

BIBSWITCHSM USER AGREEMENT

Last Updated: September 15, 2015

Welcome to BIBSWITCH! **By accessing or using BIBSWITCH's website (the "Site") and BIBSWITCH's Services ("Services") you agree to be bound by the BIBSWITCH User Agreement ("Agreement").** We may periodically update and make changes to this Agreement and your continued use of the Site indicates your acceptance of the changes to the Agreement.

GENERAL TERMS OF USE FOR BIBSWITCH: A MARKETPLACE FOR RACE NUMBERS

BIBSWITCH is an online platform that facilitates the transfer, donation and sale of race numbers by individuals who can no longer use and participate in an event but have a pre-purchased race entry secured in their own name. The Site allows users to buy ("Buyers" or "Bib Seekers") and sell ("Sellers" or "Bib Holders") race/bib numbers ("bibs") only with the approval of the Race Director ("RD") who initially sold or issued the race entry. BIBSWITCH is also referred to as "we," "us," and "our" throughout this Agreement. Buyers and Sellers are referred to collectively as "you" and "your" throughout this Agreement.

SELLERS

Sellers are those individuals who already purchased in advance an official race entry but for some reason they can no longer participate in the event. Sellers have the right to use the site to list their bibs in order to:

- **Transfer** a bib to friends or family
- **Donate** the bib back to the Race Director
- Seek a Buyer in order to **re-sale** their bib

Sellers acknowledge the fact that sending in a bib request does not guarantee a sale, transfer or donation. The final decision will be made by the Race Directors and not BIBSWITCH, as set forth below.

Seller acknowledges that he/she will **NOT be compensated 100% of the original purchase price.**

Seller will only receive a **partial compensation**, since part of the proceeds from the sale of the bib will go to the Race Director to cover administrative fees and part will be collected by BIBSWITCH to cover fees and revenues.

In order to control and guarantee the existence, quality, safety and legality of the bibs advertised, the **Seller must submit a proof of his/her race entry confirmation to us by email or upload.** If the transfer, donation or sale request is approved by the RD, the Seller's information will be checked by the RD to ensure the race entry is valid. Once a bib is posted to BIBSWITCH's Site, the Seller relinquishes all rights to it, including the right to recall or use the posted bib. Once a bib is sold, transferred or donated on our Site, the Seller waives all rights to participate in the event and the race entry and full race package will be officially taken over by the Buyer directly from the RD.

In order to keep BIBSWITCH transparent and avoid abuse of the site, each account holder will have the right to **sell a maximum of two bibs in any given year**. BIBSWITCH may, at its discretion, change the maximum allowance of sales per user at any time.

BUYERS

Buyers are those individuals who want to take over or purchase a bib listed on the site. Buyers acknowledge that they will need **to sign and submit** to BIBSWITCH any **Liability Waiver** required by the Race Director prior to the race packet pickup; otherwise their participation in a race may be denied even if they successfully purchased a bib on the Site.

Buyers acknowledge that they can be charged and there may be administrative, transaction and other fees associated with a bib transfer even if the sale price is listed as zero by the Seller.

RACE DIRECTORS

Race Directors are those individuals or organizations who are in charge of organizing and delivering various road running races and sporting events that require registrations and where a race number is issued to participants. Race Directors acknowledge that once they approve a transfer, donation or sale their **decision is final** and they are bound by this User Agreement to fulfill their promise to change their records and ensure that the Buyer will receive the full race package and bib before the event takes place, provided that the Buyer fulfills all of his/her obligations.

Race Directors have the obligation to send us a form copy of their Liability Waiver in timely manner in order to ensure that the Buyer has sufficient time to sign and submit it to BIBSWITCH before the race event takes place.

Race Directors will have the obligation to change their race records prior to the event taking place in order to reflect the name, age and gender of the Buyer who purchased a race entry through our Site. Race Directors have the obligation to ensure that Buyers have the same rights and means as the original purchasers of the bibs to receive their race numbers and packets before the race takes place.

