# DEFINITIONS AND INTERPRETATION

## Definitions in Agreement

Unless the context otherwise requires, terms which have a defined meaning in the Agreement have the same meaning when used in this Agreement.

## Definitions

In this Agreement, unless the context otherwise requires:

**Agreement** means any agreement between the Applicant and DLGSC which is expressed to incorporate this Agreement.

**Agreement Commencement Date** means the date specified as such in the Agreement Details.

**Applicant** means:

### with reference to the Coach and Official Education Subsidy:

### Permanently reside in regional (country) Western Australia (as per regional boundaries designated by the department),

### Are an Australian citizen or permanent resident,

* 1. Are registered as a volunteer to a sporting club, regional association or directly to the State Sporting Association,
  2. Attend or are going to attend, a high-level sport specific course that is recognised by the SSA or NSO.

**Auditor General** means the Auditor General for the State.

**Business Day** means a day other than Saturday, Sunday or public holiday in Perth, Western Australia.

**Confidential Information** means information in respect of the Agreement that:

### is by its nature confidential;

### is specified by a Party to be confidential, including any information specified to be confidential in the Agreement;

### a Party knows or ought to know is confidential;

### information relating to the internal management and structure of the Party or the personnel, policies, strategies, practices and procedures of the Party;

### information of the Party to which the other Party has access that has an actual or potential commercial value to the first Party or to the person or corporation which supplied that information;

### information in the Party’s possession relating to the other Party’s clients or suppliers and like information; and

### the terms of this Agreement and any negotiations in connection with this Agreement including correspondence and drafts of this Agreement;

### all records concerning the operation, dealings, organisations, business, financial transactions, books of account, contracts, agreements, arrangements, trade secrets or markets, or the commercial, industrial, financial, or business affairs of either Party; and

### any information pertaining to a Party which is or could reasonably be regarded as being of a politically or commercially sensitive nature.

**DLGSC** means the Department of Local Government, Sport and Cultural Industries or such other body or instrumentality which is charged with the administration of the Agreement from time to time on behalf of the State.

**Event of Default** means the occurrence of any one of the following events:

### a Party breaches a material obligation under the Agreement that cannot be remedied; or

### a Party breaches any other material obligation under the Agreement and that breach is not remedied within the period of time specified in the notice (being not less than 10 Business Days) after the other Party gives a notice to the Party in breach requiring the breach to be remedied; or

### a Party commits 3 breaches of its obligations under the Agreement over any 12 month period, provided that the other Party has given the Party in breach notice of any such breaches and whether or not the Party has rectified such breaches; or

### an Insolvency Event occurs in respect of a Party; or

### a Party ceases, or threatens to cease, to carry on business; or

### it becomes unlawful for a Party to perform its obligations under the Agreement; or

### if a Party is a body corporate, that Party is convicted of a criminal or statutory offence that is punishable by a fine or penalty of, or exceeding, $10,000; or

### if in the reasonable opinion of DLGSC, the reputation of DLGSC, the State or the Government of Western Australia is, or is likely to be, damaged by any act or omission of the Applicant.

**Minister** means the State's Minister for Sport and Recreation.

**Party** means a party to the Agreement **Parties** means both of them.

**Records** means records and information of any kind, including originals and copies of all accounts, financial statements, books, files, reports, records, correspondence, documents and other materials created for, or relating to, or used in connection with, the application for and use of the Subsidy, whether or not containing Confidential Information, and however such records and information are held, stored or recorded.

**Sport means** a human activity capable of achieving a result requiring physical exertion and/or physical skill which, by its nature and organisation, is competitive and is generally accepted as being a sport

**Subsidy** means either of the Coach and Official Education Subsidy

**State** means the State of Western Australia.

**State Sporting Association (SSA)** means a not for profit organisation that has been an incorporated association or company limited by guarantee for a minimum of two years that it is the pre-eminent representative organisation taking responsibility for the development of a recognised sport in Western Australia and is formally affiliated with the recognised National Sporting Organisation

**National Sporting Organisation (NSO)** means the body that is recognised by the Australian Sports Commission (ASC) as the pre-eminent organisation taking responsibility for the national development of that sport in Australia and has satisfied the ASCs eligibility criteria for recognition.

