

Services Agreement

Provision of <insert nature of service> services to the ASC for <insert project name/activity>

Australian Sports Commission (**ASC**)

<Insert contractor's name> (**Contractor**)

Contract Number: <insert>

Details

Date

This agreement is dated the later date set out on the signing page.

Parties

Name **Australian Sports Commission**
ABN 67 374 695 240
Address Leverrier Street, Bruce, ACT, 2617
Short form name **ASC**
Notice details Email: <insert>
Attention: <insert>

Name <insert>
ABN <insert>
Address <insert>
Short form name **Contractor**
Notice details Email: <insert>
Attention: <insert>

Background

- A The ASC is the Australian Government body that coordinates the Government's commitment and contribution to sport.
- B The ASC requires the provision of <insert a brief description of the services>.
- C The parties have agreed that the Contractor will provide the services to the ASC on the terms of this agreement.

Agreed terms

1. Defined terms and interpretation

1.1 Defined terms

In this agreement:

Business Day means a day on which banks are open for general banking business in the Australian Capital Territory.

Commencement Date means <insert date>.

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 that:

- (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.

Contract IP means all Intellectual Property subsisting in the Contract Material and all other Intellectual Property developed by the Contractor (including by its employees, contractors and agents) in performing the Services.

Contract Material means all material developed or delivered, or required to be developed or delivered, by the Contractor (including its employees, contractors and agents) in the course of performing the Services, including documents, information, software and data stored by any means.

Expiry Date means <insert date>.

Intellectual Property means copyright, all rights in relation to inventions (including patents), registered and unregistered trade marks (including service marks), registered and unregistered designs, circuit layouts, and any other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

Moral Rights means the right of attribution of authorship, the right not to have authorship falsely attributed and the right of integrity of authorship as defined in the *Copyright Act 1968* (Cth).

Representatives has the meaning given in clause 3.1.

Services means the services described in Schedule 1.

Specified Acts means:

- (a) failure to identify the authorship of any Contract Material, or any content in the Contract Material (including literary, dramatic, artistic works and cinematograph films within the meaning of the *Copyright Act 1968* (Cth));
- (b) materially altering the style, format, colours, content or layout of the Contract Material;

- (c) reproducing, communicating, adapting, publishing or exhibiting any Contract Material without attributing the authorship; and
- (d) adding any additional content or information to the Contract Material.

Specified Personnel means the personnel specified in Schedule 1 (if any) as personnel required to undertake the Services or part of the work constituting the Services.

Term means the period specified in clause 2.

1.2 Interpretation

In this agreement, except where the context otherwise requires:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this agreement, and a reference to this agreement includes any schedule or annexure;
- (d) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (e) a reference to **A\$, \$A, dollar** or **\$** is to Australian currency;
- (f) a reference to time is to Canberra, Australia time;
- (g) a reference to a party is to a party to this agreement, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;
- (h) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (i) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (j) the meaning of general words is not limited by specific examples introduced by **including, for example** or similar expressions;
- (k) any agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- (l) any agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
- (m) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this agreement or any part of it; and
- (n) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day.

1.3 Headings

Headings are for ease of reference only and do not affect interpretation.

2. Term

2.1 Term

The term of this agreement commences on the Commencement Date and, subject to early termination pursuant to clause 13, expires on the Expiry Date (the **Initial Term**).

2.2 Option to extend

The Initial Term may be extended by the ASC for a further period of <insert period>, on the terms and conditions then in effect, by giving written notice to the Contractor. Such notice must be given at least <insert period> before the end of the Initial Term.

2.3 Condition precedent

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

3. Contract management

3.1 Representatives

Each party must nominate one person with appropriate skills, qualifications and experience as its representative for the purposes of clause 3.2 (**Representative**). The initial Representatives are the persons specified in the Details. Either party may change its Representative by written notice to the other party.

3.2 Responsibilities

The Representatives will be responsible for the day to day operational co-ordination and management between the parties of this agreement.

4. Contractor obligations

4.1 Services

The Contractor must provide the Services to the ASC.

4.2 Performance standards

In performing the Services, the Contractor must:

- (a) regularly liaise with the ASC to ensure that the ASC's interests are addressed in the method and manner of service delivery;
- (b) comply with and ensure that the Contractor's relevant officers, employees, agents and contractors comply with:
 - (i) any reasonable directions and requests from the ASC;
 - (ii) Australian industry practice and relevant professional standards;
 - (iii) all applicable laws;
 - (iv) all ASC policies relevant to the Services, as notified by the ASC from time to time, including the ASC Code of Conduct and ASC Anti-Doping Policy (available at <http://www.ausport.gov.au/about/publications>);
- (c) exercise due care, diligence and skill;
- (d) perform the Services in a timely and professional manner;

- (e) perform the Services to the satisfaction of the ASC; and
- (f) meet any other performance standards described in Schedule 1.

