

Sponsorship Agreement

Swinburne Student Association

PARTIES

This Sponsorship Agreement is made between:

1. THE SPONSOR

and

2. SWINBURNE STUDENT ASSOCIATION LIMITED

ACN 682 527 448, of 14 Wakefield Street, Hawthorn VIC 3122 (**SSA**).

NAME OF CLUB RECEIVING THE SPONSORSHIP

INTRODUCTION

The Sponsor wishes to sponsor the Club. SSA acknowledges and supports this sponsorship and enters into this Agreement on behalf of the Club. The parties agree that the Sponsor shall provide the Sponsorship Contribution set out in the Agreement Particulars, and SSA shall provide the Benefits, in accordance with this Agreement. The parties are not bound to any conditions other than those set out in this Agreement.

The Club is the beneficiary of this sponsorship but is not a signatory to this Agreement. SSA enters into and administers the Agreement on the Club's behalf. Only the Sponsor and SSA sign this Agreement.

AGREEMENT PARTICULARS

Complete the highlighted fields. These particulars form part of this Agreement.

1	Sponsorship Contribution	TOTAL SPONSORSHIP AMOUNT (AUD) \$ WHAT THE SPONSOR IS PROVIDING (CASH AND/OR GOODS & SERVICES) 												
2	Benefits	An external vendor arrangement that provides a net benefit to Swinburne students.												
3	Term	THIS AGREEMENT RUNS UNTIL 												
4	Sponsor Representative	<table border="0"> <tr> <td>NAME</td> <td>POSITION</td> </tr> <tr> <td> </td> <td> </td> </tr> <tr> <td colspan="2">ADDRESS</td> </tr> <tr> <td colspan="2"> </td> </tr> <tr> <td>PHONE</td> <td>EMAIL</td> </tr> <tr> <td> </td> <td> </td> </tr> </table>	NAME	POSITION			ADDRESS				PHONE	EMAIL		
NAME	POSITION													
ADDRESS														
PHONE	EMAIL													
5	SSA Representative	Name: Josh Gilligan (or Delegate) Address: 34 Wakefield Street, Hawthorn VIC 3122 Email: clubs@swin.edu.au												

EXECUTION

By signing below, the Sponsor and SSA agree to be bound by this Agreement, including the Agreement Particulars and the terms that follow.

Signed for and on behalf of the Sponsor by its authorised representative:

SIGNATURE

NAME

TITLE / POSITION

DATE

Signed for and on behalf of Swinburne Student Association Limited by its authorised representative:

SIGNATURE

NAME

TITLE / POSITION

DATE

THE PARTIES AGREE

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement, unless the context requires otherwise:

“Agreement” means this agreement including the recitals, Agreement Particulars, schedules and annexures;

“Benefits” means the rights, licences, privileges, concessions and benefits set out in Item 2 of the Agreement Particulars;

“Business Day” means a day which is not a Saturday, Sunday, a public holiday or a bank holiday in the State of Victoria;

“Claim” includes any claim, action, demand, costs, expenses, proceeding, suit, cause of action, arbitration, verdict or judgment, either at law or in equity or arising under a statute;

“Club” means the Swinburne student club named in the Agreement Particulars that the sponsorship supports;

“Confidential Information” means all technical, commercial, financial or other information (whether oral, written, electronic or in any other form) disclosed by a party but excluding any information which is at the time of disclosure generally and publicly available or becomes lawfully in a party's possession wholly independently of the other party;

“Intellectual Property” means all current and future registered and unregistered rights in respect of copyright, design, trade marks, trade, business, company or domain name, trade secrets, know-how, Confidential Information, patents, inventions and discoveries and all other intellectual property rights, and including all applications and rights to apply for any of the same;

“Force Majeure” means any act, omission or circumstance relied on by a party over which that party could not reasonably have exercised control;

“SSA” means Swinburne Student Association Limited;

“Sponsorship Contribution” means the consideration (monetary and/or in-kind) provided under this Agreement by the Sponsor to sponsor the Club, as set out in Item 1 of the Agreement Particulars;

“Sponsor's Mark” means the logo or mark of the Sponsor and its related bodies corporate;

“Sponsor's Representative” means the person named in Item 4 of the Agreement Particulars and includes any delegate or representative of that person;

“SSA's Representative” means the person named in Item 5 of the Agreement Particulars and includes any delegate or representative of that person; and

“Term” means the period specified in Item 3 of the Agreement Particulars.