**Term** means the period specified as such in the Agreement, commencing on the Agreement Commencement Date.

## Interpretation

In this Agreement, unless the context otherwise requires:

### the singular includes the plural and vice versa;

### a reference to any thing is a reference to the whole or any part of it and a reference to a group of things or persons is a reference to any one or more of them;

### a reference to a gender includes other genders;

### a reference to a person includes a Public Authority, a public body, a company and an incorporated or unincorporated association or body of persons;

### a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including, but not limited to, a person taking by novation) and permitted assigns;

### if a Party consists of a consortium of two or more persons whether by way of partnership or joint venture or otherwise, then:

#### an obligation imposed on a Party under the Agreement binds each person who comprises that person jointly and severally;

#### each person who comprises a Party agrees to do all things necessary to enable the obligations imposed on that Party under the Agreement to be undertaken; and

#### the act of one person who comprises a Party binds the other persons who comprise that Party;

### an agreement, representation or warranty on the part of or in favour of two or more persons binds, or is for the benefit of, them jointly and severally;

### no rule of interpretation applies to the disadvantage of a Party on the basis that it put forward this Agreement;

### "includes" in any form is not a word of limitation;

### the meaning of "or" will be that of the inclusive "or", meaning one, some or all of a number of possibilities;

### a reference to this Agreement or another instrument includes all variations and replacements of either of them despite any change of, or any change in the identity of the relevant Party;

### a reference to a document published at an electronic address is to the document as published at that electronic address on the date of first public issue of the Agreement;

### a reference to a clause is a reference to a clause of this Agreement;

### headings are included for convenience only and do not affect the interpretation of this Agreement;

### 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 it;

### if a word or phrase is defined, other grammatical forms of that word or phrase have a corresponding meaning;

### a reference to writing includes any means of representing or reproducing words in visible form including by electronic means such as facsimile transmission;

### a reference to a liability includes all obligations to pay money and all other losses, costs and expenses of any kind;

### a reference to a month is to a calendar month and a reference to a year is to a calendar year;

### if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated inclusive of that day;

### if a date stipulated for payment or for doing an act is not a Business Day, the payment must be made, or the act must be done, on the next Business Day;

### a reference to a monetary amount means that amount in Australian currency; and

### a reference to time means the time observed by the general community from time to time in Perth, Western Australia.

# TERM OF THE AGREEMENT

This Agreement commences on the Agreement Commencement Date and unless sooner terminated under clause 16, continues for the Term.

# SUBSIDY

# ACKNOWLEDGEMENT

### The Applicant acknowledges that an application for a Subsidy confers no right or expectation on the Applicant to be considered for, or granted, any Subsidy.

### The Applicant acknowledges that DLGSC has absolute discretion in the payment of any Subsidy to any Applicant, determining the amount of any Subsidy, and determining the order of any Subsidy payments.

### The Applicant acknowledges that the course the Applicant wishes to travel to must be officially sanctioned by the SSA which is the pre eminent representative organisation taking responsibility for the development of the sport in Western Australia

### The Applicant acknowledges that the Applicant's State Sporting Association must verify, to the satisfaction of DLGSC, the Applicant's level of representation at the course that the Applicant wishes to travel to.

# THE APPLICANT'S OBLIGATIONS

During the Term the Applicant:

### with reference to the Couch and Official Education Subsidy:

### (i) must permanently reside at the address provided in the application

#### (ii) must be participating in a high level course deemed the equivalent of a L2 accreditation or higher for coaches and officials.

