

FUNDRAISING FOR SPORT

CLUBS AND ORGANISATIONS AGREEMENT

RECITALS

The Australian Sports Foundation (Sports Foundation) is a company established by the Australian Government for the purpose of raising money to develop sport in Australia.

In pursuit of its purposes, the Sports Foundation conducts the Fundraising for Sport (F4S) Program which provides financial assistance to organisations conducting activities consistent with the purposes of the Sports Foundation.

The Organisation has submitted an application to the Sports Foundation for financial assistance under the F4S Program.

The Sports Foundation agrees to provide financial assistance to the Organisation under the F4S Program in accordance with the terms and conditions set out in this Agreement, as amended by the Sports Foundation at its discretion from time to time.

OPERATIVE PROVISIONS

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

The following words have these meanings in this Agreement unless the contrary intention appears:

- **Agreement** means this agreement together with its schedules.
- **Capital Fund** means a sum of money held and invested by the Organisation, with the income being applied for a Program or Project.
- **Controller** has the meaning it has in the Corporations Act.
- **Corporations Act** means the Corporations Act 2001 (Cth).
- **Grants** means any provision by the Sports Foundation to the Organisation of financial assistance in the form of payments of money or distribution of property in accordance with this Agreement.
- **Grant Acquittal Report or Acquittal Report** means a report that must be submitted in accordance with clause 5.1 and 5.2 of this Agreement.

- A person is Insolvent if:

- a) it is (or states that it is) an insolvent under administration or insolvent (each as defined in the Corporations Act); or
- b) it has had a Controller appointed or is in liquidation, in provisional liquidation, under administration or wound up or has had a Receiver appointed to any part of its property; or
- c) it is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by the other parties to this Agreement); or
- d) an application or order has been made, resolution passed, proposal put forward, or any other action taken, in each case in connection with that person, which is preparatory to or could result in any of (a), (b) or (c) above; or it is taken (under section 459F(1) of the Corporations Act) to have failed to comply with a statutory demand; or
- e) it is the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act (or it makes a statement from which another party to this Agreement reasonably deduces it is so subject); or
- f) it is otherwise unable to pay its debts when they fall due; or
- g) something having a substantially similar effect to (a) to (f) happens in connection with that person under the law of any jurisdiction.

- **GST** has the same meaning as in the GST Act.
- **GST Act** means the A New Tax System (Goods and Services Tax) Act 1999.
- **Organisation** means the organisation named in the F4S Application approved by the Sports Foundation.
- **Personal Information** means information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.
- **Program** means a program of the Organisation in respect of which the Organisation seeks to receive Grants, as approved by the Sports Foundation.
- **Project** means a project of the Organisation underneath the framework of its Program, in respect of which the Organisation seeks to receive Grants, as submitted and approved by the Sports Foundation.
- **Receiver** includes a receiver or receiver and manager.
- **F4S Application** means the Fundraising for Sport Program online application form as amended or updated from time to time, accessed and submitted to the Sports Foundation by the Organisation on the Website.
- **Website** means the website of the Sports Foundation.

1.2 Interpretation

In this Agreement unless the contrary intention appears:

- a) a reference to this Agreement or another instrument includes any variation or replacement of either of them;
- b) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- c) the singular includes the plural and vice versa;
- d) the word person includes a firm, a body corporate, an unincorporated association or an authority;
- e) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including, but not limited to, persons taking by novation) and assigns;
- f) an agreement, representation or warranty on the part of or in favour of two or more persons binds or is for the benefit of them jointly and severally;
- g) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculate exclusive of that day; and
- h) a reference to a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later.

2 PROGRAMS AND PROJECTS

- 2.1 The Organisation may submit its Program and Projects to the Sports Foundation for approval or amendment. The Sports Foundation may require that such form or information to be provided be completed and submitted by the Organisation through the Website or by other electronic means as determined by the Sports Foundation from time to time.
- 2.2 The Sports Foundation may limit the term of a Program or Project in its sole discretion.
- 2.3 The Sports Foundation may conduct a review of the Organisation, Program or Project at any time in respect of Grants.

