

Sponsorship – Agreed terms

1. Definitions and interpretation

1.1 Definitions

In this Agreement, unless the context otherwise requires or a contrary intention appears:

Agreement means this Sponsorship Agreement.

Confidential Information means details of the Sponsorship Funds, this Agreement and all other confidential or commercially sensitive information provided by VLSB to the Recipient in the context of this Agreement or the Sponsorship Activity.

GST has the meaning given in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

GST Law means *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

Law means any law operating in Victoria under common law, equity or statute and including any applicable exchange listing rules, all regulations, by-laws, approvals and relevant requirements of any Commonwealth, State or local authority;

Personnel of a party includes the officers, employees, agents, contractors and sub-contractors of that party;

Required Insurances means each of the insurances, if any, set out in Item 1 of the Sponsorship Details;

Sponsorship Activity means the activity specified in Item 1 of the Sponsorship Details;

Sponsorship Benefits means the benefits specified in Item 3 of the Sponsorship Details;

Sponsorship Details means the details set out in the Schedule;

Sponsorship Funds means the amount specified in Item 1 of the Sponsorship Details;

Victorian Public Entity means:

- (a) a public sector body as defined in section 4 of the *Public Administration Act 2004* (Vic);
- (b) a statutory corporation, a State owned company, a State body or a State business corporation as those terms are defined in the *State Owned Enterprises Act 1992* (Vic);
- (c) a "Council" as defined in the *Local Government Act 1989* (Vic); or
- (d) an entity which receives the majority of its funding from any of the entities listed in paragraphs (a) to (c) or any entity under the control of any of the entities listed in paragraphs (a) to (c);

VLSB Branding has the meaning given in clause 7(a).

1.2 Interpretation

Unless expressed to the contrary, in this Agreement:

- (a) words in the singular include the plural and vice versa;
 - (b) any gender includes the other genders;
 - (c) if a word or phrase is defined its other grammatical forms have corresponding meanings;
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- (d) 'includes' and 'including' are not words of limitation;
- (e) no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it;
- (f) the obligations of the Recipient, if more than one person, under this Agreement are joint and several and each person constituting the Recipient acknowledges and agrees that it will be causally responsible for the acts and omissions, including breaches of this Agreement, of the other as if those acts or omissions were its own;
- (g) the rights of the Recipient, if more than one person, under this Agreement, including the right to payment, jointly benefit each person constituting the Recipient (and not severally or jointly and severally); and
- (h) a reference to:
 - (i) a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority;
 - (ii) a person includes the person's legal personal representatives, successors, assigns and persons substituted by novation;
 - (iii) any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision; and
 - (iv) a party or parties is a reference to VLSB and the Recipient (as the case requires).

2. Use of Sponsorship Funds

- (a) VLSB agrees to sponsor the Sponsorship Activity by providing the Sponsorship Funds to the Recipient.
- (b) In consideration of VLSB providing the Sponsorship Funds, the Recipient agrees to be bound by this Agreement, perform the Sponsorship Activity and provide the Sponsorship Benefits.
- (c) The Sponsorship Funds must only be used for the Sponsorship Activity, unless otherwise agreed in writing by VLSB.
- (d) In carrying out the Sponsorship Activity, the Recipient and its Personnel must not take any action or engage in any conduct which may bring the Sponsorship Activity, VLSB into disrepute.

3. Payment of Sponsorship Funds

- (a) VLSB will pay the Sponsorship Funds to the Recipient, at the times specified in Item 2 of the Sponsorship Details, within 30 days of receipt of all of the required documents and evidence as specified in the Sponsorship Details.
- (b) VLSB may, in its absolute discretion, extend the due date for submission of required documents and evidence specified in Item 2 of the Sponsorship Details.

4. No further assistance

- (a) The Sponsorship Funds are provided on the basis that the balance of funds (if any) required to conduct the Sponsorship Activity will be secured by the Recipient.
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- (b) Nothing contained in this Agreement is to be construed as creating any obligation, commitment or undertaking by VLSB to provide additional or further funding or assistance beyond the Sponsorship Funds.

5. Benefits of sponsorship

The Recipient will provide to VLSB the benefits described in Item 3 of the Sponsorship Details.

