

Public Works Committee

Inquiry into the granting of contract number OoS17/18-021 by the Office of Sport

Questions taken on Notice at the hearing on 29 November 2021

Item 1

The Hon. MARK LATHAM:

Didn't they have evidence that Mr Farrar had been to various properties but they, to my understanding, did not have evidence that Barrie Smith Motorsport had been approached prior to the release of the tender to provide a funding estimate that formed the basis of the Equestrian NSW business case?

Ms JONES:

What I will say about that is that we were definitely not aware that Mr Farrar had gone out and sought other price estimates prior to the tender process commencing. In terms of actually having a specific date of when we found out about that, I am happy to take that on notice and provide that to the Committee.

Answer: The Office of Sport became aware of this matter on 20 December 2017 (see Paragraph 259 of the Office of Sport Submission).

Item 2

The Hon. SAM FARRAWAY:

Just quickly, did Barrie Smith Motorsport ever advise what the delay was for the imported product, rather than you—

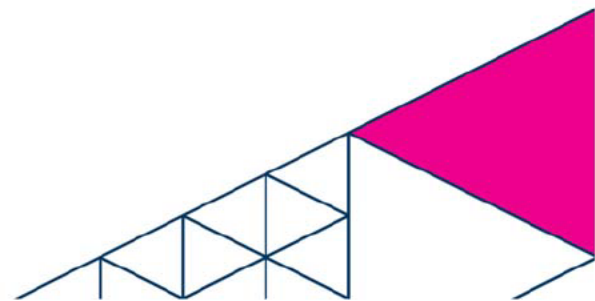
Ms JONES:

Not in my review of the documentation, but I am happy to take that on notice and we can find that out.

Answer: On 22 November 2017, Mr Smith advised by email (see Paragraph 228 of the Office of Sport Submission):

The main impact of the delay in granting the tender was that the container procurement & packing could not commence as planned and so the containers are booked on a ship one week later. At this stage, containers from both Barcelona (mats) & Hamburg (ArenaTex) are scheduled to arrive in Sydney Port on January 7 2018.

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Item 3

The Hon. TREVOR KHAN:

Was there any discussion with Barrie Smith Motorsport at the time when you found that this is not new material but recycled, if that is an appropriate term, as to how the rubber grommets were to be removed?

Ms JONES:

I might take that one on notice and see if there were specific instructions around how the rubber grommets were to be removed.

Answer: Mr Crumpler took the lead in discussing this issue with Mr Smith and he is no longer employed by the Office of Sport. The extant emails are referenced at paragraphs 232-235 of our Submission. These make it clear that Mr Crumpler had meetings with Mr Smith to discuss the issue however it is not clear from the extant records whether any specific measures were agreed. Staff have removed the grommets on an ongoing basis as they surface, in the same way that any foreign materials are routinely removed.

Item 4

The Hon. TREVOR KHAN:

When these negotiations were going on with Barrie Smith Motorsport, did they warrant that the surface, albeit not a new surface, would be free of rubber grommets?

Ms JONES:

I am not sure if they provided us with that assurance, but I will take that on notice.

The Hon. MARK LATHAM:

Did Barrie Smith not refer to it as the elephant in the room and say that he could not give that assurance? He was going to do his best, but no assurance was ever given.

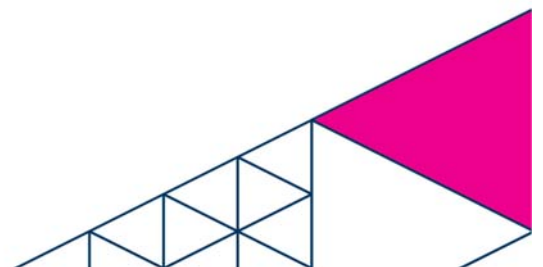
Ms JONES:

I have read Barrie Smith Motorsport's submission, and I acknowledge that they do mention "the elephant in the room". I will take it on notice in terms of whether or not there was any assurance given.

Answer: As for Item 3 above, given staff movements and the passage of time, it is not possible to give a definitive answer. Given the volume of sand to be deposited, it is reasonable to conclude that, in accepting the second hand produce, staff at the time accepted there would be an ongoing need for them to remove grommets as they surfaced, as they would any foreign objects.

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Item 5

The CHAIR:

Is there any reasonable basis to conclude that Mr Smith felt pressure to obtain this alternative material in a time frame that allowed the event to take place?

Ms JONES:

It was part of the contractual arrangement that there was to be a completion date in January 2018.

The CHAIR:

Under that contract, was he subject to any financial penalty if that was not met?

Ms JONES:

I will take that on notice, actually.

Answer:

The contract provided for liquidated damages of \$1,000 per day for delays by the contractor in reaching a completion milestone. The completion date for the contract was set as 11 January 2018.

Item 6

The CHAIR:

On notice, will you able to provide us with a copy of those clauses that are now in those?

Ms JONES:

Sure, absolutely. We can provide you with a copy of a template funding agreement.

Answer: See attached template.

Item 7

The CHAIR:

What is the expected life span of the new surface?

