

## **Terms and Conditions of Use**

These Terms govern your use of the ClubGRANTS website ("the Website"). Please read them carefully.

By accessing or using the Website, or by creating an Account, the User accepts these Terms and is bound by them. If a User does not accept these Terms it must not access or use the Website, or create an Account.

ClubsNSW may, from time to time, update or amend these Terms in its sole discretion. You should carefully read these Terms each time You use the Website

Words capitalised in these Terms have the meaning given to them in the Glossary

### **The Website**

1.1 The Website is available to Applicants Registered Clubs and LGAs

1.2 Notwithstanding anything in these Terms, certain legislation including the Competition and Consumer Act 2010 (Cth), may imply warranties, conditions or guarantees or impose obligations or remedies which cannot be excluded, restricted or modified except to a limited extent. To the extent that such legislation applies, these Terms must be read subject to those statutory provisions and nothing in them is intended to alter or restrict the operation of such provisions.

1.3 By agreeing to and accepting these Terms You have not relied on:

(a) any warranty or representation made by ClubsNSW or any person on behalf of ClubsNSW; or

(b) any conduct of ClubsNSW or any person acting on behalf of ClubsNSW.

### **2. Accessing the Website**

2.1 In order to access the functionality of the Website, a User must have an Account. Users are solely responsible for the use of their Account and must ensure that they keep all passwords secure. All use of the Account is deemed to be use of the Website by the User for the purposes of these Terms

2.2 When registering an Account, Users must provide true, accurate and complete information. If a User is acting on behalf of a company or other body, they must be authorised to provide information about that body to ClubsNSW. It

is the User's responsibility to inform ClubsNSW of any changes to that information (including without limitation the relevant email address), by updating their details on the relevant section of the Website.

2.3 The right to use the Website is personal to the User and is not transferrable to any other person or entity. Users are entirely responsible for any and all activities that occur under their Account and for ensuring that all use of the Account complies fully with these Terms. Users must notify ClubsNSW immediately of any unauthorised use of their Account or any other breach of security. ClubsNSW will not be liable for any loss that a User incurs as a result of someone using the Account created for them, either with or without the User's knowledge

2.4 ClubsNSW retains full discretion over the acceptance of new Users onto the Website and may require a User to provide additional information and/or documentation as part of the Account opening process.

2.5 ClubsNSW may suspend or terminate any User's Account if:

(a) that User has breached its obligations, or ClubsNSW reasonably believes that the User has breached its obligations, under these Terms or any applicable laws; or

(b) ClubsNSW, in its absolute discretion, considers that the User poses an actual or potential threat to the security of the Website and/or ClubsNSW's and/or other Registered Club's business and/or interests

2.6 ClubsNSW shall have no liability to the User as a result of suspending or terminating an Account in accordance with section 2.5

## **Warranties**

### 3. Warranties

3.1 Each User warrants that:

(a) it has full power and authority to accept these Terms;

(b) it has full power and authority to perform all of its obligations under these Terms; and

(c) its entry into these Terms is a legal and binding agreement, enforceable against it in accordance with these Terms.

#### 4. No legal advice

4.1 The information in these Terms and any information that is made available through the Website is not legal advice, and does not constitute a recommendation or opinion that the information or any guidance made available by ClubsNSW is suitable for a particular User.

4.2 Any information provided to Users by ClubsNSW whether through these Terms, the Website, generic marketing emails, publicly available materials or through social media channels, is general information in nature only, and must not be treated as legal advice or other professional advice. This information does not take into account and is not based upon a consideration of a User's individual circumstances.

#### 5. Discretions

5.1 Any power or discretion granted to ClubsNSW under these Terms may be exercised by ClubsNSW in its absolute discretion including, without limitation:

- (a) terminating or suspending a User's Account;
- (b) amending and/or improving the Website;
- (c) restricting a User's access to the Website (such as for periodic maintenance, repairs or upgrade); and
- (d) exercising any other right set out or contemplated in these Terms

#### **Intellectual property**

#### 6. Intellectual Property

6.1 Nothing in these Terms constitutes a transfer of any intellectual property rights.

6.2 The Website, all ClubsNSW Content and all intellectual property rights that subsist in them (including, without limitation, copyright, trademarks, patents, design rights and all other forms of intellectual property rights existing in the world) are owned by ClubsNSW, or licensed to ClubsNSW by its third party licensors.

