

Working Together

Appendix J

Big Brothers Big Sisters of Canada Affiliation Agreement

AFFILIATION AGREEMENT

July 2003

THIS AGREEMENT made this day of , 20

BETWEEN

BIG BROTHERS BIG SISTERS OF CANADA
LES GRANDS FRÈRES GRANDES SOEURS DU CANADA
(hereinafter referred to as "BBBSC")

THE PARTY OF THE FIRST PART

AND

INSERT MEMBER NAME

(hereinafter referred to as the "Member")

THE PARTY OF THE SECOND PART

WHEREAS Big Brothers Big Sisters of Canada (BBBSC) is the national organization for the Big Brothers Big Sisters Federation, governed by its members through its elected national Board of Directors, Annual General Meeting, periodic consultations and evaluations;

AND WHEREAS BBBSC's member agencies provide direct service to the communities contained in their community service area;

AND WHEREAS BBBSC is responsible for providing support to its members through the provision of programs and services relevant to enhancing the well being of the Federation;

AND WHEREAS the Member has achieved the recognized national Standards of Big Brothers Big Sisters of Canada to be an Affiliated Member of Big Brothers Big Sisters of Canada;

AND WHEREAS the Member desires to become an Affiliated Member of Big Brothers Big Sisters of Canada and be subject to all of the policies and standards of Big Brothers Big Sisters of Canada.

NOW THIS AGREEMENT WITNESSES THAT in consideration of the premises, terms, covenants and conditions herein set forth, the Member and BBBSC agree as follows:

DEFINITIONS

- (a) Affiliated Member – A Member that has entered into an Affiliation Agreement with BBBSC and is a registered charity with the Canadian Customs and Revenue Agency. A Member may include an organization that operates a Big Brother Big Sister program, whereupon the Affiliation Agreement governs only the operation of the Big Brother Big Sister program.
- (b) BBBSC - The national organization comprising the member-elected national Board of Directors, and the staff of the national office.
- (c) Community Service Area – The geographic area described in Section 5.
- (d) Federation – The federation comprising BBBSC and all Members.
- (e) Sharing Members – Members serving the same Community Service Area.
- (f) Charter Members – Member Agencies that were incorporated prior to the incorporation of Big Brothers of Canada in 1964 or prior to the incorporation of the Big Sister Association of Ontario prior to 1981.
- (g) Satellite Office – Office managed by a Member that provides service in another community that is within the Member’s Community Service Area.

TERM OF AGREEMENT

This Agreement shall remain in full force and effect for an indefinite period of time, subject to the provisions below.

AFFILIATION

Upon the execution of this Agreement, the Member shall become an Affiliated Member of BBBSC and shall be granted a certificate of membership.

AUTHORITY

The Member represents and warrants to BBBSC, with the intent that BBBSC shall rely thereon in entering into this Agreement, the following:

1. Corporate Status. The Member is duly constituted, validly existing and in good corporate standing under the laws of its jurisdiction of incorporation with respect to all filings required under any applicable legislation; and

2. Authority. The Member has the power and capacity and good and sufficient right and authority to enter into this Agreement on the terms and conditions herein set forth, and has the financial and other ability and authority to fulfill its obligations hereunder and to carry out the terms of this Agreement, and the execution of this Agreement does not violate its constitutional documents, by-laws, resolutions, or any laws or regulations by which it is bound or to which it is subject.