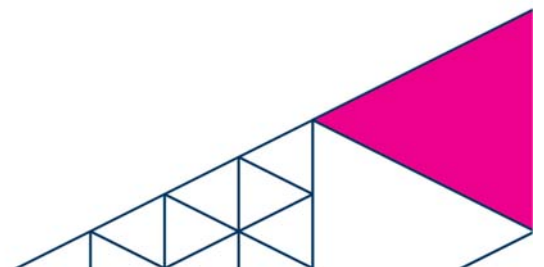
Ms JONES:

I will take that on notice.

Answer: The Barrie Smith Motor Sport tender states on page 18 that a longevity of 10-20 should be expected, depending on maintenance quality.

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Attachment: Funding Agreement for Grants Funding Agreement

[Category]

Contact
Organisation
email

Dear salutation

Cover Letter for funding under the Organisation Support Program 2021/2022

The Office of Sport (**Agency**) will provide the funding to xxxxxx under this Cover Letter on the following basis:

Organisation Details

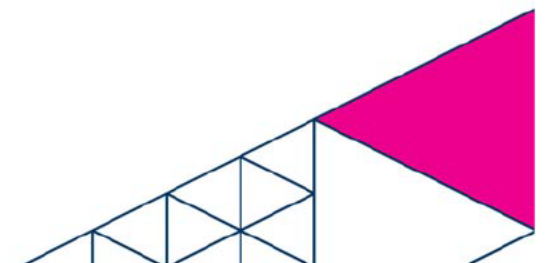
Name	
Registered Address	
ABN	
Contact Person Name	
Contact person Position	
Phone	
Email	

Funding Details

Project ID	
Funding Period (term)	1 July 2021 – 30 June 2022
Funding Category	
OSP Organisation Type	Pull from SmartyGrants
Funding	Amount: All Funding is exclusive of GST. Payment of the Funding will be made upon provision of the Required Reports.
Key Deliverables	Refer to Schedule 1 of the Terms and Conditions.
Required Reports	Complete SmartyGrants reporting by 6 May 2022.

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This Cover Letter incorporates the standard funding agreement terms and conditions at Attachment A.

This Cover Letter will take effect from the date that it is countersigned by both parties. If the Organisation accepts the funding proposed, please have an authorised delegated officer countersign and date this letter in the space provided below. The signed Cover Letter will need to be uploaded into the SmartyGrants Online reporting system.

If this agreement is signed after 6 May 2022, you may not be eligible to receive any or all of the Funding, at our absolute discretion.

If you have any queries, please do not hesitate to call the Grants Unit on 13 13 02.

Yours sincerely

Karen Jones
Chief Executive
Office of Sport

Attachments

A – standard funding agreement terms and conditions

Signed for and on behalf of xxxxxxxx

Signature:

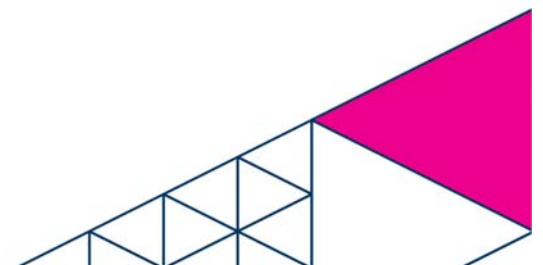
Name (print):

Title (print):

Date:

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ATTACHMENT A

Supported by the



**FUNDING AGREEMENT
STANDARD TERMS & CONDITIONS**

between the

OFFICE OF SPORT

and

XXXXXXXXXX

THIS AGREEMENT is made on the date the Organisation signs the Cover Letter.

BETWEEN: **Office of Sport**, of 6B Figtree Drive, Sydney Olympic Park NSW 2127
ABN: 31 321 190 047
(the 'Agency')

AND: **XXXXXXXXXXXX** ABN xxxxxxxxx
(the 'Organisation')

RECITALS

- A. The Agency is responsible for the delivery of the New South Wales Government's sport and recreation policy and projects.
- B. The Agency aims to build active communities across NSW.
- C. The Agency aims to provide collaborative leadership of sport and active recreation in NSW.
- D. The Agency has agreed to provide Funding to the Organisation upon and subject to the terms and conditions of this Agreement.

IT IS AGREED AS FOLLOWS:

1. DEFINITIONS AND INTEPRETATION

Definitions

In this Agreement unless the context indicates a contrary intention:

'Agency' means the Office of Sport;

'Agreement' means the Cover Letter and these terms and conditions;

'Business Day' means a day other than a weekend or a public holiday in New South Wales;

'Business Plan' means the Business Plan submitted by the Organisation to the Agency.

'Claim' means any claim, demand, remedy, suit, injury, damage, loss, Cost, liability, action, proceeding, right of action, claim for compensation and claim for abatement of obligations;

'Cost' means any cost, charge, expense, payment or other expenditure of any nature (whether direct, indirect or consequential and whether accrued or paid);

'Cover Letter' means the letter signed by both the Agency and the Organisation which specifies the Funding details and which incorporates these terms and conditions by reference.

