

Terms and Conditions

Introduction

1.1 **Victoria Tennis Association Incorporated (ABN 61 006 281 125)** of AAMI Park (Entrance F), Olympic Boulevard, Melbourne VIC 3000 (**'TVIC'**) agrees to engage Supplier to provide the Supply on the terms set out in these Terms and Conditions and Supplier agrees to provide the Supply on and in accordance with the terms set out in this Terms and Conditions.

1.2 These Terms and Conditions will prevail notwithstanding any other terms and conditions on quotations, estimates, proposals or any other documents issued by the Supplier. These Terms and Conditions can only be altered by written agreement signed by each party.

2. Appointment

2.1 This Agreement commences on acceptance of this Agreement and continues for a period of 12 months (**Term**), unless terminated earlier in accordance with the provisions of this Agreement.

2.2 Supplier is engaged on a non-exclusive basis to provide the Supply; TVIC may obtain goods or services that are the same or similar to the Supply from other parties.

3. Fees

3.1 In consideration of the proper performance of Supplier's obligations under this Agreement, TVIC will pay Supplier the Fees and provide the Support.

3.2 The Fee will be agreed between the Supplier and TVIC for each Supply, but will be based on:

(a) Services: an hourly rate of \$100 per hour (inc GST) for delivery of the Program sessions. If the parties agree that the Supplier will require the services of another coach to work alongside them for the Program sessions, an additional hourly rate of \$50 per hour will be paid. For the avoidance of doubt:

(i) The hourly rate is based on the Program session delivery irrespective of how many facilitators or Personnel are delivering that session, unless otherwise agreed; and

(ii) The rate will only be charged for each full hour of a Program session that is delivered (and will not include part of an hour).

3.3 Reimbursable Expenses: If the cost is approved in writing in advance by TVIC, the cost of transport and support staff will be paid for by TVIC.

3.4 Subject to the Supplier providing the Supply to TVIC's satisfaction, TVIC will pay the Supplier on 30 day terms from receipt of a valid tax invoice issued after completion of the Supply.

3.5 Supplier must provide TVIC with valid tax invoices and such tax invoices must include and clearly reference the unique supplier and purchase order number issued by TVIC to Supplier from time to time.

4. Support

4.1 TVIC may lease some equipment to the Supplier (including racquets, nets or balls) to help deliver the Program sessions.

4.2 TVIC may provide some merchandise for use by the Supplier to conduct and promote the Program including prizes.

4.3 Supplier agrees to submit to TVIC for its approval all advertising and promotional material relating to the Program, such approval by TVIC may not be unreasonably withheld. If TVIC does not object within five business days of receipt

PART TWO – THE SUPPLY

5. The Supply

- 5.1 With support from the Australian Tennis Foundation and Emirates, Tennis Victoria is carrying out and facilitating the ATF Emirates Force for Good Classroom to Court Program (**Program**), which is a school-based program, delivered by a local provider with the final week being a fun, welcoming and inclusive event at the local tennis club. Tennis Victoria hopes to create ongoing connections between club, school and participant post program completion. The program can be run for classes of up to 30, from Foundation level all the way to year 12.
- 5.2 TVIC wishes to engage the Supplier to deliver the Program sessions. The Supplier must deliver 3 x 1hr at-school tennis sessions followed by 1 x 2hr at-club event per Program. The Supplier may otherwise be required to deliver additional Program sessions as otherwise notified to the Supplier by TVIC from time to time during the Term in accordance with this Agreement.
- 5.3 The Supplier agrees to administer a short survey to Program participants at the conclusion of the final Program session. The survey content will be provided in advance by TVIC.
- 5.4 The Supplier agrees to fill out a short survey regarding their participation in the Program. Details of the survey will be provided in advance by TVIC.
- 5.5 The dates and locations of the Supply are as mutually agreed between TVIC and the Supplier and will be confirmed via email.