3 GRANTS

- 3.1 Subject to the availability of funds and resources, and in its sole discretion, the Sports Foundation agrees to provide periodic Grants to the Organisation for one or more Program or Projects.
- 3.2 Any Grants provided to the Organisation are to be paid by the Sports Foundation to the bank account of the Organisation stated on the F4S Application or such other bank account notified by the Organisation to the Sports Foundation.
- 3.3 If the Grant provided to the Organisation is designated for the purchase of capital items, including equipment, the Organisation must ensure that those items, or any proceeds from the sale of those items continue to be applied for similar purposes as the Project for one year after the termination of the Project.
- 3.4 If the Organisation chooses to use the Grant for the purpose of contributing towards, or establishing, a Capital Fund for the Program or Project, the Organisation acknowledges that it is solely responsible for determining the investment policy for the prudent investment of those funds, and for ensuring the application of both the Grant and any income thereon in accordance with the terms of the Grant.

4 OBLIGATIONS OF THE ORGANISATION

- 4.1 The Organisation must:
 - a) use the Grant solely for the Program or Project for which the Grant is provided and in the manner described in the F4S Application, unless the Organisation obtains the prior approval of the Sports Foundation to any variation;
 - b) notify the Sports Foundation within 4 weeks of any changes to the information provided to the Sports Foundation in respect of a Program or Project; and
 - c) pass any donations received by the Organisation but intended for the Sports Foundation by the donor, to the Sports Foundation, and acknowledge that it holds such monies on trust as agent for the Sports Foundation in the interim.
- 4.2 The Organisation warrants that the information provided to the Sports Foundation in the F4S Program Application and in respect of any Program or Project is true and accurate.

5 REPORTING OF EXPENDITURE (GRANT ACQUITTAL REPORTS) AND PROJECT PROGRESS

5.1 The Organisation must provide to the Sports Foundation a Grant Acquittal Report which provides information on the expenditure of any Grants provided to the Organisation at such times and in such manner as may be requested from time to time by the Sports Foundation. The Grant Acquittal Report must:

- a) be completed by or on behalf of an authorised representative of the Organisation;
- b) confirm that all Grants have been spent solely on the Program or Project and in accordance with this Agreement, or where this has not been the case, identify any deviation in expenditure and the reasons for this;
- c) include such information as the Sports Foundation specifies from time to time, and the Sport Foundation retains the right to amend the specified information in its sole discretion, and must notify the Organisation accordingly.

Where a Grant is used by the Organisation for the purposes of contributing to or establishing a Capital Fund to benefit a Program or Project, the Grant Acquittal Report must specify how the funds have been invested and how the income thereon has been applied. In the event that the Capital Fund is spent or wound up, the Acquittal Report must specify how the funds have been applied in accordance with the Grant.

5.2 The Organisation must provide written reports to the Sports Foundation relating to the progress of the Program or Project in such manner and at such times as requested by the Sports Foundation.

6 CALCULATION OF GRANTS

6.1 The Sports Foundation, in its discretion, ordinarily calculates the value of Grants to be provided to the Organisation based on the amount of donations received by the Sports Foundation which identify the Organisation's Program or Project as the preferred beneficiary, and after the deductions outlined in clauses 6.2 and 6.3 below have been made.

6.2 The Sports Foundation incurs charges from its financial providers for accepting donations by credit card and it will deduct a fee of 1% for donations made by Visa/Mastercard and 2% for donations made by American Express. These charges may be varied by the Sports Foundation from time to time.

6.3 The Sports Foundation will also retain a proportion of donations received in order to cover its operating costs. These amounts may be varied from time to time by the Sports Foundation, are calculated on the gross amount of the donation received, and are currently:

- 5% of donations received online;
- 5% of distributions from other Deductible Gift recipients; and
- 6% of all other donations or distributions.