BIB PRICING

BIBSWITCH does not own the bibs on the Site nor does it set prices for the bibs. Bibs cannot be sold for a higher price than the last price posted on the official website where the bib was initially purchased or otherwise allowed by the RD, although fees and costs may be added to the price, which will be borne by Buyers as set forth below.

ACCOUNTS

You must create an account in order to list, transfer, donate, sell or purchase a bib. You must have a valid credit card or debit card on file in order to make a transaction. BIBSWITCH also accepts payment by PayPal. Any disputes over PayPal payments must be resolved by PayPal and its payment service providers. You acknowledge that BIBSWITCH may charge any one of your payment methods on file for amounts you owe us, costs we incur or other losses arising out of your violation of this Agreement.

FEES

BIBSWITCH is a free service offered to Sellers and Race Directors. All fees are paid by Buyers in the form of the Purchase Price of the bib. The Seller acknowledges the fact that he/she will not receive 100% of the Selling Price of the bib. Part of the Price will be distributed between the RD and BIBSWITCH. The Sellers agree that the price will be split between the Seller and RDs, and BIBSWITCH will collect a fee associated with each sale to cover transaction costs and Site revenues. The RDs can reserve the right to pre-set their transfer fees collected on the bibs. BIBSWITCH reserves the right to change the payment structure of the service offered and to collect membership fees in the future.

LISTING BIBS

Under no circumstances may anyone list speculative on non-existent bibs. All bibs needs to be verified and proofs of authenticity need to be provided by email or upload to us and the Race Director before a sale, transfer or donation can take place on the Site.

COMMITMENT TO TRANSFER, SALE OR DONATE

By listing a bib for transfer, sale or donation, Seller makes a binding offer to transfer that bib to a Buyer who purchases the bib for the price Seller has specified, or to return it to the RD who can donate or re-sell Seller's bib. Under no circumstances may Sellers cancel a bib listing once it is approved by BIBSWITCH and the RD.

TAXES

Seller is solely responsible for the payment of any applicable taxes resulting from Seller's bib sales. Seller acknowledges that the bib price listed might contain tax payments required by the Internal Revenue Service and applicable state tax.

BUYING BIBS

Buyer is responsible for reading the complete listing before committing to buy a bib. When placing an order, Buyer enters into a binding contract with the Seller to purchase that bib. Payment is remitted to BIBSWITCH and disbursed to the Seller, BIBSWITCH and RDs according to our payment policy. **All Sales Are Final** and Buyer will not receive a refund for completed purchases in case Buyer can no longer use the bib you purchased.

EVENT CANCELLATIONS, POSTPONEMENT, AND OTHER EVENT CHANGES

BIBSWITCH is not responsible for loss of value in case an event is cancelled in which Buyer obtained a bib. Once a transfer or sale is finalized, it is the Buyer's responsibility to directly monitor the website of the specific event for which he/she obtained the bib and to read and refer to the cancellation and refund policies offered by the RDs for each specific event in case of event cancellation.

SITE CHANGES AND AVAILABILITY

BIBSWITCH reserves the right at any time to modify or discontinue, temporarily or permanently, the Site, the Services, or any part of the Site or Services with or without notice for any reason. BIBSWITCH performs regularly scheduled maintenance. While BIBSWITCH does its best to avoid customer impact, the Site or Services may be temporarily unavailable during maintenance periods.

ABUSING BIBSWITCH

When using the Site or the Services, you agree that you will not do any of the following:

- Use the Site or the Services for unlawful purposes or in an unlawful manner;
- Use BIBSWITCH's name, logo or any of its trademarks without our prior express written permission;
- Copy, reproduce, reverse engineer, modify, decompile, disassemble or otherwise attempt to derive source code from, create derivative works from, distribute, or publicly display any content (except for your own personal information) or software from our Site or Services without BIBSWITCH's prior express written permission and the appropriate third party, as applicable;
- Use any robot, spider, scraper, or other automated means to access the Site for any purpose without our express written permission;
- Take any action that imposes or may impose (to be determined in our sole discretion) an unreasonable or disproportionately large load on our infrastructure or otherwise interferes with the functioning of the Site;
- Do anything else that BIBSWITCH determines, in its sole discretion, misuses the Site or Services or otherwise negatively impacts our marketplace.