6. Cancellation

- (a) The Recipient is responsible for the conduct of the Sponsorship Activity. The Recipient must advise VLSB immediately in writing if the Sponsorship Activity is, or is likely to be, cancelled, terminated early or postponed, together with the reason for the cancellation, early termination or postponement.
- (b) In the event of cancellation, early termination or postponement, VLSB may, by written notice, require the Recipient to refund the whole or part of the Sponsorship Funds.
- (c) In determining the amount of any refund under clause 6(b), VLSB may, in its absolute discretion, take into account any costs or expenses properly incurred by the Recipient for the Sponsorship Activity up to date of cancellation, termination or postponement, subject to provision by the Recipient to VLSB of evidence to its reasonable satisfaction of those costs or expenses.

7. Marketing material for the Sponsorship Activity

- (a) The Recipient must use any VLSB+C Branding as directed by VLSB or as otherwise described in Item 4 of the Sponsorship Details (**VLSB+C Branding**), in good faith and in such a manner as to enhance and promote the goodwill and reputation of VLSB.
- (b) The Recipient must not use the VLSB+C Branding in association with or in relation to any activity which adversely or detrimentally affects, or is likely to adversely or detrimentally affect, the goodwill or reputation of VLSB.
- (c) When required by VLSB, the Recipient will ensure that all promotional materials in relation to the Sponsorship Activity are submitted to and approved by VLSB in advance of public release.
- (d) Sponsorship is not a general endorsement of the Recipient performing the Sponsorship Activity, or of its services or products and the Recipient must not promote or publicise the Sponsorship Activity as such.
- (e) The Recipient must immediately cease and desist using, or otherwise referring to, the VLSB Branding on termination (for any reason) of this Agreement.
- (f) VLSB may in its absolute discretion publicise the Sponsorship Activity in any manner, after the Sponsorship Activity is publicly launched or announced by the Recipient. The Recipient grants to VLSB a non-exclusive, royalty-free licence to use the Recipient's branding (including its name, logo and mark) for the purpose of VLSB publicising the Sponsorship Activity in accordance with this clause 7(f).

8. Licence to use VLSB Branding

- (a) VLSB grants to the Recipient a non-exclusive, non-transferable, royalty-free licence to use VLSB+C Branding for the purpose of the Recipient acknowledging VLSB's sponsorship of the Sponsorship Activity.
 - (b) The Recipient must comply with the VLSB+C brand guidelines provided to the Recipient in Item 4 of the Sponsorship Details or as otherwise updated by
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VLSB from time to time, and any instructions given by VLSB to the Recipient regarding the use of VLSB+C Branding.

9. Relationship between the parties

Neither the Recipient nor any of its Personnel will by reason of this Agreement, be or become an agent of or in the service or employment of VLSB in relation to the Sponsorship Activity or for any other purpose whatsoever and the Recipient will be responsible for all matters requisite as employer or otherwise in relation to such persons.

10. Recipient's Intellectual Property

The Recipient warrants that any intellectual property used by it in connection with the Sponsorship Activity or the reports and any documents and other materials provided by the Recipient to VLSB under this Agreement are the sole property of the Recipient or the Recipient is legally entitled to use that intellectual property.

11. Accounts and audit

- (a) The Recipient must account for the Sponsorship Funds and all Sponsorship Activity expenditure separately from other funds of the Recipient and in accordance with generally accepted accounting principles.
- (b) Upon request, the Recipient must permit VLSB or the Auditor General of Victoria access to accounting records relating to the Sponsorship Activity.

12. Failure to perform

- (a) If:
 - (i) the Recipient breaches this Agreement and fails to rectify that breach within 14 days of being required to do so; or
 - (ii) VLSB is of the reasonable opinion that:
 - (A) the Sponsorship Activity or the preparation for the Sponsorship Activity is not proceeding, or cannot proceed, substantially in the form which had been advised by the Recipient to VLSB prior to the date of this Agreement;
 - (B) the Recipient will not provide to VLSB a benefit described in Item 3 of the Sponsorship Details;
 - (C) the Recipient has engaged or may engage in any conduct which affects or may adversely affect the goodwill or reputation of the Recipient, the Sponsorship Activity, VLSB, a Minister, or the State government;
 - (D) there has been a significant deterioration in the financial circumstances of the Recipient;
 - (E) the Recipient is subject to an insolvency administration;
 - (F) continued association with the Sponsorship Activity, or the Recipient may bring a Minister, VLSB into disrepute; or
 - (G) there may be an actual, potential or perceived conflict of interest in VLSB continuing to make payments under this Agreement,

VLSB may in its absolute discretion do any of the following:

- (iii) withhold any payment due to be made under this Agreement;
 - (iv) require the repayment to VLSB of the whole or part of the Sponsorship Funds as may be determined by VLSB; and
 - (v) by written notice terminate this Agreement.
- (b) A notice under clause 12(a)(v) may be given at any time, except in the case of termination under clause 12(a)(ii)(E) where the Recipient is a company and a stay period applies under Chapter 5 of the *Corporations Act 2001* (Cth). In such a case, notice of termination may be given at the expiry or lifting of that stay period.