COMMUNITY SERVICE AREA

- (a) The Community Service Area designated to the Member shall be Area # ____, which is the geographical area outlined by written description attached hereto as Appendix A.
- (b) The following provision shall apply only to Members sharing Community Service Areas with Sharing Members as of January 1, 2002:
- (i) Provided that the Member satisfies all of its covenants and obligations hereunder, BBBSC agrees not to enter into any agreement during the term of this Agreement with any other person or organization for the purpose of granting rights to such person or organization to serve the Community Service Area, unless otherwise agreed to by the Member and the Sharing Member currently serving such Community Service Area. The Member agrees to not negatively impact the Sharing Member in the provision of services, recruiting, fundraising, or any other operational activity in the Community Service Area.
- (ii) The Member further agrees to refrain from utilizing advertising or public relations techniques, or public media instrumentalities, in any manner that could reasonably be expected to have a primary or significant adverse impact in a neighbouring Community Service Area served by another Member or a Sharing Member. However, the Member will not be held responsible for media broadcasts or print materials that are distributed beyond the Member's Community Service Area where such distribution is beyond the reasonable control of the Member.
- (c) The following provisions shall apply to all Members:
- (i) Provided that the Member satisfies all of its covenants and obligations hereunder, BBBSC agrees not to enter into any agreement, during the term of this Agreement, with any other person or organization for the purpose of granting rights to such person or organization to serve the Community Service Area unless otherwise agreed to by the Member currently serving such Community Service Area.
- (ii) The Member agrees to restrict its services, recruitment, fundraising, or any other operational activity to the Community Service Area. Any such activities may not be carried on by the Member outside its assigned Community Service Area, unless such activities outside its Community Service Area are permitted and agreed to in writing by the Members in the affected Community Service Area. Any such agreements between Members shall be communicated in writing to BBBSC. Existing fundraising activities will be exempt from such restrictions where existing donors and/or purchasers of fundraising tickets are shown to be historic. This grandfathering is meant to include targeted individual appeals and not the broad distribution of fundraising material.

- (iii) The Member further agrees to refrain from utilizing advertising or public relations techniques, or public media instrumentalities, in any manner that could reasonably be expected to have a primary or significant adverse impact in a Community Service Area served by another Member of BBBSC. However, the Member will not be held responsible for media broadcasts or print materials that are distributed beyond the Member's Community Service Area where such distribution is beyond the reasonable control of the Member.

USE OF NAME AND LOGO

The Member shall be required to utilize one of the following derivations of the BBBSC name as part of the Member's name under which it operates: "Big Brothers", "Big Sisters", "Big Brothers Big Sisters", or an alternative acceptable to BBBSC. The Member shall utilize the logo adopted by BBBSC as the Member's sole logo. The Member acknowledges that BBBSC retains all rights, title and interest in and to the BBBSC name, the logo, any derivations of the name or logo and any and all trade names, trademarks and other intellectual property belonging to BBBSC.

BBBSC RESPONSIBILITIES

BBBSC agrees:

- (a) To recognize the autonomy of the Member in the administration of its program within its designated Community Service Area,
- (b) To set National Standards in consultation with, and with approval from the Member, and to monitor and enforce compliance,
- (c) To provide an opportunity for the Member to participate in the assessment of the services performed by BBBSC once every three years or more frequently if, in the opinion of BBBSC, the assessment is needed,
- (d) To commit, wherever deemed practical, to making its services and printed material available in both official languages of Canada. In geographic areas where demand warrants and it is deemed practical, BBBSC may make its services and printed material available in either, or both official languages of Canada.
- (e) To provide an opportunity for consultation, and to provide resources, materials, programs, and procedures, in areas specific to the successful operation of the Member,
- (f) To plan, sponsor, conduct, and implement meetings, conferences, conventions, and training programs for the Federation's staff and volunteers in a timely and continuing way,
- (g) To advise the Member of any research projects BBBSC initiates on behalf of the Federation, and to whatever extent practical, to provide consultation and/or assistance to research projects initiated by the Member,
- (h) As resources permit, to keep current with new forms of technology which are relevant to the Federation's operation,
- (i) To plan, sponsor, conduct, and implement meetings to allow the Federation's professionals and volunteers to participate in deliberations on critical issues affecting the Federation,

- (j) To submit to the Member an annual report, which will include BBBSC's audited financial statements,
- (k) To make available to the Member rules and regulations and other standard materials required for the Member to operate in compliance with this Agreement,
- (l) To coordinate any nationwide fundraising campaign in compliance with the established BBBSC National Fundraising Policy,
- (m) As resources permit, to conduct, within its own discretion, and in conjunction and coordination with the Member, national advertising, public relations and other campaigns,
- (n) To inform the Member in a timely manner about matters which BBBSC considers important to the Federation, and
- (o) To represent the Federation as appropriate on national public policy issues.
- (p) To use reasonable commercial efforts to ensure adequate insurance coverage for errors, omissions, and liability to which Affiliates must subscribe.