6.3 Subject to clause 6.4, Users must not do anything which breaches or otherwise interferes with ClubsNSW's intellectual property rights or the intellectual property rights of any of ClubsNSW's third party licensors. Users may

not distribute, reproduce, publish, alter, modify or create derivative works from any ClubsNSW Content without the prior written permission of ClubsNSW, or the relevant third party licensor, or exploit such content for commercial benefit.

6.4 ClubsNSW grants each Applicant, Registered Club and LGA a non-exclusive, non-transferable, personal, limited licence to access, view, download, modify, use and display the Downloadable Content which ClubsNSW makes available to Applicants, Registered Clubs and LGAs from time to time on the Website.

6.5 All rights not expressly granted are reserved by ClubsNSW.

6.6 You warrant that any User Content represents your own original work and/or You have all necessary rights to disclose the User Content on the Website and to ClubsNSW and that any use by ClubsNSW as contemplated under these Terms will not infringe the intellectual property rights of any third party.

6.7 When You upload User Content to the Website, You grant ClubsNSW a worldwide, royalty-free, non-exclusive license (with the right to sub-licence) to copy, distribute, publicly display, communicate and make derivative works of the User Content, to the extent necessary for the assessment, review and the effective management of grants and the Website including any related activities.

6.8 In addition to the licence granted in clause 6.7, the User gives ClubsNSW permission to use any data contained in the User Content for any purpose determined by ClubsNSW, including without limitation analytical and insights purposes.

6.9 Each User gives ClubsNSW permission to disclose any data contained in the User Content to any party, provided that ClubsNSW has ensured that reasonable security measures for the data are in place prior to any data transfer.

## 7. Privacy

7.1 Any personal information collected by ClubsNSW through the Website or otherwise collected by or on behalf of ClubsNSW, will be dealt with in accordance with the Privacy Policy and in accordance with the following provisions of clause 7.

7.2 Each User shall take all reasonable measures to ensure that personal information held in connection with the Website is protected against loss, and against unauthorised access, use, modification, disclosure or other misuse and that only authorised personnel have access to the personal information on a "need-to-know" basis.

7.3 Each User shall use any personal information held in connection with the Website only for the purpose of fulfilling its obligations under these Terms or as expressly permitted by ClubsNSW or as required by law.

7.4 Each User shall not disclose any personal information obtained in connection with the Website without the prior written approval of ClubsNSW and the User shall immediately notify ClubsNSW where it becomes aware that:

- (a) a disclosure of personal Information may be required by law;
- (b) the User has or may have breached its privacy obligations under these Terms; or
- (c) a complaint has been made by a third party in relation to the User's handling of personal information.

7.5 You must take reasonable steps to ensure your representatives requiring access to any personal information held in connection with the Website shall:

- (a) not access, use, disclose or retain personal information except in performing their duties of employment or other relevant agreement; and
- (b) be informed that failure to comply with clause 7.5 (a) may be a breach of the Privacy Act 1988 (Cth) and may also lead to ClubsNSW taking action against the representative.

7.6 If You become aware or reasonably suspect that there has been any unauthorised access to, or disclosure or loss of, any personal information collected from or on behalf of, directly or indirectly, ClubsNSW ("Breach"), You shall:

- (a) immediately notify ClubsNSW of such Breach;
- (b) promptly cooperate with ClubsNSW in any investigations or enquiries of the Breach by ClubsNSW or by a regulator or law enforcement agency, including where requested by ClubsNSW, immediately suspending your use of the Website, providing reasonable assistance to ClubsNSW with its determinations under this clause and any other activities related to those determinations such as the preparation of statements and notices, and any notifications to affected individuals; and
- (c) provide prompt and full disclosure to ClubsNSW regarding the circumstances surrounding the Breach, including the likely affected individuals, the relevant personal information involved in the Breach, security measures which should be

modified to avoid a similar future breach and any other information reasonably requested by ClubsNSW in relation to a Breach or which would be reasonably relevant to investigation of a Breach.