13. Indemnity and release

13.1 Indemnity

The Recipient indemnifies VLSB and each of its Personnel against any:

- (a) cost or liability incurred by VLSB;
- (b) loss of or damage to VLSB's property; or
- (c) loss or expense incurred by VLSB in dealing with any claim against VLSB, including legal costs and expenses on an indemnity basis and the cost of time spent, resources used, or disbursements paid by VLSB,

arising from:

- (d) any act or omission by the Recipient or any of its Personnel in connection with the Sponsorship Activity or this Agreement;
- (e) any breach by the Recipient of this Agreement; or
- (f) the use by VLSB of the reports or other material provided under this Agreement, including any claims by third parties about the ownership or right to use intellectual property in the reports or material,

except to the extent that any wilful, unlawful or negligent act or omission of VLSB or its Personnel contributed to such cost, expense, loss, damage or liability.

13.2 Release

The Recipient releases VLSB and its Personnel from any claim, loss or liability incurred or suffered by VLSB in connection with this Agreement, except to the extent that any wilful, unlawful or negligent act or omission of VLSB or its Personnel contributed to such claim, loss or liability.

14. Insurance

The Recipient must obtain and maintain each of the Required Insurances.

15. Conflict of interest

- (a) The Recipient warrants to VLSB that it does not, and will ensure that its Personnel do not, hold any office or possess any property, are not engaged in any business, trade or calling and do not have any obligations by virtue of any contract whereby, directly or indirectly, duties or interests are or might be created in conflict with, or might appear to be created in conflict with, their duties and interests under this Agreement.
 - (b) The Recipient must promptly inform VLSB of any matter which may give rise to an actual or potential conflict of interest and comply with any reasonable directions given by VLSB in terms of dealing with that conflict.
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- (c) The Recipient acknowledges and agrees that failure to comply with this clause 15 will constitute a breach of a fundamental term of this Agreement.

16. Compliance with Law, standards and policy

- (a) The Recipient must carry out the Activity in a safe and professional manner and:
- (i) in a manner that ensures the safety of persons and property.
 - (ii) in accordance with all laws, codes and standards, and VLSB's lawful requirements or policies as notified to the Recipient in writing from time to time. Instruments applicable to the activity include occupational, health and safety laws and standards, and the Code of Conduct for Victorian Public Sector Employees 2015 (if relevant).
 - (iii) on request, provide evidence of compliance with this clause.
- (b) The Recipient must use its best endeavours to have systems, equipment and/or procedures in place to minimise safety impacts and immediately rectify any breach of any standard or procedure to VLSB's satisfaction.
- (i) The Recipient must ensure that any information or representation provided by it about its health and safety in any application document relating to the Activity is accurate and comply with any such practices in the performance of this Agreement.
 - (ii) The Recipient must not do or fail to do anything that may damage or bring into disrepute, or attract public or media attention which may be detrimental to, VLSB's reputation or messages.

17. Regulatory or inspectorial functions of VLSB

- (a) The Recipient acknowledges that this Agreement cannot fetter, limit or influence in anyway the manner in which VLSB carries out its statutory regulatory or inspectorial functions.
- (b) If VLSB believes, in its absolute discretion, that its obligations under this Agreement conflict with its statutory regulatory or inspectorial functions, VLSB may by written notice terminate this Agreement.

18. Working with children

Where the Sponsorship Activity will involve interaction with children, the Recipient must:

- (a) comply, and ensure that all its Personnel comply, with the *Child Wellbeing and Safety Act 2005 (Vic)* and the *Worker Screening Act 2020 (Vic)*;
- (b) ensure that prior to any Personnel commencing direct and unsupervised work with children in connection with the Sponsorship Activity:
 - (i) the relevant individual passes a Working With Children check (WWCC); and
 - (ii) the Recipient is in possession of a copy of the relevant individual's assessment notice;
- (c) if the Recipient receives a negative notice regarding Sponsorship Activity Personnel, the Recipient must immediately and permanently remove that person from any role that usually involves direct and unsupervised contact with a child;
- (d) retain copies of all WWCC assessment notices it receives; and

- (e) if the Recipient is in breach of this clause, immediately on becoming aware of the breach:
 - (i) notify VLSB in writing; and
 - (ii) take steps to rectify the breach.