4.3 Warranty

The Contractor warrants that:

- (a) the Contractor and its personnel are suitably qualified and have sufficient expertise to perform the Services; and
- (b) the Contractor has all licences necessary to perform the Services.

4.4 Reporting requirements

The Contractor must provide the ASC with the reports described in Schedule 1.

4.5 Use of ASC premises and facilities

When accessing or using ASC premises or facilities, the Contractor, its employees, agents and contractors must:

- (a) comply with any safety and security directions and procedures notified by the ASC; and
- (b) only use the ASC premises and facilities for the purposes of this agreement.

4.6 Conflict of interest

- (a) The Contractor warrants that no conflict of interest exists or is anticipated relevant to the performance of the Services.
- (b) If such a conflict arises, the Contractor must notify the ASC immediately. The ASC will decide in its absolute discretion whether the Contractor may undertake the conflicting work or not.

4.7 Personnel

The Contractor must:

- (a) ensure that the Specified Personnel undertake the work in respect of the Services;
- (b) immediately notify the ASC if any of the Specified Personnel are unable to undertake work in respect of the Services and must promptly provide replacement personnel acceptable to the ASC if requested by the ASC; and
- (c) if directed by the ASC (where the ASC has acted in good faith in the interests of the ASC), remove any personnel (including Specified Personnel) from the performance of the Services and must promptly provide replacement personnel acceptable to the ASC if requested by the ASC.

4.8 Subcontracting

The Contractor must not subcontract the performance of any of its obligations under this agreement without the prior written consent of the ASC. The Contractor entering into a subcontract does not create any contractual relationship between the ASC and the subcontractor or relieve the Contractor from liability for the performance of any of its obligations under this agreement.

4.9 Review

The ASC may review the Contractor's performance of this agreement, or any part of it, at reasonable times and on reasonable notice. The Contractor must provide any assistance reasonably required by the ASC for the purposes of any such reviews.

4.10 Obligations on expiry or termination

On expiry or termination of this agreement, the Contractor must:

- (a) immediately stop using the ASC's Confidential Information and any material provided by the ASC; and
- (b) at the ASC's option, return or destroy all material containing the ASC's Confidential Information and any material provided by the ASC.

5. Charges

5.1 Fees

The ASC will pay the Contractor the fees described in Schedule 2 in the manner described in that schedule.

5.2 Expenses

The fees are inclusive of all costs, expenses and taxes incurred by the Contractor, other than expenses specifically described in Schedule 2 as payable by the ASC (if any). The ASC will reimburse the Contractor for expenses specified in Schedule 2 as payable by the ASC only where the expenses are reasonable and were necessarily incurred by the Contractor in performing the Services.

5.3 Invoicing procedure

The Contractor must submit invoices to the ASC for payment of the fees and (if any) expenses.

5.4 Invoice details

An invoice must be:

- (a) addressed to the ASC in accordance with this agreement;
- (b) accompanied by supporting documentation in respect of the Services provided in that period, and containing the information described in Schedule 2 or as otherwise notified by the ASC; and
- (c) in the form of a tax invoice complying with the tax invoice requirements set out in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

5.5 Payment of invoices

The ASC must pay any invoice rendered correctly in accordance with this agreement within 30 days of receipt.

5.6 Disputed invoices

If the ASC reasonably considers that an invoice exceeds the amount properly payable, or that the Contractor has not performed any relevant payment milestone to the ASC's reasonable satisfaction, the ASC may withhold payment and the ASC must:

- (a) notify the Contractor of the amount in dispute within 20 days after receipt of the invoice; and
- (b) pay the balance of the invoice.

6. Goods and services tax

6.1 Terminology

In this clause 6:

- (a) **GST-exclusive consideration** means the consideration payable or to be provided for a Supply, but for the application of this clause 6;
- (b) **Recipient** means a party to whom a Supply is made;
- (c) **Supply** means a supply made under or in connection with this agreement;
- (d) **Supplier** means a party making a Supply; and
- (e) words or expressions that are defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the same meaning in this clause 6.

6.2 Gross-up

If a Supplier makes a Supply in respect of which GST is payable (not being a Supply the consideration for which is specified in this agreement as 'GST-inclusive'), the Recipient must pay to the Supplier an additional amount equal to the GST payable on the Supply at the same time as the GST-exclusive consideration is payable or to be provided.

6.3 Reimbursement or indemnification

If a party must reimburse or indemnify the other party for a loss, cost or expense, the amount to be reimbursed or indemnified is first reduced by the amount of any input tax credit the other party is entitled to for the loss, cost or expense, and then increased in accordance with clause 6.2.