7.7 You acknowledge that ClubsNSW will have sole discretion in:

(a) determining and assessing whether the Breach would be likely to result in serious harm to any of the affected individuals;

(b) determining any remediation strategy, and the facilitation and/or delivery of a remediation strategy with respect to the Breach;

(c) determining whether the Privacy Commissioner or other regulator or law enforcement agency and/or affected individuals should be notified about the Breach, or an exemption obtained or other action taken; and

(d) determining the contents of any notice and sending any notice to the Privacy Commissioner, or other regulator, or law enforcement agency.

7.8 To the extent that a User uploads to the Website any personal information of a third party, the User warrants to ClubsNSW that it has permission to upload that personal information.

## 8. Confidentiality

8.1 Each User will keep confidential all information of ClubsNSW as may reasonably be deemed confidential and will not disclose the same to any other party, save as permitted by these Terms or as required by law.

8.2 Each User agrees that ClubsNSW's confidential information includes any software (including without limitation the source code, design details, algorithms and other materials) comprised in the Website.

## 9. Third Party Activities

9.1 The Website may contain links to third party websites where content is not controlled by ClubsNSW.

9.2 Links to Linked Sites are provided for convenience only. The appearance of a link to a Linked Site does not imply ClubsNSW's endorsement of that Linked Site or any content created or uploaded by a party other than ClubsNSW, including all Third Party Content. ClubsNSW has no control over and is not responsible for any Linked Site or any Third Party Content.

9.3 Users access Linked Sites at their own risk and, to the full extent permitted by law, ClubsNSW disclaims all guarantees and warranties, express and implied, as to the accuracy, value, legality or otherwise of any materials or information contained on such Linked Sites and in Third Party Content.

9.4 Any use by a User of Third Party Content (including, without limitation, that featured on Linked Sites) may be subject to a third party's terms and conditions of use. It is the User's responsibility to check and comply with such terms.

## 10. Website Technology

10.1 ClubsNSW uses reasonable endeavours to make the Website available when required by the User. However, ClubsNSW does not guarantee the availability of the Website at all times.

10.2 Errors and failures may occur in respect of the Website technology and the internet may be subject to faults and events which may affect a User's access. Additionally, the User's systems, our systems or the systems of a third party which the User or ClubsNSW rely on, may fail to work properly.

10.3 ClubsNSW is constantly striving to improve the Website. This means that the Website may need to be suspended or updated as a result of periodic maintenance, repairs or upgrades. ClubsNSW will always seek to provide the User with prior notice.

## 11. Liability

11.1 To the fullest extent permitted by law, but subject always to clauses 1.2 and 11.2:

(a) the Website and all ClubsNSW Content is provided to Users "as is" and on an "as available" basis, without any representation or endorsement and without warranty or guarantee of any kind;

(b) ClubsNSW excludes all representations, warranties, guarantees, terms and conditions, whether express or implied (and including, without limitation, those implied by statute, custom, law or otherwise) except as expressly set out in these Terms;

(c) ClubsNSW does not guarantee continuous, uninterrupted or secure access to the Website, or that its servers are free of computer viruses, bugs or other harmful components or that defects will be corrected. As a result, Users may at times experience disruption or other difficulties in using the Website;

(d) ClubsNSW excludes all liability to Users for any damages or loss (including without limitation direct, incidental, indirect, consequential, special, punitive or exemplary damages or any loss of business, interest, goodwill, revenue, profit, or loss or corruption of data) arising out of a User's access to, or use of, or inability to use or access the Website, or otherwise in connection with:

(i) the User's use of, or reliance on, the Website (or any of the ClubsNSW Content, Linked Site or Third Party Content) however caused (including, without limitation, damage or loss arising in contract, tort (including, without limitation, negligence), statute or otherwise));

(ii) the accuracy, timeliness, credibility, quality, utility or completeness of the information contained on the Website; and/or

(iii) any errors or omissions in the content on the Website, whether or not ClubsNSW is aware of such errors or omissions.

