

## Sports Voucher Provider Terms and Conditions

### Definitions

In this Agreement:

1. **"ANTS(GST) Act"** means the *A New Tax System (Goods and Services Tax) Act 1999 (Cwth)*;
2. **"Claim"** means a collection of one or more Subsidies
3. **"Eligible Child"** means a child which meets the eligibility criteria set out in clause 18;
4. **"Eligible Provider"** means an entity which meets the criteria set out in clause 17;
5. **"GST"** has the meaning provided under the *ANTS(GST) Act*;
6. **"GST Rate"** has the meaning provided under the *ANTS(GST) Act*;
7. **"Membership"** means:
  - a. being a member of an Eligible Provider and participating in sporting or dancing activities as part of that membership; or
  - b. where an Eligible Child otherwise participates in sporting or dancing activities provided by an Eligible Provider for a fee even if they do not register as a member;
8. **"Minister"** means the Minister for Recreation, Sport and Racing, represented under this Program by the Office for Recreation, Sport and Racing;
9. **"Subsidy"** means a payment (of a value and paid in a manner determined by the Minister) per Eligible Child as a partial Subsidy to the Eligible Child of the cost of that child's membership with you;
10. **"Personnel"** means your officers, employees, members, volunteers, associates, agents, contractors or sub-contractors (however referred to) or any other person connected to, involved with or representing you and your sporting or dancing activities as an organisation or an entity providing sporting or dancing memberships to Eligible Children;
11. **"Program"** means the Government of South Australia's Sports Vouchers program which is being administered and run by the Minister; and
12. **"Taxable Supply"** has the meaning provided under the *ANTS(GST) Act*;
13. **"You"** refers to the legal entity (which could include an incorporated sporting club, sole trader or partnership) which is agreeing to these terms and conditions.

### Formation of Agreement

14. The fact that you meet the eligibility criteria and agree to the terms and conditions set out in this document does not create an Agreement between you and the Minister or oblige the Minister to execute this Agreement or accept your participation in the Program.
15. An Agreement will only be formed on these terms and conditions upon notification by the Minister (or the Office for Recreation, Sport and Racing), which may be provided in the Minister's sole discretion based on criteria set out in this document and any other information deemed relevant by the Minister, that your registration with the Program has been accepted. Where this occurs, a legally binding agreement will exist between you and the Minister.

### Term

16. Subject to clause 17, the Term of this Agreement, commences upon your acceptance of these terms and continues until terminated by either party.

### Provider Eligibility Criteria

17. You warrant that you meet, and will at all times during the Term meet the following eligibility criteria:
  - a. you provide sport or dance memberships to Eligible Children which includes either training sessions, sporting matches or other sporting or dancing activities for participation by Eligible Children which last, and require the participation of the child, for a duration of not less than 8 weeks or as otherwise approved by the Office of Recreation, Sport and Racing;
  - b. you are either
    - i. an association incorporated under the *Associations Incorporation Act 1985 (SA)* or have some other comparable legal status. The Office for Recreation, Sport and Racing may request evidence such as constitution, financial reports, agendas or minutes of meetings, or list of members;
    - ii. another form of legal entity carrying out a for-profit business and registered which holds an Australian Business Number under the *A New Tax System (Australian Business Number) Act 1999 (Cwth)*;
  - c. you and your Personnel at all times during the Term comply with all statutory requirements relating to the protection of children including but not limited to the provisions (as amended from time to time) of:
    - i. the *Children and Young People (Safety) Act 2017 (SA)* and in particular provide a "safe environment for children and young people" by complying with Chapter 8 of that Act;
    - ii. the *Child Safety (Prohibited Persons) Act 2016 (SA)*;
    - iii. the *Children's Protection Regulations 2010 (SA)*; and
      - i. any other documents with which compliance is required thereunder;
  - d. if you are a for-profit sport entity, you are formally affiliated or have an agreement with the relevant state sporting body (being a body either recognised by the Office for Recreation, Sport and Racing, the Australian Sports Commission or affiliated to a national organisation which is recognised by the Australian Sports Commission a current list can be found at [www.orsr.sa.gov.au](http://www.orsr.sa.gov.au) and [www.sportaus.gov.au](http://www.sportaus.gov.au)) for the relevant sport; and the sport for which you provide memberships is a sport recognised by the Australian Sports Commission (a current list can be found at [www.sportaus.gov.au](http://www.sportaus.gov.au)).
  - e. if you are a for-profit dance entity, you are formally affiliated with the relevant peak dance association for the form of dance you provide or you are a member of Recreation South Australia.
  - f. if you are a for-profit or not-for-profit 'learn to swim' provider, you are formally affiliated with one of the following organisations: Swimming South Australia, Recreation South Australia, AUSTSWIM Limited, The Royal Life Saving Society Australia – SA Branch or the Australian Swimming Coaches and Teachers Association (Swim Australia).

