

2017 Terms and Conditions: Port to Pub Swim

1. Definitions

Entry Fee means the relevant fee (calculated under clause 6) for Your entry in the Event;

Event means the **Port to Pub Swim** to be conducted by the Organiser on the Event Course on Saturday, 25 March 2017 that includes the **Port to Pub swim** for one or more swimming Participants competing as a single team and the **Port to Pub 25 kilometre ultra-marathon** for solo swimming Participants only;

Event Briefing means the compulsory briefing for Participants to be conducted by the Organiser on 16 March 2017 (or any other dates notified by the Organiser on the Event Website);

Event Course means the courses delineated by the Organisers located in the Indian Ocean between Leighton Beach and Rottnest Island, Western Australia over which the Event including the Port to Pub swim and the Port to Pub 25 kilometre ultramarathon will be conducted as published and updated from time to time on the Event Website;

Event Qualifying Requirements mean the pre-requisites for entry as a Participant in the Event (that include the pre-requisites for entry as a skipper and the separate pre-requisites for entry as a swimmer in each of the Port to Pub swim and the Port to Pub 25 kilometre ultra-marathon);

Event Website means the website at www.porttopub.com.au and any pages within that website;

Harm means death, personal injury (including burns), psychological trauma, loss or damage (including property damage);

Interested Parties means the Organiser and blueChip Timing Pty Ltd ABN 70 115 314 013 together with the port authorities, local councils and other public bodies, landholders, sponsors and suppliers in any way involved in the organisation or conduct of the Event;

Law means all acts and statutes (of the State of Western Australia or Commonwealth of Australia) enacted and all regulations, by-laws, requisitions or orders made under any Law from time to time;



Non-Adult Participant is defined in clause 3(b);

Organiser means Port to Pub Pty Ltd ABN 11603209623 of PO Box 4327 Mosman Park South Western Australia, 6012 its directors, officers, employees, agents, volunteers and contractors:

Marine Rules mean all statutes, regulations, by-laws, requirements and approvals (including conditions) under any applicable Law regulating the conduct of boating and recreational activities on or about the Event Course including the rules and regulations for safe boating and marine safety in Western Australian waters published by the Department of Transport from time to time;

Other Participant means any other person for whom You complete the online registration as a member of Your Team subject to clause 4;

Participant means a person participating in the Event as a swimmer, paddler, skipper, or support crew;

Solo Swimmer is defined in clause 2(b);

Terms means these terms and conditions for entry into the Event that include an exclusion of liability, indemnity and risk acknowledgment (including any amendments made by the Organiser subject to clause 14);

You and Your means:

- (a) the person completing the online registration personally (or by a parent or guardian on his or her behalf where the Participant is under the age of 18 years) or as authorised agent for and on behalf of Other Participants (subject to clause 4); and
- (b) each Participant;

and in each case the person's heirs, executors and administrators;

Your Team means You and each person participating with You in the Event as part of a discrete team including as a swimmer, paddler, skipper or support crew; and

Vessel means a boat subject to clause 2(d) or a surf ski (or similar) used by a Participant to participate in the Event.

2. Event Qualifying Requirements

(a) Entry in this Event by You and Your Team is subject to the Event Qualifying Requirements. You must not submit an online registration unless You and each member of Your Term meet the relevant Event Qualifying Requirements.



(b) The Event Qualifying Requirements for participation as a swimmer in the Event are set out in the table below. By agreeing to these Terms You warrant that You meet the relevant Event Qualifying Requirements.

Event	Minimum Age	Qualifying Swim
Port to Pub 25 kilometre ultra- marathon Solo only*	14 years (subject to clause 3(b))	10km under 4 hours 15 mins within a two year timeframe prior to the date of the Event. OR Solo Rottnest Channel crossing (Port to Pub or RCS) in last 2 years.
Port to Pub Solo*	14 years (subject to clause 3(b))	10km under 4 hours 15 mins within a two year timeframe prior to the date of the Event. OR Solo Rottnest Channel crossing (Port to Pub or RCS) in last 2 years.
Port to Pub Duo	13 years (subject to clause 3(b))	2.5km within a two year timeframe prior to the date of the Event. OR Rottnest Channel solo or duo crossing (Port to Pub or RCS) completed in last 2 years.
Port to Pub Team of 4	13 years (subject to clause 3(b))	1.25km within a two year timeframe prior to the date of the Event.
Port to Pub Team of 6	13 years (subject to clause 3(b))	1.25km within a two year timeframe prior to the date of the Event

^{*}Proof that swimmers in these categories (**Solo Swimmers**) meet the Event Qualifying Requirements must be provided to the Organiser.