6.4 Tax invoices

A Recipient need not make a payment for a taxable Supply until the Supplier has given the Recipient a tax invoice for the Supply to which the payment relates.

6.5 Adjustments

- (a) If the GST payable by a Supplier on any Supply varies from the GST amount paid or payable by the Recipient under clause 6.2 such that a further amount of GST is payable in relation to the Supply or a refund or credit of GST is obtained in relation to the Supply, then the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient.
- (b) Any payment, credit or refund under this clause is deemed to be a payment, credit or refund of the GST amount payable under clause 6.2.
- (c) If an adjustment event occurs in relation to a Supply, the Supplier must issue an adjustment note to the Recipient in relation to that Supply within 14 days after the Supplier becomes aware of the adjustment event.

6.6 Exclusion of GST from calculations

If a payment is calculated by reference to or as a specified percentage of another amount or revenue stream, that payment will be calculated by reference to or as a specified percentage of the amount or revenue stream exclusive of GST.

7. Record-keeping and access

7.1 Records

The Contractor must:

- (a) keep adequate records concerning this agreement (including the performance of the Services);
- (b) ensure that such records:
 - (i) include sufficient detail to enable the amounts payable by the ASC under this agreement to be accurately determined;
 - (ii) include appropriate audit trails and be maintained up-to-date;
 - (iii) be kept in a manner that permits them to be conveniently and properly audited; and
 - (iv) be drawn in accordance with any relevant generally accepted accounting standards; and
- (c) retain such records for at least 7 years after the expiry or termination of this agreement.

7.2 Access

The ASC, its employees and any third parties authorised in writing by the ASC may, at reasonable times (whether during or within 7 years after the Term) and on reasonable notice to the Contractor, audit (including examine and copy, on a full “open book” basis) the records required to be maintained under clause 7.1 and related material, including entering the Contractor’s premises for such purpose. The Contractor will provide all assistance reasonably requested by the ASC, its employees or authorised third parties for the purposes of such audit, including providing full and accurate answers to any questions.

8. Intellectual property

8.1 Ownership

All Contract IP vests in the ASC immediately on its creation and the Contractor hereby assigns to the ASC all Contract IP. If requested by the ASC, the Contractor will bring into existence, sign, execute or otherwise deal with any document which may be necessary to enable the vesting of Contract IP in the ASC.

8.2 Existing and independently developed IP

Nothing in clause 8.1 alters the ownership of Intellectual Property rights existing at the Commencement Date or developed independently of the provision of the Services.

8.3 Moral rights

To the extent permitted by applicable laws and for the benefit of the ASC, the Contractor must use its best endeavours to ensure that each of its personnel involved in creating the Contract Material consents in writing to the use of the Contract Material for the Specified Acts, even if the use would otherwise be an infringement of their Moral Rights.

8.4 Warranty and indemnity

- (a) The Contractor warrants that:
 - (i) the Services and the Contract IP (including the use of the Contract Material by the ASC and its officers, employees, agents and contractors) will not infringe the Intellectual Property rights or Moral Rights of any person; and
 - (ii) it has the necessary rights to vest the Contract IP as provided in clause 8.1.
- (b) Without limitation to clause 12.1, the Contractor indemnifies the ASC, its officers, employees, agents and contractors against all loss, liability or expense arising out of or in connection with an allegation or claim by a third party that the Services or the Contract IP (including the use of the Contract Material by the ASC or its officers, employees, agents and contractors) infringes the third party's Intellectual Property rights or Moral Rights.
- (c) For the purposes of this clause 8.4, an infringement of Intellectual Property rights includes unauthorised acts which would, but for the operation of section 163 of the *Patents Act 1990* (Cth), section 96 of the *Designs Act 2003* (Cth), section 183 of the *Copyright Act 1968* (Cth) and section 25 of the *Circuit Layouts Act 1989* (Cth), constitute an infringement.

8.5 Use of ASC name and logo

Unless specifically authorised by the ASC in writing to do so, the Contractor must not use or reproduce any name, logo, trademark or service mark associated with the ASC for any purpose.

9. Confidentiality

9.1 Prohibition and exceptions

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 employees, agents, contractors or advisers requiring the information for the purposes of this agreement;
- (b) with the consent of the other party;
- (c) to the extent it is required to do so by law; or
- (d) by the ASC to its responsible Minister or portfolio Department or in response to a request of the parliament or a parliamentary committee or as otherwise permitted by law.

9.2 Disclosure

When disclosing information under clause 9.1(a) or 9.1(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 in clause 9.1.

9.3 Written undertaking

The ASC may at any time require the Contractor to arrange for its employees, agents, advisers or subcontractors to give a written undertaking relating to non-disclosure of the ASC's confidential information in a form acceptable to the ASC.