'Funding' means the funds made available by the Agency to the Organisation pursuant to this Agreement as set out in the Cover Letter;

‘Minister’ means the Minister for Sport and any successors in function;

‘Organisation’ means the party named in the Cover Letter;

‘SSO’ means State Sporting Organisation.

‘SSOD’ means State Sporting Organisation for people with Disability.

1.2 Interpretation

In this Agreement unless the contrary intention appears:

- (a) a reference to this agreement, Cover Letter or document means this Agreement and includes any variation or replacement of it;
- (b) a reference to a statute or other law includes regulations and other instruments under it and any consolidations, amendments, re-enactments or replacements of it;
- (c) the singular includes the plural number and vice versa;
- (d) a reference to a gender includes a reference to each gender;
- (e) the word ‘person’ includes a firm, corporation, body corporate, unincorporated association or a governmental authority;
- (f) a reference to a person or a party includes a reference to the person or the party, the person or the party’s employees, agents, contractors, legal personal representatives, successors, liquidators, trustees in bankruptcy and the like, and permitted assigns;
- (g) an agreement on the part of, or in favour of, two or more persons binds or is for the benefit of them or any one or more of them together and separately;
- (h) a reference to a party means a person who is named as a party, and is bound to observe the provisions of, this Agreement;
- (i) ‘includes’ means includes but without limitation;
- (j) a reference to a clause will (except where the context refers specifically to another instrument) be references to a clause in this Agreement;
- (k) where a word or a phrase is given a defined meaning in this Agreement, any other part of speech or grammatical form in respect of such word or phrase has a corresponding meaning;
- (l) a reference to an act includes an omission and a reference to doing an act includes executing a document;

(m) a heading is for reference only. It does not affect the meaning or interpretation of this Agreement; and

(n) any schedule attached to this Agreement forms part of it.

1.3 TERM OF AGREEMENT

This Agreement shall be for the term set out in the Cover Letter.

2. RECOGNITION

2.1 If, as specified in the Cover Letter, the Organisation is identified as a Recognised SSO or Recognised SSOD, then the Agency offers recognition of the Organisation as the SSO or SSOD for the sport or sporting discipline that the Organisation governs within New South Wales.

2.2 As a Recognised SSO or Recognised SSOD, the Agency will provide, for the Term of this Agreement, the following benefits to the Organisation:

(a) the right, subject to any directions, conditions or guidelines given by the Agency, to refer to the Organisation as an SSO or SSOD recognised by the Agency and, on the Organisation's documents and website, to use the Agency's logo in conjunction with the following supporting text:

"The New South Wales Government through the Office of Sport recognises [the Organisation's name] as the pre-eminent body to develop [sport or sporting discipline name] in New South Wales";

(b) entry in the Agency's online listing as the SSO or SSOD for its sport or sporting discipline; and

(c) invitations to attend workshops, seminars and other Office forums conducted for recognised SSOs and SSODs.

2.3 The Organisation's status as a Recognised SSO or Recognised SSOD is subject to the Organisation's continued compliance with the terms and conditions of this Agreement.

2.4 the Agency may revoke the Organisation's status as a Recognised SSO or Recognised SSOD:

(a) for any breach of the terms and conditions of this Agreement by the Organisation; or

(b) for any other reason, at any time following one month's written notice by the Agency to the Organisation.

2.5 The Agency may exercise any of its rights under clause 2.4 without prejudice to and in addition to any other right that the Agency may have in relation to the terms and conditions of this Agreement.

- 2.6 The Organisation, should it wish to do so, may forfeit its status as a Recognised SSO or Recognised SSOD, for any reason, at any time following one month's written notice by the Organisation to the Agency.

3. THE AGENCY'S OBLIGATIONS

- 3.1 Subject to this clause and delivery against the Key Deliverables the Agency agrees to provide the Organisation the Funding as set out in the Cover Letter.
- 3.2 The Agency will be under no obligation to make the Funding, or any part of it available to the Organisation if at any time during the term of this Agreement:
- (c) the Organisation is not, in the Agency's opinion, complying with the terms of this Agreement, including, but not limited to the Cover Letter; or
 - (d) the Agency is unable to provide the Funding to the Organisation for any reason.
- 3.3 The Agency will provide advice and information to the Organisation of any relevant changes in government policy, programs and funding conditions.
- 3.4 The Organisation agrees that the Agency may withhold or suspend any payment of the Funding to the Organisation in whole or in part until the Organisation has performed its obligations in accordance with this Agreement.
- 3.5 Notwithstanding such suspension or deferral of any payments, the Organisation agrees to continue to perform any obligations under this Agreement, unless notified otherwise in writing by the Agency.
- 3.6 Notwithstanding any other provision of this Agreement, where the Agency is satisfied that the Organisation does not have the capacity to adequately manage the Funding, the Agency may immediately suspend, reduce or cease the release of Funding to the Organisation on providing the Organisation with notice of this decision, and the Organisation agrees to return any portion of the Funding that has not been expended in accordance with this Agreement.
- 3.7 Nothing in this Agreement is to be construed as creating any obligation, commitment or undertaking by the Agency to provide additional or further Funding or assistance beyond that specifically detailed in this Agreement.