11.2 If the statutory provisions outlined in clause 1.2 apply, notwithstanding any other provision of these Terms, to the extent that ClubsNSW is entitled to do so, ClubsNSW limits its liability in respect of any claim under those provisions to (at its option):

(a) in the case of services, the supply of the services again or the payment of the cost of having services supplied again; and

(b) in the case of goods, the replacement of the goods or the supply of equivalent goods, the repair of such goods, the payment of the cost of replacing the goods or acquiring equivalent goods, or the payment of the cost of having the goods repaired.

11.3 Users agree to fully compensate and hold harmless ClubsNSW, its related companies, officers, employees and agents from and against reasonable liability, loss, damage, costs and expense (including, without limitation, reasonable legal expenses) and penalties incurred or suffered by any of them arising out of:

(a) any User's material breach of these Terms;

(b) any misuse or use of ClubsNSW Content in breach of these Terms; and

(c) any act of fraud or wilful misconduct by or on behalf of any User.

11.4 For the avoidance of doubt, the indemnity in clause 11.3 will extend without limitation to any loss ClubsNSW may suffer as a result of the use by third parties of a User's Account, except in circumstances where the User can demonstrate to

ClubsNSW's satisfaction that such third party obtained the relevant Account details through no fault of the User.

## 12. Termination of Account

12.1 Applicants and Registered Clubs may terminate an Account at any time by providing notice of termination to ClubsNSW by message through the Website, by email to [enquiries@clubsnsw.com.au](mailto:enquiries@clubsnsw.com.au) or by prepaid ordinary post to The Registered Clubs Association of New South Wales, Level 8, 51 Drutt Street, Sydney, NSW, 2000. This notice will be effective upon ClubsNSW processing the notice (which it will do within a reasonable timeframe). Termination of an Account includes disabling the User's access to the Website.

12.2 At the time of terminating an Account pursuant to clause 12.1 above, an Applicants or Registered Club may request a copy of their data (including User Content) contained on the Website, which ClubsNSW will use reasonable endeavours to provide within 90 days of the request.

12.3 An LGA may only terminate an Account after the following has occurred:

(a) a completed notice of intention to terminate has been provided to ClubsNSW in a form approved by ClubsNSW from time to time;

(b) a copy of the notice under clause 12.3(a) has been provided to every Registered Club located within the geographical limits of the LGA;

(b) no earlier than 21 days from the date that a notice under clause 12.3(a) has been provided to ClubsNSW, written consent to the termination has been sought and obtained from every Registered Club located within the geographical limits of the LGA;

(c) a completed notice of consent to termination has been provided to ClubsNSW in a form approved by ClubsNSW from time to time.

## 13. Amendments

ClubsNSW may from time to time make changes to these Terms. Users with Accounts will receive notifications of the changes through their Accounts on the Website. Users that do not have Accounts must regularly check the Terms made available on the Website, where the most recent version of the Terms will always be displayed.

## 14. General

14.1 These Terms and any other documents referred to in these Terms comprise the entire agreement of the parties about the subject matter of the Terms and supersede all other representations, arrangements, understandings or agreements and all other communications.

14.2 If a provision of these Terms is invalid or unenforceable in a jurisdiction:

(a) it is to be read down or severed in that jurisdiction to the extent of the invalidity or unenforceability; and

(b) that fact does not affect the validity or enforceability of that provision in another jurisdiction or the remaining provisions.

14.3 These Terms are governed by the laws of New South Wales.

14.4 Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales, the Federal Court of Australia in New South Wales and courts of appeal from them for determining any dispute concerning these Terms.