10. Privacy

10.1 Application of this clause

This clause 10 applies only where the Contractor deals with personal information when, and for the purpose of, providing Services under this agreement.

10.2 Obligations

The Contractor acknowledges that it is a ‘contracted service provider’ within the meaning of section 6(1) of the *Privacy Act 1988* (Cth) (the **Privacy Act**), and agrees in respect of the provision of Services under this agreement:

- (a) to use or disclose personal information obtained during the course of providing Services under this agreement, only for the purposes of this agreement;
- (b) not to do any act or engage in any practice that would breach an APP contained in Schedule 1 of the Privacy Act, which if done or engaged in by an agency, would be a breach of that APP;
- (c) to carry out and discharge the obligations contained in the APPs as if it were an agency under the Privacy Act;
- (d) to notify individuals whose personal information the Contractor holds, that complaints about acts or practices of the Contractor may be investigated by the Privacy Commissioner who has power to award compensation against the Contractor in appropriate circumstances;
- (e) not to use or disclose personal information or engage in an act or practice that would breach an APP or an APP code which is applicable to the Contractor, unless the activity or practice is engaged in for the purpose of discharging, directly or indirectly, an obligation under this agreement, and that activity or practice is inconsistent with the APP or APP code;
- (f) to disclose in writing to any person who asks, the content of the provisions of this agreement (if any) that are inconsistent with an APP or an APP code binding a party to this agreement;
- (g) to immediately notify the ASC if the Contractor becomes aware of a breach or possible breach of any of the obligations contained in, or referred to in, this clause 10, whether by the Contractor or any subcontractor;
- (h) to comply with any directions, guidelines, determinations or recommendations of the Privacy Commissioner, to the extent that they are not inconsistent with the requirements of this clause 10; and
- (i) to ensure that any employee of the Contractor who is required to deal with personal information for the purposes of this agreement is made aware of the obligations of the Contractor set out in this clause 10.

10.3 Subcontracts

The Contractor must ensure that any subcontract entered into for the purpose of fulfilling its obligations under this agreement contains provisions to ensure that the subcontractor has the same awareness and obligations as the Contractor has under this clause 10, including the requirement in relation to subcontracts.

10.4 Indemnity

The Contractor indemnifies the ASC in respect of any loss, liability or expense suffered or incurred by the ASC which arises directly or indirectly from a breach of any of the obligations of the Contractor under this clause 10, or a subcontractor under the subcontract provisions referred to in clause 10.3.

10.5 Definitions

In this clause 10, the terms 'agency', 'Australian Privacy Principles' (APPs), and 'APP code' have the same meaning as they have in section 6(1) of the Privacy Act, and 'personal information', which also has the meaning it has in section 6(1) of the Privacy Act, means:

'information or an opinion about an identified individual, or an individual who is reasonable identifiable:

- (a) whether the information or opinion is true or not; and
- (b) whether the information or opinion is recorded in a material form or not.'

11. Work health and safety

11.1 WHS legislative requirements

- (a) The Contractor must ensure that the work conducted by the Contractor and any of the Contractor's workers in connection with the Services, or otherwise in connection with this agreement, complies with all applicable legislative requirements, standards and policies, and requirements of this agreement, that relate to the health and safety of the Contractor, the Contractor's workers, the ASC's workers and third parties.
- (b) The Contractor must comply with its obligations under any applicable WHS law, and must ensure, so far as is reasonably practicable, that its officers (as defined by applicable WHS law) and workers comply with their obligations under applicable WHS law.
- (c) The other provisions of this clause 11 do not limit this clause 11.1.

11.2 Contractor's primary duty of care

- (a) The Contractor must ensure, so far as is reasonably practicable, the health and safety of:
 - (i) workers engaged, or caused to be engaged, by the Contractor; and
 - (ii) workers whose activities in carrying out work are influenced or directed by the Contractor,while the workers are at work in connection with the Services or otherwise in connection with this agreement.
- (b) The Contractor must ensure, so far as is reasonably practicable, that the health and safety of other persons (including the ASC's workers) is not put at risk from work carried out in connection with the Services or otherwise in connection with this agreement.

11.3 Consultation, co-operation, co-ordination

The Contractor must consult, co-operate and co-ordinate with the ASC in relation to the Contractor's work health and safety duties.

11.4 Reasonable assistance to the ASC

- (a) Without limiting this agreement, the Contractor must, 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 WHS Act) to comply with the duties imposed on the ASC and its officers under the WHS Act.

- (b) The Contractor must give all reasonable assistance to the ASC to assist the ASC in consulting with workers who carry out work for the ASC (including, but not limited to, the Contractor's workers) who are, or are likely to be, directly affected by a matter relating to work health and safety.