1.2 Interpretation

In this Agreement, unless the context requires otherwise:

- a. the headings are used for convenience only and do not affect the interpretation of this Agreement;
- b. a reference to a document includes the document as modified from time to time and any document replacing it;

- c. a reference to a clause, schedule, appendix or annexure is a reference to a clause, schedule, appendix or annexure in or to this document, including the Agreement Particulars, all of which are deemed part of this document;
- d. where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
- e. where the expression including or includes is used it means 'including but not limited to' or 'including without limitation';
- f. if this Agreement requires something to be done on a day which is not a Business Day then that thing must be done by the next Business Day;
- g. a reference to a person includes a natural person, any body or entity whether incorporated or not, partnership, government authority, any executor, administrator or successor in law of the person;
- h. a reference to a party includes that party's successors and permitted assigns;
- i. a reference to a statute or other law includes regulations and other instruments made under it and includes consolidations, amendments, re-enactments or replacements of any of them;
- j. a reference to '\$' or 'dollars' is a reference to Australian dollars.

2. SPONSORSHIP

2.1 Sponsorship

The Sponsor agrees to sponsor the Club and SSA agrees to provide the Benefits, on the terms and conditions set out in this Agreement.

2.2 Sponsorship Contribution

- a. The Sponsor must provide the Sponsorship Contribution at the times and in the manner specified in Item 1 of the Agreement Particulars.
- b. The Sponsor must give at least 30 days' written notice to SSA if the provision of the Sponsorship Contribution is expected to be varied, delayed or suspended for any given reason.

2.3 Sponsorship Benefits

- a. SSA will provide the Sponsor with the Benefits at the times and in the manner set out in Item 2 of the Agreement Particulars during the Term in accordance with this Agreement.
- b. The Sponsor acknowledges and agrees that if the Sponsor fails to provide the Sponsorship Contribution when due, SSA may withhold some or all of the Benefits at its sole discretion.

2.4 Non-Exclusivity

Unless otherwise specified, the Sponsor acknowledges and agrees that SSA may enter into a similar or identical sponsorship agreement with one or more persons other than the Sponsor.

3. USE OF MARKS

3.1 Sponsor's Marks

The Sponsor agrees to provide SSA with a suitable electronic copy of the Sponsor's Mark and grants SSA the right to use and reproduce the Sponsor's Mark for the purpose of promoting and acknowledging the Sponsor as a sponsor of the Club.

3.2 Swinburne's or SSA's Marks

- a. The Sponsor may not use the Swinburne name and logo to promote its association with the Club, however, does have the right to refer to sponsorship of the Club on its own website, with appropriate links during the Term. The Sponsor may use the Club logo or name to promote its association.

- b. The Sponsor must not use the SSA, Swinburne or Club name and/or logo in any way that is prejudicial to either SSA's or Swinburne's reputation.

4. INTELLECTUAL PROPERTY RIGHTS

- a. All Intellectual Property relating to the Club belongs or is licensed to SSA and, subject to clause 3.2, the Sponsor must not copy, reproduce, distribute, publish or communicate to any third party such information without SSA's prior written consent.
- b. Each party acknowledges that it will not acquire any rights in the other party's Intellectual Property by virtue of entering into or performing its obligations under this Agreement.
- c. Each party must notify the other party immediately upon becoming aware of:
 - i. any actual or suspected infringement of the other party's Intellectual Property; or
 - ii. any third party claim of infringement of their Intellectual Property from the use of the other party's Intellectual Property.
- d. If requested, each party must co-operate fully with and provide all reasonable assistance to, the other party in stopping any infringement or defending a claim.