6. General obligations

- 6.1 When providing the Supply, Supplier (and each of its Personnel) must:
- (a) exercise all due care, skill, efficiency and attention in providing the Supply, and ensure the Supply is provided:
 - (i) by employing techniques and standards generally observed in Supplier's industry with respect to works similar to the Supply; and
 - (ii) to the reasonable satisfaction of TVIC;
 - (b) act in good faith in all dealings with TVIC;
 - (c) regularly liaise with TVIC to ensure that TVIC's interests are addressed in the method and manner of the provision of the Supply;
 - (d) meet any agreed deadlines;
 - (e) ensure that any goods forming part of the Supply are suitable for TVIC's purpose;
 - (f) identify and comply with all applicable Laws relating to the Supply;
 - (g) at Supplier's expense apply and maintain any and all authorisations required by Law in order for Supplier to comply with its obligations under this Agreement.
 - (h) Supplier acknowledges and agrees that the Program sessions must be delivered by suitably qualified and experienced Personnel..
 - (i) If TV, acting reasonably but in its sole discretion, considers that Personnel engaged by the Supplier is unsuitable for any reason (Unsuitable Personnel), TVIC may issue the Supplier with a notice requiring that the Supplier cease engaging the Unsuitable Personnel to deliver the Program, and engage new Personnel.
- 6.2 If Supplier becomes aware of anything which will or may cause a delay or other difficulty in its provision of the Supply (**Delay**) it must immediately notify TVIC. In such circumstances of a Delay, Supplier must take all reasonable steps necessary to make up time or rectify the issue. Where the cause of the Delay was within the reasonable control of Supplier, Supplier must make the rectification at its own cost. Where the cause of the Delay was not within the control

of Supplier, the parties will meet to determine, acting reasonably, what additional costs will be charged to TVIC.

7. Variations

7.1 From time to time, TVIC may direct Supplier in writing to vary the Supply by written notice to Supplier. In such circumstances, the following provisions will apply:

- (a) If Supplier proposes to alter the Fees as a result of a variation directed by TVIC, it must provide TVIC with details of the proposed alteration to the Fees in writing within two business days of receipt of TVIC's direction. Supplier must obtain TVIC's written approval of that alteration in Fees before commencing the varied Supply.
- (b) Supplier will not be entitled to any alteration in Fees if a variation results from:
 - (i) a defect in the Supply;
 - (ii) Supplier otherwise being in breach of the Agreement; or
 - (iii) an increase in the quantities of units of the Supply contemplated under the description of Supply.
- (c) Supplier must not vary the Supply in any way without TVIC's written approval.

PART THREE – THE LOCATION

8. Background checks and Accreditation

8.1 Prior to commencing the Supply, Supplier must ensure that its authorised Personnel, and the Personnel of any subcontractor or third party involved in the Supply, obtain (at Supplier's cost):

- (a) a current police check (completed not more than two years prior to the commencement of the Event);
- (b) a working with children check or appropriate state equivalent; and
- (c) any other background checks and proof of identity required by TVIC.

8.2 If requested by TVIC, Supplier must provide TVIC with complete copies of the documents referred to in clause 8.1 above.

8.3 If TVIC considers it necessary to confirm that the appropriate background checks have been completed, it may audit the records and systems of the Supplier and any subcontractor or third party involved in the Supply. Supplier must ensure that it reserves the right for TVIC to conduct such audits in any agreements it enters into with subcontractors or third parties in relation to the Supply.

8.4 TVIC reserves the right (acting reasonably) to specify uniform requirements for Supplier's Personnel to wear when performing the Supply and to restrict or refuse the display of any names, logos or graphics that TVIC considers offensive or in conflict or potential conflict with TVIC or sponsor branding.

PART FOUR - PUBLICITY

9. Confidentiality

9.1 The parties must take reasonable steps to ensure that they, their employees, advisers and agents do not use or disclose any part of this Agreement, any information in respect of this Agreement or any confidential information of the other party (including pricing) except to the extent that:

- (a) it is required to do so by law;
- (b) the other party has consented in writing to such disclosure or use; or

(c) a party's disclosure is to that party's professional advisers.

10. Prohibition on publicity and advertising

10.1 Supplier must not make any public announcement relating to this Agreement, TVIC or any of TVIC's events without the prior written consent of TVIC.

10.2 Except as required in order to perform its obligations under the Agreement, Supplier must not:

(a) in any way represent to any person that it is associated with or has the support or approval of TVIC or any of TVIC's events and must not produce or participate in the production of any document or materials which suggest or indicate such an association or support; or

(b) use any of TVIC's logos, trademarks or other intellectual property of TVIC; without TVIC's prior written approval.