11.5 ASC may give directions

The ASC may direct the Contractor to take specified measures in relation to the Contractor's work in connection with the Services, or otherwise in connection with this agreement, 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 Contractor must comply with the direction. The Contractor is not entitled to an adjustment to the fee described in Schedule 2, or to be reimbursed for any additional costs, expenses or taxes, merely because of compliance with the direction.

11.6 Notifiable Incidents

- (a) If an event occurs in relation to the Contractor's work in connection with the Services or otherwise in connection with this agreement, that leads, or could lead, to the death of, or an injury or illness to, a person (**Notifiable Incident**), the Contractor must:
 - (i) immediately report the matter to the ASC, including all relevant details that are known to the Contractor;
 - (ii) as soon as possible after the Notifiable Incident, investigate the Notifiable Incident to determine, as far as it can reasonably be done:
 - (A) its cause; and
 - (B) what adverse effects (if any) it will have on the Contractor's work under this agreement, including adverse effects on risks to health and safety;
 - (iii) as soon as possible after the Notifiable Incident, take all reasonable steps to remedy any effects of the Notifiable Incident on health and safety;
 - (iv) as soon as possible after the Notifiable Incident, take all reasonable steps (including by instituting procedures and systems) to ensure that an event or circumstance of the kind that led to the Notifiable Incident does not recur;
 - (v) within 5 Business Days after the Notifiable Incident, give the ASC a written report giving further details of the Notifiable Incident, including the results of the investigations required by clause 11.6(a)(ii) and a statement of the steps the Contractor has taken or that the Contractor proposes to take as required by clauses 11.6(a)(iii) and (iv); and
 - (vi) within 3 months after the Notifiable Incident, give the ASC a written report giving full details of its actions in relation to the Notifiable Incident.

The Contractor's obligations under this clause 11.6 are in addition to any reporting obligation that the Contractor has under any applicable legislation.

- (b) The Contractor must fully co-operate, at its own cost, with any investigation by any government agency (including Comcare) with respect to a Notifiable Incident, including parliamentary inquiries, boards of inquiry and coroner's investigations.

11.7 Subcontracts

Without limitation to clause 4.8, the Contractor must not enter into any subcontract for the purpose of directly or indirectly fulfilling its obligations under this agreement unless such a

subcontract obliges the subcontractor to comply with equivalent provisions to those contained in this clause 11.

11.8 Definitions

- (a) In this clause 11:
 - (i) **applicable WHS law** means any applicable occupational health and safety law, including any corresponding WHS law (as defined in section 4 of the WHS Act);
 - (ii) **Notifiable Incident** has the meaning given to it in clause 11.6(a); and
 - (iii) **WHS Act** means the *Work Health and Safety Act 2011* (Cth).
- (b) A word or expression in this clause 11 that is:
 - (i) used or defined in an applicable WHS law; and
 - (ii) not otherwise defined in this clause 11 or elsewhere in this agreement,has, for the purposes of this clause 11, the meaning given to it under the applicable WHS law.

12. Indemnity and insurance

12.1 Indemnity

The Contractor indemnifies the ASC, its officers, employees, agents and contractors against all claims, damages, costs, losses, liabilities and expenses (on a solicitor and own client basis and whether incurred by or awarded against the ASC, its officers, employees, contractors or agents) arising out of or in connection with:

- (a) any breach of this agreement by the Contractor, including any breach of warranty and any breach in respect of which the ASC exercises a right to terminate this agreement; or
- (b) any wrongful, unlawful or negligent act or omission of the Contractor, its officers, employees, agents or contractors,

except to the extent that the claim, damages, cost, loss, liability or expense is directly attributable to the ASC breaching this agreement or the wrongful, unlawful or negligent act or omission of the ASC, its officers, employees, agents or contractors (other than the Contractor). This indemnity is a continuing obligation, separate and independent from the other obligations of the Contractor. It is not necessary for the ASC to incur expense or make payment before enforcing this indemnity.

The indemnity in this clause 12 does not apply to any claim, damages, cost, loss, liability or expense for which the Contractor's liability is limited by a scheme operating under Schedule 4 of the *Civil Law (Wrongs) Act 2002* (ACT), or any corresponding State, Territory or Commonwealth legislation, that limits the civil liability of members of particular professions arising from the performance of their professional services, where the Contractor is a member of that scheme.

