NSW Football Legacy Fund – Round 1 – Participation 2022/2023
Claim of Funding Form

Introduction

Please accept the Terms and Conditions relating to the Funding as outlined below.
If you have any questions about the process or these Terms and Conditions, please contact the Grants Unit via email at grantsunit@sport.nsw.gov.au before you accept the Terms and Conditions below.

Organisation Name*
Organisation Name:
[Insert]

The Office of Sport (**Department**) will provide funding to the Organisation under the Terms and Conditions below (**Agreement**). The Organisation should print and retain a copy of this form for its own records.

Funding Agreement under the NSW Football Legacy Fund – Round 1 – Participation 2022/2023 (Program)

Preliminaries

1. Funding and Project
1.1 The Organisation acknowledges that GST exclusive Funding of:
$[insert]
has been approved to assist with the delivery of the Project titled:
[insert].
1.2 Nothing in this Agreement is to be construed as creating any obligation, commitment or undertaking by the Department to provide additional or further Funding or assistance to the Organisation beyond that specifically detailed in this Agreement. Specifically, the Organisation agrees that it is responsible for all operating and maintenance costs arising from the Project
1.3 Where the Organisation applied for the Funding as and is specified as a trustee for a trust (**Trust**) then, the Organisation warrants that:

(a) it is the sole trustee of the Trust; and
(b) it has full and valid power and authority to enter into this Agreement and perform the obligations under it on behalf of the Trust; and
(c) it has entered into this Agreement for the proper administration of the Trust; and
(d) all necessary resolutions, consents, approvals and procedures have been obtained or duly satisfied to enter into this Agreement and perform the obligations under it; and
(e) it has the right to be indemnified out of the assets of the Trust for all liabilities incurred by it under this Agreement.

2. Term
2.1 This Agreement will commence on the date that the Organisation accepts these Terms and Conditions.
2.2 Unless terminated earlier, this Agreement will end at the later of:

(a) Eighteen calendar months after the date of the Minister's notification of the Organisation being successful; or
(b) once the Organisation has completed the Project to the Department's satisfaction and all required reports or acquittals have been provided to the Department.

Organisation Obligations

3. Undertaking the Project

3.1 The Organisation agrees to undertake the Project in accordance with:

(a) this Agreement;

(b) its online application, which forms part of this Agreement, which it acknowledges is true and correct, including, without limitation, the information provided in regard to the budget and the outputs and outcomes of the Project;

(c) relevant policies or directions issued by the Department from time to time; and

(d) all relevant laws applicable to the Organisation or the Project.

3.2 Without limiting clause 3.1, the Organisation must, in undertaking the Project:

(a) acknowledge that it is committed to maintaining a child safe environment which is free of any form of harassment or child abuse and to developing appropriate policies in these areas;

(b) warrants that it is not listed either as an "institution that has not joined or signified their intent to join the National Redress Scheme" or an "institution named in the Royal Commission that has not yet joined the National Redress Scheme";

(c) ensure that it complies with the provisions of the *Children & Young Persons (Care and Protection) Act 1998* (NSW), *Child Protection (Working with Children) Act 2012* (NSW)*, Children's Guardian Act 2019* (NSW) and any other laws which apply to child protection;

(d) ensure that:

(i) it is complete and free from defects or omissions that are not minor;

(ii) it will not cause any legal or physical impediment to the use an occupation of the property for the designated use;

(iii) it is fit for use for the designated use; and

(iv) it holds all rights, licences and consents required to conduct the Project and otherwise fulfil its obligations under this Agreement;

(e) where it is not the owner of all or part of the land where the Project will be constructed, installed or otherwise delivered, it has obtained the approval and agreement of the landowner to construct, install or otherwise deliver the Project on their land.

3.3 The Organisation must complete the Project within the time period specified in clause 2.2(a). If the Project has not been completed by this time, the Department may terminate this Agreement and require the return of the funding, or any unspent balances, at its discretion.