11. Intellectual property in the Supply

11.1 Each party owns and retains all right, title and interest, worldwide, in any and all of its intellectual property rights pre-existing before the Commencement Date and developed other than in accordance with obligations under this Agreement (**Background IP**).

11.2 Supplier gives TVIC a free licence to use any Background IP forming part of the Supply for the duration of the Term.

11.3 Supplier acknowledges and agrees that all intellectual property rights in any material created by Supplier in the course of providing the Supply (**Contract IP**) is the exclusive property of TVIC and is assigned to TVIC immediately on creation. Supplier agrees to sign any documents (and where relevant, procure its authorised representatives to sign any documents) which are required to give effect to this clause 11.

11.4 Supplier acknowledges and agrees that TVIC may use any Contract IP however it considers fit without needing to pay any royalties, licence fees or other costs to Supplier or any third party and whether or not this amounts to 'derogatory treatment' as defined in the *Copyright Act 1968* (Cth). Supplier further represents that TVIC is not required to attribute authorship in any Contract IP and it has done all things necessary to obtain moral rights consents from each relevant author for the purpose of meeting the obligation in this clause.

11.5 Supplier agrees not to use TVIC's Background IP or the Contract IP, for any other purpose other than performing its obligations under this Agreement.

11.6 Within two days of receipt of TVIC's written request, Supplier must deliver to TVIC any paper documents or electronic files, including CAD drawings, created by it in the course of its provision of the Supply in the manner requested by TVIC (at no further cost to TVIC).

PART FIVE – GENERAL

12. Termination

12.1 Without prejudice to any of its other rights under this Agreement or at Law either party may terminate this Agreement:

(a) Immediately by giving written notice to the other party if the other party commits a material breach of this Agreement; or

(b) For any reason by providing at least 14 days' written notice to the other party.

12.2 On the expiry or termination of this Agreement, Supplier must repay to TVIC any Fees paid to it for any Supply not yet provided or adequately completed (if any).

13. Insurance

13.1 The Insurance is comprised of:

- (a) Public and product liability insurance which must, noting the relevant interest of TVIC, insure Supplier against liability for the death of or injury to any person or loss of, destruction of or damage to property due to or arising out of or in connection with the Supply and/or performance of Supplier's obligations under this Agreement for an amount not less than \$20 million for any one occurrence in respect of public liability (and unlimited as to the number of claims that can be made under the policy) and in the annual aggregate in respect of product liability.
 - (b) Professional indemnity insurance to insure Supplier in respect of professional services liability under this Agreement for an amount of at least \$5 million per claim.
 - (c) Any workers compensation insurance as required by Law covering all liabilities in relation to the death or injury to Supplier's workers (or any person deemed to be a worker), and in the case of persons not required by Law, to hold workers' compensation insurance, personal sickness and accident insurance.
- 13.2 Supplier must maintain the Insurance during the Term of this Agreement and for a minimum six months after the end of the Term. If Supplier fails to effect or maintain any insurance policy referred to in this clause 13, TVIC may immediately terminate this Agreement.
- 13.3 The Insurance policies shall be placed with a recognised, solvent and reputable insurer that has a standard and poor's rating of A- and above.
- 13.4 Evidence of the existence of applicable insurance cover may be requested by TVIC. Upon receipt of such a request, Supplier will be obliged to present a certificate of currency within 7 days.
- 13.5 If any subcontractor or agent is appointed in accordance with clause 17.1, without limiting any other provision of this Agreement, Supplier must ensure that each such subcontractor or agent maintains the insurance required under this clause 13 and provide evidence of that insurance to TVIC when requested by TVIC, or if no such request is made, before commencing supply of the Supply described in this Agreement.
- 13.6 No provision contained in this clause 13 will limit Supplier's liability to indemnify TVIC in accordance with the provisions of this Agreement.
- 14. Indemnity**
- 14.1 To the extent permitted by Law, Supplier releases and indemnifies TVIC and its employees, subsidiaries, officers, volunteers, servants and agents against any claim, loss, damage or expense (including legal fees) arising out of or in connection with:
 - (a) injuries or death to any persons or damage to any property caused by Supplier or its Personnel;
 - (b) any negligence, misconduct or wilful, reckless, malicious or fraudulent acts or omissions by Supplier or its Personnel;
 - (c) Supplier or its Personnel breaching this Agreement; and
 - (d) Supplier's breach of, or failure to comply with, the *Building Act 1993 (Vic)*, the *Disability Discrimination Act 1992 (Cth)*, any relevant Australian and/or New Zealand Standards, any relevant Occupancy Permit, the National Construction Code or any other relevant Law;

