State Sport Development Collaboration Agreement

2012/13

Australian Sports Commission
The Australian Capital Territory, acting through the Economic Development Directorate
Australian Sports Commission

1 July 2012 - 30 June 2013
1.1 In this agreement:

activities means the activities and strategies described in the plan.

activity period means the period specified in item 2 of the details during which the activities will be completed.

agreement means the agreement between the ASC and the Department, comprising the details (including the execution page), these terms, the plan and any other attachments, or annexures to any of those documents.

ASC means the Australian Sports Commission.

confidential information of a party means information that:

(a) is by its nature confidential;
(b) is designated by that party as confidential; or
(c) the other party knows or ought to know is confidential,

but does not include information which:

(d) is or becomes public knowledge other than by breach of this agreement or any other confidentiality obligation; or
(e) has been independently developed or acquired by the other party.

Department means the State or Territory referred to in item 3 of the details, acting through the department referred to in item 3 of the details.

details means the attached document titled “State Sport Development Collaboration Agreement Details” (including the Payment and Reporting Table and Signing Page signed by the ASC and the Department).

funding means the funding described in item 7 of the details.

1.2 In this agreement:

(a) a reference to this agreement or another instrument includes any variation or replacement of them;
(b) words in the singular include the plural and vice versa;
(c) words importing a gender include any other gender;
(d) 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 calculated exclusive of that day;
(e) a reference to a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later;
(f) the verb “include” (in all its parts, tenses and variants) is not used as, nor is it to be interpreted as, a word of imitation; and
(g) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.

GST has the same meaning as in the A New Tax System (Goods and Services Tax) Act 1999.

intellectual property rights means all copyright (including rights in relation to phonograms, cinematograph films and broadcasts), all rights in relation to inventions (including patent rights), plant varieties, registered and unregistered trademarks (including services marks), registered designs, circuit layouts and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

performance measure means the performance measures described in the plan.

plan means the plan and the schedules specified in item 7 of the details.

tax invoice has the meaning given in the A New Tax System (Goods and Services Tax) Act 1999.

timeframes means the timeframes for the activities described in the plan.
1.3 Headings are inserted for convenience and do not affect the interpretation of this agreement.

1.4 In the event of any inconsistency between any of the documents comprising this agreement, the documents will prevail in the following descending order:
(a) the details;
(b) these terms;
(c) the plan;
(d) any other attachments, or annexures to any of the above documents.

2 TERM

Term

2.1 The term of this agreement is shown in item 1 of the details.

Ministerial approval

2.2 If Ministerial approval of this agreement is required under section 47 of the Australian Sports Commission Act 1989, this agreement is conditional on that approval being obtained.

3 ACTIVITIES

Activities

3.1 The Department must perform the activities and achieve the performance measures within the activity period and in accordance with the timeframes.

3.2 In performing the activities, the Department must:
(a) regularly liaise with the ASC, or any third party nominated by the ASC, to ensure that the ASC’s aims and interests are addressed in the method and manner of performing the activities;
(b) not misrepresent its association with the ASC;
(c) not do anything which may damage the reputation or standing of the ASC or any of its programs in the minds of the general public, or otherwise bring the ASC into disrepute;
(d) exercise due care, diligence and skill; and
(e) perform the activities in a timely and professional manner.

Failure to achieve performance measures

3.3 The Department must promptly notify the ASC if a performance measure will not be, or is unlikely to be, achieved within the timeframes. The notice must set out:
(a) the reason for the delay;
(b) the Department’s proposed action to address the delay;
(c) the expected date for achievement of the performance measure;
(d) the expected effect the delay will have on subsequent performance measures (if any); and
(e) the expected effect the delay will have on the activities.

3.4 Nothing in clause 3.3 affects the ASC’s rights under this agreement in relation to the delay.

4 ASC ASSISTANCE

4.1 The ASC will use its reasonable endeavours to provide the assistance (if any) described in the plan in such manner as the ASC determines at its discretion.

4.2 The Department will only use the assistance provided by the ASC for the purposes of the activities.

5 PAYMENT OF FUNDING

Funding

5.1 The ASC will pay the funding in instalments as set out in the Payment and Reporting Table of the details, provided that Commonwealth appropriation to the ASC has occurred.