6.3 The Sports Foundation will only accept donations of sporting goods or other (non-cash) property, if such donations are accompanied by a completed "Donated Property Agreement", which can be obtained from the Sports Foundation. The Organisation acknowledges and agrees to inform donors of this requirement. The receipt of, and grant of such property will be subject to the terms outlined in the Donated Property Agreement, and that agreement will prevail to the extent of any inconsistency with this Agreement.

- 6.4 In allocating Grants, the Sports Foundation will give consideration to preferences expressed by donors. However, the Organisation acknowledges that Grants are made in the sole discretion of the Sports Foundation and nothing in this Agreement limits the discretion of the Sports Foundation in respect of Grants to the Organisation whatsoever.

7 ACKNOWLEDGEMENT BY THE ORGANISATION

- 7.1 To enable the Sports Foundation to raise funds through public and corporate donations for the development of sport in Australia, the Organisation acknowledges that the Sports Foundation may, in its sole discretion:

- a) promote the Program or Project using copies of any promotional images and video provided to the Sports Foundation by the Organisation;
- b) establish a page on the Website to showcase the Program or Project to donors and potential donors;
- c) establish an online donation facility for the Program or Project;
- d) generate relevant information in respect of donations received to enable the Organisation to acknowledge or thank donors directly;
- e) prepare fundraising guidance, online or via other means as the Sports Foundation determines, to share knowledge and best practice of fundraising techniques among the sporting and not-for-profit community;
- f) promote sport as a deserving vehicle for philanthropy, to attract donations;
- g) promote the Program or Project by such means as the Sports Foundation in its sole discretion from time to time determines, including reference or features on its Website, newsletters and social media platforms; and
- h) promote the Program or Project and any funding Grants for the Project to the general community via any or all relevant media channels.

- 7.2 The Organisation acknowledges and agrees with the terms and conditions in respect of donations made to the Sports Foundation as amended and published on the Website from time to time.

- 7.3 The Organisation must acknowledge the financial assistance provided by the Sports Foundation in relation to the Program or Project, using the Acknowledgement Guidelines set out at Schedule 1. The Organisation must amend or remove any reference to the Sports Foundation, its logo, or any description of the Grant, Program or Project if requested to do so by the Sports Foundation.

8 TAX OBLIGATIONS

The Organisation acknowledges that:

- a) The Sports Foundation is not authorised to provide taxation advice and provides no warranties or representations as to the tax deductibility of any donations received;
- b) The Sports Foundation is not responsible for checking eligibility for a tax deduction of any donations received, or of monitoring an Organisation's or donor's compliance with tax regulations;
- c) Any claims for a tax deduction by donors in respect of donations made to the Sports Foundation are subject to assessment by the Commissioner of Taxation, and if donors are in any doubt they should seek professional advice; and
- d) It is responsible for ensuring that it complies with any obligations in respect of tax law which apply to the Organisation.

9 REPAYMENT

- 9.1 The Organisation must repay Grants to the Sports Foundation in whole or in part on demand if the Sports Foundation determines that the Organisation has breached a term of this Agreement, unless otherwise agreed to by the Sports Foundation.
- 9.2 If the breach is capable of being remedied, the Organisation has 21 days, upon receipt of notice of the breach from the Sports Foundation (or within any longer period specified in the notice) to remedy the breach or otherwise the Organisation must repay the grant to the Sports Foundation in whole or in part, on demand, as set out at 9.1 above.
- 9.3 The Sports Foundation may recover all or any of the amount to be repaid to it under clause 9.1 by deducting it from subsequent amounts of a Grant to the Organisation (if any).

10 INDEMNITY

- 10.1 The Organisation indemnifies the Sports Foundation, its officers, employees and agents against loss, liability or expense any of them may suffer or incur which is caused or contributed to by an act of omission of the Organisation, its officers, employees or agents in respect of the Program or Project.
- 10.2 This indemnity is a continuing obligation separate and independent from the other obligations of the Organisation and survives termination of this Agreement.
- 10.3 It is not necessary for the Sports Foundation to incur expense or make payment before enforcing its right of indemnity under clause 10.1.