In BIBSWITCH's effort to protect Buyers and Sellers, we may screen bib sales or listings for signs of fraud using algorithms or automated systems, which may result in automatic or manual cancellation of listings or sales and temporary or permanent suspension of accounts. If your transaction or account is canceled or suspended in error, please contact us and we may reinstate your account or listing, in our sole discretion.

If we believe you are abusing BIBSWITCH in any way we may take any action that we deem appropriate in our sole discretion for such abuse. These actions may include, but are not limited to: temporarily or permanently suspending you from using or accessing the Site or Services, removing a listing, requiring you to edit a listing, cancelling a sale, withholding a payment to you, or charging the payment method on file for amounts you owe us or costs we incur due to your misconduct (including, without limitation, any costs associated with collection of delinquent accounts or chargebacks and any replacement costs). We reserve the right to report any activity that we believe to be illegal and we will respond to all inquiries initiated by governmental agencies or as otherwise legally required. In addition, we reserve the right to refuse or terminate our Services to anyone for any reason at our discretion.

AGREEMENT TO ARBITRATE LEGAL DISPUTES WITH BIBSWITCH

You and BIBSWITCH each agree that any and all disputes or claims that have arisen or may arise between you and BIBSWITCH relating in any way to or arising out of this or previous versions of the User Agreement, your use of or access to BIBSWITCH's Site or Services, or any tickets or related passes sold or purchased through BIBSWITCH's Site or Services shall be resolved exclusively through final and binding arbitration, rather than in court, except that you may assert claims in small claims court, if your claims qualify and so long as the matter remains in such court and advances only on an individual (non-class, non-representative) basis. The Federal Arbitration Act governs the interpretation and enforcement of this Agreement to Arbitrate.

(a) Prohibition of Class and Representative Actions and Non-Individualized Relief

YOU AND BIBSWITCH AGREE THAT EACH OF US MAY BRING CLAIMS AGAINST THE OTHER ONLY ON AN INDIVIDUAL BASIS AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE ACTION OR PROCEEDING. UNLESS BOTH YOU AND BIBSWITCH AGREE OTHERWISE, THE ARBITRATOR MAY NOT CONSOLIDATE OR JOIN MORE THAN ONE PERSON'S OR PARTY'S CLAIMS, AND MAY NOT OTHERWISE PRESIDE OVER ANY FORM OF A CONSOLIDATED, REPRESENTATIVE, OR CLASS PROCEEDING. ALSO, THE ARBITRATOR MAY AWARD RELIEF (INCLUDING MONETARY, INJUNCTIVE, AND DECLARATORY RELIEF) ONLY IN FAVOR OF THE INDIVIDUAL PARTY SEEKING RELIEF AND ONLY TO THE EXTENT NECESSARY TO PROVIDE RELIEF NECESSITATED BY THAT PARTY'S INDIVIDUAL CLAIM(S). ANY RELIEF AWARDED CANNOT AFFECT OTHER BIBSWITCH USERS.

(b) Arbitration Procedures

Arbitration is less formal than a lawsuit in court. Arbitration uses a neutral arbitrator instead of a judge or jury, and court review of an arbitration award is very limited. However, an arbitrator can award the same damages and relief on an individual basis that a court can award to an individual; and an arbitrator must also follow the terms of the User Agreement, as a court would.

All issues are for the arbitrator to decide, except that issues relating to arbitrability, the scope or enforceability of this Agreement to Arbitrate, or the interpretation of Section 1 of this Agreement to Arbitrate ("Prohibition of Class and Representative Actions and Non-Individualized Relief"), shall be for a court of competent jurisdiction to decide.