except where and to the extent the relevant claim, loss, damage or expense is caused or contributed to or by the negligent or wilful acts or omissions of TVIC, its employees, subsidiaries, officers, volunteers, servants and agents.
- 14.2 Under no circumstances will TVIC, its, employees, directors, subcontractors or agents be liable to Supplier for special incidental, or indirect damages or for any economic consequential damages, or lost profits, business, revenue, goodwill or anticipated savings..

15. Privacy

- 15.1 Supplier agrees, in respect of any personal information it obtains access to in the course of providing the Supply, to comply with the *Privacy Act 1988*, any other applicable legislation regarding privacy and TVIC's privacy policy. A copy of the privacy policy can be found at: <http://www.tennis.com.au/privacy>. Supplier agrees not to use any personal information it obtains in connection with the Supply for any purpose other than the provision of the Supply.
- 15.2 Supplier represents and warrants that its authorised Personnel have consented to TVIC collecting, holding and using personal information about them in connection with the administration of this Agreement and on the terms and conditions set out in TVIC's privacy policy.

16. Force majeure and Event cancellation

- (a) In this clause 16, a force majeure event means any act of God, fire, flood, earthquake, cyclone, tornado, hurricane, lightening, explosion, war, acts of terrorism, travel restrictions including flight restrictions, theft, malicious damage, strikes, lock-outs, or industrial action of any kind, a restraint or restriction by a government or governmental agency, orders or temporary or permanent injunctions of any duly constituted court of competent jurisdiction (**Force Majeure Event**).
- (b) Where TVIC or Supplier is unable, wholly or in part, by reason of a Force Majeure Event to carry out any obligation under this Agreement, it must:
- (i) give the other party immediate notice of the Force Majeure Event; and
 - (ii) use all reasonable diligence to remove or minimise the Force Majeure Event as quickly as possible,
- and any such non-performance will not be considered a breach of this Agreement.
- 16.2 If by reason of a Force Majeure Event, Supplier will not be able to, or may not be able to, meet its obligations under this Agreement in respect of the Event, TVIC may immediately terminate this Agreement either in its entirety or only in relation to the affected Supply by written notice to Supplier. If this occurs the parties shall be relieved from their respective obligations to each other hereunder without liability whatsoever, other than the provision of any Supply that was not affected that is still requested by TVIC and the payment by TVIC for such requested Supply.
- 16.3 If an event for which Supplier has been engaged to deliver the Supply (**Event**) is cancelled, either in whole or part, is rescheduled, relocated, extended, or replaced with alternative content for any reason whatsoever (including a Force Majeure Event), such rescheduling, relocation or extension will not be a breach of this Agreement, and the time for performance of all of Supplier's obligations under this Agreement will be extended in accordance with the rescheduling or extension of the Event. If the Event is cancelled, either in whole or part, and not re-scheduled for any reason whatsoever (including a Force Majeure Event), such cancellation will not be a breach of this Agreement and the parties will be relieved from their respective obligations to each other hereunder in respect of the Event for that year without liability whatsoever, other than payment for any Supply already provided.
- 16.4 Should the cancellation (in whole or in part), rescheduling, relocation, extension or replacement of content in relation to an Event require a variation to the Supply, then TVIC will provide the Supplier with a notice under clause 7.1.