11 RELATIONSHIP

This Agreement does not create a joint venture, partnership, employment or service provider relationship between the parties. The parties must not:

- a) misrepresent their relationship under this Agreement; or
- b) attempt to bind or represent the other in any way

12 TERMINATION

- 12.1 The Sports Foundation may terminate this Agreement by notice to the Organisation if:
- a) the Organisation is in breach of this Agreement, that breach is capable of being remedied, and the Organisation fails to remedy the breach within 21 days of receipt of a notice from the Sports Foundation requiring it to do so (or within any longer period specified in the notice);
 - b) the Organisation is otherwise in breach of this Agreement;
 - c) the Organisation becomes Insolvent; or
 - d) following any review of the Program or Project by the Sports Foundation pursuant to clause 2.3, the Sports Foundation determines to terminate this Agreement.
- 12.2 The Organisation may terminate this Agreement at any time by notice to the Sports Foundation.
- 12.3 On termination of this Agreement:
- a) the Organisation must within 30 days give the Sports Foundation a Grant Acquittal Report covering the expenditure of funds since the previous Acquittal Report provided to the Sports Foundation under clause 5; and
 - b) the Sports Foundation may by notice to the Organisation require the Organisation to repay any or all of the Grants that remain unacquitted at the time the notice is received. Any such amounts must be repaid by the Organisation within 14 days of receipt of a notice from the Sports Foundation requiring repayment.
- 12.4 For the purposes of clause 12.3(b) money remains unacquitted if it:
- a) is unspent and is not contractually committed to be spent; or
 - b) has been spent in breach of this Agreement.

13 NOTICES

- 13.1 A notice under this Agreement is ineffective unless it is in writing
- 13.2 A notice may be given by post or electronic transmission including by email or through the Website.
- 13.3 A notice by post or by electronic means other than through the Website must be directed as follows:
- a) **For the Australian Sports Foundation**
Address:
PO Box 176
Belconnen ACT 2616
Attention: Chief Executive Officer
Email: info@sportsfoundation.org.au
 - b) **For the Organisation**
to the authorised person and to the postal or electronic address as specified on the F4S Application, or as last notified to the Sports Foundation in writing.
- 13.4 The Sports Foundation may provide user credentials to the Organisation to enable it to submit Website notices as it sees fit.

14 WAIVER AND VARIATION

Unless otherwise permitted under this Agreement, a provision of, or a right created under, this Agreement may not be:

- a) waived except in writing signed by the party granting the waiver; or
- b) varied except in writing signed by the parties.

15 GOVERNING LAW AND JURISDICTION

This Agreement is governed by the law in force in the Australian Capital Territory

16 GST

16.1 For the purposes of this Agreement:

- a) a word or expression defined in the GST Act has the same meaning as in that Act, unless the context makes it clear that a different meaning is intended; and
- b) consideration includes any non-monetary consideration, in respect of which the parties must agree on a market value, acting reasonably.

16.2 Unless stated to the contrary, and otherwise as provided in this clause, any consideration payable under this Agreement shall be exclusive of GST. If a party makes a supply pursuant to this Agreement, and GST is payable on that supply, the consideration for the supply (GST exclusive consideration) is increased by an amount equal to the GST exclusive consideration multiplied by the rate of GST prevailing at the time the supply is made (additional GST amount), except where the recipient of the supply is liable under the GST law to pay the GST on that supply.

16.3 The additional GST amount must be paid at the same time and in the same manner as the GST exclusive consideration.

16.4 If a party is required under this Agreement to indemnify another party, or pay or reimburse costs of another party, that party agrees to pay the relevant amount less any input tax credits to which the other party (or to which the representative member for a GST group of which the other party is a member) is entitled.