5. CONFIDENTIALITY

- a. All Confidential Information obtained by one party from the other party in the course of performing this Agreement will be treated as confidential, kept secure and will not be disclosed to any third party without its prior written consent, unless required by law to do so.
- b. The parties agree to limit the disclosure of the Confidential Information to those of its employees to whom such disclosure is strictly necessary for the purpose of performing its obligations under this Agreement and to ensure that they keep the Confidential Information confidential.

6. WARRANTIES

The Sponsor represents and warrants to SSA that:

- a. it is the beneficial owner of the Sponsor's Mark and Intellectual Property that it has the right to permit SSA to use the Sponsor's Mark under this Agreement;
- b. the Sponsor's Mark and Intellectual Property does not infringe any third party's Intellectual Property;
- c. any use by SSA of the Sponsor's Mark in accordance with this Agreement will not constitute an infringement or misappropriation of the rights of any person; and
- d. the Sponsor must indemnify SSA against the full cost of any Claim by any third party that SSA's use of the Sponsor's Mark infringes any third party's Intellectual Property.

7. LIABILITY AND INDEMNITY

7.1 Indemnity

- a. Subject to paragraphs (b) and (c), each party (an indemnitor) indemnifies and shall keep indemnified the other party (including all or its servants, agents, officers or employees) (indemnatee) from and against any and all losses, Claims and liabilities (including reasonable legal fees) that the indemnatee suffers or incurs as a result of:
 - i. loss of or damage to property, personal injury or death caused by the indemnitor;
 - ii. any breach of this Agreement by the indemnitor;
 - iii. infringement of Intellectual Property by the indemnitor; or
 - iv. any unlawful or negligent act or omission by the indemnitor.

- b. The indemnity given by the indemnitor will be reduced proportionately to the extent that a breach of this Agreement or any unlawful or negligent act or omission by the indemnitee may have contributed to any such liability, loss, harm, damage, cost or expense.
- c. Notwithstanding any provision of this Agreement, in no event shall a party have any liability whatsoever to another party (or anyone claiming through another party including their agents, consultants, employees or representatives) for any loss of profits, revenue, business, opportunity, production, goodwill, contract, data or anticipated saving or for any financing costs or increase in operating costs or for any economic loss for any special, indirect or consequential loss or for exemplary damages arising out of or in connection with this Agreement.

7.2 Limitation of liability

Except as expressly provided to the contrary in this Agreement and to the fullest extent permitted by the law:

- a. all terms, conditions, warranties or representations, whether express, implied, statutory or otherwise relating to the supply of the Benefits are excluded;
- b. the total liability of each party (whether SSA or the Sponsor) to the other party, or to any other person, for any loss or damage, including any damage to property, personal injury or death, is in every case limited to the amount of the Sponsorship Contribution; and
- c. neither party will be liable to the other party for any delay or failure to perform its obligations under this Agreement (including, in the case of SSA, any delay or failure to provide the Benefits) where the delay or failure is due to Force Majeure or to an act or omission of the other party.

The liability cap in 7.2(b) and the excused-performance provision in 7.2(c) apply mutually to both SSA and the Sponsor.

7.3 Where liability cannot be limited

Certain laws such as the Competition and Consumer Act 2010 (Cth) may imply warranties or conditions or impose obligations upon SSA that SSA cannot exclude, restrict or modify. If these laws apply, to the extent to which SSA is able to do so, SSA's liability will be limited (at SSA's option) to:

- a. the resupply of the Benefits; or
- b. the payment of the cost of resupplying the Benefits.

8. COMPLIANCE WITH LAW

The Sponsor must comply with, and must ensure that its officers, employees, agents and subcontractors comply with, all laws and policies which are published or which are disclosed to the Sponsor, affecting this Agreement and the manner in which the Sponsor performs its obligations under this Agreement.

9. GST

9.1 GST Act

In this clause words that are defined in A New Tax System (Goods and Services Tax) Act 1999 have the same meaning as their definition in that Act.

9.2 Exclusive of GST

Except as otherwise provided by this clause, all consideration payable under this Agreement in relation to any supply is exclusive of GST.

