

# **Capricorn Events Sponsorship**

*Australian Terms & Conditions*

*Document updated 1/10/2021*

With effect from the date on which Capricorn Society Limited (ACN 008 347 313) ("**Capricorn**") accepts the sponsorship registration form ("**the Registration Form**") which incorporates these terms and conditions and in consideration of the sponsorship fee specified in the Registration Form ("**the Sponsorship Fee**"), Capricorn grants to the entity or person named in the Registration Form ("**the Sponsor**") the benefits of sponsorship in respect of the event set out in the Registration Form ("**the Sponsorship Event**") as listed in the Registration Form ("**the Sponsorship Rights**"). These terms and conditions ("**the Sponsorship Terms**"), together with the Registration Form and Events Terms (as defined in clause 17 below), where applicable, form the "**Sponsorship Agreement**".

1. Capricorn will advise each entity or person who submits a sponsorship application as part of their Registration Form for consideration as soon as practicable whether their sponsorship application has been accepted and, if so, which sponsorship package they will be providing.
2. Payment of the Sponsorship Fee must be made by or on behalf of the Sponsor by the date specified in the Registration Form or, if no date is specified, in accordance with the payment terms specified in any invoice issued by Capricorn with respect to participation at the Sponsorship Event.
3. Should Capricorn not receive payment of the full Sponsorship Fee by the date specified in clause 2, Capricorn may immediately terminate the Sponsorship Agreement on written notice to the Sponsor. In the event of such termination, Capricorn may charge a fee to the Sponsor (including by way of deduction from any Sponsorship Fee paid) equal to any unrecovered costs incurred by Capricorn in connection with the Sponsor's failure to pay the Sponsorship Fee (including, for example, printing costs for banners and promotional materials).
4. The following shall apply regarding cancellations:
  - 4.1. If Capricorn cancels the Sponsorship Event, other than in accordance with clause 16, Capricorn agrees to refund any payment(s) made to Capricorn (including the Sponsorship Fee) by the Sponsor.
  - 4.2. In the event that the Sponsor cancels after the date nominated by Capricorn in the Registration Form (or otherwise) for notification of cancellation, the Sponsor may be charged a termination fee by Capricorn, calculated in the same way as the termination fee in clause 3.
  - 4.3. Capricorn is not liable for any other costs, losses or expenses incurred by the Sponsor associated with our cancellation, including relating to travel, accommodation or printing.

Upon cancellation for any reason these Sponsorship Terms will be at an end and the Sponsor and Capricorn will be released and discharges the other from further performance under these Sponsorship Terms. For the avoidance of doubt, the rights and obligations of the parties accrued prior to cancellation continue to apply.

5. To the maximum extent permitted by law, Capricorn may in its sole and absolute discretion postpone or amend a Sponsorship Event, provided that it shall notify the Sponsor of any such postponement or amendment, and in the event of any postponement or amendment of a Sponsorship Event to a date on which the Sponsor cannot attend, Capricorn shall refund to the Sponsor any Sponsorship Fee paid in respect of the Sponsorship Event and Capricorn will not be liable for any

other direct or indirect damages, cost, expense, loss, liability or loss of enjoyment arising in any way out of any postponement or amendment of a Sponsorship Event.

6. The Sponsor shall be entitled to the Sponsorship Rights only and nothing in the Sponsorship Terms or the Events Terms (as defined below) shall be construed as granting any other rights or benefits to the Sponsor whatsoever.
7. Notwithstanding anything else contained in these Sponsorship Terms the grant and exercise of Sponsorship Rights is still subject to Capricorn's prior approval of the Sponsor's advertising and promotional content or material to be used in accordance with the Sponsorship Rights, including, without limitation, any content or materials of a third party ("**Sponsor Content**"). Capricorn reserves the right to withhold approval of and refuse permission to display Sponsor Content if, in Capricorn's reasonably held opinion, the Sponsor Content:
  - 7.1. does not comply with any deadlines, specifications or brand guidelines notified by us to the Sponsor;
  - 7.2. does not comply with all relevant laws, including the Australian Consumer Law's prohibition on misleading or deceptive conduct;
  - 7.3. is likely to cause offence; or
  - 7.4. is likely to bring the Sponsorship Event, Sponsor or Capricorn into disrepute.
8. For the avoidance of doubt, the failure of Capricorn to expressly approve Sponsor Content prior to the exercising of the Sponsorship Rights shall not be construed as implied consent to the Sponsor Content and it shall be the Sponsor's responsibility to ensure express approval is granted prior to exercise of the Sponsorship Rights. The Sponsor shall be solely responsible and liable for all and any Sponsor Content and/or materials used in exercise of the Sponsorship Rights including, without limitation, any content and/or materials of a third party.
9. The Sponsor warrants that all Sponsor Content published, displayed, broadcast, advertised, exhibited or otherwise promoted by the Sponsor or by Capricorn pursuant to the Sponsorship Rights:
  - 9.1. shall comply with the specifications (if any) stated in the Registration Form or in any other directions from Capricorn;
  - 9.2. is truthful and accurate and complies in all respects with all applicable legislation (including the provisions of the Competition and Consumer Act 2010 ("**CCA**"), to the extent that it is applicable), regulations, rules and standards (including, but not limited to, decency, privacy and intellectual property rights);
  - 9.3. uses intellectual property, including trademarks and logos, that are either owned by the Sponsor or that it has full power and is authorised to use in the Sponsor Content and does not infringe any third party intellectual property rights; and
  - 9.4. complies with these Sponsorship Terms.
10. No part of an exhibit or signage or other materials forming the Sponsor Content may be pasted, nailed, or otherwise affixed to walls, doors or other surfaces in a way that marks or defaces

