

Jump Rope for Heart - School Terms & Conditions

1. Definitions and interpretation

1.1 Definitions

In this Agreement:

Agreement means this document, including any schedule or annexure to it, together with corresponding details from the School Application Form.

Business Day means a day that is not a Saturday, Sunday or any other day which is a public holiday or a bank holiday in the place where an act is to be performed or a payment is to be made.

Confidential Information means all information that is not in the public domain that is by its nature confidential or designated as such by the disclosing party, including all trade secrets, financial information and other commercially or scientifically valuable information of whatever description and in whatever form (whether written or oral, visible or invisible).

Heart Foundation means National Heart Foundation of Australia ABN 98 008 419 761 and includes references to us, we, and our.

Intellectual Property means all rights conferred under statute, common law or equity, wherever in the world subsisting, in relation to:

- a. copyright and the Promotional Material;
- b. design, patent, trademark, semiconductor, circuit layout or plant breeder rights (whether registered, unregistered or applied for);
- c. trade, business, company or domain name;
- d. know-how, inventions, processes, confidential information (whether in writing or recorded in any form);
- e. any other proprietary, licence or personal rights arising from intellectual activity in the business, industrial, scientific or artistic fields;
- f. whether existing now or in the future and whether or not registered or registrable; and
- g. includes the right to apply for the registration or grant of any such intellectual property.

Jump Rope for Heart and the Program means the Heart Foundation's program for schools across Australia that encourages fun and simple physical activity (skipping) and fundraising to help fund life-saving heart disease research.

School Coordinator means a person nominated by the School, who is an employee of the School or the state/territory Education Department, who coordinates the Program at the School on behalf of the School, including being the primary point of contact for Participant Parents and other school staff.

School Coordinator Resources means the resources available to School Coordinators to assist them in delivering the Program, as amended from time to time by the Heart Foundation.

Participants means children who attend the School and who have been registered to participate in the Program by their parent or guardian.

Personal Information has the same meaning as defined in the *Privacy Act 1988* (Cth) as it may be amended from time to time.

Personnel means the employees, directors, officers, committee members, honoraries, research fellows, servants, agents, volunteers and subcontractors of a party, and in the case of the School includes the School Coordinator.

Privacy Laws mean all legislation, principles, industry codes and policies regulating the handling of Personal Information including the *Privacy Act 1988* (Cth).

Promotional Material means all materials (regardless of form or format) prepared and provided to the School to promote the Program and includes posters, videos, lesson plans, worksheets, pamphlets and flyers, registration forms and other forms together with their digital equivalents.

Term means the duration of this Agreement specified in clause 3.

1.2 Interpretation

Reference to:

- a. one gender includes all genders.
- b. the singular includes the plural and the plural includes the singular.
- c. a person includes a body corporate.

- d. a party includes the party's executors, administrators, successors and permitted assigns.
 - e. a statute, regulation, code or other law or a provision of any of them includes:
 - i. any amendment or replacement of it; and
 - ii. another regulation or other statutory instrument made under it, or made under it as amended or replaced; and
 - f. dollars means Australian dollars unless otherwise stated.
2. "Including" and similar expressions are not words of limitation.
 3. Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.
 4. Headings and any table of contents or index are for convenience only and do not form part of this Agreement or affect its interpretation.
 5. A provision of this Agreement must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of the Agreement or the inclusion of the provision in the Agreement.
 6. If an act must be done on a specified day that is not a Business Day, it must be done instead on the next Business Day.

1.3 Parties

1. If a party consists of more than 1 person, this Agreement binds each of them separately and any 2 or more of them jointly.
2. An obligation, representation or warranty in favour of more than 1 person is for the benefit of them separately and jointly.

2. Acceptance

1. These terms and conditions apply to and are incorporated into the School's participation in the Jump Rope For Heart Program and are accepted when the School's representative completes the online school registration process.
2. The terms and conditions of this Agreement apply to all transactions between the Heart Foundation and the School relating to the Program and constitute a separate legal agreement in respect of each year the School participates in the Program.
3. We may amend the terms of this Agreement from time to time by providing reasonable written notice to you or the School.
4. The School must not enter into an agreement with us for the Program, and we will be under no obligation to agree to your School's participation in the Program if you do not agree to and accept the terms of this Agreement or if you do not have authority to act on behalf of any person, School, entity or body corporate for whom you are representing.