- (c) Your Team must be supported by a support boat Vessel and skipper that complies with the Event Qualifying Requirements in clause 2(d). A support boat Vessel may only support one team participating in the Event except that a single support boat Vessel may support no more than two Solo Swimmers provided that:
 - (i) each such Solo Swimmer is also supported by a surf-ski (or equivalent);
 - (ii) the Solo Swimmers are no more than 20 metres distance from each other at all times during the Event.
- (d) The Event Qualifying Requirements for participation as a skipper for Your Team in the Event are:
 - (i) that each skipper has read and understood the Marine Rules and that each Vessel used by a skipper satisfies the requirements of the Marine Rules for participation in the Event; and
 - (ii) that the support boat Vessel for Your Team is not less than 5 metres and not more than 12 metres in length. Tender Vessels must be greater than 3.75 metres in length. Vessels greater than 12 metres are advised to stay south of the channel and of the main fleet.
 - (iii) each Skipper holds any licence (including but not limited to a recreational skipper's ticket) required by Law or the Marine Rules to skipper the Vessel of which he or she will be skipper; and that licence is not provisional or restricted or subject to disqualification or suspension for any reason;

It is also recommended that each skipper is a member of the Fremantle Volunteer Sea Rescue Group.

3. Registration, warranties and acknowledgements

- (a) By participating in the Event You acknowledge that You have read the Terms and agree to be bound by them (whether or not You sign a copy of these Terms).
- (b) You warrant that You and each member of Your Team are 18 years or older or if on the date of the Event, You or a member of Your Team are under the age of 18 years (Non-Adult Participant):
 - (i) a parent or guardian must agree to be bound by these Terms on the Non-Adult Participant's behalf by printing out and providing a signed copy of the Parent/Guardian consent attached to these Terms to the Organiser at the address shown on the Event Website or at the Event Briefing; and
 - (ii) the Non-Adult Participant must be supervised by an adult at all times during the Event.



(c) You warrant that:

- (i) the information You have provided to the Organiser or that has been provided to the Organiser about You in the online registration is true and correct;
- (ii) You, and each member of Your Team, meet the applicable Event Qualifying Requirements (if any);
- (iii) You have the legal capacity to agree to these Terms; and
- (iv) You will not use a false name or impersonate another person in the online registration or in relation to the Event generally.
- (d) You acknowledge and agree that:
 - (i) by signing a copy of these Terms you agree to be bound by them; and
 - (ii) in any event, by participating in the Event You will be bound by these Terms (even if You fail to sign a copy of them and/or fail to provide a signed copy of them to the Organiser).

4. Registering another member of Your Team

- (a) If You complete the online registration for another member of Your Team (**Other Participant**), You warrant that:
 - (i) You are authorised to do so and that each Other Participant is 18 years or older, or if on the date of the Event, an Other Participant is under the age of 18 years:
 - (A) You are authorised by a parent or guardian of the Other Participant to register the Other Participant as a Participant;
 - (B) You will procure a parent or guardian of the Other Participant to agree to be bound by these Terms on the Participant's behalf by printing out and providing a signed copy of the Parent/Guardian consent attached to these Terms to the Organiser at the address shown on the Event Website or at the Event Briefing.
 - (ii) the Other Participant whom You are authorised to register has read and agreed to be bound by the Terms as if the Other Participant were the person completing the online registration personally; and
 - (iii) You are authorised to accept these Terms on the Other Participant's behalf (whether or not the Other Participant signs a copy of these Terms).
- (b) If You complete the online registration for an Other Participant, You agree that You will procure each Other Participant to print out and return a signed copy of these Terms to the Organisers. You also agree that You and the Other



Participant will be bound by these Terms even where the Other Participant does not sign a copy of these terms and/or the Organiser does not receive a copy of these Terms signed by the Other Participant.