11. the premises (or any equipment and furnishings on the premises) where the Sponsorship Event is located. Damage and loss that arises from failure to observe this clause is payable by the Sponsor.
12. The Sponsor undertakes that it shall comply in all respects with all applicable legislation (including the provisions of the CCA, to the extent that it is applicable), regulations, rules and standards which may at any given time regulate, and be applicable to, its conduct and behaviour in the course of exercising the Sponsorship Rights.
13. The Sponsor indemnifies and must keep indemnified Capricorn for any damages, costs, losses, demands or claims suffered or incurred by Capricorn ("**Liability**") as a result of the Sponsor's negligence or breach of the Sponsorship Agreement ("**Indemnified Matters**"). Such indemnity being reduced to the extent that any Liability arises as a direct result of Capricorn's breach of the Sponsorship Agreement or negligence.
14. Subject to clauses 14 and 15:
  - 14.1. to the maximum extent permitted by law, no party is liable to the other party for any loss of, or loss of anticipated, use, production, revenue, income, profits, goodwill, contract, business and savings or business interruption, whether or not foreseeable ("**Indirect Loss**"), except to the extent that such Indirect Loss is an Indemnified Matter under this Sponsorship Agreement; and
  - 14.2. Capricorn's maximum aggregate liability will be limited to the Sponsorship Fee paid by the Sponsor under these Sponsorship Terms.
15. If a Sponsor is a "consumer" within the meaning of the Australian Consumer Law, then Capricorn may be taken to have given it certain guarantees in respect of the services provided under this Sponsorship Agreement that Capricorn cannot exclude or restrict by law. If Capricorn fails to comply with those guarantees, then the Sponsor may have certain rights and remedies under the Australian Consumer Law. To the fullest extent permitted by law, Capricorn's liability for any such breach of these guarantees is limited to, at Capricorn's election, Capricorn:
  - 15.1. supplying the services contemplated by this Sponsorship Agreement again; or
  - 15.2. paying the cost of having the services contemplated by this Sponsorship Agreement supplied again.
16. Capricorn makes no warranty against defects associated with the supply of services under this Sponsorship Agreement. However, if and only if Capricorn is taken at law to have made any such warranty, then Capricorn is taken to have provided the following statement to the Sponsor:
 

*Our services come with guarantees that cannot be excluded under the Australian Consumer Law. For major failures with the service, you are entitled:*

  - *to cancel your service contract with us; and*
  - *to a refund for the unused portion, or to compensation for its reduced value.*

*You are also entitled to be compensated for any other*

*reasonably foreseeable loss or damage. If the failure does not amount to a major failure, you are entitled to have problems with the service rectified in a reasonable time and, if this is not done, to cancel your contract and obtain a refund for the unused portion of the contract.*

