I have read, understood, acknowledge and agree to the terms and conditions of entry including the exclusion of implied terms, warning, assumption of risk, release and indemnity. I agree that if my application is accepted, I will be bound by these terms and conditions.