4. THE ORGANISATION'S OBLIGATIONS

4.1 General

- (a) The Organisation accepts prime responsibility and accountability for the achievement of Key Deliverables as set out in the Cover Letter. The Organisation will regularly liaise with the Agency to ensure that the Key Deliverables are addressed in the method and manner specified in Schedule 1.

- (b) For the term of this Agreement, the Organisation is committed to working co-operatively with the Agency, including but not limited to, financial matters, and communicating any problems or important issues that may arise.
- (c) The Organisation's events and activities must have appropriate alcohol management policies and practices, including responsible service of alcohol at all events organised by the Organisation and throughout the term of this agreement the Organisation agrees to comply with the *Liquor Act 2007* (NSW) and the *Liquor Regulation 2008* (NSW). (Information on the Responsible Service of Alcohol can be found at: <https://www.liquorandgaming.justice.nsw.gov.au/>).
- (d) The Organisation must not do anything which may damage the reputation or standing of the Agency or any of its programs, or otherwise bring the Agency into disrepute; and
- (e) The Organisation must not do anything which may damage the reputation or standing of the Organisation, the Organisation's sport, or otherwise bring the Organisation, the Organisation's sport into disrepute.

4.2 Conditions Applying to Expenditure of Funding

- (a) The Organisation shall expend the Funding only in accordance with the terms of this Agreement and for the purpose of delivering the Key Deliverables. If the Organisation fails to comply with this clause, without written permission from the Agency, the Agency may terminate this Agreement in accordance with clause 9.
- (b) In the event that the Organisation fails to expend all of the Funding set out in the Cover Letter at the conclusion of the Funding Period, the Organisation shall repay the unexpended amount of Funding, unless otherwise agreed in writing and pending such agreement, if any, the Organisation shall, unless specified in writing, hold the unexpended amount of Funding in trust for the Agency.
- (c) The Organisation acknowledges that the amount referred to in the Cover Letter will be a debt due and owing to the Agency and that the Agency may take such action as it considers necessary to recoup that debt.
- (d) The Organisation will ensure that all Key Deliverables set out in the Cover Letter are achieved in accordance with this Agreement and that all Funding is expended accordingly by the end of the Funding Period set out in the Cover Letter.
- (e) The Organisation agrees to:
 - (i) keep proper financial records and books of account related to the Funding;

- (ii) ensure that the Funding is held in an account in the Organisation's name, and which is solely controlled by the Organisation or an approved officer of the Organisation, with a bank or credit union carrying on banking business in Australia;
 - (iii) adopt and comply with sound policies and practices in relation to its corporate governance and financial management;
 - (iv) only expend the Funding for the purposes set out in the Cover Letter;
 - (v) not use the Funding as security to obtain, or comply with, any form of loan, credit, payment or similar transaction;
 - (vi) provide account details to allow electronic payments to be made;
 - (vii) advise the Agency if it has received an overpayment; and
 - (viii) identify the receipt and expenditure of the Funding separately within the Organisations account so that at all times the Funding is identifiable and ascertainable.
- (f) Unless a variation is approved in writing by the Agency, the Organisation must use the Funding solely for the purpose for which it was approved.

4.3 Reports

- (a) The Organisation shall provide the Agency with:
- (i) its most recent financial statements and annual reports as required under the *Associations Incorporation Act 2009* (NSW) or the *Corporations Act 2001* (Cth);
 - (ii) a completed annual Certificate of Expenditure for the Funding which identifies the receipt and expenditure of the Funding; and
 - (iii) gender representation on the Organisation's governing board.
- (b) The Organisation agrees to supply the Agency with the materials referred to in clause 4.3(a) within one month of its annual general meeting.
- (c) The Organisation will also provide any other reports or information specified in the Cover Letter or as reasonably requested by the Agency relating to the Organisation, the Organisation's sport or this agreement.
- (d) The Agency reserves the right to arrange an inspection or audit of the Organisation's books and records at any time or request audited copies of current financial statements and the Organisation agrees to assist the Agency in arranging the inspection or audit and the Organisation agrees to provide audited copies of its financial statements whenever a request is made by the Agency.
- (e) If the organisations fails to provide the report and acquit the Funding in accordance with 4.3(a) it will be considered ineligible for further funding until the required information is provided.

- (f) If the organisation provides false or misleading information it may be considered an offence under the *Crimes Act 1900*.

4.4 Access to Information and Meetings

- (a) The Organisation shall meet with the Agency from time to time at the Agency's request and provide the Agency with such information as the Agency may require and considers necessary to determine whether the terms of this Agreement, including but not limited to, the Schedules, have and are being complied with by the Organisation.
- (b) The Organisation must promptly notify the Agency of:
- (i) any change of its name and address;
 - (ii) any change in the principal office holders of the Organisation;
 - (iii) any proposed change to the status of incorporation of the Organisation;
 - (iv) any proposed change to its constitution;
 - (v) any other applications for government funding by the Organisation, and the results of any such applications; or
 - (vi) details of funding received directly or indirectly from any other government agency (Federal, State or Local).
- (c) The Organisation must provide the Agency with any further information it may need concerning the matters in clause 4.4(b) above upon request by the Agency.