### Child Eligibility Criteria

18. Each child for whom you are claiming a Subsidy meets the following criteria:
  - a. the child is aged 5 or is becoming 5 in the calendar year the Subsidy is being claimed for and is still eligible to attend primary school, for the purposes of this agreement this means Reception to Year 7

- (inclusive), even if the school that the child attends has Year 7 in middle or secondary school;
- b. the child resides in South Australia; and
- c. a Subsidy under the Program has not already been paid or applied for (whether by you or any other Eligible Provider) in respect of the child in the calendar year in which you are applying for the Subsidy and the membership applies (only one Subsidy is payable per Eligible Child per calendar year under the Program); and
- d. the child has a membership with you which requires the child to participate in either training sessions, sporting matches or other sporting or dancing activities for a duration of not less than 8 weeks or as otherwise approved by the Office for Recreation, Sport and Racing.

### Membership Fees

19. The purpose of the Subsidy is to allow you to offer Eligible Children a discount on a sporting or dancing membership with you. The membership must:
  - a. be for a sporting or dancing membership and cannot be used to solely reimburse or pay for equipment or for a one-off activity; and
  - b. must be in relation to a sporting or dancing program of a minimum duration of, and require the participation of the Eligible Child for a minimum of 8 weeks or a period otherwise approved by the Office for Recreation, Sport and Racing.
20. The Subsidy will be payable as:
  - a. a payment to you where the Eligible Child has paid their membership fees in full (subject to allowing a discount on account of the Subsidy) at the time that you apply for the Subsidy; or
  - b. a refund to you where the Eligible Child has paid their membership fees in full and did not receive a discount to account for the Subsidy. Where this occurs, you must ensure this payment is made to the Eligible Child and the Minister may request evidence that this refund has been passed onto the child's guardian.
21. You must use the Subsidy to provide the Eligible Child with a discount or refund on membership fees and you must not retain or absorb the Subsidy. For each membership for which a Subsidy is paid by the Minister you must provide the Eligible Child with a discount off their membership or refund to here membership.
22. You must not in any way increase your membership fees or structure your membership fees so that the benefit of the Subsidy is not passed onto the relevant Eligible Child.
23. Where at any time during the Term you increase your membership fees payable by Eligible Children by a percentage greater than the percentage change of the All Groups, Adelaide Consumer Price Index in the year immediately prior to the change in membership fees, you must if requested by the Minister demonstrate the reason for the increase in your membership fees (for example, as a result of any additional cost incurred by you).
24. If, following the provision of information under clause 25, the Minister is not satisfied in its sole discretion that the increase in membership fees is justified, the Minister may require that you repay all Subsidies paid to you in the relevant period and is not require to pay any further Subsidies under this Agreement. Where the Minister exercises its rights under this clause you must not recover any monies repaid to the Minister from Eligible Children.

### Collection of information and privacy

25. For each Eligible Child for whom you are claiming a Subsidy under this Agreement you must:

- a. collect and provide to the Minister (in such format as required by the Minister) the following information:
    - i. the name, date of birth and address of the child;
    - ii. the email address and telephone number of the parent or guardian;
    - iii. confirmation of whether the child has been a member of the club previously;
    - iv. confirmation of whether the child has previously used a Subsidy in the calendar year; and
    - v. the child's Medicare number (or Australian Visa number if the child does not have a Medicare number).
  - b. obtain the express written consent of the Eligible Child's parent or guardian to collect the information set out in clause 25(a) and provide it to the Minister for use by the Minister for the purpose of administering this Agreement and the Program;
  - c. provide confirmation to the Minister (in such form as determined by the Minister) that you have obtained the consent required under clause 25(b); and
  - d. unless otherwise agreed between you and the Eligible Child's guardian, not use the information set out in clause 25(a) for any purpose other than for the purpose of this Agreement.
26. All personal information provided to the Minister under this Agreement will be used and disclosed by the Minister in accordance with the Government of South Australia's Information Privacy Principles Instruction (a copy of which can be found at [www.dpc.sa.gov.au](http://www.dpc.sa.gov.au)).