12.2 Insurance

In connection with the performance of this agreement, the Contractor must have and maintain valid and enforceable insurance policies for:

- (a) professional indemnity in respect of liability in relation to the provision of the Services, which must provide coverage for at least \$10 million in respect of each occurrence, and for a period of at least 7 years following the expiry or termination of this agreement the Contractor must either continue to maintain such insurance or have adequate run-off cover in relation to such liability;

- (b) public liability, which must provide coverage for at least \$10 million in respect of each occurrence;
- (c) workers' compensation, as required by law; and
- (d) any other insurance relevant to the performance of its obligations.

12.3 Evidence of insurance

The Contractor must give evidence of the insurance required under this clause if and when requested by the ASC.

13. Termination and reduction

13.1 Termination for breach or insolvency

- (a) The ASC may terminate this agreement with immediate effect by giving notice to the Contractor if:
 - (i) the Contractor breaches a material provision of this agreement where that breach is not capable of remedy; or
 - (ii) the Contractor breaches any provision of this agreement and fails to remedy the breach within 14 days after receipt of a notice from the ASC requiring it to remedy the breach; or
 - (iii) an event specified in clause 13.1(b) happens to the Contractor.
- (b) The Contractor must notify the ASC immediately if:
 - (i) the Contractor ceases to carry on business;
 - (ii) the Contractor ceases to be able to pay its debts as they become due;
 - (iii) where the Contractor is a company, the Contractor enters into liquidation or has a controller or managing controller or liquidator or administrator appointed;
 - (iv) where the Contractor is a natural person, the Contractor is declared bankrupt or assigns his or her estate for the benefit of creditors; or
 - (v) where the Contractor is a partnership, any step is taken to dissolve that partnership.

In this clause 13.1(b), '**controller**', '**managing controller**' and '**administrator**' have the same meanings as in the *Corporations Act 2001* (Cth).

13.2 Termination and reduction for convenience

- (a) The ASC may at any time, by notice to the Contractor, terminate this agreement or reduce the scope of the Services.
- (b) Upon receipt of a notice of termination or reduction the Contractor must:
 - (i) stop work as specified in the notice;
 - (ii) take all available steps to minimise loss resulting from that termination and to protect Contract IP; and
 - (iii) continue work on any part of the Services not affected by the notice.
- (c) If the ASC terminates this agreement under this clause 13.2, the ASC will only be liable for:

- (i) payment under clause 5 for Services rendered before the effective date of termination; and
 - (ii) subject to clause 13.2(d), any reasonable costs in respect of unavoidable expenses incurred by the Contractor that are directly attributable to the termination, provided that the expenses are substantiated to the ASC's reasonable satisfaction.
- (d) The ASC is not liable to pay compensation under clause 13.2(c)(ii) in an amount which would, in addition to any amounts paid or due, or becoming due, to the Contractor under this agreement, exceed the total fees that would otherwise have been payable under this agreement.
- (e) For the avoidance of doubt, in the event of any termination or reduction by the ASC under this clause 13.2, the Contractor is not entitled to compensation for loss of prospective profits.
- (f) If the scope of the Services is reduced, the ASC's liability to pay the fees and any expenses abates in accordance with the reduction in the Services.

13.3 Termination does not affect accrued rights

Termination of this agreement does not affect any accrued rights or remedies of a party.

14. Notice

14.1 Address details

Each party's address and email address are as specified in the Details. Either party may change such details by written notice to the other party.

14.2 Giving of notices

A party giving notice or notifying under this agreement must do so in writing:

- (a) directed to the other party's Representative; and
- (b) hand delivered or sent by pre-paid post or email to the other party's address or email address as the case requires.

14.3 Receipt of notice

A notice given in accordance with clause 14.2 is taken to be received:

- (a) if hand delivered, on delivery;
- (b) if sent by pre-paid post, 3 days after the date of posting; or
- (c) if sent by email, at the time that would be the time of receipt under the *Electronic Transactions Act 1999*.

15. Miscellaneous

15.1 Relationship of the parties

The parties agree that:

- (a) nothing contained in this agreement creates or constitutes a relationship of employment, agency or partnership between the parties;

- (b) except as otherwise specifically provided in this agreement, a party does not have any authority or power to act for, or to create or assume any responsibility or obligation on behalf of, the other party; and
- (c) each party must not represent itself, and must ensure that its officers, employees, agents and subcontractors do not represent themselves, as being an officer, employee, partner or agent of the other party, or as otherwise able to bind or represent the other party.

15.2 Assignment and novation

The Contractor must not assign or novate this agreement without the prior written consent of the ASC.

15.3 Approvals and consents

Except where this agreement expressly states otherwise, a party may, in its discretion, give conditionally or unconditionally or withhold any approval or consent under this agreement.

15.4 Variations

No agreement or understanding varying or extending this agreement is legally binding upon either party unless the agreement or understanding is in writing and signed by both parties.

15.5 Costs

Each party must pay its own costs of negotiating, preparing and executing this agreement.