3. Basis of engagement

We are a non-exclusive independent contractor to the School. Nothing in this Agreement is intended to create an employment or agency relationship between us, you and/or the School, or any of our Personnel and you and/or the School.

4. Term

1. This Agreement commences from the date the Heart Foundation notifies acceptance of the School's participation in the Program (**Commencement Date**) and continues until completion of the School's Jump Off Day and delivery of all prizes unless terminated in accordance with the terms of this Agreement (**Term**).

5. School Obligations

- 5.1. During the Term, the School undertakes to run the Jump Rope for Heart Program at the School during regular school hours and actively promote student participation in the Program.
- 5.3. The Heart Foundation will provide Promotional Material and otherwise reasonably cooperate with the School.
- 5.4 The School will appoint a School Coordinator to lead the management and coordination of the Program at the School during the Term. The School Coordinator will be the point of contact for the Heart Foundation for the Program at the School.
- 5.5 In consideration of participating in the Program, the School agrees to promptly pay all amounts and costs relating to its participation in the Program and as invoiced by the Heart Foundation by the applicable invoice due date.

5.6 The School acknowledges and agrees that the Heart Foundation's ability to provide the Program to the School relies on the School and the School Coordinator's reasonable cooperation and assistance. The Heart Foundation will not be liable to you, the School or the Participants if it is not able to provide the Program to you or achieve the timeframes for the Program as a direct or indirect result of any failure to cooperate with or assist us. The Heart Foundation will use its best endeavours to notify you of any expected or anticipated delays that affect the School's facilitation of the Program.

6. Intellectual property rights

6.1 No title or other ownership rights in Intellectual Property or otherwise in the Promotional Material, including all physical or electronic copies of such material and any translations, compilations, derivative works and partial copies, shall pass to the School under this Agreement. For clarity, the School does not acquire ownership rights in Intellectual Property or Promotional Material under this Agreement.

6.2 The School must not reproduce, alter, modify or otherwise use or interfere with the Promotional Material for any purpose.

6.3 The School must not use any Heart Foundation logo, mark or name except to the extent strictly compliant with the Jump Rope for Heart Brand Guidelines as varied from time to time.

6.4 The Heart Foundation acknowledges and agrees that:

1. It has no right, title or interest in any of the School Logos, except use of the School Logos in the manner expressly approved by the School in writing; and
2. Nothing in this Agreement will be construed as an assignment or grant to the Heart Foundation of any right, title or interest in or to any of the School Logos.

7. Confidentiality

7.1 A party must not, without the prior written approval of the other party, disclose the other party's Confidential Information.

7.2 A party is not in breach of clause 7.1 in circumstances where it is legally compelled to disclose the other party's Confidential Information.

7.3 Each party must take all reasonable steps to ensure that its Personnel engaged for the purposes of this Agreement do not make public or disclose the other party's Confidential Information.

7.4 Despite any other provision of this clause, both parties may disclose the terms of this Agreement (other than Confidential Information of a technical nature) to its related companies, solicitors, auditors, insurers or accountants, and must ensure that every person to whom that disclosure is made uses that information solely for the purposes of advising or reporting to that party.

7.5 This clause 7 survives the termination of this Agreement.

8. Compliance with Laws

8.1 The Heart Foundation, the School, the School Coordinator, and their respective Personnel must perform their obligations under this Agreement in accordance with all laws and regulations, whether in force now or during the Term, including, but not limited to:

1. the *Privacy Act 1988* (Cth);
2. the *Do Not Call Register Act 2006* (Cth);
3. the *Spam Act 2003* (Cth);
4. the *Telecommunications Act 1997* (Cth);
5. the *Telecommunications (Telemarketing and Research Calls) Industry Standard 2017* (Cth);
6. all laws and regulations relating to charitable fundraising, including lottery and gaming;
7. all relevant industry codes of practice; and
8. any other statute, law, rule, regulation, proclamation, order in council, ordinance, by-law or statutory instrument (including but not limited to orders, directions, guidelines or standards with legislative force), where relevant to the performance of its obligations under or in relation to this Agreement.