### Child Safe Environment

27. You warrant and agree that you and your Personnel are solely responsible for maintaining a child safe environment at all times and complying with, and keeping fully informed of any updates to, all legal requirements relating to this and other child protection requirements, whether imposed under this Agreement, by legislation or otherwise at law.
28. The Department for Education will periodically provide a list of all Eligible Providers participating in the Program that have submitted a Child Safe Environment Compliance Statement with the Chief Executive of the Department for Education in accordance with section 114(3) of the *Children and Young People (Safety) Act 2017 (SA)*.
29. If you do not provide a Child Safe Environment Compliance Statement to the Chief Executive of the Department for Education, or cease to be a Child Safe Environment:
  - a. you will be immediately suspended from the Program until such time as you lodge a Child Safe Environment Compliance Statement to the Department for Education and advise the Office for Recreation, Sport and Racing accordingly; and
  - b. the Minister reserves the right to terminate your participation in the Program effective immediately.

### Assessment of Claims

30. A Claim will be assessed by the Office for Recreation, Sport and Racing to determine whether a child is an Eligible Child to receive the Subsidy.
31. Where a child is assessed as not meeting the Eligible Child criteria set out in clause 18, the child will not receive a Subsidy.
32. Despite clause 18(c) the Office for Recreation, Sport and Racing may approve an application for a Subsidy where an Eligible Child has claimed a Subsidy from another Eligible Provider in the same calendar year.
33. The Office for Recreation, Sport and Racing will issue an email notification to you advising whether a Claim or Subsidy has been approved or rejected (including reasons for any rejection).

34. The Office for Recreation, Sport and Racing may also notify parents and/or guardians where their child's Subsidy has been approved.

### Payment of the Funding

35. Where you are eligible for the payment of a Claim under the terms and conditions of this Agreement, this Claim must be applied for and will be paid pursuant to such processes and using such forms as determined by the Minister from time to time.
36. To the extent that any payment of Claims under this Agreement amounts to a payment for a Taxable Supply:
- the Subsidy is exclusive of GST;
  - you warrant that you are registered for GST (and will immediately notify the Minister if you cease to be registered) and that your ABN is provided to the Minister upon your acceptance of these terms and conditions;
  - the Office for Recreation, Sport and Racing is registered for GST and their ABN is 81 213 956 472;
  - you agree that you will not issue tax invoices for the Taxable Supply;
  - you permit the Minister to create and issue recipient created tax invoices for the Taxable Supply; and
  - in addition to the Subsidy the Minister will pay you an additional amount to account for the GST payable on the Taxable Supply which will be determined by multiplying the Subsidy by the GST Rate.

### Repayment of Funding

37. If at any time it becomes apparent that a Subsidy has been paid on a Claim and:
- the child was not an Eligible Child;
  - you are not an Eligible Provider;
  - you have in any way failed to comply with the terms and conditions of this Agreement in relation to the Subsidy,
- then, without in any way derogating from any other right of the Minister under this Agreement or at law, the Minister may issue a notice in writing requesting that you repay the payment in full by a period set out in the notice.

### Termination and Suspension

38. You may terminate this Agreement and withdraw from the Program at any time by notice in writing to the Minister, once notice has been received you will be removed within one business day, you acknowledge that no Claims will be received after this process.
39. The Minister may terminate the Program at any time by providing three (3) months' notice in writing to you prior to the end date of the Program.
40. Without derogating from any other right of the Minister, the Minister may, at the Minister's sole discretion and option, suspend your participation in the Program or terminate this Agreement immediately by notice in writing at any time if:
- you commit a breach of this Agreement and fail to remedy such breach within one month of receiving a notice from the Minister requiring you to rectify the breach;
  - you commit a breach of this Agreement which, in the opinion of the Minister, cannot be remedied or is of such significance to the Minister or the Program to require immediate termination (including without limitation where you have committed any fraud or act of dishonesty in claiming Subsidies);
  - you are not, or cease to be, an Eligible Provider;
  - you claim a Subsidy for any child who is not an Eligible Child (except in instances where you can provide to the Minister's satisfaction that this was the result of an honest mistake);