17. In exercising the Sponsorship Rights, the Sponsor shall not do anything or become involved in any situation which, in the reasonable opinion of Capricorn, brings Capricorn into public disrepute, contempt, scandal or ridicule, offends public opinion or reflects unfavourably upon Capricorn's reputation (as to do so would breach these Sponsorship Terms) and Capricorn will be the sole arbiter in this regard.
18. Capricorn reserves the right to immediately cancel, refuse and withdraw from the Sponsor the Sponsorship Rights, without notice, where the Sponsor is in breach of the Sponsorship Agreement or the Capricorn Events Terms and Conditions as found on Capricorn's website ("**Events Terms**"). If the Sponsorship Rights are withdrawn then the Sponsor shall immediately withdraw from publication, display, broadcast, advertisement, exhibition or otherwise all Sponsor Content promoted by the Sponsor pursuant to the Sponsorship Rights. If the Sponsor is in breach of the Sponsorship Agreement or Events Terms and Capricorn withdraws from the Sponsor the Sponsorship Rights, any price paid to Capricorn for the Sponsorship Rights by the Sponsor (including the Sponsorship Fee) will be non-refundable.
19. Capricorn accepts no liability for diminution in the Sponsorship Rights caused by or arising out of:
  - 19.1. actual, anticipated or threatened events such as war, fire, adverse weather, natural and man-made disasters, action by government authority, political unrest, industrial dispute, terrorist action, epidemic, pandemic or health risks (including Covid-19) and associated restrictions imposed by government or other authorities, transport delays, adverse weather conditions or amendments by providers of goods and services that are beyond our reasonable control which result in you receiving reduced benefit from the Sponsorship Rights and/or being unable to exercise the Sponsorship Rights in part or in full; or
  - 19.2. participation in activities and use of facilities at the Event location, including activities and facilities where the Sponsorship Rights may be exercised, being necessarily limited to the number of persons who can (for safety or other reasons) participate in the activities or use the facilities at any one time.
20. If the Sponsor attends the Event, or has as part of the Sponsorship Rights the ability to register one or more persons to attend the Event, then the *Capricorn Events – Australian Terms and Conditions* will apply to the Sponsor and each attendee registered by the Sponsor and the Sponsor will be responsible for all acts and omissions of attendees at the Event under those terms.
21. Capricorn may plead these Sponsorship Terms in bar to any claim, action, proceeding or suit brought by the Sponsor against Capricorn for any matter, circumstance or thing arising out of, concerning or in any way relating to the Sponsorship Event.
22. Unless specifically stated otherwise, fees and charges in

respect of the Sponsorship Event (including, without limitation, the Sponsorship Fee) do not include Goods and Services Tax (or any other value-added tax) ("GST"). Capricorn will increase any fees and charges, unless specifically stated as including GST, by an additional amount on account of GST. The Sponsor must pay the GST at the same time as the Sponsor pays the fees and charges (including the Sponsorship Fee).

23. This Sponsorship Agreement shall be governed by the laws of the State of Western Australia and the Sponsor agrees to submit to the exclusive jurisdiction of the courts thereof.

23.1. A waiver by Capricorn of any right, power or privilege arising under the Sponsorship Agreement must be in writing. Failure to exercise or delay in exercising any right, power or privilege by Capricorn does not operate as a waiver of that right, power or privilege. A single or partial exercise of any right, power or privilege by Capricorn does not preclude any other or further exercise of that right, power or privilege; or

23.2. the exercise of any other right, power or privilege.

24. To the extent permitted by law, these Sponsorship Terms (together with such other terms and conditions referred to in the Registration Form) constitute the sole and entire agreement between Capricorn and the Sponsor.

25. For the purposes of these Sponsorship Terms and unless a contrary intention appears:

25.1. the singular includes the plural the opposite gender includes the other gender;

25.2. an obligation, representation or warranty in favour of

25.3. 2 or more persons is for their benefit jointly and severally and an obligation, representation or warranty on the part of 2 or more persons binds them jointly and severally;

25.4. any thing or amount includes any part of it;

25.5. mentioning anything after "includes", "including", "for example", or similar expressions, does not limit what else might be included;

25.6. a provision of these Sponsorship Terms must not be construed to the disadvantage of Capricorn because Capricorn was responsible for the preparation of these Sponsorship Terms;

25.7. a reference to a person includes a body corporate, body politic or partnership;

25.8. references to clauses are references to clauses in these Sponsorship Terms;

25.9. time is of the essence for payment of all amounts under these Terms and Conditions and where no time is specified for the payment of an amount, that amount is payable on demand;

25.10. the parties will do all things reasonably necessary to give effect to these Terms and Conditions;

25.11. if a word or phrase is defined, its other grammatical forms have a corresponding meaning; and

25.12. a reference to any party includes that party's executors, personal representatives, administrators, substitutes,

25.13. successors and permitted assigns, which these Sponsorship Terms bind.

25.14. To the extent that any one or more of the sections, clauses, or sub-clauses of these Sponsorship Terms, or any portions hereof are or may become invalid, rendered unenforceable or prohibited, those sections, clauses, sub-clauses and/or portions shall be ineffective to the extent of such invalidity, prohibition or unenforceability and shall be severable without invalidating or modifying the remainder of these Sponsorship Terms, which shall continue in full force and effect as if the section, clause, sub-clause or portions rendered invalid, unenforceable or prohibited had not been included herein.