9. Warranties

9.1 The Heart Foundation warrants that it will comply with the following obligations:

1. The Heart Foundation will provide the School Coordinator Resources and Promotional Materials to the School Coordinator.
2. The Heart Foundation will provide participant registration forms on its website at www.jumprope.org.au and will keep records relating to Participants as specified and as required for the Program.
3. The Heart Foundation may publicise the School's participation in the Program as part of the Jump Rope for Heart Program's promotional and marketing activities.
4. The Heart Foundation will provide online reporting functions and tools for the School in respect of the Program as notified to the School.
5. The Heart Foundation will provide the School with Promotional Material and other Program resources.
6. Without prejudice to any other rights or obligations it may have, where complaints are raised with the Heart Foundation regarding the conduct of a School Coordinator, the Heart Foundation will investigate those complaints as required.
7. The Heart Foundation must ensure that any Promotional Material, publications or activities referring to the School or including the School Logos or name are agreed to by the School prior to publication or implementation.
- 9.2 The School warrants that it will comply with the following obligations:
 1. The School must ensure that any Promotional Material complies with Jump Rope for Heart Brand Guidelines and is agreed to by the Heart Foundation prior to publication or implementation.
 2. The School must ensure the School Coordinator carries out their obligations in accordance with the obligations noted in clause 8 of this Agreement.

10. School Coordinator Responsibilities

- 10.1 The School warrants that it will ensure that the appointed School Coordinator:
1. has knowledge of the Program and the School Coordinator Resources.
 2. in conducting or participating in Program activities, will comply with the instructions outlined in the School Coordinator Resources and other resources and guidelines provided by the Heart Foundation.
 3. will not conduct, organise, undertake or otherwise be involved in any activity that purports to be approved by or associated with the Program without the Heart Foundation's prior written approval.
 5. will comply with all Heart Foundation reasonable directions and requirements in respect of the Program.
 6. will provide true and correct information to the Heart Foundation and promptly notify the Heart Foundation of any changes.
 7. will not disclose or use Participant's Personal Information other than for the purposes of administering the Program and not for any other personal, private, or commercial use.
- 10.2 In the event that the School Coordinator is no longer affiliated with the School or becomes unavailable to perform the duties of the School Coordinator, the School will advise the Heart Foundation as soon as practical and will procure a replacement School Coordinator.

11. Liability & Indemnity

- 11.1 Each party indemnifies (the '**Indemnifying Party**') and will keep indemnified the other (including all of its Personnel) (collectively referred to as '**Those Indemnified**') from and against all claims, actions, proceedings, demands, costs or expenses arising directly or indirectly from any breach of this Agreement or any fraudulent or unlawful act or omission of the Indemnifying Party or its Personnel.
- 11.2 The liability of each party to indemnify the other under this clause will be proportionately reduced to the extent of any breach by the other party of any of its warranties or obligations under this Agreement caused or contributed to the loss, damage or cost.
- 11.3 The Indemnifying Party acknowledges and agrees that the benefit of the indemnity under clause 11.1 to the Personnel of Those Indemnified is held on trust by Those Indemnified.

11.4 Notwithstanding this clause, the Heart Foundation's liability to indemnify the School under this Agreement will be limited, in aggregate, to the greater of either:

(a) to the extent and amount that any applicable insurance policy covers such indemnification; or

(b) the amounts paid by the School under this Agreement during the Term.

11.5 Neither party is liable to the other for any kind of indirect or consequential loss or damage arising out of or in connection with this Agreement.

11.6 Nothing in this Agreement is intended to limit or exclude any applicable consumer guarantees under the Australian Consumer Law.

11.7 The obligations and indemnities in this clause survive the termination or expiration of this Agreement.

12. Insurance

12.1 Each party must, at their own expense, effect and maintain adequate insurance for the Term of this Agreement. Both parties are required to maintain sufficient insurance coverage in amounts commensurate with those amounts that a responsible entity would put in place to cover the risks associated with the Program and to cover their obligations under this Agreement, including:

1. public and products liability insurance; and
2. workers' compensation insurance as required by statute and where that statutory insurance does not include cover for employer's liability at common law, appropriate employer's liability insurance.