17. Assignment and subcontracting

- 17.1 Supplier must:
- (a) not, without the prior written approval of TVIC, appoint a subcontractor or agent (or allow a subcontractor or agent to appoint a subcontractor or agent) to provide the Supply (or any part) and/or any obligation under this Agreement;

- (b) ensure that any subcontractors or agents comply with the Terms and Conditions of this Agreement as if they were a party to this Agreement; and
 - (c) remain fully responsible and liable to TVIC under this Agreement for any act or omission of any subcontractor or agent as if such act or omission were performed or done by Supplier itself.
- 17.2 Where requested to do so by TVIC, Supplier will direct its subcontractors to engage directly with TVIC (for example in circumstances where subcontractors have discounted pricing arrangements with TVIC).
- 18. General**
- 18.1 Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this Agreement are exclusive of GST.
- 18.2 The parties agree to and must comply with the Special Conditions (if any).
- 18.3 Each party must not assign or transfer any right or liability under this Agreement without the prior written consent of the other party.
- 18.4 Nothing contained in this Agreement nor anything done by the TVIC and Supplier, shall create a joint venture, partnership, employment or agency relationship between the TVIC and Supplier.
- 18.5 The expiration or termination of this Agreement does not operate to terminate any of the continuing obligations under this Agreement and they will remain in full force and effect and binding on the party concerned. Any term of this Agreement needing to survive the expiry or termination of this Agreement in order to be given effect to its provisions shall survive such expiry or termination.
- 18.6 Any term in this Agreement that is either wholly or partly unenforceable will be severed to the extent necessary to make the remaining terms of this Agreement enforceable.
- 18.7 This Agreement constitutes the entire agreement between the parties about its subject matter and supersedes all prior representations, agreements, statements and understandings, whether verbal or in writing.
- 18.8 Any partial exercise, failure to exercise, or delay in exercising a power, right or remedy provided under this Agreement, or by law, does not operate as a waiver, or prevent or restrict any further or later exercise of that power, right, or remedy.
- 18.9 Each party must, at its own expense, do everything reasonably necessary to give effect to this Agreement and the transactions contemplated by it, including the execution of documents.
- 18.10 The parties may execute this agreement in counterparts, all of which together constitute one instrument. A true and correct PDF signed copy of this Agreement may be used in place of originals for any purpose.
- 18.11 This Agreement may not be varied, except in writing signed by both parties.
- 18.12 This Agreement is governed by the laws of the Territory of ACT and the parties submit to the exclusive jurisdiction of the ACT courts.
- 18.13 Clauses 9 (Confidentiality), 10 (Publicity), 14 (Indemnity), 18 (General) and 19 (Dictionary and Interpretation) survive the termination or expiry of this Agreement.
- 19. Dictionary and Interpretation**
- 19.1 In this Agreement the following terms will have the following meanings:
 - Agreement** means this agreement including the Schedule, the Terms and Conditions and each applicable Attachment;
 - Attachment** means an attachment to this Agreement.
 - Commencement Date** means the date specified in Item 2 of the Schedule;

Expiry Date means the date specified in Item 2 of the Schedule;

Fees means the fees payable by TVIC to Supplier, as specified in Item 4 of the Schedule;

Insurance means those insurance policies specified in Item 5 of the Schedule;

Law means:

- (a) principles of law or equity established by decisions of courts;
- (a) statutes, regulations or by-laws of the Commonwealth of Australia, or any State or Territory of the Commonwealth of Australia or a government agency; and
- (b) requirements and approvals (including conditions) of the Commonwealth of Australia or any State or Territory of the Commonwealth of Australia or a government agency that have the force of law;

Payment Terms means the terms on which payment of any Fees by TVIC to Supplier is made, as set out in Item 5 of the Schedule;

Personnel means the employees, officers, agents, subcontractors and suppliers of a person;

Schedule means the Schedule to this Agreement.

Special Conditions means those terms and conditions set out in Item 7 of the Schedule;

Supplier means the person described in Item 1 of the Schedule;

Supply means the services, hire, works, facilities, goods, benefits or supplies (including all materials, products and equipment) provided by Supplier to TVIC in accordance with this Agreement and as set out in Item 3 of the Schedule and detailed further in Attachment 1; and

Term has the meaning given in clause 2.1.

- 19.2 Any reference in this Agreement to the singular includes the plural, to any gender includes all genders, to persons includes all bodies and associations both incorporated and unincorporated, or parties includes successors and permitted assigns and substitutes by way of assignment or novation, to any legislation or regulations includes all amending and succeeding legislation and regulation, to conduct includes an omission, statement or undertaking whether or not in writing, to AUD, dollars or \$ is to Australian currency, to clauses or schedules is to clauses or schedules in this Agreement and headings are for reference purposes only. If there is any inconsistency between the Terms and Conditions set out in this Agreement and the Special Conditions, the Special Conditions will prevail.