



Australian Government

Australian Sports Commission

State Sport Development Collaboration Agreement

2012/13

Australian Sports Commission

The Australian Capital Territory, acting through the Economic
Development Directorate



Australian Government
Australian Sports Commission

Australian Sports Commission

**Standard Terms for State
Sport Development
Collaboration Agreements**

1 July 2012 – 30 June 2013

TERMS

1 INTERPRETATION

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*.

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*.

1.2 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.

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*.

8 REPORTS

8.1 The *Department* must give the *ASC* the reports described in the Payment and Reporting Table of the *details* by the respective specified due dates, in the form and containing the matters as advised by the *ASC* from time to time.

8.2 The *ASC* may require the *Department* to provide additional reports if, in the *ASC*'s reasonable opinion, such reports are required by the *ASC* to maintain an understanding of the progress of the *activities* or for the *ASC* to monitor the *Department's* compliance with this *agreement*. The *Department* will provide the reports required by the *ASC* at the times and in the manner specified by the *ASC*.

8.3 If the *ASC* considers that the form or content of a report is not adequate, it may require the *Department* to submit a revised report. The *Department* must provide a revised report satisfactory to the *ASC* within 30 days of receipt of notice from the *ASC*.

9 INSPECTION AND AUDIT

9.1 The *ASC* and/or its nominated auditor (including without limitation the Auditor-General and/or Privacy Commissioner) may at reasonable times and on reasonable notice at any time during the term of this *agreement* or within 7 years after termination or expiry, enter the *Department's* premises, inspect and/or audit their records (relevant to the *activities* or this *agreement*) and their progress with the *activities*, to assess the *Department's* compliance with this *agreement*.

9.2 In conducting an inspection or audit, the *ASC* and/or the auditor may take copies of any materials and records (books, documents and any other papers) that the *ASC* or the auditor considers relevant to the *activities* or the *Department's* compliance with this *agreement*. The *Department* must also give the *ASC* and/or the auditor, reasonable access to its employees for the same purpose.

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 for default**

- 13.1 A party may terminate this *agreement* (in whole or in part) by written notice if the other party is in breach of this *agreement* and fails to remedy that breach within 10 days of receipt of a notice from the first party requiring it to do so.

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*.

14 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.

15 GST

- 15.1 Unless otherwise indicated, all consideration for any supply under this *agreement* is exclusive of any *GST* imposed on the supply.
- 15.2 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.
- 15.3 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.
- 15.4 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.
- 15.5 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.

16 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*.

Signing page

EXECUTED as an agreement

**Signed for and on behalf of
The Australian Capital Territory, acting
through the Economic Development
Directorate**

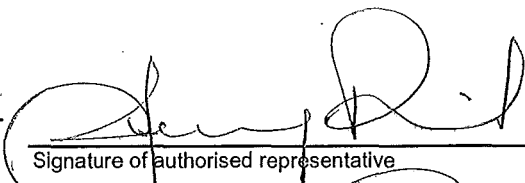
by a duly authorised representative



Signature of witness

Simon Dolejsi

Name of witness (print)



Signature of authorised representative

JENNY PRIEST

Name of authorised representative (print)

18/10/12

Dated


**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)

30 November 2012

Dated

State Sport Development Collaboration Agreement Details

Item No.	Item	Details
1	Term of Agreement	1 July 2012 to 31 July 2013
2	Activity Period	1 July 2012 to 30 June 2013
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 <i>(Notices will be sent to the Department at this address)</i>
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 <i>(Notices should be sent to the ASC for the attention of the Funding Section at this address)</i>
	ASC Contact Person	Name: ██████████ Position: Sports Program Adviser (Grants) Telephone: (02) 6214 1497 Facsimile: (02) 6214 1836 Email: ██████████
	Funding and Activity Areas	Sport Participation ("SP") - see the plan at Attachment 1 for details. \$95,000 <p style="text-align: right;">TOTAL \$95,000 (exclusive of GST)</p>
	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

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