3.4 The Organisation agrees to immediately notify the Department:

(a) any change in its corporate details including, but not limited to, addresses or the identity of officer holders or primary contact for the Project;

(b) of anything reasonably likely to adversely affect the delivery of the Project, management of the Funding or its performance of its other requirements under this Agreement; or

(c) its incorporation status changes, if it ceases to trade or can no longer comply with this Agreement.

3.5 Where the Funding is used by the Organisation to purchase any equipment or Asset for $5,000 (GST inclusive) or more:

(a) the Organisation agrees to obtain the Department's prior written approval to use the Funding to purchase any equipment or Asset, apart from those listed in its online application;

(b) the Organisation agrees to maintain a register of all equipment and Assets purchased in the form specified by the Department and to provide the register to the Department upon request;

(c) the Organisation agrees to use the equipment and Assets for the purposes of the Project;

(d) the Organisation must ensure that it owns any equipment and Assets purchased with the Funding for the purposes of the Project; and

(e) the Organisation agrees that the proceeds of any equipment and Assets purchased with the Funding disposed of during the Project must be treated as part of the Funding and used for the purposes of the Project.

3.6 The Organisation agrees:

(a) to ensure that its personnel and subcontractors do not engage in any Fraud in relation to the Project;

(b) to report within 7 days, to the Department and all appropriate law enforcement and regulatory agencies, of becoming aware of any Fraud in relation to the Project or any other Fraud that has had or may have an effect on the delivery of the Project;

(c) to investigate any Fraud referred to in clause 3.6(b) at its own cost and in accordance with any relevant

standards or best practice or as directed by the Department; and

(d) that the Department may, at its discretion, investigate any Fraud in relation to the Project and to co-operate and provide all reasonable assistance at its own cost with any such investigation.

4. Publicity

4.1 The Organisation agrees to acknowledge the Department's support in any:

(a) press release or media interviews;

(b) in any material published, whether electronic or physical, in connection with this Agreement or the Project; or

(c) at any sporting event or other function held by the Organisation in connection with this Agreement or the Project.

4.2 In acknowledging the Department's support, in accordance with clause 4.1, the Organisation will comply with the NSW Government's Funding Acknowledgement Guidelines for recipients of NSW Government Fundings, including appropriate use of the NSW Government logo in accordance with the NSW Government Brand Guidelines, as notified by the Department from time to time.

4.3 The Organisation must seek the written consent or the Department prior to any material, as outlined in clause 4.1(b), being published or provided to the public.

4.4 The Organisation also agrees to invite the Minister or other NSW Government representative to attend any opening ceremonies or launches of the Project.

5. Subcontracting

5.1 The Organisation is responsible for the performance of its obligations under this Agreement, including in relation to any tasks undertaken by subcontractors.

5.2 It is the Organisation's responsibility to ensure that:

(a) any subcontractors (or project partners) hired for the work proposed to be carried out have appropriate skills, qualifications and experience;

(b) that all work meets the requirements of this Agreement and complies with all applicable legislation, standards and codes of practice including, without limitation, those related to child protection;

(c) all subcontractors hold all required and/or appropriate licences and insurances; and

(d) compliance with the most recent National Construction Code is made a condition of tender for all subcontractors who tender for the work relating to the Project and providing the necessary assurances to the Department.

5.3 The Organisation agrees to make available to the Department the details of any of its subcontractors engaged to perform any tasks in relation to this Agreement upon request.

6. Conflict of interest

6.1 The Organisation agrees to notify the Department promptly of any actual, perceived or potential conflicts of interest which could affect its performance of this Agreement and agrees to take action to resolve the conflict.

6.2 The Organisation:

(a) represents and warrants that, as at the date of this Agreement, no Conflict of Interest exists or is likely to arise in relation to the entry into, or performance of obligations under, this Agreement by the Organisation or any of its employees;

(b) undertakes to notify the Department, in writing, immediately upon becoming aware of the existence, or possibility, of a Conflict of Interest.