- you have not submitted a Claim within the previous twenty four (24) month period;
- you or any Personnel are involved in any conduct which, in the reasonable opinion of the Minister is:
  - prejudicial to the interests and aims of the Program, the Minister or the Crown in right of the State of South Australia;
  - likely to cause damage or harm to the reputation of the Program, the Minister or the Crown in right of the State of South Australia; or
  - likely to bring the Program, the Minister or the Crown in right of the State of South Australia into disrepute.
- you or your Personnel fail to comply with a statutory requirement relating to the protection of children including but not limited to the provisions (as amended from time to time) of:
  - the *Children and Young People (Safety) Act 2017 (SA)*, including but not limited to Chapter 8 of that Act;
  - the *Children and Young People (Prohibited Persons) Act 2016 (SA)*; and
  - the *Children's Protection Regulations 2010 (SA)*; and
  - any other documents with which compliance is required thereunder; or
- your Personnel or any other person who is in any way involved with, engaged by or otherwise related to you or at any time present at an event or activity conducted by you is the subject of any allegation, arrest, charge or conviction for a sexual offence or an offence of indecency or any offence against a child.

41. Where your participation in the program is suspended pursuant to clause 40:
- the Minister is not required to pay any subsidy to you during the course of that suspension;
  - the Minister may undertake any relevant enquiries or actions relating to the reason for the suspension, or ask you to take any necessary actions, with a view to resolving the reason for the suspension as soon as possible; and
  - the suspension does not derogate from any other right of the Minister including any right to terminate this Agreement.
42. Termination of this agreement does not affect any rights or obligations of the parties which accrued prior to the termination, except that the Minister is not required to make any payment of a Subsidy following a termination by the Minister under clause 40.

### Recording, Audit and Inspection

43. You must prepare financial statements at the end of each financial year during the Term which record the payment of Subsidies and the memberships to which the Subsidies were applied.
44. During the Term and for a period of two (2) years after the expiry or termination of the Term you must keep a record of all information relating to the Subsidies applied, including all information required under clause 26 and all information produced or received by you that is relevant to your or your Personnel's compliance or otherwise with all statutory requirements relating to the protection of children including but not limited to the provisions (as amended from time to time) of:
- the *Children and Young People (Safety) Act 2017 (SA)* including but not limited to Chapter 8 of that Act;
  - the *Children and Young People (Prohibited Persons) Act 2016 (SA)*; and
  - the *Children's Protection Regulations 2010 (SA)*; and
  - any other documents with which compliance is required thereunder.
45. You must ensure that all records and information collected or held by you as part of the Program or under

this Agreement (including any personal information collected) must be stored securely and only used by you and relevant Personnel for the purpose of the Program and this Agreement.

46. You must allow any officer or person authorised by the Minister to enter your premises to inspect and audit your operations (including equipment, premises, accounting records, documents and information) and interview your Personnel on matters pertaining to the Program and your compliance with this Agreement. You cooperate with the Minister and any officer or person authorised by the Minister in the conduct of an audit and must provide them with such information requested by them and relating to the Program or your obligations under this Agreement.

#### **Survival**

47. Clauses 25-29, 37 and 43-51 survive the expiry or termination of this Agreement

#### **Rules and Legislation**

48. You must at all times comply with the laws in force in the State of South Australia and with any constitution or rules which govern your operations.

#### **Insurance and Risk**

49. You must take out and maintain for the Term a policy of public liability insurance for not less than the amount \$10 million.
50. You must provide a copy of the certificate of insurance for the insurance policy if required by the Minister.
51. You acknowledge and agree, and parents and guardians be informed of all children who apply for a Subsidy through you, that the Minister's sole obligation under this Agreement is the provision of the Subsidy and this Agreement does not operate to place any additional obligations on or create any additional liability or duty on the Minister or the Crown in right of the State of South Australia in relation to the provision of the membership or sporting or dancing activities by you.

#### **Variation of Agreement**

52. The Minister may at any time during the Term vary the terms and conditions of this agreement unilaterally by providing notice in writing to you. Where this occurs, the amendments will come into effect within fourteen (14) days of date on which notice was issued to you.

#### **No Assignment**

53. You must not assign, transfer or encumber any of your rights or obligations under this Agreement.

#### **Auditor General**

54. Nothing in this Agreement derogates from the powers of the Auditor-General under the *Public Finance and Audit Act 1987 (SA)*.

#### **Disclosure**

55. The Minister may disclose this Agreement and/or information in relation to this Agreement in either printed or electronic form to the public or to a particular person as a result of a specific request. Nothing in this clause derogates from:
  - a. your obligations under any provision of this deed; or
  - b. the provisions of the *Freedom of Information Act 1991 (SA)*.