16.5 A party need not make a payment for a taxable supply made pursuant to this Agreement until it receives a tax invoice or issues a Recipient Created Tax Invoice ("RCTI") (as appropriate) for the supply to which the payment relates

16.6 In the event that the Organisation is registered or required to be registered for GST, the parties agree that the Sports Foundation will issue RCTIs to the Organisation in relation to supplies made by the Organisation to the Sports Foundation under or in connection with this Agreement. The parties agree that the Sports Foundation will issue RCTIs in accordance with the terms contained in Schedule 2 and for a period of time commencing at the date of this Agreement and until this Agreement is terminated or the terms for issuing RCTIs are no longer met by the parties.

16.7 If an adjustment of GST is required as a result of an adjustment event in respect of a supply made pursuant to this Agreement, then:

- a) a corresponding adjustment of GST payable under this Agreement must be made between the parties within 21 days after the end of the tax period in which the adjustment is attributable; and
- b) the supplier, if obligated to do so under the GST law, must issue an adjustment note within 21 days after the end of the tax period in which the adjustment is attributable.

17 PRIVACY

- 17.1 The Sports Foundation and the Organisation will comply with the Privacy Act 1988 (Cth), in relation to any Personal Information that is collected, used or disclosed under this Agreement, whether or not they are legally bound to comply with the Act.
- 17.2 The Organisation will not do anything with Personal Information that will cause the Sports Foundation to breach its obligations under the Privacy Act 1988 (Cth).
- 17.3 The Organisation will provide all assistance as required by the Sports Foundation to assist the Sports Foundation in complying with its obligations under all applicable laws relating to the Sports Foundation's dealings with Personal Information under this Agreement.

18 ENTIRE AGREEMENT AND COUNTERPARTS

- 18.1 This Agreement constitutes the entire agreement between the parties and supersedes all prior arrangements with respect to its subject matter.
- 18.2 This Agreement may be signed in counterparts and will become effective upon the last party signing counterpart.

SCHEDULE 1

GUIDELINES FOR ACKNOWLEDGMENT OF FINANCIAL ASSISTANCE PROVIDED BY THE SPORTS FOUNDATION

The Sports Foundation works with the sporting and philanthropic communities to raise money for the development of Australian sport.

In furtherance of this aim, the Organisation is required to acknowledge the role of the Sports Foundation in providing financial assistance under its F4S Program through the appropriate placement of logos and branding and in media engagement and other communications opportunities that relate to the Organisation's registered Program or Projects with the Sports Foundation. The Schedule below provides guidance on the form of acknowledgement in respect of the Organisation's Programs and Projects.

Please note that in acknowledging the Sports Foundation in this regard, the Organisation is not expected to:

- forgo other commercial revenue opportunities (for example, sponsor acknowledgments);
- incur significant additional expense; or
- do anything that would infringe other contractual rights agreed with sponsors or commercial partners.

Queries or specific proposals that represent an appropriate way to fulfil the Organisation's responsibilities under this schedule can be discussed and agreed with the Fundraising Support Team.

Branding

All resources for acknowledgment, including key messages, logos and other materials are available through the Fundraising Support Team. When your Program or Project is approved, logo files will be made available to you for use on your promotional materials.

Approvals

Use of the Sports Foundation logo and media releases and collateral related to Sports Foundation Programs and Projects must be signed off in advance and in writing by the Fundraising Support Team or the Sports Foundation Marketing team.

Need more information?

Contact the Fundraising Support Team or email us at info@sportsfoundation.org.au or call us on 02 5112 0990.

HOW TO ACKNOWLEDGE THE SPORTS FOUNDATION

Preferred nomenclature

The Sports Foundation is to be referred to as a 'fundraising partner'.

Logo representation

Sports Foundation logo to be included with corporate and relationship logos on all fundraising communications displaying these relationships.

Download the Sports Foundation logo via the website.

Functions, Conferences and Events promoting or funded by the Sports Foundation fundraising programs or projects (includes games, Annual Dinners and Awards Ceremonies)

Signage

Up to two Sports Foundation signs to be displayed in a prominent position.

Event program and promotional materials

Sports Foundation logo to be displayed in a prominent position on event collateral

Sports Foundation key message advertisement to be included.