4.5 Access and Equity – Social Justice Issues

4.5.1 The Organisation acknowledges it is committed to the principles of access and equity and that it is able to demonstrate its commitment to these principles in its Business Plan, its actions in guiding the development of the Organisation and/or any programs that it is conducting.

4.5.2 The Organisation shall identify, where appropriate, in its Business Plan measures being taken to improve access to social justice groups. These groups include women and girls, Aboriginal and Torres Strait Islanders, people with a disability, people of non-English speaking backgrounds and youth at risk.

4.6 Child Protection

- (a) The Organisation acknowledges that it is committed to maintaining an environment which is free of any form of harassment or child abuse and to developing appropriate policies in these areas. The Organisation warrants that it will ensure that it or its employees will comply with the obligations set out in Schedule 1.
- (b) The Organisation must comply with all Commonwealth and state laws applicable to the Organisation's operations relating to child protection and

anti-discrimination legislation.

- (c) The Organisation warrants that it is not named by the National Redress Scheme for Institutional Child Sexual Abuse on its list of organisations that have not joined or signified their intent to join the scheme.

4.7 Privacy

The Organisation acknowledges that it is complying with the provisions of the *Privacy and Personal Information Protection Act 1998* (NSW) and the *Health Records and Information Privacy Act 2002* (NSW).

4.8 Workplace Safety

The Organisation acknowledges that it will at all times comply with the provisions of the *Work Health and Safety Act 2011* (NSW).

4.9 Anti-Discrimination

The Organisation must comply with all Commonwealth and state laws applicable to the Organisation's operations relating to anti-discrimination.

4.10 Acknowledgment in Publicity and Promotion

4.10.1 Where appropriate, the Organisation must acknowledge the support of the Agency as follows:

- (a) in press releases and media interviews;
- (b) by complying with the Office of Sport's Style Guide in:
 - videos and manuals
 - promotional material
 - official programs, newsletters and advertisements
 - website and electronic communications; and
- (c) at any sporting event or function conducted by the Organisation.

4.10.2 The Organisation agrees that it will provide the Agency with a copy of all material, as outlined in 4.10.1(b) above, prior to the material being printed, and/or provided to the public, and the Organisation agrees it will not print, and/or provide to the public, any material without the written consent of the Agency.

4.11 Anti-Doping

- (a) In relation to anti-doping, the Organisation, if it is a Recognised SSO or Recognised SSOD, must, where applicable:
 - (i) acknowledge SIA's functions and powers under the SIA Act and the NAD Scheme (including the Sporting Administration Body Rules) and facilitate the execution of SIA's functions and powers as reasonably

required by SIA;

- (ii) adopt, implement and comply with an anti-doping policy and rules that are approved by SIA and conform with the Code, the NAD Scheme and applicable National Sporting Organisation anti-doping requirements;
- (iii) assist, co-operate, and liaise with SIA and National Sporting Organisation, including in relation to the conduct of any investigations or hearings into an alleged or suspected anti-doping rule violation;
- (iv) have in place and maintain an executed confidentiality undertaking with SIA to facilitate SIA's ability to lawfully share protected information with your organisation.

(b) for the purposes of this clause 4.11:

- (i) “**Code**” means the World Anti-Doping Code as amended from time to time;
- (ii) “**National Sporting Organisation**” means a national federation recognised by Sport Australia as the entity responsible for governing the Organisation’s sport or sporting discipline nationally;
- (iii) “**NAD Scheme**” has the same meaning as defined in section 4 of the SIA Act; and
- (iv) “**SIA**” means Sport Integrity Australia as established by the SIA Act or any successor Commonwealth agency carrying out equivalent statutory functions;
- (v) “**SIA Act**” means the *Sport Integrity Australia Act 2020* (Cth) as amended from time to time; and
- (vi) “**Sporting Administration Body Rules**” means the sporting administration body rules specified in the NAD Scheme, as amended from time to time.

5. INCORPORATION

The Organisation warrants that it is a duly constituted association under the *Associations Incorporation Act 2009* (NSW) or the *Corporations Act 2001* (Cth). The Organisation is required to maintain the currency of its incorporation during the term of this Agreement.

6. COSTS

6.1 The Organisation shall be solely liable for all its debts, losses and expenses including Cost and disbursements incurred by it in connection with:

- (i) the preparation, entry into and execution of this Agreement, and any subsequent consent, agreement, approval or waiver under or variation of this Agreement; and

(ii) the performance of its obligations under this Agreement.

6.2 The Organisation must on demand reimburse the Agency for and keep the Agency indemnified against all expenses including Cost and disbursements incurred by the Agency in connection with the enforcement, attempted enforcement or preservation of any rights of the Agency under this Agreement.