(c) If You complete the online registration for an Other Participant, You indemnify and hold harmless the Interested Parties to the fullest extent permitted by Law, from and against all actions, claims, proceedings, demands, liabilities, losses, damages (including indirect and consequential loss), expenses, costs (including legal costs on a full indemnity basis) whatsoever that may be incurred, as a direct or indirect result of any breach of Your warranties or failure to comply with Your obligations in this clause 4.

5. Registration changes

- (a) Changes to Your Event registration (including changes to the Participants) may only be made by logging on to the Event Website using Your or Your Team's individual Event registration reference code and following the prompts.
- (b) You agree that no amendment may be made to an Event registration which would result in:
 - (i) a person who does not meet the relevant Event Qualifying Requirements participating in the Event;
 - (ii) a Non-Adult Participant participating in the Event unless the Organiser has received the Parent/Guardian consent attached to these Terms signed by a parent or guardian of that Non-Adult Participant agreeing to be bound by these Terms on the Non-Adult Participant's behalf; and
 - (iii) any person participating in the Event who has not signed and provided to the Organiser a signed copy of these Terms or has otherwise accepted these Terms in a manner advised by, or acceptable to, the Organiser or authorised another person to accept these Terms on his or her behalf.
- (c) You agree that any changes to Your Event registration will not result in any part of the Event Fee that has been paid being refunded by the Organiser.

6. Payment and refunds

- (a) You must pay, or arrange payment of, the Entry Fee in full during the online registration by going to or arranging for a member of Your Team to go to the Event Website and following the prompts.
- (b) The Entry Fee varies depending upon the capacity in which You participate in the Event and the time at which payment is made and can be calculated according to the following table:

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Event	Early Bird: (Before 14 November 2016)	Standard: (14 Nov – 06 Feb 2017)	Late Entries: (07 Feb - 06 March 2016)
25km ultra- marathon	\$275	\$290	\$330
Solo	\$275	\$290	\$330
Duo	\$480	\$500	\$550
Teams of four	\$880	\$960	\$1000
Team of six	\$1320	\$1440	\$1500

- (c) You agree that You (or Your Team or any member of Your Team) are not entitled to any refund of the Entry Fee where You withdraw (or Your Team or any member of Your Team withdraws) from the Event at any time or are unable to participate or compete in the Event for any reason (including where You (or any member of Your Team) are incapacitated or declared medically unfit for any reason).
- (d) The Organisers do not guarantee that the Event will take place at the time stated on the Event Website and reserve the right to delay the starting time of the Event or to alter the duration of the Event or any proposed Event activities, or to cancel or abandon the Event at any time, where circumstances occur beyond the reasonable control of the Organisers including but not limited to shark sightings, bad weather, strong and dangerous currents and swells or other safety or security concerns. Where the Event is delayed, cancelled or abandoned in any of these circumstances, You agree that no refund of the Event Fee will be payable.

7. Conduct

- (a) You are responsible for ensuring that:
 - You are in an appropriate physical and mental condition to participate in the Event including taking into account Your level of general health, physical fitness, any physical or medical condition, physical and mental stamina and likelihood of fatigue;
 - (ii) You are present for the Event Briefing which will be conducted at the time and place specified by the Organiser;
 - (iii) You have obtained adequate insurance to cover any injuries and loss or damage to Your property that occurs during the Event;
 - (iv) You do not participate in the Event while under the influence of alcohol or drugs.
- (b) If You are going to act as a swimmer in the Event that:



- (i) You are experienced in swimming in open water conditions that include strong and dangerous currents and swells, rips, seaweed, reefs, channels and other unexpected water environments that include water that is very cold, sandy and difficult to swim in;
- (ii) You understand that You will be exposed to a range of marine life that may be deadly or harmful to You including sharks, sting rays, seals and other marine creatures including jellyfish and stingers;
- (iii) You understand that in addition to the usual risks involved in swimming in open water conditions the high concentration of Participants means that You will be exposed to additional risks of injury from other Participants and Vessels.
- (c) If You are going to act as a paddler in the Event that:
 - (i) You are experienced in paddling in open water conditions that include strong and dangerous currents and swells, rips, seaweed, reefs, channels and other unexpected water environments;
 - (ii) You are a strong and experienced paddler and if you are dislodged from your Vessel You will be capable of swimming in open water conditions that include strong and dangerous currents and swells, rips, seaweed, reefs, channels and other unexpected water environments that include water that is very cold, sandy and difficult to swim in;
 - (iii) You understand that You will be exposed to a range of marine life that may be deadly or harmful to You including sharks, sting rays, seals and other marine creatures including jellyfish and stingers; and
 - (iv) You understand that in addition to the usual risks involved in paddling in open water conditions the high concentration of Participants means that You will be exposed to additional risks of injury from other Participants and Vessels.
- (d) If You are going to act as skipper of a Vessel during the Event:
 - You hold any licence (including but not limited to a recreational skipper's ticket) required by Law or the Marine Rules to skipper the Vessel; and that licence is not provisional or restricted or subject to disqualification or suspension for any reason;
 - (ii) You ensure that the Vessel will be seaworthy and capable of carrying the number of passengers and undertaking the operations required to participate safely in the Event;
 - (iii) without limiting the operation of clause 7(d)(ii) You acknowledge that the maximum number of passengers on the Vessel (including You) at all times must not exceed the Marine Rules which at the date of these Terms are:



Vessel Size	Number of Persons
3.5 metres to less than 4.5 metres	4 people
4.5 metres to less than 5.0 metres	5 people
5.0 metres to less than 5.5 metres	6 people
5.5 metres to less than 6.0 metres	7 people

- (iv) You have sufficient experience in being in charge of the Vessel in conditions similar to the Event (that will include heavy traffic and swimmers in the water, requiring a high degree of Vessel control and navigational ability); and
- (v) You comply with Marine Rules at all times and ensure that any other person who assists You in operating the Vessel also complies with Marine Rules.

(e) You agree:

- (i) to attend the Event Briefing and comply, and procure compliance by each member of Your Team, with the additional directions for participation in the Event given by the Organiser at the Event Briefing or published on the Event Website:
- (ii) without limiting clause 7(e)(i), that the Organiser may exclude You and Your Team from participation in the Event where:
 - (A) the skipper and at least one paddler and one swimmer from Your Team (or each solo swimmer) does not attend the Event Briefing;
 - (B) the Organiser does not receive on or before the Event Briefing (or any later date determined by the Organiser in its absolute discretion) one or more signed copies of these Terms signed by each member of Your Team.
- (iii) that no Participant who is under 18 years of age at the date of the Event will be allowed to participate where the Organiser has not received a signed copy of these Terms signed by a parent or guardian of the Participant; and
- (iv) to promptly follow, and procure that each member of Your Team follows, all directions given by the Organiser during the conduct of the Events.



- (f) During the Event, You and each member of Your Team must not engage in any conduct that may cause Harm to another Participant or their property, or in any criminal activity, bad language or other antisocial behaviour that will interfere with the conduct of the Event or damage the reputation of the Event or the Interested Parties.
- (g) The Organiser reserves the right, in its absolute discretion, to refuse to allow You and members of Your Team to participate in the Event or to require You and members of Your Team to immediately withdraw from the Event and leave an Event venue at any time if You and/or members of Your Team breach these Terms (including because a member of Your Team fails to sign and return to the Organiser a signed copy of these Terms), or otherwise where the Organiser determines it is in the best interests of the Event to do so, and in any such case You and each member of Your Team will have no claim against the Organiser for any Harm You and members of Your Team may suffer and You will forfeit all Entry Fees.