5.2 The ASC may withhold any, or all of, the funding if:
(a) a performance measure for any of the activities required to be completed before the date for payment has not been achieved;
(b) the Department has not provided to the ASC a report required to be given under clause 8; or
(c) the Department is otherwise in breach of this agreement or any other agreement between the Department and the ASC.
5.3 A payment withheld under clause 5.2 will not be made unless and until the ASC is satisfied that the respective default has been remedied.

Invoices
5.4 The Department must submit invoices to the ASC for payment of each instalment of the funding.

Invoicing procedure
5.5 An invoice must be:
(a) addressed to the ASC contact person and ASC address specified in item 6 of the details;
(b) accompanied by supporting documentation in respect of the activities provided in the relevant period, and containing any information as notified by the ASC;
(c) in the form of a tax invoice which identifies both the funding and the GST amount; and
(d) itemised by funding and activity areas as indicated at item 7 of the details.

Payment of invoices
5.6 Subject to clause 5.2 and Commonwealth appropriation to the ASC having occurred, the ASC agrees to pay an invoice rendered in accordance with clause 5.5 within 30 business days of receipt.
5.7 The ASC may make payments by cheque or electronic funds transfer.

6 USE OF ASC FUNDING
6.1 The Department must:
(a) use the funding solely for the activities and in accordance with the plan; and
(b) where item 7 and/or the Payment and Reporting Table of the details allocate the funding amongst particular funding and activity areas, use each part of the funding solely for the particular funding and activity area to which it has been allocated.

6.2 If:
(a) at any time during the term of this agreement there remains an amount of the funding that has not been expended in accordance with this agreement, or the funding has not been acquitted to the ASC’s satisfaction, the Department agrees to return the unspent funding to the ASC within 20 days of a written notice from the ASC, or otherwise deal with those funds as directed by the ASC;
(b) any part of the funding is unspent at the end of the activity period, the Department agrees to return the unspent funds to the ASC, unless approval to carry them forward has been given by the ASC;
(c) any part of the funding is not paid to the Department by the end of the activity period, the Department forfeits any right to receive that part of the funding (except such amounts for which the ASC is unconditionally liable under this agreement to pay to the Department as at the expiry of the term of this agreement).

6.3 Without limitation to the ASC’s other rights under this agreement or otherwise, if the Department has breached clause 6.1 the ASC may do either or both of the following:
(a) immediately terminate this agreement; and/or
(b) require the Department to repay (at the ASC’s discretion) all or part of the funding within 14 days of demand.

7 RECORD KEEPING
7.1 The Department must keep all documents necessary to provide a complete and detailed record and explanation of:
(a) progress with the activities, including without limitation progress against timeframes; and
(b) receipt and expenditure of the funding,
and any other documents reasonably required by the ASC.
7.2 The documents kept by the Department under clause 7.1 must include original receipts and invoices, and must otherwise be to the ASC’s satisfaction.
7.3 Documents maintained under clause 7.1 must be kept by the Department for at least 7 years after termination or expiry of this agreement.

9.3 The Department must give the ASC and the auditor all necessary assistance and access to facilities to enable them to conduct an inspection and/or audit.

10 CONFIDENTIALITY AND PRIVACY

Confidential Information

10.1 Neither party may use any confidential information of the other party for any purpose other than in relation to this agreement, or disclose any confidential information of the other party, except:

(a) to its employees, officers, agents, contractors or advisors requiring the information for the purposes of this agreement;

(b) with the consent of the other party; or

(c) as required to do so by the operation of any law, judicial or parliamentary body or governmental agency, including disclosure to the responsible Minister or House or Committee of Parliament;

10.2 When disclosing information under clause 10.1(a) or (b), a party must use all reasonable endeavours to ensure that persons receiving confidential information from it do not disclose the information except in the circumstances permitted under clause 10.1.