6.3 On receiving a notice of a Conflict of Interest under clause 6.2(b), the Department may:

(a) approve the continuation of Agreement, which approval may be subject to reasonable conditions to ensure appropriate management of the Conflict of Interest; or

(b) where in the Department's reasonable view the Conflict of Interest cannot be appropriately managed, terminate this Agreement.

<u>About the Funding</u>

7. Payment of the Funding

7.1 The Department agrees to pay the Funding to the Organisation in a single payment subject to the Organisation:

(a) accepting the Terms and Conditions of this Agreement by [insert date];

(b) issuing a tax invoice to the Department for the total amount of the Funding plus GST (where applicable) through the Department's electronic grants management system;

(c) where it does not have an ABN, providing a completed Australian Taxation Office Statement by a Supplier form through the Department's electronic grants management system;

(d) being fully compliant, including any reporting or acquittal requirements, with the terms and conditions of any previous funding agreement with the Department and the Department will not pay the Funding under this Agreement until such time that any outstanding issues with previous funding agreements have been resolved to the Department's satisfaction.

7.2 Where the Organisation fails to accept the Terms and Conditions of this Agreement by the date specified in clause 7.1(a), the Department may, in its sole and absolute discretion, decide to not provide the Funding.

7.3 Nothing in clause 7.1 requires the Department to pay the Funding to the Organisation where the Department is unable to provide the Funding to the Organisation for any reason.

7.4 The Organisation must ensure that the Funding is only held in an account:

(a) in the Organisation's name;

(b) solely controlled by the Organisation or an approved officer of the Organisation; and

(c) with an entity included on the register of authorised deposit-taking institutions published by the Australian Prudential Regulation Authority.

8. GST

8.1 Unless otherwise indicated, all consideration for any supply under this Agreement is exclusive of any GST imposed in relation to the supply.

8.2 If the Organisation is not registered under the GST Law, it will not be entitled to receive such amount of any payment that is equal to the amount of GST imposed on that supply.

8.3. If:

(a) GST is imposed on a supply the Organisation makes to the Department under this Agreement; and

(b) the Department is or will be entitled to receive an input tax credit (as defined in the GST Law) in relation to that supply, the Department will pay you an additional amount equal to the GST imposed on that supply, at the time and in the manner payment is otherwise payable under this Agreement in relation to that supply.

9. Spending the Funding

9.1 The Organisation agrees to spend the Funding solely for the purpose of delivering the Project.

10. Repayment

10.1 If:

(a) any of the Funding has been spent other than in accordance with this Agreement;

(b) any amount of the Funding is additional to the amount required to deliver the Project;

(c) where relevant, the Organisation fails to secure a site for the Project;

(d) where relevant, the Organisation fails to secure or obtain any right, licence or consent required to conduct the Project;

(e) where relevant, the Organisation fails to execute a lease agreement with the landowner; or

(f) the Department has paid an amount greater than the Funding to the Organisation,

then the Organisation agrees to repay that amount to the Department upon demand from the Department unless agreed otherwise.

10.2 Any amount to be repaid to the Department under clause 10.1 may be recovered as a debt due to the Department.

<u>Reporting and Records</u>

11. Record keeping

11.1 The Organisation agrees to maintain the following controls and records related to the Funding:

(a) identify the receipt and expenditure of the Funding separately within the Organisation's accounts and records so that at all times the Funding is identifiable; and

(b) all tax invoices, official receipts, bank statements, quotations and other relevant records that enable all receipts and payments related to the Project to be identified and reported.

11.2 The Organisation agrees to maintain the records for at least seven years after the end of the Term in accordance with clause 2.2 and provide copies of the records to the Department upon request.