8. Risks

- (a) You acknowledge that attending or participating in the Event has inherent risks that may result in You suffering Harm. These risks include but are not limited to:
 - (i) exposure to sharks and other marine animals that may cause Harm including death or life threatening injuries;
 - (ii) exposure to dangerous ocean conditions that may cause Harm including heavy swell, tides, rips, currents, reefs, channels, and other ocean conditions that are unexpected and unpredictable;
 - (iii) accidents (and resulting Harm) arising from exposure to inclement or extreme weather or ocean conditions;
 - (iv) collisions (and resulting Harm) involving Vessels, marine animals, persons or property;
 - acts of violence and other harmful acts (whether intentional or inadvertent) committed by Participants or persons attending, or encountered during the Event (and resulting Harm);
 - (vi) the mechanical unreliability or failure or unsuitability for Event conditions of Your Vessel during the Event (and resulting Harm);
 - (vii) dangerous conditions for Participants during the Event (and resulting Harm) caused by the number of swimmers, paddlers or Vessels in close proximity or unpredictable ocean conditions:
 - (viii) lack of Event services or equipment to ensure the safety of persons or property during the Event (and resulting Harm);



- (ix) accidents (and resulting Harm) caused by Your fatigue or the fatigue of other Participants;
- (x) the conduct of the Event in a remote location in ocean waters with limited or no access to medical facilities and assistance, telecommunications services and emergency services and equipment (and resulting Harm).
- (b) If You participate as the skipper of the support boat Vessel for Your Team at the Event you acknowledge that You are ultimately responsible for the safety and welfare of each member of Your Team during the Event and that You are responsible for determining whether it is safe to continue or whether You and Your Team should withdraw from the Event at any time. If you are not the skipper of the support boat Vessel for Your Team, then You acknowledge that the skipper of the support boat Vessel for Your Team, is ultimately responsible for Your safety and welfare and the safety and welfare of each member of Your Team during the Event and You agree to abide by the directions of the skipper of the support boat Vessel for Your Team including any determination by the skipper of the support boat Vessel for Your Team to withdraw from the Event at any time.

9. Medical treatment

- (a) You consent to receive and pay for any medical treatment (including without limitation, ambulance or emergency transportation) which is considered by the Organiser to be advisable or deemed reasonable before, during or after the Event and agree to indemnify and keep indemnified the Organiser for all costs associated with this medical treatment.
- (b) Where You receive medical treatment before, during or after the Event (at the request of or in consultation with the Organiser) You agree to provide a copy of Your medical records for that medical treatment to the Organiser's insurers upon request.
- (c) if you receive medical treatment before, during or after the Event, you consent to the Organiser providing to persons giving you such medical treatment any medical information about You that the Organiser has received in connection with Your participation in the Event (including in the online registration process).

10. Exclusion of liability

(a) To the fullest extent permitted by law (including but not limited to section 139A of the Competition and Consumer Act 2010 (Cth) and section 5J of the Civil Liability Act 2002 (WA)) the Interested Parties exclude all liability (including in relation to any warranty or guarantee) arising from any loss or damage suffered by You or any member of Your Team in connection with the Event, including (without limitation) in respect of any loss or damage to property and in respect of any death, physical or mental injury (including aggravation, acceleration or recurrence of such an injury), contraction, aggravation or acceleration of a disease or coming into existence, aggravation, acceleration or recurrence of any other condition or occurrence that is or may be harmful or disadvantageous to



You or Your Team arising from the Event not being supplied with due care and skill or not being reasonably fit for purpose or for any breaches or failure of any consumer guarantees under Schedule 2 to the *Competition and Consumer Act 2010 (Cth)* (the "**Australian Consumer Law**") or arising under any Law or due to negligence by any of the Interested Parties or for breach of contract or arising in any other way whatsoever.

(b) Nothing in this document excludes, limits or modifies the application of the Australian Consumer Law, or any other applicable Law or the exercise of any rights or remedies conferred by the Australian Consumer Law or any other applicable Law where to do so would contravene the Australian Consumer Law.

11. Indemnity

You indemnify and hold harmless the Interested Parties to the fullest extent permitted by Law, from and against all actions, claims, proceedings, demands, liabilities, losses, damages (including indirect and consequential loss), expenses, costs (including legal costs on a full indemnity basis) whatsoever that may be incurred, as a direct or indirect result of Your participation in the Event and/or participation in the Event of any member of Your Team.