#### (iii) must submit a copy of the proposed course application or booking information, must submit a copy of future bookings or receipts for travel and accommodation.

### must agree to return Subsidy monies to DLGSC if;

#### travel (the subject of the application) is not undertaken or

#### the course is not attended

### must participate in media events and promotional events at the discretion of DLGSC;

### when requested by DLGSC to provide written information or Records relating to the Applicant's application for, or use of, a Subsidy, provide such written information or Records within 10 Business Days of the DLGSC request.

### Must use the subsidy for travel costs only

# FEES AND PAYMENT

### In its absolute discretion, DLGSC may pay the Subsidy to the Applicant.

### All Subsidy payments are to be used by the Applicant for the purposes of the Supporting Community Sport Initiative, and for no other purpose.

# WARRANTIES

The Applicant acknowledges and warrants to DLGSC that:

### as at the Commencement Date the Applicant is free to, and has the authority to, enter into this Agreement.

### the Applicant has taken all necessary action to authorise the execution, delivery and performance of this Agreement in accordance with its terms;

### all information provided to DLGSC by or on its behalf in connection with this Agreement, the transactions contemplated by this Agreement, and its assets, business and affairs are true and correct in all material respects and are not, whether by omission or otherwise, misleading or deceptive; and

### it has not withheld from DLGSC any document, information or other fact material to the decision of DLGSC to enter into this Agreement.

### The Applicant acknowledges that DLGSC has entered into this Agreement in reliance on the representations and warranties in, or given under, this Agreement.

### A breach of any of the warranties in this clause will be considered a material breach for clause 14.

# PUBLIC DISCLOSURE AND CONFIDENTIALITY

**Disclosure**

The Applicant agrees to:

### DLGSC disclosing any information provided by the Applicant to DLGSC under or in connection with the Agreement to enable DLGSC to meet public disclosure obligations DLGSC may have:

### under any current or future legislation; or

#### under any current or future policy of DLGSC or the State; or

#### in the course of official duties of the Minister responsible for DLGSC; or

#### to satisfy requirements of parliamentary accountability; or

#### under annual reporting obligations of DLGSC; or

#### to satisfy any other recognised public requirement.

# Freedom of Information

The Applicant acknowledges that the *Freedom of Information Act* 1992 (WA) applies to:

### the Agreement; and

### information held or compiled by DLGSC or the State in relation to the Agreement.

# Auditor General

### The Applicant agrees and acknowledges that the powers and responsibilities of the Auditor General under the *Financial Management Act* 2006 (WA) and the *Auditor General Act* 2006 (WA) are not limited or otherwise affected by the Agreement.

### The Applicant must allow the Auditor General, or an authorised representative of the Auditor General, to have access to and examine the Applicant’s Records concerning the Agreement.

### The Applicant releases DLGSC from all liability whatsoever for any loss, injury, damage, liability, costs or expense resulting from the disclosure of information about the Applicant under clauses 10.1 and 10.2 by DLGSC.

### Each Party must keep any Confidential Information confidential. A Party must not disclose, use, reproduce or distribute to any person the Confidential Information except:

### where necessary (and only to the extent necessary) for the purpose of complying with this Agreement; or

#### as authorised in writing by the other Party; or

#### to the extent that the Confidential Information is public knowledge (other than because of a breach of this clause by a Party); or

#### as required by any law, judicial or parliamentary body or governmental agency; or

#### when required (and only to the extent required) to the Party’s professional advisers, but the disclosing Party must ensure that such professional advisers are bound by the confidentiality obligations imposed on that Party under this clause 10.5(a).

### A Party must immediately notify the other Party if it becomes aware of a suspected or actual unauthorised disclosure, copying or use of the other Party's Confidential Information.

### A Party must ensure that each person to whom it discloses the Confidential Information (except a person to whom disclosure is legally required) complies with the obligations in clauses 10.5(a) and 10.5(b).