MEMBER RESPONSIBILITIES

The Member agrees:

- (a) To deliver high quality local service,
- (b) To provide high quality, volunteer-driven, community based mentoring programs in compliance with BBBSC National Standards,
- (c) To participate in any BBBSC national accreditation program,
- (d) To promptly pay any and all financial obligations due and owing to BBBSC, including, but not limited to membership fees, as they are determined from time to time,
- (e) To meet all obligations of membership as provided in the Letters Patent and By-Laws of BBBSC,
- (f) To annually submit to BBBSC a report of member activities including, but not limited to, its annual report, audited financial statements, statistics, list of staff personnel, board lists, and any other information that might be required on a periodic basis,
- (g) To participate in the Annual General Meeting of Members and Special Meetings in accordance with BBBSC's Letters Patent and By-laws,
- (h) To notify BBBSC, after (a) receiving service of process naming the Member in any lawsuit; or (b) receiving a resignation from, and/or terminating the position of executive director or the most senior staff person, no later than two (2) business days after the date of service or the date of termination/resignation,
- (i) To participate in activities of BBBSC such as regional meetings, workshops and study projects. The Member will give consideration to the budgetary requirements necessary to provide for such participation,

- (j) To incorporate the BBBSC brand and conform to the brand policies for all agency marketing, fundraising, and graphic communications vehicles by June 30, 2005. Specifications related to brand adherence are found in "BBBSC Graphic Guidelines", downloadable from BBBSC website.
- (k) To keep BBBSC informed at all times of its business address, its telephone number and names of its directors, and
- (l) To not operate in a manner detrimental to another Member's operation.
- (m) To participate in the National Insurance coverage with prompt payment of premiums.

OWNERSHIP OF BOOKS, RECORDS AND DATA

Each Member owns and is responsible for the account books, records and data collected, reproduced or created by it. Should the Member discontinue operations, the ownership of all account books, records and data will be transferred to BBBSC, and all accounting books, records and data shall be promptly delivered to BBBSC. The ownership of all assets will be disposed of according to relevant provincial legislation or the Member's bylaws, once any debts to BBBSC are settled. Should a Member's membership be terminated by either the Member or BBBSC and the Member continue to operate, copies of all case records will be promptly submitted to BBBSC.

9. DISPUTE RESOLUTION

(a) *Inter-Member:* The Member agrees that, should any dispute arise between or among the Members, which has not been resolved within a reasonable time, the Members may refer the issue to BBBSC for mediation. If mediation does not bring forth a mutually acceptable resolution, then the resolution made by the National Board (or a committee thereof), shall be final, and the Members agree to abide by such resolution.

(b) *Between BBBSC and the Member regarding the Affiliation Agreement:* The Member agrees that, should any dispute arise between BBBSC and the Member related to the Affiliation Agreement, which is not resolved within a reasonable time, the dispute shall be resolved by arbitration conducted as follows:

- (i) The arbitration shall be conducted pursuant to the Arbitration Act or similar statute of the province in which the Member is located.
- (ii) Subject to paragraph (iv), the arbitration shall be conducted by a panel of three arbitrators – one chosen by BBBSC, one chosen by the Member and one appointed jointly by the other two appointees.
- (iii) If either the Member or BBBSC fails to appoint an arbitrator within 10 days' of the other's appointment, then the first arbitrator appointed shall be constituted as the sole arbitrator of the dispute.
- (iv) BBBSC and the Member may agree that a particular arbitration shall be decided by a single arbitrator appointed jointly by them.

- (v) The arbitration shall be conducted at a location to be agreed upon and failing such agreement, in the capital of the province in which the Member is located.
- (vi) The arbitrator or panel shall hear and determine the dispute and issue an award which shall be final and binding on the parties.

(c) *Between BBBSC and the Member regarding other matters:* The Member agrees that, should a dispute other than one related to the Affiliation Agreement arise, two separate agency representatives, appointed by the Member and two BBBSC Board members, appointed by BBBSC, will mediate the dispute with a view to finding a mutually acceptable resolution.

TERMINATION BY MEMBER

(a) The Member may terminate this Agreement by giving ninety (90) days' written notice to the Chair of BBBSC.

