

TERMS AND CONDITIONS

Victorian Tennis Association ABN 29 757 304 158 of AAMI Park (Entrance F), Olympic Boulevard, Melbourne, VIC 3000 ('TV')

and

The HOST whose details are specified in the accompanying Booking Form ("The HOST")

THE PARTIES AGREE:

1. The Program

- 1.1 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 all the way to year 12.
- 1.2 The 4th Program session will be held at the Venue between school hours (as mutually agreed) at (each session of the Program under this Agreement will be considered an "**Program Session**")

2. Term

- 2.1 The Term of this Agreement commences on acceptance of the Agreement expires on the conclusion of the Program, unless terminated earlier in accordance with this Agreement.

3. The Hosting Fee

- 3.1 For each Program Session TV will pay the HOST \$100 (incl GST).
- 3.2 TV will pay the Fee to the HOST following completion of the Program Session, in accordance with Tennis Australia's fortnightly pay cycle.
- 3.3 TV will pay a validly issued tax invoices in accordance with Tennis Australia's fortnightly pay cycle.
- 3.4 The HOST agrees that the Fees and any other amounts expressed in this agreement are inclusive of GST, any withholding tax or other similar taxes, which are the HOST'S responsibility.

4. Sponsorship and other Third Party Arrangements

- 4.1 The parties agree that the HOST must not negotiate and enter into Program sponsorship with third parties without the prior written approval of TV.

5. TV's Obligations

- 5.1 Other than as expressly described in this Agreement, TV will provide those things described in Schedule 1 as being TV's responsibility.
- 5.2 TV reserves to itself all rights in the Program other than the rights expressly granted to the Host pursuant to this Agreement.

6. Hosts' Obligations

- 6.1 In addition to its other obligations in this Agreement, the Hosts must:
 - (a) provide those things described in Schedule 1 as being the Host's responsibility (in a form and to a standard acceptable to TV from time to time);
 - (b) provide TV with access to the Venue during the Program Sessions for the purposes of the Program; and

- (c) comply with all reasonable directions given by TV in relation to the Program and TV's policies and procedures each as amended from time to time.

- 6.2 HOST agrees to exercise the rights granted to them under this Agreement in a manner which is consistent with the good name, goodwill and reputation of TV, tennis and the Program.

7. Program Management

- 7.1 The HOST must exercise the rights granted to it in this Agreement in a manner which is consistent with the good name, goodwill and reputation of the Program. All rights not expressly granted to the HOST in this Agreement are reserved by TV.
- 7.2 The HOST must promptly comply with all reasonable instructions, directions or regulations issued by or on behalf of TV in relation to the organisation, safety, security, conduct or image of the Program.
- 7.3 The precise size, colour and location or placement of any and all signage or other branding benefits under this Agreement shall be determined by TV in its sole discretion. All artwork for signage and promotional material must be approved by TV in writing in advance.
- 7.4 If the HOST alters or changes its logo during the Term, all costs relating to the replacement of signage or Program related advertising and promotional material must be borne by the HOST.

8. Use of IP and Associative Rights

- 8.1 The HOST acknowledges that it has no rights or title to the Program Logo, Program Name, Designations or Program Imagery except as expressly granted, and nothing in this Agreement will entitle or be construed as entitling the HOST to display, use or refer to the Program branding other than in accordance with this Agreement.
- 8.2 The HOST grants TV for the Term a non-exclusive, non-transferable royalty-free licence to use the HOST Logo (if provided to TV) for the sole purposes of promoting the HOST'S Hosting rights of the Program and complying with its obligations under this Agreement.
- 8.3 TV acknowledges that it has no rights or title to the HOST Logo except as expressly granted, and nothing in this Agreement will entitle or be construed as entitling TV to display, use or refer to the HOST Logo other than in accordance with this Agreement.
- 8.4 The HOST must obtain the prior approval of TV to any use by it of the Program Logo, Program Name, Designations and/or Program Imagery or any reference to the Program. The HOST must provide TV from time to time (including on request from TV), samples of all proposed advertising and promotional materials incorporating the Program Logo, Program Name, Program Imagery, Designations and/or reference or associations to the Program.
- 8.5 The HOST must not release or distribute any letters, press releases, promotional, marketing or advertising materials or external statements concerning the Program without TV's prior approval.
- 8.6 The HOST shall not register any trade-marks, company or business names, logos, symbols, emblems, designs or other indicia using the Program Name, Program Logo, Program Imagery, or any component thereof.
- 8.7 Each party's pre-existing intellectual property is and remains the property of that party. Any modifications or derivative works of this pre-existing Intellectual Property made by a party in connection with this Agreement will vest in that party.
- 8.8 Each party must notify the other party if it becomes aware of any infringement of the Program Name, Program Logo, Program Imagery or the HOST's Logo.
- 8.9 The HOST must not take any photographs or recordings of the Program. The HOST permits TV to take photographs or recordings of the Program.