# Return of Confidential Information

### Except to the extent that a Party is required by law to retain any Records, a Party must return all Records containing the other Party’s Confidential Information immediately at the expiration or termination of the Agreement.

# PUBLICITY

### The Applicant must not make any misleading public statement concerning the Agreement.

### DLGSC may use existence of the Agreement and the other Party’s name for reasonable promotional or publicity purposes (but only with the written consent of the other party), and reporting functions.

# RECORDS

### The Applicant must keep accurate, complete and current written Records in respect of the Agreement.

# CONFLICT OF INTEREST

If a conflict of interest arises in respect of the Applicant, it must:

### promptly notify DLGSC that the conflict has arisen and provide full details; and

### take reasonable steps in consultation with DLGSC to remove or manage the conflict.

# DEFAULT, TERMINATION AND SUSPENSION

**Consequences of Event of Default**

### If an Event of Default occurs in respect of one Party the other Party may by notice in writing to the Party the subject of the Event of Default terminate the Agreement.

**Consequences of Termination or Expiry**

### The expiration or termination of the Agreement does not affect any rights, liabilities or obligations of either Party as a result of anything occurring before the expiration or termination.

### The Applicant must return all or any part of the Subsidy as specified by DLGSC.

# FORCE MAJEURE

**Notification**

A Party that claims it is prevented from performing its, or receiving the benefit of the other Party's, obligations under this Agreement by a Force Majeure Event must, within 5 Business Days of the first occurrence of the Force Majeure Event, give to the other party written notice containing full particulars of the Force Majeure Event, including:

### the nature of the Force Majeure Event;

### the date of the first occurrence of the Force Majeure Event;

### the effect of the Force Majeure Event on that Party’s ability to perform its, or receive the benefit of the other Party's, obligations under this Agreement; and

### the expected duration of the Force Majeure Event.

**Entitlement of the Affected Party**

### If a Party is prevented from performing its, or receiving the benefit of the other Party's, obligations under this Agreement in whole or part by a Force Majeure Event then, subject to that Party complying with clauses 15.1, 15.2(b) and 15.4, performance or receipt of those obligations is suspended to the extent that performance or receipt is prevented by that Force Majeure Event.

### The affected Party must provide the other Party with regular updates as to the affected Party's circumstances and the impact of the Force Majeure Event during the time that it is prevented from performing its, or receiving the benefit of the other Party's, obligations under the Agreement and in any event must provide the other Party with an update within 2 Business Days of a request at any time by the other Party.

### The affected Party must notify the other Party in writing as soon as, and in any event within 2 Business Days of, the Force Majeure Event ceasing to prevent it from performing or receiving those obligations under this Agreement.

**Implications of a Force Majeure Event**

If a Party’s obligations are suspended under clause 15.2, then during that period of suspension:

### that Party’s actual non-performance, or delay in performance, of this Agreement resulting from the Force Majeure Event will not be deemed to be a breach of the Agreement; and

### each Party will bear its own costs.

**Effect of a Force Majeure Event**

### Within 5 Business Days of receipt by a Party of a notice referred to in clause 15.1, the Parties must meet to discuss the steps that the Parties will take to minimise any effects of the Force Majeure Event.

### Irrespective of any other obligations under this clause 15, on and from the date a Party is aware of a Force Majeure Event, that Party must mitigate and minimise the effect of the Force Majeure Event.

**Termination**

If a Party is prevented from performing its, or receiving the benefit of the other Party's, obligations under this Agreement in whole or part by a Force Majeure Event for a period in excess of 20 Business Days (or such other period specified in the Agreement Details) then either Party may by notice in writing to the other Party terminate this Agreement.