15.6 Survival

The following clauses survive the expiry or termination of this agreement:

- (a) clause 4.10 (Obligations on expiry or termination);
- (b) clause 7 (Record-keeping and access);
- (c) clause 8 (Intellectual property);
- (d) clause 9 (Confidentiality);
- (e) clause 10 (Privacy); and
- (f) clause 12 (Indemnity and insurance).

Any other provision of this agreement that by its nature is intended to survive the expiry or termination of this agreement survives the expiry or termination of this agreement.

15.7 No merger

The rights and obligations of the parties under this agreement do not merge on completion of any transaction contemplated by this agreement.

15.8 Entire agreement

This agreement constitutes the entire agreement between the parties in connection with its subject matter and supersedes all previous agreements or understandings between the parties in connection with its subject matter.

15.9 Further action

Each party must do, at its own expense, everything reasonably necessary (including executing documents) to give full effect to this agreement and any transaction contemplated by it.

15.10 Severability

A term or part of a term of this agreement that is illegal or unenforceable may be severed from the agreement and the remaining terms or parts of the term of the agreement continue in force.

15.11 Waiver

A party does not waive a right, power or remedy if it fails to exercise or delays in exercising the right, power or remedy. A single or partial exercise of a right, power or remedy does not prevent another or further exercise of that or another right, power or remedy. A waiver of a right, power or remedy must be in writing and signed by the party giving the waiver.

15.12 Governing law and jurisdiction

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.

15.13 Counterparts

This agreement may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes an original of this agreement, all of which together constitute one agreement.

Schedule 1- Services

Note to Potential Suppliers: This schedule will be developed based on the Statement of Requirements contained in the Approach to Market document (RFT, RFQ, RFP etc) and the response submitted by the Preferred Supplier, if any.

1. Project Background and Overview

The Australian Sports Commission (ASC) is seeking to.....

<Insert detail as required>

2. Required Services

2.1 Description of Services

In performing the Services the Contractor must.....

<Insert detail as required>

2.2 Performance Standards

<Insert detail as required>

3. Deliverables

The Contractor must provide the following deliverables:

<Insert detail as required>

4. Schedule of activities/ Milestone Delivery Dates

The Contractor will deliver the Services to the ASC in accordance with the Milestone delivery dates table below.

No	Deliverable/ Milestone Requirement	Timeframe

5. Specified Personnel

The Contractor agrees the following Specified Personnel will deliver the Services to the ASC in accordance with the following table, including the estimated level of effort, and in accordance with the provisions of the agreement (specifically clauses 4.3(a) and 4.7).

Name	Position	Role	Estimated Level of Effort (Days*)
<Name 1>	<Position 1 >	<Role 1>	<Effort>
<Name 2>	<Position 2>	<Role 2>	<Effort>
<Name 3>	<Position 3>	<Role 3>	<Effort>
<Name 4>	<Position 4>	<Role 4>	<Effort>

* based on a work day of 7.5 hours

6. Communications and Reporting

6.1 Reporting

The Contractor must provide the following reports to the ASC:

Report	Content	Frequency
<Insert title of report>	<Outline high level contents of the report>	<Insert the frequency of the report>

At a minimum, the ASC expects informal <insert period> reporting by the Contractor on the progress of the Services.

6.2 Communications

The Contractor will work closely with the ASC Representative (specified below) <Insert details of other relevant individuals/teams (eg “the ASC Project team and individuals from work areas associated with the Service delivery”)> in relation to performance of the Services.

7. ASC Assistance

To enable the Contractor to effectively deliver the Services required, the ASC will provide the Contractor:

<To be completed if applicable>

Schedule 2 - Payments

Note to Potential Suppliers: This schedule will be developed based on the Statement of Requirements contained in the Approach to Market document (RFT, RFQ, RFP etc) and the response submitted by the Preferred Supplier, if any.

All Figures listed in this Schedule 2 are GST Inclusive unless otherwise advised.

1. Summary of Payments

Note to Potential Suppliers: The following text will be used for contracts relating to Goods or Services that are paid by the achievement of Milestones or in Instalments.

The maximum amount payable to the Contractor (including all costs, expenses taxes and charges) for the delivery of the Services is **<\$XXXXXX>** as set out below. This amount will be paid by the ASC as set out below on receipt of a correctly rendered tax invoice.