12. Reporting and Acquittals

12.1 The Organisation agrees:

(a) to submit any required report, acquittal or other documentation through the Department's electronic grants management system (**SmartyGrants**); and

(b) to abide by any SmartyGrants Privacy and Data Security/Usage Policies published on the SmartyGrants website (www.smartygrants.com.au).

12.2 The Organisation must:

(a) provide a Completion Report, in accordance with the template accessible through SmartyGrants, within 30 days of the Project being delivered;

(b) include with the Completion Report, a declaration by an office holder that the Funding has been used only for the Project and any supporting evidence, including, but not limited to, invoices and photographic evidence, as specified in the template accessible through SmartyGrants.

12.3 The Organisation agrees to provide, upon request by the Department from time to time, any additional information reasonably requested by the time specified in such request including, but not limited to, a Certificate of Practical Completion or an Occupation Certificate.

12.4 For the purposes of this Agreement, the material provided to the Department under clauses 12.1(a), 12.2 or 12.3 is considered Reporting Material.

12.5 If the Organisation does not comply, to the Department's satisfaction, with its obligations in clauses 12.2 or 12.3, then the Department may, in any combination,:

(a) terminate this Agreement;

(b) require the Organisation to repay Funding (either in full or in part) and such Funding required to be repaid under this clause may be recovered as a debt due to the Department; or

(c) consider the Organisation ineligible for any further funding under the Program or any other program managed by the Department until such non-compliance is rectified.

13. Audit

13.1 The Organisation may be audited or investigated by the Department to determine whether it is complying with this Agreement.

13.2 The Organisation must provide any information or documentation that is reasonably required for the purpose of any such audit or investigation conducted under clause 13.1.

13.3 If requested by the Department, the Organisation agrees to provide the Department, or any persons authorised in writing by the Department, with access to the Organisation's premises, personnel, documents and other records, and all assistance reasonably requested, to enable the Department to conduct any audit or investigation conducted under clause 13.1.

13.4 The Department will reimburse the Organisation's substantiated reasonable costs for complying with a request under clause 13.3.

14. Performance Monitoring and Evaluation

14.1 At any point during the Term of this Agreement and until 5 (five) years after the end of the Term in accordance with clause 2.2, where requested, the Organisation must:

(a) provide statistical data and any other information or media in response to any request the Department may reasonably make for the purpose of research, program evaluation and surveys conducted by the Department or its authorised representative; and

(b) where such request made covers data or information which is commercial-in-confidence, agree to negotiate with the Department in good faith to provide the data or information in an aggregated or de-identified form, or in such other form or on such other basis, as may be agreed with the Department.

Risk

15. Insurance

15.1 The Organisation agrees to maintain the following insurance for the Term of this Agreement and provide the

Department with proof when requested:

(a) workers compensation insurance as required by law; and

(b) adequate occurrence based public liability insurance (minimum $5 million).

16. Indemnities

16.1 The Organisation agrees to indemnify and keep indemnified the Department, its officers, employees, agents and contractors from and against any Claim (including reasonable legal costs and expenses) arising out of or in connection with the Project or the use of the Funding.

16.2 The Organisation's obligation to indemnify the Department will reduce proportionally to the extent any act or wilful or negligent omission involving fault on the part of the Department contributed to the Claim.

17. Exclusion of liability

17.1. To the extent permitted by law, the Department (including its officers, employees, agents and contractors) will not be liable for any direct, indirect, incidental, special or consequential loss or damage or for any death, illness, personal injury, financial loss or property damage however caused (including by negligence) which may be suffered or incurred by the Organisation or any person arising directly or indirectly out of or in any way connected with this Program, including:

(a) any decision to make or refuse to make a payment under this Agreement;

(b) the fraudulent application for payments made under this Agreement; or

(c) any breach of this Agreement.