# NOTICES

**Notices Generally**

Each notice or other communication given under the Agreement:

### must be in writing;

### may be given by an authorised officer of a Party; and

### must be:

#### hand delivered or sent by prepaid post to the address of the recipient specified in the Agreement;

#### sent by email to the address of the recipient as specified in the Agreement and the email must be sent with automatic receipt notification; or

#### sent by facsimile to the facsimile number of the recipient specified in the Agreement,

### subject to clause 16(e), is taken to be received:

#### in the case of hand delivery, on the date of delivery;

#### in the case of post, on the third Business Day after posting; and

#### in the case of email, at the time in the place to which it is sent equivalent to the time shown on the automatic receipt notification received by the Party sending the email from the recipient;

#### in the case of facsimile, on the date on which the sender’s facsimile machine records that the facsimile was successfully transmitted; and

### if received after 5.00 pm or on a day other than a Business Day, is taken to be received on the next Business Day.

**Notices Sent by Email**

With respect to a notice sent by email, the Parties agree that the following applies:

### any text in the body of the email or the subject line will not form part of the notice; and

### an attachment to the email will only form part of the notice if it is in .pdf format or such other format as may be agreed between the Parties from time to time,

and with respect to any notice sent by email under or in connection with the Agreement, each Party must ensure that:

### its firewall and/or email server (as applicable):

#### allows messages of up to 6MB to be received;

#### automatically sends a receipt notification to the sender upon receipt of a message; and

### its systems automatically send a notification message to each of the sender and the recipient when a message is received by the recipient's domain that cannot or will not be delivered to the recipient.

# MISCELLANEOUS

**Assignment, Novation etc**

### Unless a Party obtains the other Party's prior written consent, a Party must not assign, novate or otherwise deal with any of its rights or obligations under the Agreement.

### DLGSC may subcontract any of its rights or obligations under the Agreement.

### If the Applicant is a corporation (other than a public company as defined in the *Corporations Act* 2001 (Cth)) the Applicant is taken to have assigned the Agreement if:

#### anything occurs, the effect of which is to transfer, directly or indirectly, the management or control of the Applicant to another person; or

#### there is any change in control of the Applicant within the meaning of the *Corporations Act* 2001 (Cth).

**Waiver**

### Any waiver by the Applicant or DLGSC must be in writing and signed by the Party waiving the right.

### Any waiver by the Applicant or DLGSC does not affect its rights in respect of any other breach of the Agreement by the other Party.

### Subject to clause 17.2(a), any delay or failure by the Applicant or DLGSC to enforce any right under or in connection with the Agreement or any law will not be construed as a waiver of their respective rights under the Agreement or any law.

**Entire** **Agreement**

The Agreement supersedes all prior negotiations, understandings and agreements (whether in writing or not) between the Applicant and DLGSC relating to the matters covered by the Agreement and constitute the full and complete agreement between the Applicant and DLGSC relating to the matters covered by the Agreement.

**Rights** **Are Cumulative**

Unless otherwise stated the rights, powers and remedies in the Agreement are in addition to, and not exclusive of, the rights, powers and remedies existing at law or in equity.

**Applicable** **Law**

The Agreement is governed by the laws of the State of Western Australia. The Applicant and DLGSC irrevocably submit to the exclusive jurisdiction of the courts of Western Australia.

**Further** **Assurance**

The Applicant and DLGSC must do everything reasonably necessary, at that Party's expense, including signing further documents, to give full effect to, perfect or complete, the Agreement.

**Dispute Resolution**

### The Parties agree to use reasonable efforts to resolve by negotiation any problem that arises between them under the Agreement. Neither Party will resort to legal proceedings, or terminate the Agreement, until the following process has been exhausted, except if it is necessary to seek an urgent interim determination.

### If a problem arises (including a breach or an alleged breach) under the Agreement which is not resolved at an operational level or which is sufficiently serious that it cannot be resolved at the operational level, a Party concerned about the problem may notify the other. Management representatives [or nominated representatives?] of each of the Parties will then endeavour in good faith to agree upon a resolution.

**Relationship**

Nothing in the Agreement may be construed to make a Party a partner, agent, employee or joint venturer of the other Party.