9. Liability

- 9.1 The parties acknowledge and agree that neither party is liable to the other party for any consequential or indirect loss, loss of profits, loss of business or any special or exemplary damages, even if the other party was aware of the potential for such loss or damage.
- 9.2 Despite any other provision of this Agreement, the total aggregate liability of TV during each year of the Term (including with respect to any Program), relating to any and all claims, costs, proceedings, expenses (including legal costs and expenses on a full indemnity basis), losses or liabilities incurred or sustained by the HOST arising under or in connection with this Agreement, must not exceed 100% of the total the Hosting Fees payable by the HOST under this Agreement.

10. Warranties

- 10.1 The Hosts warrants that:
- (a) they will not willfully make any statement either orally or in writing which is likely, in TV's opinion, to cause detriment, damage, injury or loss to TV or the Program, or generally bring TV's business into disrepute;
 - (b) they will not associate themselves with the Program in any way which is not authorised by TV or this Agreement;
 - (c) they will comply with all applicable laws, regulations and codes of practice;
 - (d) they will comply with all reasonable and lawful directions of TV;
 - (e) all necessary permits, consents, licences and authorisations that are required or will be required in connection with the performance of their obligations under this Agreement have been obtained or effected and are or will be fully operative and in full force and effect during the Program;
 - (f) the Venue, and any other location at which the Program is held, is fit and safe for the purpose of use for the Program; and
 - (g) any goods, equipment or materials provided by them, or on their behalf, in connection with the Venue will be of merchantable quality and fit for intended purpose.

11. Indemnity and release

- 11.1 To the extent permitted by law, the Hosts releases, indemnifies, defends and hold harmless TV and TV's employees, officers, volunteers, servants and agents against any loss, damage or expense (including legal fees on a full indemnity basis) arising out of or in connection with:
- (a) any breach of this Agreement by the Hosts;
 - (b) any infringement of intellectual property rights of third parties arising from use of TV's Logos;
 - (c) The Host's unlawful, reckless, negligent acts or omissions; and
 - (d) any loss or damage to property or injury or death to any person suffered in connection with the Program, except to the extent that such accident, damage, injury or loss occurred by reason of TV's negligence.
- 11.2 Any indemnity under this Agreement in favour of TV will be independent of any other obligation of the Hosts, is irrevocable and will continue despite expiration or termination of this Agreement. TV may enforce any indemnity under this Agreement without or before incurring any expense.

12. Termination

- 12.1 Either party may terminate this Agreement for its own convenience and in its sole discretion if it provides 30 days written notice to the other party.
- 12.2 Either party may terminate this Agreement by notice in writing to the other party if:
- (a) the other party is in material breach of any of its obligations under this Agreement and:
 - (i) if the breach is capable of remedy – fails to remedy the breach within 48 hours of receipt of a notice requiring the other party to remedy such breach; and
 - (ii) if the breach is not capable of remedy – by specifying that breach in the notice of termination;
 - (b) the other party is or becomes unable to pay its debts when they are due or is or becomes unable to pay its debts within the meaning of the Corporations Act 2001(Cth) or is presumed to be insolvent under the Corporations Act 2001 (Cth);
 - (c) the other party enters into or resolves to enter into any arrangement, composition or compromise with, or assignment for the benefit of, its creditors or any class of them;
 - (d) the other party ceases or threatens to cease to carry on business;
 - (e) a receiver, receiver and manager, official manager, trustee, administrator, other controller or similar official is appointed, or steps taken for such appointment, over the assets or undertaking of the other party; or
 - (f) an application or order is made, or any steps are taken, for the winding up or dissolution of the other party.

13. Effect of Termination

- 13.1 Unless otherwise notified by TV, the HOST'S entitlement to use the Program branding, the designations and any other rights or benefits granted to the HOST under this Agreement, will automatically cease upon termination of this Agreement and the HOST must immediately discontinue its Program related advertising and promotional activities. Likewise, TV must immediately cease to use the HOST Logo.
- 13.2 Termination of this Agreement does not affect the rights of any party against the other in respect of anything done or omitted under this Agreement before termination or regarding any sums or other claims outstanding at the time of termination.

14. Confidentiality

- 14.1 The parties acknowledge that the terms of this Agreement are confidential.
- 14.2 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 except to the extent that:
- (a) it is required by law;
 - (b) it is required for the performance of the party's obligations under this Agreement;
 - (c) the other party has consented in writing to such disclosure or use; or
 - (d) the party discloses any part of this Agreement or information in respect of this Agreement to that party's professional adviser.

15. Force Majeure, Postponement and Cancellation

- 15.1 Neither party will be liable for delay in performing or failure to perform its obligations if the delay or failure results from any act of God, fire, explosion, flood, war, acts of terrorism, theft, malicious damage, strikes, lock-outs, or industrial action of any kind, government regulation or requirement,

national emergency, epidemic, pandemic or quarantine or a restraint by a government or governmental agency, or any other cause or causes, whether similar or dissimilar to the foregoing, beyond the reasonable control of, and not caused or contributed to by the applicable party (**'Force Majeure Program'**).