Termination

18. Termination for default

18.1 Without limitation to any other express right specified in this Agreement or at law, the Department may terminate this Agreement, and seek damages, by notice where it reasonably believes the Organisation:

(a) has failed, or will not be able to, satisfactory deliver the Project;

(b) has provided false or misleading statements in their application for the Funding;

(c) has otherwise breached this Agreement;

(d) the Organisation acts in a manner that will cause damage to the reputation or standing of the Department or any of its programs, or otherwise bring the Department into disrepute;

(e) the Organisation acts in a manner that will cause damage to its reputation or standing, its sport, or otherwise bring it or its sport into disrepute; or

(f) has become bankrupt or insolvent, entered into a scheme of arrangement with creditors, come under any form of external administration, ceases to carry on business or otherwise fails maintain the currency of its incorporation as a separate legal entity pursuant to any law applicable to it (for example, *Associations Incorporation Act 2009* (NSW), *Corporations Act 2001* (Cth) or *Local Government Act 1993* (NSW)).

19. Termination for convenience

19.1 The Department may terminate this Agreement by notice, due to:

(a) a change in government policy; or

(b) a Change in the Control of the Organisation, which the Department believes will negatively affect the Organisation’s ability to comply with this Agreement.

19.2 The Organisation agrees on receipt of a notice of termination under clause 19.1 to:

(a) stop the performance of the Organisation's obligations as specified in the notice; and

(b) take all available steps to minimise loss resulting from that cancellation.

19.3 In the event of cancellation under clause 19.1, the Department will be liable only to:

(a) pay any part of the Funding due and owing to the Organisation under this Agreement at the date of the notice; and

(b) reimburse any reasonable expenses the Organisation unavoidably incurs that relate directly to the cancellation and are not covered by 19.3(a).

19.4 The Department’s liability to pay any amount under this clause is subject to:

(a) the Organisation's compliance with this Agreement; and

(b) the total amount of the Funding.

19.5 The Organisation will not be entitled to compensation for loss of prospective profits or benefits that would have been conferred on the Organisation.

Miscellaneous

20. Intellectual Property

20.1 Subject to clause 20.2, the Organisation owns the Intellectual Property Rights in Project Material and Reporting Material.

20.2 This Agreement does not affect the ownership of Intellectual Property Rights in Existing Material.

20.3 The Organisation gives the Department a non-exclusive, irrevocable, royalty-free licence to use, reproduce, publish and adapt Project Material and Reporting Material for Department Purposes.

21. Privacy

21.1 In carrying out the Project, the Organisation agrees not to do anything which, if done by the Department, would be a breach of *Privacy and Personal Information Protection Act 1998* (NSW) and the *Health Records and Information Privacy Act 2002* (NSW).

22. Confidentiality

22.1 Each party agrees it must maintain the confidentiality of all commercially sensitive or confidential information it receives from the other party, unless it obtains the consent of that other party to disclose the information. For the purposes of this section, the Department considers the amount of the Funding to be confidential information.

22.2 Clause 22.1 does not apply if the information disclosed:

(a) is publicly available at the time of the disclosure;

(b) is required to be disclosed under the *Government Information (Public Access) Act 2009* (NSW) or process or requirement of Parliament, law or a court; or

(c) is required to be disclosed for the purpose of preparing a party's financial statements.

23. Variation

23.1 This Agreement may be varied in writing only, signed by both parties.

24. Notices

24.1 A notice under this Agreement must be in writing, signed by the party giving notice and addressed to the other Party's representative.

24.2 The Department may, by notice, advise the Organisation of changes to the Agreement that are minor or of an administrative nature provided that any such changes do not increase the Organisation's obligations under this Agreement. Such changes, while legally binding, are not variations for the purpose of clause 23.

25. Relationship between the Parties

25.1 A party is not by virtue of this Agreement the employee, agent or partner of the other party and is not authorised to bind or represent the other party.

26. Dispute resolution

26.1 The parties agree not to initiate legal proceedings in relation to a dispute unless they have tried and failed to resolve the dispute by negotiation.