The arbitrator, and not any federal, state, or local court or agency, shall have exclusive authority to resolve any dispute arising out of or relating to the interpretation, applicability, enforceability or formation of this Agreement to Arbitrate, any part of it, or of the User Agreement including, but not limited to, any claim that all or any part of this Agreement to Arbitrate or the User Agreement is void or voidable.

The arbitration will be conducted by the American Arbitration Association ('AAA') under its rules and procedures, including the AAA's Supplementary Procedures for Consumer-Related Disputes (as applicable), as modified by this Agreement to Arbitrate. The AAA's rules are available at www.adr.org or by calling the AAA at 1-800-778-7879.

A party who intends to seek arbitration must first send to the other, by email, a Notice of Dispute ("Notice"). You may download a "Notice of Dispute" from our website. A Notice to BIBSWITCH should be sent to legal@bibswitch.com. Re: BIBSWITCH Notice of Dispute. BIBSWITCH will send any Notice to you to the email address we have on file associated with your BIBSWITCH account; it is your responsibility to keep your email address up to date. All information called for in the Notice must be provided, including a description of the nature and basis of the claims the party is asserting and the relief sought.

If you and BIBSWITCH are unable to resolve the claims described in the Notice within 30 days after the Notice is sent, you or BIBSWITCH may initiate arbitration proceedings. A form for initiating arbitration proceedings is available on the AAA's website at www.adr.org. In addition to filing this form with the AAA in accordance with its rules and procedures, the party initiating the arbitration must mail a copy of the completed form to the opposing party. You may send a copy to BIBSWITCH at the following address: legal@bibswitch.com. In the event BIBSWITCH initiates arbitration against you, it will send a copy of the completed form to the email address we have on file associated with your BIBSWITCH account. Any settlement offer made by you or BIBSWITCH shall not be disclosed to the arbitrator. The arbitration shall be held in Queens County, New York or at another mutually agreed location. If the value of the relief sought is \$10,000 or less, you or BIBSWITCH may elect to have the arbitration conducted by telephone or based solely on written submissions, which election shall be binding on you and BIBSWITCH subject to the arbitrator's discretion to require an in-person hearing, if the circumstances warrant. In cases where an in-person hearing is held, you and/or BIBSWITCH may attend by telephone, unless the arbitrator requires otherwise.

The arbitrator will decide the substance of all claims in accordance with the laws of the State of New York, including recognized principles of equity, and will honor all claims of privilege recognized by law. The arbitrator shall not be bound by rulings in prior arbitrations involving different BIBSWITCH users, but is bound by rulings in prior arbitrations involving the same BIBSWITCH user to the extent required by applicable law. The arbitrator's award shall be final and binding, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

(c) Costs of Arbitration

Payment of all filing, administration, and arbitrator fees will be governed by the AAA's rules, unless otherwise stated in this Agreement to Arbitrate. If the value of the relief sought is \$10,000 or less, at your request, BIBSWITCH will pay all filing, administration, and arbitrator fees associated with the arbitration. Any request for payment of fees by BIBSWITCH should be submitted by mail to the AAA along with your Demand for Arbitration and BIBSWITCH will make arrangements to pay all necessary fees directly to the AAA. If the value of the relief sought is more than \$10,000 and you are able to demonstrate that the costs of accessing arbitration will be prohibitive as compared to the costs of accessing a court for purposes of pursuing litigation on an individual basis, BIBSWITCH will pay as much of the filing, administration, and arbitrator fees as the arbitrator deems necessary to prevent the costs of accessing arbitration from being prohibitive. In the event the arbitrator determines the claim(s) you assert in the arbitration to be frivolous, you agree to reimburse BIBSWITCH for all fees associated with the arbitration paid by BIBSWITCH on your behalf that you otherwise would be obligated to pay under the AAA's rules.