Privacy

10.3 The Department must, in respect of personal information held by it in connection with this agreement:

(a) comply with the public sector Information Privacy Principles in the Privacy Act 1988;

(b) use and disclose the personal information only for the purposes of this agreement;

(c) report to the ASC on compliance with this clause when reasonably requested; and

(d) include equivalent provisions in any subcontract.

10.4 In clause 10.3, the terms “Information Privacy Principles” and “personal information” have the same meanings as they have in section 6 of the Privacy Act 1988.
11 INTELLECTUAL PROPERTY

11.1 The title to and intellectual property rights in or in relation to all material created or acquired by the Department (including by its employees and subcontractors) in the course of performing the activities vests, on its creation, in the ASC and the Department assigns to the ASC all such title and rights.

11.2 The ASC grants to the Department a perpetual, royalty-free, non-exclusive, licence to use, for the non-commercial purposes of the Department, the intellectual property rights assigned to the ASC by the Department pursuant to this clause and the material in which those rights subsist.

11.3 Nothing in this clause alters the ownership of intellectual property rights existing on the commencement of this agreement, or developed independently of the performance of the activities.

11.4 In this clause 11, “material” includes any documents, information, software and data stored by any means.

12 INDEMNITY

The Department indemnifies the ASC, its employees, officers and agents against all loss, liability and expense arising out of or in connection with:

(a) the Department breaching this agreement; or

(b) any wrongful, unlawful or negligent act or omission of the Department, its employees, officers, agents or subcontractors,

except to the extent that the loss, liability or expense is directly attributable to the wrongful, unlawful or negligent act or omission of the ASC, its employees, officers, agents or contractors (other than the Department).

13 TERMINATION

Termination without default

13.2 The ASC may terminate this agreement (in whole or in part) at any time by written notice if:

(a) there is a change in Federal Government policy impacting on this agreement;

(b) there is a significant reduction in the budget available to the relevant sports program areas of the ASC; or

(c) there is a reduction in the ASC’s external funding relating to sports development.

General obligations on termination

13.3 If this agreement is terminated in whole:

(a) the ASC’s obligation to pay funding or provide any assistance ceases except that the ASC will pay to the Department any outstanding amount of the funding to the extent that those monies have been legally committed for expenditure by the Department in accordance with this agreement and are payable by the Department as a current liability (written evidence of which will be required) by the date a notice of termination is given under clause 13;

(b) the Department must give the ASC within 30 days of the termination date:

(i) a statement of expenditure to the date of termination; and

(ii) a report on the activities and their progress, in a form and containing the matters satisfactory to the ASC; and

(c) the ASC may require the Department to refund any part of the funding which:

(i) has not been legally committed for expenditure by the Department in accordance with this agreement and is payable by the Department as a current liability (written evidence of which will be required) by the date a...
notice of termination is
given under clause 13; or

(ii) has not, in the ASC's
opinion been expended
by the Department in
accordance with the
terms and conditions of
this agreement.

**Partial termination**

13.4 If either party terminates this agreement in part, clause 13.3 applies in respect of the activities that have been terminated.

13.5 For the purposes of this clause 13, a partial termination of this agreement means termination of one or more, but not all, the activities.

**NOTICES**

14.1 A notice, approval, consent or other communication in connection with this agreement must be:

(a) in writing; and

(b) left at the address of the addressee, sent by prepaid ordinary post to the address of the addressee, sent to the facsimile number of the addressee, or sent by email to the email address of the addressee shown in the details; or

(c) left at another address or sent to another facsimile number or email address notified by the addressee.

14.2 A notice, approval, consent or other communication takes effect from the time it is received unless a later time is specified in it.

14.3 A letter, facsimile or email is taken to be received:

(a) in the case of a posted letter, on the third day after posting;

(b) in the case of a facsimile, on production of a transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the facsimile number of the recipient; and

(c) in the case of email, when it is delivered to a system from which the addressee can retrieve it.