7. INDEMNITY

Save in the event and to the extent a Claim arises as a result of any wilful or negligent act or omission or any breach of the terms of this Agreement by the Agency, the Organisation shall indemnify and keep indemnified the Minister, the Agency and the Government of New South Wales from and against all Claims whatsoever brought, prosecuted or made against the Agency for which the Minister, the Agency or the Government of New South Wales will or may be or become liable whether during or after the termination of this Agreement arising from or as a result of this Agreement.

8. INSURANCE

The Organisation warrants that it will take out, and maintain:

- (a) workers compensation insurance and shall also ensure that every subcontractor who is not taken to be a worker employed by the Organiser in accordance with the *Workplace Injury Management and Workers Compensation Act 1998* (NSW) and all relevant legislation must hold or take out insurance covering workers compensation; and
- (b) occurrence based public liability insurance (minimum \$5 million),

The Organisation further warrants that it will maintain the insurance until the end of the contract period and will produce to the Agency, within 7 days from the date of signing this contract or otherwise on demand, certificates of currency for the abovementioned insurance policies, and provide the Agency with 30 days written notice of any revocation or termination of the abovementioned policies by either the Operator or the insurer.

9. TERMINATION

9.1 The Agency may immediately terminate this Agreement by giving written notice to the Organisation of the termination without prejudice to the rights, liabilities, or obligations of either party accruing prior to the date of termination if:

- (i) the Agency is satisfied that any statement made by the Organisation in its application for funding is incorrect, incomplete or misleading in a way that may have affected the Agency's decision to approve the Funding, the terms and conditions of this Agreement, or any action taken by the Agency under this Agreement; or
- (ii) the Organisation significantly varies the Key Deliverables without the written approval of the Agency; or

- (iii) the Organisation has failed to satisfactorily deliver the Key Deliverables; or
- (iv) the Organisation is unable to pay its debts as and when they become due and payable; or
- (v) part or all of the Funding has been misappropriated;
- (vi) proceedings are initiated to obtain an order for the Organisation's winding up or dissolution; or
- (vii) the organisation becomes insolvent or is placed under external administration; or
- (viii) notice is served on the Organisation or proceedings are taken to cancel the incorporation or registration of the Organisation or to dissolve the Organisation as a legal entity; or
- (ix) the Organisation ceases to carry on business;
- (x) the Agency is unable to proceed with the performance of its obligations by reason of force majeure, war, strikes, riot or civil commotion (whether war be declared or not) or any other circumstance whatsoever beyond the Agency's control; or
- (xi) the Organisation does not perform its obligations under this Agreement in accordance with the policies and operating systems of the Agency and the terms and conditions set out in this Agreement; or
- (xii) the Organisation acts in a manner that will cause damage to the Agency's reputation; or
- (xiii) the Organisation does not use the expertise, skill, diligence and care in providing the services, as outlined in this Agreement, to be expected from an experienced provider of services of this nature; or
- (xiv) the Organisation breaches any other provision of this agreement and fails to remedy the breach within 14 days after receipt of a notice from the Agency requiring it to remedy the breach.

9.2 Either the Agency or the Organisation may terminate this Agreement at any time by giving not less than three months' written notice of termination to the other party.

9.3 Where any of the events set out in sub-clause 9.1 or 9.2 occur, the Agency reserves the right to withhold payment, or cease the payment, of Funding instalments, and/or require repayment of all of the Funding or the unexpended Funding, at its discretion. In this case, the Organisation shall have no claims, actions and demands of any kind against the Minister, the Agency, the State of New South Wales or any other related entity, in respect of or arising from any losses, damages, costs and expenses suffered by the Organisation as a result of or occasioned by the Agency withdrawing funding.

9.4 Where repayment of all of the Funding or that part of the Funding that is unexpended has been requested by the Agency, the amount to be repaid will be deemed to be a debt due and owing to the Agency and the Agency may take

such action as it considers necessary to recoup that debt.

10. GOODS AND SERVICES TAX

10.1 Interpretation

In this clause:

'Act' means *A New Tax System (Goods and Services Tax) Act 1999*;

'GST', **'taxable supply'**, **'input tax credit'**, **'supply'** and **'tax invoice'** have the same meaning as in the Act;

'GST rate' means 10% or if the rate at which GST is calculated under the Act changes, the rate applicable at the relevant time; and

'payment' includes consideration in the form of money given or received and in a form other than money given or received.

10.2 Acknowledgement and Warranty

- (a) Parties acknowledge that the Funding payable under this Agreement by the Agency is exclusive of GST.
- (b) Parties warrant that at the time a party makes a supply under this Agreement on which GST is imposed under this Agreement that party is or will be registered under the Act. If the other party requests written evidence of registration, the party claiming to be registered must promptly produce evidence satisfactory to the party seeking such evidence.

10.3 Payment of GST

The Agency must pay to the Organisation at the same time as the Agency must make payment for a taxable supply under this Agreement, an additional amount equal to the amount of the payment multiplied by the GST rate.