9.3 Recipient must pay

If GST is payable in respect of any supply made by a supplier under this Agreement, subject to clause 9.4 the recipient will pay to the supplier an amount equal to the GST payable on the supply at the same time and in the same manner as the consideration for the supply is to be provided under this Agreement.

9.4 Tax Invoice

The supplier must provide a tax invoice to the recipient before the supplier will be entitled to payment of the GST payable under clause 9.3.

10. DISPUTE RESOLUTION

10.1 Dispute

- a. Neither party will resort to legal proceedings, or terminate this Agreement, until the following process has been exhausted, except if it is necessary to seek urgent interlocutory relief.
- b. If a Dispute arises about the operation of this Agreement, that party must promptly send a notice to the other party ("Dispute Notice") setting out a full description of the Dispute.
- c. Within the 10 Business Days after the Dispute Notice is given, SSA's Representative and the Sponsor's Representative must meet at a time and place agreed between the parties and use reasonable commercial efforts to resolve the Dispute in good faith.
- d. If resolution of the dispute cannot be achieved under clause 10.1(c), the dispute must then be escalated to the executive of each party, (the CEO, in the case of SSA), or their nominee or delegate, who must attempt to resolve the dispute in good faith.

10.2 Mediation

- a. Should the executives fail to reach a solution in accordance with clause 10.1(d) within 5 Business Days (or such other time frame agreed between the parties), the parties may agree to mediation.
- b. The mediator will be selected in accordance with the Commercial Mediation Guidelines issued by the Australian Commercial Dispute Centre Limited.

11. TERMINATION

11.1 Cancellation

- a. The Sponsor and SSA may terminate this Agreement by mutual agreement if the sponsorship is cancelled or not delivered.
- b. If the Agreement is terminated, SSA will return to the Sponsor the whole of the Sponsorship Contribution, less any unavoidable costs of such cancellation as determined by SSA at its sole discretion.

11.2 Termination Notice

Each party may terminate this Agreement at any time by 7 days' written notice to the other Party if the other Party ("Defaulting Party"):

- a. fails to carry out any provision of this Agreement and that the Defaulting Party does not remedy that failure within 10 Business Days after written notice to the Defaulting Party requiring it to be remedied;
- b. fails to carry out any provision of this Agreement and the failure is not capable of remedy;
- c. ceases to carry on business in the normal course.

11.3 Immediate Termination

SSA may immediately terminate this Agreement at any time by written notice to the Sponsor where:

- a. the Sponsor is the subject of an Insolvency Event; or

- b. in the opinion of Swinburne or SSA the name, goodwill, reputation or interest of Swinburne or SSA is at risk.

11.4 Consequences of Termination

- a. Unless agreed otherwise by the parties, on expiration or termination of this Agreement, each party:
 - i. will cease to have any rights to use the other party's Intellectual Property;
 - ii. must immediately cease to use, publish or distribute the other party's Intellectual Property, hold itself out as being entitled to use or reproduce the other party's Intellectual Property, or suggest, in any way, a relationship between SSA and the Sponsor;
 - iii. must in the manner and within the timeframe required by the other party destroy all material on which the other party's trade mark appears or which in any way may suggest a relationship between SSA and the Sponsor.
- b. Termination of this Agreement does not affect:
 - i. a party's rights or claims which arose before termination; or
 - ii. unless agreed otherwise by the parties, any rights or claims made under clauses 3 (use of Marks), 4 (Intellectual Property Rights), 5 (Confidentiality), 6 (Warranties) and 10 (Dispute Resolution) (to the extent that these obligations are applicable to them) and any other obligations which by their nature are intended to survive this Agreement.
- c. Termination of this Agreement does not prejudice any cause of action or claim of any party arising out of a breach of this Agreement by the other party.

11.5 The Sponsor's obligations on Termination

On termination of this Agreement, the Sponsor must return to SSA all property of SSA including, but not limited to, Confidential Information.

12. FORCE MAJEURE

- a. If a party is unable to perform an obligation under this Agreement due to Force Majeure, that party is excused from performing that obligation while those circumstances continue.
- b. If those circumstances continue for 60 days or if the delay in the party's performance of its obligation has a material adverse effect on the other party, then the party adversely affected may terminate this Agreement upon giving 14 days' written notice to the other party.