(d) Severability

With the exception of any of the provisions in subsection (a) of this Agreement to Arbitrate ('Prohibition of Class and Representative Actions and Non-Individualized Relief'), if an arbitrator or court decides that any part of this Agreement to Arbitrate is invalid or unenforceable, the other parts of this Agreement to Arbitrate shall still apply. If an arbitrator or court decides that any of the provisions in subsection (a) of this Agreement to Arbitrate ('Prohibition of Class and Representative Actions and Non-Individualized Relief') is invalid or unenforceable, then the entirety of this Agreement to Arbitrate shall be null and void. The remainder of the User Agreement will continue to apply.

(e) Opt-Out Procedure

You can choose to reject this Agreement to Arbitrate ('opt out') by emailing us a written opt-out notice ('Opt-Out Notice'). The Opt-Out Notice must be emailed no later than 30 days after the date you accept the User Agreement for the first time. You must email the Opt-Out Notice to legal@bibswitch.com.

The Opt-Out Notice must include your name, address (including street number and address, city, state, and zip code), phone number and the email address(es) used to log in to the BIBSWITCH account(s) to which the opt-out applies. The Opt-Out Notice must state that you are opting out of this Agreement to Arbitrate. You must sign the Opt-Out Notice for it to be effective. This procedure is the only way you can opt out of the Agreement to Arbitrate. If you opt out of the Agreement to Arbitrate, all other parts of the User Agreement will continue to apply. Opting out of this Agreement to Arbitrate has no effect on any previous, other, or future arbitration agreements that you may have with us.

(f) Future Amendments to the Agreement to Arbitrate

Notwithstanding any provision in the User Agreement to the contrary, you and we agree that if we make any amendment to this Agreement to Arbitrate (other than a change to any notice address or website link provided herein) in the future, that amendment shall not apply to any claim that was filed in a legal proceeding between you and BIBSWITCH prior to the effective date of the change. The amendment shall apply to all other disputes or claims governed by the Agreement to Arbitrate that have arisen or may arise between you and BIBSWITCH. We will notify you of amendments to this Agreement to Arbitrate by posting the amended terms on <http://www.bibswitch.com> at least thirty (30) days before the effective date of the amendments and by sending notice via email to your email address on file with us. If you do not agree to the amended terms, you may close your account within the thirty (30) day period and you will not be bound by the amended terms.

APPLICABLE LAW

Except as otherwise stated, the Agreement shall be governed by the laws of the State of New York.

LIMITATION OF LIABILITY

YOU UNDERSTAND AND AGREE THAT YOU ARE MAKING USE OF BIBSWITCH'S SITE AND SERVICES ON AN "AS IS" AND "AS AVAILABLE" BASIS. BIBSWITCH MAKES NO WARRANTY WITH RESPECT TO ITS SOFTWARE, SERVICES, SITE, ANY BIBS, ANY EVENT, ANY USER CONTENT, OR THAT SELLERS OR BUYERS AND RACE DIRECTORS WILL PERFORM AS PROMISED.

IN ADDITION, TO THE MAXIMUM EXTENT PERMITTED BY LAW, BIBSWITCH IS NOT LIABLE FOR:

(A) ANY SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES; (B) LOSS OF: PROFITS, GOODWILL OR REPUTATION, PROFITS, OR OTHER INTANGIBLE LOSSES; OR (C) PUNITIVE DAMAGES.

RELEASE AND COVENANT NOT TO SUE

To the fullest extent permitted by law, you release and covenant not to sue BIBSWITCH, its affiliated companies, and our and their respective officers, directors, agents, joint ventures, employees, legal representatives, and suppliers from any and all claims, demands and damages (actual and consequential) of every kind and nature, known and unknown, suspected and unsuspected, disclosed and undisclosed, arising out of or in any way connected with disputes between users. In entering into this release you expressly waive any protections (whether statutory or otherwise) that would otherwise limit the coverage of this release to include only those claims, which you may know or suspect to exist in your favor at the time of agreeing to this release.

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New York, NY