12. Privacy

- (a) You consent to the Organiser collecting and using Your name on the Event Website for promotional and fundraising purposes to the extent permitted by law.
- (b) You agree that photos taken at the Event can be used in advertising and promotional material for the Port to Pub Swim provided that all images will reflect behaviour that is appropriate and will meet community standards of acceptable dress and deportment and will not contain Your personal details, and the Organiser will remove those photos where requested by You.

13. Cancellation of the Event

You agree that the Organiser may in its sole and absolute discretion cancel or postpone the Event at any time before or during the conduct of the Event and if that occurs, neither You nor any member of Your Team will have any claim for damages or loss of any kind against the Interested Parties.

14. Amendment of terms

You acknowledge that the Organiser may amend these Terms at any time, in its sole discretion, but must notify You where an amendment is important and will impact detrimentally on You. You agree that the Organiser can notify You by sending an email to the email address included in the online registration process.

15. Previous disclaimers



To the extent there is any inconsistency, these Terms replace all previous terms and conditions in relation to the Event.

16. Severance

If any provision of this document is prohibited, invalid or unenforceable in any jurisdiction, that provision will, as to that jurisdiction, be ineffective to the extent of the prohibition, invalidity or unenforceability without invalidating the remaining provisions of this document or affecting the validity or enforceability of that provision in any other jurisdiction.



17. Risk Warning And Acknowledgement

- (a) Your participation in the Event may involve risk. The risks involved may result in property loss or damage and personal injury including death. Prior to participating in the Event, You should ensure You are aware of all of the risks involved, including those risks associated with any health condition You may have. You acknowledge, agree, and understand that participation in the Event including the services provided by the Interested Parties may involve risk.
- (b) You freely and voluntarily assume all risks associated with participating in the Event including the risks described in clauses 8 and 17(a) and acknowledge that Your participation in the Event is entirely at Your own risk and that You may withdraw from the Event at any time.
- (c) You also acknowledge that the risk warning in this clause 17 constitutes a 'risk warning' in accordance with relevant Law including the *Civil Liability Act 2002* (WA).
- (d) **WARNING:** If You participate in these activities Your rights to sue the Interested Parties if You are killed or injured because the activities were not supplied with due care and skill or were not reasonably fit for their purpose, are excluded, restricted or modified in the way set out in or on this notice.
- (e) **NOTE:** The change to Your rights, as set out in or on this notice, does not apply if Your death or injury is due to gross negligence on the Interested Parties 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.

PAGES TO BE PRINTED OUT, SIGNED BY EACH PARTICIPANT AND RETURNED ON OR BEFORE EVENT BRIEFING



Please return this form/forms in the following ways:

Email: info@porttopub.com.au (photo or scanned document);

Post: PO Box 4237, Mosman Park South WA, 6012;

Or bring the forms with you to the Event Briefing.

*Delete whichever does not apply

Terms and Conditions and forms are also available on the Port to Pub website under Registrations

You hereby acknowledge that You have read, understood and accept the Terms and agree to

be bound by the Terms in connection with the Event.

Name ______

Team Name ______

Signature ______

Date ______

Swimmer/Paddler/Skipper*

Name ______

Team Name ______

Signature ______

Signature ______

Date ______

Swimmer/Paddler/Skipper*

Swim to Rottnest





Name
Team Name
Signature
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Swimmer/Paddler/Skipper*
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*Delete whichever does not apply

Swim to Rottnest



PARENT/GUARDIAN CONSENT – PERSONS UNDER 18 YEARS
Iof [Address]
am the parent/guardian* of(the Participant) who is
under 18 years old. I have read this document and understand its contents, including the
exclusion of liability, assumption of risk, and risk warning and acknowledgment, and have
explained the contents to the Participant. I agree to the terms of this document on behalf of
the Participant and I consent to the Participant participating in the Event at his/her own risk
and agree that I will arrange for the Participant to be supervised by an adult at all times
during the Event.
Name
Team Name
Signature
Date
Parent/Guardian*





*Delete whichever does not apply