Milestone	<Milestone/Description>	Date	GST Exclusive	GST	GST Inclusive
1	<Description 1>		<\$0,000.00>	<\$0,000.00>	<\$0,000.00>
2	<Description 2>		<\$0,000.00>	<\$0,000.00>	<\$0,000.00>
3	<Description 3>		<\$0,000.00>	<\$0,000.00>	<\$0,000.00>
4	<Description 4>		<\$0,000.00>	<\$0,000.00>	<\$0,000.00>
5	<Description 5>		<\$0,000.00>	<\$0,000.00>	<\$0,000.00>
6	<Description 6>		<\$0,000.00>	<\$0,000.00>	<\$0,000.00>
Service Fees			<\$0,000.00>	<\$0,000.00>	<\$0,000.00>
Approved expenses			<\$0,000.00>	<\$0,000.00>	<\$0,000.00>
Total			<\$0,000.00>	<\$0,000.00>	<\$0,000.00>

The amount due for each Milestone/Instalment will only be paid by the ASC upon satisfactory completion of the **<Milestone requirements or service requirements>**, as accepted by the ASC, and only upon the receipt of a correctly rendered tax invoice.

Note to Potential Suppliers: The following text will be used for contracts relating Services that are paid on a periodic basis linked to the level of effort expended by the Supplier.

The maximum amount payable to the Contractor (including all costs, expenses taxes and charges) for the delivery of the Services is <XXXXXX>, calculated on the basis of the rates as set out below. The fees will be paid by the ASC <insert period> in arrears on receipt of a correctly rendered tax invoice.

Personnel	Role	Staff Level	<Hourly/ Daily> Rate (GST Inc.)	Maximum Level of Effort (Days)	Total
				<Sub total>	
				<Approved expenses>	
				<Total (GST Exc.)>	
				<Total (GST Inc.)>	

Upon request from the ASC, any claim of payments for services performed are to be supported by detailed documentation, which must include as a minimum:

- a) The nature of the line item (labour or expenses);
- b) Personnel name, work date, hours performed and tasks completed (for labour); and
- c) If applicable, expense category, date incurred, details of expense and justification.

The Contractor will only be paid for the Services with reasonable demonstration of Level of Effort expended against original estimated resource and effort breakdown.

The parties acknowledge that should the ASC require a change to the scope of the Services, the fees listed for the Services may be varied as agreed in writing by both parties.

If the ASC requires additional work outside of the scope of the Services, but related to the project as a whole, the ASC may seek a further quote from the Contractor for such work. The price quoted by the Contractor must be based on the <hourly/daily> rates (if any) identified above.

2. Expenses

With the exception of the agreed expenses listed below, the ASC will not pay any travel, accommodation, administration, or other expenses unless they have been pre-approved in writing by the ASC.

For the travel, accommodation, administration or other expenses agreed and listed below, the Contractor is not to exceed the amount of <\$000.00> (GST Inclusive) under this agreement.

2.1 Travel

The Contractor will be reimbursed for travel and related accommodation where they are pre-approved in writing by the ASC. The Contractor must provide reasonable justification (to the satisfaction of the

ASC) for such expenditure and submit a correctly rendered invoice for the expenses. The ASC will reimburse the Contractor (not exceeding the approved amount), in accordance with the invoicing procedures set out in this Schedule.

The Contractor must ensure when incurring travel expenditure that:

- a) Airfares are booked in accordance with the principle of Lowest Practical Fares and travel class which reflects the practical needs of the Service delivery;
- b) Accommodation and meal expenses do not exceed the reasonable allowance rates as determined by the Australian Taxation Office for the financial year in which the expense is incurred; and
- c) Co-ordination of activities and provision of resources that minimises to the best extent possible, travel costs above and beyond that is necessarily required for the provision of services.

Indicative Travel Costs (Where relevant)

For estimation purposes only, the following costs have been utilised in the determination of authorised travel expenditure and reimbursement of costs incurred:

- 1) Return flights - <\$0>
- 2) 1 Nights' accommodation - <\$0>
- 3) 1 Nights' sundry expenses - <\$0>
- 4) Taxi's - ,<\$0> per trip

Activity Title	No of Trips	Resources Required to Travel	Estimated Travel Costs
<Activity 1>	<1>	<Name 1>	<\$000.00>
<Activity 3>	<2>	<Name 2>	<\$000.00>
<Activity 5>	<3>	<Name 3>	<\$000.00>
Travel & Administration			<\$000.00>

2.2 <Insert other expense type requirements if appropriate>

3. Invoices

The Contractor will submit correctly rendered tax invoices for the fees and expenses (if any) payable by the ASC. Invoices must be submitted electronically as follows:

<ASC Official Name>

<ASC Branch>

Email: <ASC.Official>@ausport.gov.au

Signing page

EXECUTED as an agreement

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

Signature of witness

Name of witness (print)

Dated



Signature of authorised representative

Name of authorised representative (print)



Signed for and on behalf of **<insert Contractor's full name>** by a duly authorised representative

Signature of witness

Name of witness (print)

Dated



Signature of authorised representative

Name of authorised representative (print)