13. NOTICES

13.1 Service of Notice

A notice or other communication required or permitted, under this Agreement, to be served on a person must be in writing and may be served:

- a. personally on the person;
- b. by leaving it at the person's current address for service;
- c. by posting it by prepaid post addressed to that person at the person's current address for service;
- d. by facsimile to the person's current number for service; or
- e. by email to the person's email address for service.

13.2 Particulars for Service

- a. The particulars for service of the Sponsor are specified in Item 4 of the Agreement Particulars.
- b. The particulars for service of SSA are specified in Item 5 of the Agreement Particulars.

- c. Any party may change the address or facsimile number for service by giving notice to the other party.
- d. If the person to be served is a company, the notice or other communication may be served on it at the company's registered office.

13.3 Time of Service

A notice or other communication is deemed served:

- a. if served personally or left at the person's address, upon service;
- b. if posted within Australia to an Australian address, 2 Business Days after posting and in any other case, 7 Business Days after posting;
- c. if served by facsimile, subject to the next sub-clause, at the time indicated on the transmission report produced by the sender's facsimile machine indicating that the facsimile was sent in its entirety to the addressee's facsimile;
- d. if served by email, at the time the notice or other communication comes to the attention of the addressee;
- e. if served by email, at the time the email containing the notice left the sender's email system, unless the sender receives notification that the email containing the notice was not received by the recipient;
- f. if received after 5.00pm in the place of receipt or on a day which is not a Business Day, at 9.00am on the next Business Day.

14. RELATIONSHIP OF THE PARTIES

This Agreement does not create a partnership, joint venture, employment or agency relationship between the parties. Each party must not incur any expenditure on behalf of any other party, pledge its credit, or bind it to any contractual obligation whatsoever without prior written approval signed by the other party.

15. GENERAL

15.1 Entire Agreement

This Agreement contains the entire agreement between the parties and supersedes all prior communications, representations, warranties and undertakings between the parties concerning the subject matter of this Agreement.

15.2 No Variation

This Agreement cannot be varied except in writing signed by the parties.

15.3 Severability

If any provision in this Agreement is unenforceable, illegal or void or makes this Agreement or any part of it unenforceable, illegal or void, then that provision is severed and the rest of this Agreement remains in force.

15.4 Further assurance

Each party must promptly at its own cost do all things (including executing and if necessary delivery all documents) necessary or desirable to give full effect to this Agreement.

15.5 Waiver and Exercise of Rights

- a. A single or partial exercise or waiver of a right relating to this document does not prevent any other exercise of that right or the exercise of any other right.

- b. No party will be liable for any loss or expenses incurred by another party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

15.6 Assignment or Sub-contracting

- a. SSA may assign or sub-contract the performance of any or all of the Benefits under this Agreement.
- b. The Sponsor must not:
 - i. sell, transfer, novate, delegate, assign, licence; or
 - ii. mortgage, charge or otherwise encumber,any right or obligation under this Agreement to any person without the prior written consent of SSA.

15.7 Legal Costs and Expenses

Each party must pay its own legal costs and expenses in relation to the negotiation, preparation and execution of this document and other documents referred to in it, unless expressly stated otherwise.

15.8 Survival of Indemnities

Each indemnity in this document is a continuing obligation, separate and independent from the other obligations of the parties and survives termination of this document.

15.9 Enforcement of Indemnities

It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity conferred by this document.

15.10 No Merger

The Warranties, undertakings, agreements and continuing obligations in this document do not merge on completion.

15.11 Rule of Construction

In the interpretation of this document, no rule of construction applies to the disadvantage of the party preparing this document on the basis that it prepared or put forward this document or any part of it.

15.12 Execution of counterparts

This Agreement may be executed in any number of counterparts. Each counterpart is an original but the counterparts together are one and the same agreement.

15.13 Governing Law

This Agreement is governed by and construed in accordance with the laws of the State of Victoria. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Victoria and waives any right to object to proceedings being brought in those courts.