<table>
<thead>
<tr>
<th>15</th>
<th>GST</th>
</tr>
</thead>
<tbody>
<tr>
<td>15.1</td>
<td>Unless otherwise indicated, all consideration for any supply under this agreement is exclusive of any GST imposed on the supply.</td>
</tr>
<tr>
<td>15.2</td>
<td>If GST is imposed on a supply by one party (supplier) to the other party (recipient) under this agreement and the supplier gives the recipient a tax invoice, the recipient must pay to the supplier the amount of GST imposed in addition without set off to the consideration the recipient is required to provide to the supplier for the supply in question.</td>
</tr>
<tr>
<td>15.3</td>
<td>Despite clause 15.1, if the consideration for a taxable supply by the supplier to the recipient under this agreement is itself a taxable supply by the recipient to the supplier, all consideration for each supply is inclusive of any GST imposed on the supply.</td>
</tr>
<tr>
<td>15.4</td>
<td>Where clause 15.3 applies, the parties must agree the GST inclusive market value of the taxable supplies in question and the supplier must provide a tax invoice to the recipient for the taxable supply made by that party.</td>
</tr>
<tr>
<td>15.5</td>
<td>The recipient of a supply under this agreement is not liable to reimburse the supplier in relation to any amount for which the supplier can claim an input tax credit.</td>
</tr>
</tbody>
</table>

**ACKNOWLEDGEMENT AND PUBLIC STATEMENTS**

16.1 The Department must, in all publications, promotional and advertising materials, public announcements and activities in relation to the activities or in any products, processes or inventions developed as a result of it, make all reasonable efforts to acknowledge the financial and other support the Department has received from the ASC in the manner set out in item 10 of the details.

16.2 The Department must comply with any rules or directions governing the use of the ASC logo, or any other logo provided by the ASC, as advised by the ASC from time to time.

16.3 The ASC will provide to the Department electronic logo files for use during the term of this agreement.
16.4 The ASC may publicise the funding to the Department and the activities.

17 WORK HEALTH AND SAFETY

17.1 The Department agrees, when using the ASC's premises or facilities, to comply with all reasonable directions and procedures relating to work health and safety and security in effect at those premises or in regard to those facilities, as notified by the ASC or as might reasonably be inferred from the use to which the premises or facilities are being put.

17.2 Without limiting any other provision of this agreement, the Department agrees to, on request, give all reasonable assistance to the ASC, including by way of provision of information and documents, to assist the ASC and its officers (as defined in the Work Health and Safety Act 2011 (WHS Act) to comply with the duties imposed on the ASC and its officers by the WHS Act.

17.3 The Department acknowledges that the ASC may direct the Department to take specified measures in relation to the Department's work in connection with this agreement, or otherwise in connection with the activities, that the ASC considers reasonably necessary to deal with an event or circumstance that has, or is likely to have, an adverse effect on the health or safety of persons. The Department must comply with the direction. The Department agrees that it is not entitled to an adjustment to the funding, or to be reimbursed for any additional costs, expenses or taxes, merely because of compliance with the direction.

18 ASSIGNMENT AND SUBCONTRACTING

The Department must not:

(a) assign any of its rights under this agreement; or

(b) subcontract the performance of any of the activities;

without the ASC's prior written consent.

19 DISPUTE RESOLUTION

19.1 Subject to clause 19.4, before resorting to external dispute resolution mechanisms, the parties must attempt to settle by negotiation any dispute in relation to this agreement, including by referring the matter to personnel who may have authority to intervene and direct some form of resolution.

19.2 If a dispute is not settled by the parties within 14 days of one party first sending to the other party written notice that they are in dispute, the dispute may be the subject of court proceedings or may be submitted to some alternative dispute resolution mechanism as may be agreed in writing between the parties.

19.3 Notwithstanding the existence of a dispute, each party must continue to perform its obligations under this agreement.

19.4 A party may commence court proceedings relating to any dispute arising from this agreement at any time where that party seeks urgent interlocutory relief.

20 WAIVER AND VARIATION

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 both parties.

21 ENTIRE AGREEMENT

This agreement constitutes the entire agreement of the parties about its subject matter. Any prior agreements, undertakings and negotiations on this subject matter cease to have any effect.

22 GOVERNING LAW

This agreement is governed by the law of the Australian Capital Territory and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of the Australian Capital Territory.