10.4 Reimbursements

When calculating the amount of:

- (a) any reimbursement to the Agency under this Agreement; and
- (b) the indemnification under this Agreement of an expense, loss or liability incurred or to be incurred by the Agency,

the Agency may include the GST paid or payable on the supply giving rise to the amount, but if the Agency includes the GST it must deduct the amount of

any input tax credit to which it is entitled.

10.5 Tax Invoice

The Organisation must submit a valid tax invoice to the Agency before the Agency will issue payment of any part of the Funding.

11. REVIEW OF FUNDING AND AGREEMENT

11.1 This Agreement may be formally renegotiated at any time during the period of the Agreement at the instigation of either the Agency or the Organisation. This may include review of any changed circumstances of the Organisation during the term of this Agreement.

Any modification or variation of this Agreement is to be in writing and agreed to by both the Agency and the Organisation.

12. GENERAL

12.1 Notices

Any notice given in connection with this Agreement must be in writing and may be:

- (a) left at;
- (b) sent by email; or
- (c) sent by pre-paid security post,

addressed to a party at the address specified in this Agreement or such other address as may be notified for the purpose of the service of notices.

A notice is deemed to have been given:

- (d) on the date on which it is left;
- (e) in the case of a notice being sent by facsimile, at the time of dispatch; and
- (f) in the case of a notice being sent by post, three (3) Business Days after the day of posting.

12.2 Conflict of Interest

- (a) The Organisation and its employees must not carry on or be involved in any capacity in an activity or business, which may conflict with, or adversely affect, its ability to carry out its obligations under this Agreement;
- (b) The Organisation warrants that at the date of this Agreement, no conflict

of interest exists or is likely to arise for it or its employees in relation to execution of this Agreement, its subject matter or in relation to the Key Deliverables;

- (c) The Organisation and its employees must, during the Funding Period, inform the Agency of any actual or perceived conflict of interest that may arise in relation to the performance of its obligations under this Agreement, its subject matter or in relation to the Key Deliverables and how such conflicts are to be managed; and
- (d) The Organisation must ensure that sub-clauses (a) through (c) of this clause 12.2 are included in any contract with an agent or contractor engaged by the Organisation in relation to the Key Deliverables to ensure that they have the same obligations to the Organisation as the Organisation has to the Agency regarding conflicts of interest.

12.3 No Employment, Agency or Partnership

The Organisation shall not represent itself and shall ensure that its employees do not represent themselves as the employees, agents or partners of the Agency nor shall anything contained in this Agreement constitute or be deemed to constitute the Organisation or any of its employees, agents or partners of the Agency for any purpose and the Organisation shall not have authority to bind the Agency in any manner.

12.4 No Assignment

The Organisation shall not assign or otherwise deal with its rights and obligations under this Agreement without the prior written consent of the Agency.

12.5 Entire Agreement

- (a) This Agreement constitutes the entire agreement between the parties in relation to the subject matter and supersedes all prior negotiations, memoranda or agreements, whether written or oral with respect to that subject matter.
- (b) No modification or variation to this Agreement shall be of any effect unless it is in writing and has been signed by or on behalf of the parties hereto.
- (c) Noncompliance with the terms and conditions of the agreement may result in the Organisation not being considered for any future funding.

12.6 No Waiver

Failure or omission by the Agency at any time to enforce or require strict or timely compliance with any provision of this Agreement will not affect or impair the Agency's right to avail itself of any remedy it may have in respect of any breach of this Agreement.

12.7 Time of Essence

Time shall be of the essence for all obligations under this Agreement.

12.8 Governing Law

The laws of New South Wales govern this Agreement and the parties submit to the non-exclusive jurisdiction of the courts in that State.

12.9 Severability

If any part of this Agreement is prohibited, void, illegal or unenforceable, then that part is severed from this Agreement but without affecting the continued operation of the remainder of the Agreement.

12.10 Severability

Any clause, which by its nature, is intended to survive this Agreement shall survive termination, expiry or repudiation of this Agreement.

SCHEDULE 1
KEY DELIVERABLES SCHEDULE
(2021-2022)

Output Area	Key Deliverables
Access and Equity	The Organisation will adopt inclusive practices and promote opportunities for under-represented groups including women and girls, Aboriginal and Torres Strait Islanders, people from culturally diverse backgrounds and people with a disability.
Annual Reporting	<p>The Organisation will provide through the SmartyGrants reporting system:</p> <ol style="list-style-type: none"> 1. an annual report on the achievement of the key deliverables, within 3 months of the completion of the Organisation's financial year or within 1 month following the Organisation's Annual General Meeting 2. an update to its organisational profile, membership, and insurance and corporate governance data 3. an upload of its: <ul style="list-style-type: none"> o Business Plan o Annual Report 4. signed acquittal of funds for the previous grant 5. a copy of its Annual Reporting including financial statements approved by members at the Annual General Meeting.
Athlete, Coach and Officials Development, NSWIS/Regional Academies of Sport	The Organisation shall develop athlete, coaches and officials' pathways and development. The Organisation shall identify in its annual business plan any relations it has with NSWIS and/or Regional Academies of Sport across New South Wales.
Concussion	The organisation and its affiliates has an up to date Concussion Policy which complies with the Sports Medicine Australia and all relevant NSW and Australian Government and the Australian Medical Association (AMA) Concussion in Sport protocols and policies.