- 15.2 If a party is prevented from or hindered in performing its obligations under this Agreement by a Force Majeure Program, performance of those obligations is suspended to the extent that performance is prevented or hindered by the Force Majeure Program and such non-performance or delay in performance will not be deemed to be a breach of this Agreement (except that, in the case of the HOST, the HOST will still be responsible for any delay in or failure to pay the Hosting Fee on the due date(s) for payment thereof).
- 15.3 The time for performance of the obligations under this Agreement is extended as long as performance is prevented, delayed or hindered by the Force Majeure Program.
- 15.4 If the Program is cancelled either in whole or part, re-scheduled, or relocated, replaced with alternative content, as a result of a Force Majeure Program or for any other reason (including, but not limited to COVID-19 or inclement weather), such cancellation will not be a breach of this Agreement and TV shall be relieved from its respective obligations hereunder as regards to that Program (or part thereof) without liability whatsoever.
- 15.5 The parties acknowledge and agree that there may be an impact to the Program and that the parties' ability to adhere to their contractual obligations due to the COVID-19 pandemic may be adversely affected. Without reducing the operation of the remainder of this clause 15, the parties must use all reasonable endeavours to overcome the impact of COVID-19.
- 15.6 Notwithstanding anything else in this clause 15, the HOST acknowledges and agrees that if the Program does not proceed due to any reason (including but not limited to inclement weather, a Force Majeure Program or COVID-19), TV is not obliged to pay the HOST's Fees.

16. COVID-19 Compliance and Safety Plan

- 16.1 Without limiting any other provision of this Agreement, the parties acknowledge the COVID-19 pandemic may impact the Program and agree that:
 - (a) At all times during the Program, the Hosts will adhere to all relevant and current local, State and Federal government restrictions and guidelines related to the current COVID-19 pandemic, including any applicable restrictions on public gatherings.
 - (b) If required by TV or at law, the Hosts will prepare a COVID-19 Safety Plan (**Safety Plan**) which addresses all COVID-19 issues in relation to the Program to the satisfaction of TV.
 - (c) The Hosts must comply with the Safety Plan.
- 16.2 The Hosts will immediately notify TV if there is any breach or suspected breach of this clause 16.1, as soon as reasonably practicable after the Hosts became aware of that breach or suspected breach.

17. General

- 17.1 This Agreement sets out the entire agreement between the parties and may only be modified, varied, amended or added to in writing signed by both parties. Any prior arrangements, agreements, representations or undertakings are superseded.
- 17.2 The Hosting rights under this Agreement are personal to the HOST and cannot be assigned or otherwise transferred without the prior written approval of TV.
- 17.3 The HOST must not, without the prior written approval of TV, appoint an agent or sub-contractor (or allow an agent or sub-contractor to appoint an agent or sub-contractor) to carry out the HOST's activation and/or perform any of its obligation under this Agreement. If TV consents to the appointment of an agent or sub-contractor:

- (a) the HOST must ensure that any sub-contractors or agents comply with the terms and conditions of this Agreement as if they were a party to this Agreement.
 - (b) the HOST will remain fully responsible and liable to TV under this Agreement for any act or omission of any sub-contractor or agent as if such act or omission was performed or done by the HOST itself.
- 17.4 Any notices required to be given under this Agreement shall be deemed to have been given if delivered by any means to the persons specified in the Booking Form.
- 17.5 Nothing contained in this Agreement will create a joint venture, the Hosting or agency relationship between TV and the HOST and neither party will represent that it is the joint venturer, the HOST or the agent of the other party nor pledge the credit of the other party.
- 17.6 No failure to exercise or delay in exercising any right, power or remedy by a party operates as a waiver. A single or partial exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the party granting that waiver unless made in writing.
- 17.7 Any provision of this Agreement that is void or unenforceable in Victoria may be severed from this Agreement without affecting the enforceability of other provisions.
- 17.8 The laws of Victoria shall govern this Agreement and the parties agree to submit to the exclusive jurisdiction of the courts of Victoria.
- 17.9 If this Agreement consists of a number of signed counterparts, each is an original and all of the counterparts together constitute the same document.
- 17.10 Any clause of this Agreement, which in order to give effect to the provisions of this agreement needs to survive the expiry or termination will do so.

SCHEDULE 1 – RESPONSIBILITY MATRIX

Each party has the following responsibilities in relation to the Program.

Part A – Host’s Responsibilities

1. The HOST is responsible for providing, at its cost, a Venue which is fit for purpose and includes, but is not limited to the following:
 - (a) The amount of courts (free of charge or hire costs) as agreed for each Program Session.
 - (b) All courts must be in good, clean condition for the Program Sessions.
 - (c) Sufficient lighting to meet the needs of the Program Sessions.
 - (d) Separate locker rooms for female and male players with toilets.
 - (e) Current / working Defibrillator and first aid kit at the Program Sessions.
 - (f) Provide appropriate waste management (general & recyclable) relevant to participant numbers
2. The HOST is responsible for managing entry and exit of the players onto its Venue as per Guidelines published by TV (if any) and any other reasonable directions of TV.
3. The HOST is responsible for working with the coach to provide a fun, welcoming and inclusive event at the final Program session

Part B – TV’s Responsibilities

TV is responsible for providing:

1. The relevant personnel to facilitate the Program Sessions (coaches).