In the event of termination of this Agreement by the Member, the Member agrees it shall immediately cease to use the names "Big Brother(s)", "Big Sister(s)", and "Big Brother(s) Big Sister(s)" and any of their derivatives in its name or in any manner whatsoever and shall cease to use the terms, either generally or specifically, "Big Brother(s)", "Little Brother(s)", "Big Sister(s)", and "Little Sister(s)" as well as any other trade-marks and/or products owned by BBBSC. The Member agrees that, upon termination of this Agreement, any license, expressed or implied, given by BBBSC in any of its trade names, trademarks or other intellectual property will also terminate.

(b) Charter Member Agencies will be given a three (3) year period from the date of approval of this Agreement by the membership of BBBSC to withdraw from BBBSC without losing the legal right to use its existing name within its local community.

(c) A Member who gives notice under paragraph 10.(a) or (b) is responsible for payment for any membership fee that was payable prior to the effective date of withdrawal.

SUSPENSION OF AFFILIATION AGREEMENT BY BBBSC

- a) The President may suspend a Member's Affiliation Agreement for any breach of the Affiliation Agreement.
- b) A Member may appeal a suspension by notice in writing to the Board Chair of BBBSC, setting out the grounds for the appeal in reasonable detail.
- c) Upon receiving a notice of appeal:
 - i) the Board Chair of BBBSC shall convene a meeting of the Executive Committee within 30 days;
 - ii) the Executive Committee shall consider the appeal, allowing the Member to be represented at the meeting by its president or its agent and to submit oral or written argument;
 - iii) the Executive Committee shall prepare a report within 15 days of its consideration of the appeal and submit the report and recommendations to the Board of Directors;

- iv) the Board of Directors shall, within 30 days of receiving the report of the Executive Committee, consider the report and confirm, rescind or amend the suspension; and
 - v) the Board of Directors shall send its written decision to the Chair of the Board of the Member within 15 days of the Board meeting.
- d) A decision of the Board on an appeal from a suspension of the affiliation agreement is final and binding, subject only to the arbitration provisions contained in Article 10 (b).
- e) A Member may continue to use the official marks of BBBSC while its Affiliation Agreement is under suspension.

12. TERMINATION OF AFFILIATION AGREEMENT BY BBBSC

- a) The Board of BBBSC may terminate the Affiliation Agreement between BBBSC and a Member by two-thirds' majority of the votes cast at a meeting of the Board of Directors, where the Board concludes that the Member has failed to comply with any of the provisions of the affiliation agreement.
- b) Where an Affiliation Agreement is terminated the Member agrees it shall immediately cease to use the names "Big Brother(s)", "Big Sister(s)", and "Big Brother(s) Big Sister(s)" or any of its derivatives in its name or in any manner whatsoever and shall cease to use the terms, either generally or specifically, "Big Brother(s)", "Little Brother(s)", "Big Sister(s)", and "Little Sister(s)" as well as any other trade-marks and/or products owned by BBBSC. The Member agrees that, upon termination of this Agreement, any license, expressed or implied, given by BBBSC in any of its trade names, trademarks or other intellectual property will also terminate.

13. GENERAL PROVISIONS

(a) Letters Patent and Bylaws

BBBSC will provide to the Member, at the time of authorizing this Agreement, a copy of BBBSC's Letters Patent and Bylaws.

(b) Assignment

The Member agrees that it will not transfer or assign this Agreement or subcontract or delegate in any manner the services hereunder without obtaining the prior written consent of the other party.

Membership does not transfer regardless of any amalgamation, restructuring or arrangement entered into by a Member with any other organization.

(c) Governing Law

This Agreement shall be governed in accordance with laws of the Province of the Member and the laws of Canada.

(d) Amendments and Waivers

No supplement to, modification, amendment or waiver of this Agreement shall be binding unless executed in writing by the duly authorized representatives of the parties. No waiver of any breach of any term or provision of this Agreement will be effective or binding unless made in writing and signed by the party purporting to give the same and, unless otherwise provided in the written waiver, it will be limited to the specific breach waived.

(e) Entire Agreement

This Agreement (including any attachments, exhibits, and amendments hereto) constitutes the entire understanding between the parties hereto, and cancels and supersedes all prior negotiations, representations, understandings and agreements, either written or oral, with respect to the subject matter hereof.

ACCEPTED: MEMBER

DATE: _____

Board President/Chair

Executive Director

ACCEPTED: BBBSC

DATE: _____

National Board Chair

President