23 SURVIVAL

Clauses 6 (use of ASC funding), 7 (record keeping), 8 (reports), 9 (inspection and audit), 10 (confidentiality and privacy), 11 (intellectual property), 12 (indemnity), 13.3 (termination) and 19 (dispute resolution) survive termination or expiry of this agreement.
EXECUTED as an agreement

Signed for and on behalf of
The Australian Capital Territory, acting through the Economic Development Directorate
by a duly authorised representative

[Signature of witness]
Simon Adeji
Name of witness (print)

[Signature of authorised representative]
Jenny Priest
Name of authorised representative (print)

Dated 18/10/12

Signed for and on behalf of the
Australian Sports Commission
by a duly authorised representative

[Signature of witness]
Anthony Pardy
Name of witness (print)

[Signature of authorised representative]
Wanda Sipta
Name of authorised representative (print)

Dated 30 November 2017
# State Sport Development Collaboration Agreement Details

<table>
<thead>
<tr>
<th>Item No.</th>
<th>Item</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td><strong>Term of Agreement</strong></td>
<td>1 July 2012 to 31 July 2013</td>
</tr>
<tr>
<td>2</td>
<td><strong>Activity Period</strong></td>
<td>1 July 2012 to 30 June 2013</td>
</tr>
</tbody>
</table>
| 3       | **Department Details**        | The Australian Capital Territory, acting through the Economic Development Directorate  
|         |                               | ABN: 72 397 293 490                                                   |
|         |                               | Address: PO Box 147                                                    |
|         |                               | CIVIC SQUARE ACT 2608                                                 |
|         |                               | *(Notices will be sent to the Department at this address)*            |
| 4       | **Department Contact Person** | Name: Simon Dolejsi                                                     |
|         |                               | Position: Assistant Manager - Client Services and Programs              |
|         |                               | Telephone: (02) 6207 2077                                              |
|         |                               | Facsimile: (02) 6207 2071                                              |
|         |                               | Email: simon.dolejsi@act.gov.au                                         |
|         | **ASC Details**               | Australian Sports Commission                                           |
|         |                               | ABN: 67 374 695 240                                                    |
|         |                               | Address: Leverrier Crescent                                            |
|         |                               | Bruce ACT 2617                                                         |
|         |                               | *(Notices should be sent to the ASC for the attention of the Funding Section at this address)* |
|         | **ASC Contact Person**        | Name: [Name Redacted]                                                   |
|         |                               | Position: Sports Program Adviser (Grants)                              |
|         |                               | Telephone: (02) 6214 1497                                              |
|         |                               | Facsimile: (02) 6214 1836                                              |
|         |                               | Email: [Email Redacted]                                                |
| 5       | **Funding and Activity Areas**| Sport Participation ("SP") - see the plan at Attachment 1 for details. |
|         |                               | TOTAL $95,000 (exclusive of GST)                                        |
|         | **Payment Instalments**       | See the instalments specified in the Payment and Reporting Table below  |
|         | **Reporting Obligations**     | See the reports and their respective due dates specified in the Payment and Reporting Table below  |
|         | **Acknowledgement Obligations**| The Department must acknowledge the financial and other support from the ASC as follows: |
|         |                               | In relation to the SP Activities: by displaying the ASC logo.          |
# Payment and Reporting Table

<table>
<thead>
<tr>
<th>Payment</th>
<th>Report required</th>
<th>Report Due date</th>
<th>Instalment</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Payment 1:</strong> payment from 1 August 2012</td>
<td>2012/13 Sport Collaboration Agreement executed</td>
<td>31 July 2012</td>
<td>SP: $47,500</td>
</tr>
<tr>
<td><strong>Payment 2:</strong> payment from 1 February 2013</td>
<td>Financial acquittal for 2011/12 activities endorsed by the Department's financial manager</td>
<td>30 September 2012</td>
<td>SP: $47,500</td>
</tr>
<tr>
<td></td>
<td>Final report on 2012/13 SP agreement activities</td>
<td>31 July 2013</td>
<td></td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td></td>
<td></td>
<td><strong>$95,000</strong></td>
</tr>
</tbody>
</table>