19. Confidentiality

The Recipient must not disclose or permit the disclosure of any of VLSB's Confidential Information without written permission from VLSB, except:

- (a) where required under this Agreement;
- (b) to the Recipient's legal and financial advisers, on a confidential basis;
- (c) where the information disclosed is already in the public domain other than due to a breach of this Agreement; or
- (d) where the disclosure is required by Law.

20. Privacy and data protection

- (a) For the purposes of this clause 20, Personal Information and public sector data have the meanings given to them in the *Privacy and Data Protection Act 2014 (Vic)* (**Privacy Act**).
- (b) The Recipient must, and must ensure that their Personnel and subcontractors comply with:
 - (i) the Information Privacy Principles set out in the Privacy Act;
 - (ii) any privacy statement issued by VLSB from time to time (as published on its website);
 - (iii) protective data security standards (including the Victorian Protective Data Security Framework established under Part 4 of the Privacy Act); and
 - (iv) any other applicable laws, principles, policies and codes dealing with the collection, holding, use, disclosure, storage, management, transfer or granting of access rights to Personal Information and public sector data, in relation to any Personal Information and public sector data collected, held, used, managed, disclosed, transferred or stored in relation to this Agreement and in the same way and to the same extent as VLSB would have been bound had the relevant act been done by VLSB (where applicable).

21. GST, duties and taxes

- (a) If any supply made under this agreement is taxable under the GST Law (as defined in *A New Tax System (Goods and Services Tax) Act 1999*), the recipient of that supply will pay to the supplier, in addition to any amount specified in this agreement, the GST applicable to that supply imposed by or under the GST Law.
 - (b) Any amounts payable by the recipient to the supplier under the previous paragraph will be paid at the same time as any amount due under this agreement, provided that the supplier provides to the recipient a tax invoice in the form required under the GST Law.
 - (c) The Recipient must pay any stamp duty and any other taxes or imposts which may be payable in connection with this Agreement
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22. General

22.1 Entire agreement

This Agreement contains the entire agreement between the parties in connection with its subject matter. It supersedes all previous agreements or understandings between the parties in connection with its subject matter.

22.2 Further assurances

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

22.3 Counterparts

This Agreement may be executed in counterparts. All executed counterparts are taken to constitute one document.

22.4 Electronic execution

Each party consents to the other party executing this Agreement using one or more of the following methods:

- (a) the insertion in graphic form of a visual representation of the signature of the authorised signatory; or
- (b) the application of a digital signature using a recognised digital signature standard that meets the Victorian Government's electronic approval standard.

22.5 Governing law

This Agreement is governed by and is to be construed in accordance with the laws of the State of Victoria. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of the State of Victoria and to any courts that may hear appeals from those courts in respect of any proceedings in connection with this Agreement and waives any right to object to any proceedings being brought in those courts.

22.6 Time of the essence

Time is of the essence in relation to the performance of this Agreement.

22.7 Variation

This Agreement may only be amended or replaced in writing executed by each party.

22.8 Waiver

A waiver of any right, power or remedy under this Agreement must be in writing and signed by the party granting it. The fact that a party fails to do, or delays in doing, something the party is entitled to do under this Agreement does not amount to a waiver.

22.9 Severability

Any provision of this Agreement which is invalid or unenforceable is to be read down, if possible, so as to be valid and enforceable, and, if that is not possible, the provision will, to the extent that it is capable, be severed to the extent of the invalidity or unenforceability, without affecting the remaining provisions.

22.10 Set off

VLSB may set off against any sum owing to the Recipient under this Agreement any amount then owing by the Recipient to VLSB.

22.11 Assignment

- (a) Subject to clause 22.11(b), a party may not assign any right under this Agreement without the prior written consent of the other party. The Recipient will be responsible for acts and omissions of any assignee.
- (b) VLSB may, by notice in writing to the Recipient, assign its rights, transfer its obligations or novate this Agreement to any Victorian Public Entity in the event of any State government restructure or other reorganisation or change in policy.

22.12 Warranty

Each party warrants that:

- (a) it has the power and authority to enter into and perform its obligations under this Agreement; and
- (b) this Agreement will be enforceable against each party in accordance with its terms.

23. Survival

Clauses 1, 6(b), 7, 10, 11, 12, 13, 19, 22 and 23 of this Agreement survive the termination or expiry of this Agreement and may be enforced at any time.