Verbal acknowledgement by key personnel at events relating to fundraising projects.

Announcements and speaking opportunities

Verbal acknowledgement by key personnel and MC or host, where appropriate.

Invitations

Invitations to be extended to Sports Foundation representatives.

Media relating to Sports Foundation fundraising Programs or Projects

Media Announcements

Sports Foundation media team to be contacted and consulted prior to media announcements that relate to programs invested in by the Sports Foundation.

Press conferences and media interviews

Sports Foundation logo to be displayed on fundraising specific media backdrops.

Key representatives to verbally acknowledge the Sports Foundation in media interviews relating to fundraising projects, where appropriate.

Media release

Sports Foundation logo to be included, when appropriate (to be approved by the Sports Foundation).
Sports Foundation support to be acknowledged.

Publications and Stationery relating to the fundraising Program or Project

Newsletters – print and stationary

Sports Foundation logo to be displayed in prominent position either as per relationship lock-up or independently where the fundraising program or project is being promoted.

Annual reports

Sports Foundation to be acknowledged in reports where the fundraising Program or Project is being profiled or promoted

Sports Foundation logo to be displayed in prominent position either as per relationship lock-up or independently where the fundraising program or project is being promoted.

Other publications – brochures, certificates, fundraising letterhead

Sports Foundation logo to be displayed in prominent position.

IMAGES AND VIDEO

Use of images and video footage

Video content and photographs from major events (excluding matches) to be provided to the Sports Foundation for promotional use where the activity was funded by or supports the promotion of Sports Foundation fundraising programs or projects.

Additionally, you may choose to use video or images produced by the Sports Foundation in your promotional materials and communications channels.

DIGITAL COMMUNICATIONS

Website – Homepage

Donate button to be displayed with link to the Sports Foundation donation page during all fundraising campaign periods.

WEBSITE

Corporate and relationship lock-ups

Sports Foundation logo to be displayed with acknowledgement as per Preferred nomenclature – see top of acknowledgements.

Paragraph about the Sports Foundation to be included where appropriate and in line with other corporate and relationship acknowledgements.

Social Media

Like, follow and share Sports Foundation and content on:

Facebook: <https://www.facebook.com/AustralianSportsFoundation>

Twitter: <https://twitter.com/AusSportsFdn>

Instagram: <https://instagram.com/australiansportsfoundation/>

LinkedIn: <http://www.linkedin.com/company/3802906>

Promote Sports Foundation profiles, @AusSportsFdn – Twitter and @aussportsfdn – Instagram, with hashtags, #australiansportsfoundation and #supportyoursport on relevant updates

SCHEDULE 2 – RCTI AGREEMENT

In the event that the Organisation is registered or required to be registered for GST, the parties agree to the following terms with respect to the issue of RCTIs by the Sports Foundation to the Organisation:

- a) The Organisation will not issue to the Sports Foundation a tax invoice in respect of that supply
- b) The Sports Foundation acknowledges that it is registered for GST at the time of entering into this Agreement with the Organisation
- c) The Sports Foundation will notify the Organisation if it ceases to be registered for GST or ceases to satisfy the requirements of GSTR 2000/10
- d) The Organisation acknowledges that it is registered for GST at the time of entering into this Agreement with the Sports Foundation
- e) The Organisation will notify the Sports Foundation if it ceases to be registered for GST or satisfy the requirements of GSTR 2000/10
- f) The Sports Foundation will issue to the Organisation a recipient created adjustment note where a supply made under this Agreement is subject to an adjustment event (as defined by Subdivision 19-A) of the A New Tax System (Goods and Services Tax) Act 1999
- g) All RCTIs or recipient created adjustment notes issued to the Organisation by the Sports Foundation under this Agreement will contain all the necessary information as required under the A New Tax System (Goods and Services Tax) Act 1999 and A New Tax System (Goods and Services Tax) Regulations 1999) (Statutory Rules 1999 No. 245)