26.2 The parties agree to continue to perform their respective obligations under this Agreement where a dispute exists.

26.3 The procedure for dispute resolution does not apply to action relating to termination or urgent litigation.

27. Governing law

27.1 The laws of New South Wales govern this Agreement and the parties submit to the non-exclusive jurisdiction of the courts in that State.

28. Electronic dealing

28.1 The Organisation acknowledges acceptance of execution of this Agreement under the provisions of the *Electronic Transactions Act 2000* (NSW).

29. Entire agreement and severability
29.1 This Agreement constitutes the entire agreement between the parties in relation to the Project and supersedes all prior negotiations, memoranda or agreements, whether written or oral.
29.2 If any part of this Agreement is prohibited, void, illegal or unenforceable, then that part is severed from this Agreement but without affecting the continued operation of the remainder of the Agreement.

30. Assignment
30.1 The Organisation must not assign or novate its obligations or interests under this Agreement, without the Department's prior written consent.

31. Waiver
31.1 Failure or omission by the Department at any time to enforce or require strict or timely compliance with any provision of this Agreement will not affect or impair the Department's right to avail itself of any remedy it may have in respect of any breach of this Agreement.

32. Survival
32.1 Clauses 3.2, 3.5, 3.6, 4, 10, 11, 12, 13, 14, 16, 17, 20, 21, 22, 31, 32 and 33 survive termination, cancellation or expiry of this Agreement along with any other clause, which by its nature, is intended to survive termination, cancellation or expiry of this Agreement.

Definitions and Interpretation

33. Definitions
33.1 In this Agreement, unless the contrary appears:

(a) Asset means any item of property purchased wholly, or in part, with the use of the Funding;

(b) Certificate of Practical Completion means a certificate of practical completion for the Project issued in form and substance acceptable to the Department.

(c) Change in the Control means any change in any person(s) who directly exercise effective control over the Organisation.

(d) Claim means any claim, demand, remedy, suit, injury, damage, loss, Cost, liability, action, proceeding, right of action, claim for compensation and claim for abatement of obligations;

(e) Conflict of Interest means a situation where the exercise of a person's duty or decision-making is influenced, potentially influenced, or may appear to be influenced, by a secondary interest, including (but not limited to) a private or business interest;

(f) Cost means any cost, charge, expense, payment or other expenditure of any nature (whether direct, indirect or consequential and whether accrued or paid);

(g) Department Purposes means the operations of the Department but does not include commercialisation or the provision of the Material to a third party for its commercial use;

(h) Existing Material means Material developed independently of this Agreement that is incorporated in or supplied as part of Reporting Material or Project Material;

(i) Fraud means dishonestly obtaining a benefit, or causing a loss, by deception or other means, and includes alleged, attempted, suspected or detected fraud;

(j) GST Law means *A New Tax System (Goods and Services Tax) Act 1999* (Cth), related legislation and any delegated legislation made pursuant to such legislation;

(k) Intellectual Property Rights means all copyright, patents, registered and unregistered trademarks (including service marks), registered designs, and other rights resulting from intellectual activity (other than moral rights under the Copyright Act 1968);

(l) Material includes documents, equipment, software (including source code and object code versions), goods, information and data stored by any means including all copies and extracts of them;

(m) Minister means the Minister for Sport and any successors in function;

(n) Occupation Certificate means a final certificate provided, in accordance with any applicable law, that certifies that the works for the Project have been completed and authorises a person to commence occupation or use of any new building or to commence a new use of an existing building, premises or facility listed in the certificate.

(o) Project Material means any Material, other than Reporting Material, created or developed by the Organisation as a

result of the Project and includes any Existing Material that is incorporated in or supplied with the Project Material.

(p) Reporting Material means all Material which the Organisation is required to provide to the Department for reporting purposes as specified in the Funding Details and includes any Existing Material that is incorporated in or supplied with the Reporting Material.