Output Area	Key Deliverables
Corporate Governance, Risk Management and Sports Safety	<p>The Organisation warrants it will undertake corporate governance activities, which are consistent with the Sport Australia's Sport Governance Principles and recognised best corporate governance practice.</p> <p>The Organisation warrants it will undertake risk management activities which are consistent with the Australian Standard Risk Management AS/NZS ISO 31000:2009 & HB 246:2010.</p> <p>In particular, the Organisation will have in place a robust process for, at a minimum, managing director or committee member conflicts of interests (actual, potential or perceived) which is documented, implemented, enacted and enforced.</p>
Director and Senior Staff Skill Development	<p>Directors of the Management Board and senior staff of the Organisation will endeavour to participate in relevant seminars, workshops and other professional development activities. The skills and knowledge gained should be utilised for the benefit of the Organisation.</p>
Diversity and Inclusion Policy	<p>The Organisation warrants that it complies with relevant Sport Australia and NSW Government policies and is committed to the development of inclusion and diversity, including LGBTQIA.</p>
Events	<p>The Organisation will have in place appropriate policies and procedures regarding the conduct of events. Policies will include Responsible Service of Alcohol, Child Protection, risk management, athlete, coach and official behaviour / code of conduct and Workplace Safety.</p>
Future Needs of Sport Infrastructure Survey	<p>The Organisation, if involved in the study, will work cooperatively with the Office of Sport to capture the data required for your sport.</p>

Output Area	Key Deliverables
<p>Harassment Free Sport and Ethics</p> <p>Play by the Rules</p>	<p>The Organisation needs to demonstrate high standards of ethical behaviour and encourage its members and participants to behave in a respectful and responsible manner.</p> <p>The Organisation will have in place a member protection policy or equivalent, that addresses issues relating to harassment, discrimination, child protection, complaints handling and codes of behaviour and keep such policy updated to ensure that it complies with all applicable laws.</p> <p>In addition, the Organisation will promote Play By the Rules to its members and encourage athletes, coaches, officials, administrators and committee members to complete the online learning courses.</p>
<p>Integrity of Sport and Match-fixing</p>	<p>The Organisation agrees to abide by all relevant NSW legislation relating to match-fixing and integrity in sport and the conditions of the National Policy on Match-fixing in Sport as agreed by Australian Governments on 10 June 2011 and any match-fixing or integrity in sport policy adopted by the respective sport's governing body.</p>
<p>Participation</p>	<p>The Organisation's Participation strategies must align with its National Sporting Organisation (NSO) Participation Plan (where developed).</p>
<p>NSW Participation Strategy</p>	<p>The Organisation has developed or is developing a NSW Participation Strategy.</p>

End.

SCHEDULE 2 CHILD PROTECTION

Child safe related laws

The Organisation must ensure that it meets its legislative obligations under:

1. Child Protection (Working with Children) Act 2012
2. Children's Guardian Act 2019
3. Children and Young Persons (Care and Protection) Act 1998
4. and all other related laws concerning child protection

With regards to the Child Protection (Working with Children) Act 2012, the organisation must complete a 'Working with Children Check' on any employees or volunteers who are engaged in child-related work for the purposes of delivering the projects set out at Schedule 2 of this Agreement. The organisation must register as an employer with the Office of the Children's Guardian and to verify on-line the validity of the application number (APP) and WWCC number provided by employees and volunteers.

Child Safe Standards

1. The Organisation should:
 - a. implement the Child Safe Standards through its systems, policies and procedures, including, for example, a Statement of Commitment to Child Safety, Child Safe Policy, Code of Conduct, Complaint Management Policy and Procedure, Human Resources Policy, and Risk Management Plan
 - b. continually assess, plan and review how it meets the Child Safe Standards
 - c. encourage staff, volunteers, parents and the community to undertake training on the Child Safe Standards offered by the Office of the Children's Guardian, including how to prevent, identify, respond and report child abuse in organisations
 - d. distribute information about how to keep children safe in organisations to staff, volunteers, parents and the community.

The Child Safe Standards are:

1. Child safety is embedded in organisational leadership, governance and culture
2. Children participate in decisions affecting them and are taken seriously
3. Families and communities are informed and involved
4. Equity is upheld, and diverse needs are taken in to account
5. People working with children are suitable and supported
6. Processes to respond to complaints of child abuse are child focused
7. Staff are equipped with the knowledge, skills and awareness to keep children safe through continual education and training
8. Physical and online environments minimise the opportunity for abuse to

occur

9. Implementation of the Child Safe Standards is continuously reviewed and improved

10. Policies and procedures document how the organisation is child safe.

More information, training and support can be found at the Office of Children's Guardian <https://www.kidsguardian.nsw.gov.au/>

The information contained in this Schedule is intended as a guide only. It is the Organisation's responsibility to ensure that it complies with current child protection legislation and meet the Child Safe Standards.