12.2 Parties must provide copies of insurance certificates promptly upon request.

13. Dispute Resolution

13.1 If there is a dispute as to any matter under or in connection with this Agreement, the party raising the dispute must, within 10 Business Days, notify the other party in writing, outlining the nature of the issues and proposing a resolution to the other party.

13.2 Should the dispute remain unresolved, either party may refer the dispute to an independent expert appointed. The independent expert will be chosen by mutual agreement, and costs and expenses relating to the dispute will be borne equally by both parties.

13.3 This clause does not prevent any party from obtaining injunctive, declaratory or other interlocutory relief from a court which may be urgently required.

14. Default and termination

14.1 Either party may terminate this Agreement by giving the other party 60 days' notice in writing or such other period as mutually agreed in writing.

14.2 The Heart Foundation may terminate this Agreement by giving 14 days written notice to the School if it breaches this Agreement, fails to pay any amounts due and payable, if the funding in relation to the Program is suspended, terminated or otherwise unavailable, or if the Program is materially modified or withdrawn.

14.3 On termination of this Agreement, each party retains its rights against the other party in respect of any past breach, in addition to any other rights, powers or remedies provided by law.

15. Effect of termination

15.1 If this Agreement terminates for any reason:

1. each party:
 - a. is released from its obligation to further perform the Agreement; and
 - b. retains the rights it had against the other party in respect of any past breach, in addition to any other rights, powers or remedies provided by law.
2. the School must:
 - a. cease to display and distribute Promotional Material;
 - b. not reproduce, modify, adapt or exploit any Heart Foundation Intellectual Property; and
 - c. return or make available for collection all Promotional Material; and
 - d. pay all money owed by the School to the Heart Foundation under this Agreement.

16. Force majeure – unforeseen events causing delay

16.1 A party (Affected Party) is not liable for any delay or failure to perform an obligation (other than to pay money) under this Agreement caused by anything outside the reasonable

control of a party regardless of whether it is reasonably contemplated by the parties at the Commencement Date as a likely result of a breach of the Agreement (**Force Majeure Event**).

16.2 The Affected Party must notify each other party as soon as practical of any anticipated delay or failure caused by an event referred to in clause 16 and provide reasonable information substantiating the Force Majeure Event upon request.

16.3 The performance of the Affected Party's obligation is suspended for the period of delay caused by the Force Majeure Event other than to pay money.

16.4 If a Force Majeure Event continues for more than 30 business days, either party may terminate the Agreement by written notice to the other without liability for damages of any kind, including for indirect or consequential losses.

17. Assignment

17.1 You must not assign or otherwise deal with all or any part of its rights or obligations under the Agreement without our prior written consent (which may not be unreasonably withheld but which may be given subject to reasonable conditions).

17.2 The Heart Foundation may assign or otherwise deal with any of our rights or obligations under the Agreement without your prior consent.

18. Severability

18.1 If any provision is unenforceable or invalid, it will be ineffective to the extent it is unenforceable or invalid, without affecting the validity or enforceability of the remaining provisions of the Agreement.

19. Cumulative rights

19.1 The rights, powers and remedies provided in this Agreement are in addition to those provided by law independently of this Agreement and each right, power and remedy provided in this Agreement (including any right of indemnity) is additional to and not exclusive of every other right, power or remedy provided in this Agreement.

20. Statutory requirements

20.1 In carrying out this Agreement each party must comply with the requirements of all laws and all permits and directions of competent authorities.

21. Further assurance

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

22. Entire understanding

22.1 This Agreement represents the entire agreement between the parties and supersedes all prior discussions, negotiations, understandings and agreements in relation to the subject matter of this Agreement.

23. Waiver

23.1 A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right.

23.2 The exercise of a power or right does not preclude either its exercise in the future or the exercise of any other power or right.

23.3 A waiver is not effective unless it is in writing.

23.4 Waiver of a power or right is effective only with respect to the specific instance to which it relates and for the specific purpose for which it is given.

24. Notices

24.1 A notice, consent, approval, waiver or other communication provided in connection with this Agreement must be in writing. A notice may be given by hand delivery, by post (prepaid or registered mail), email, or by facsimile to the address of the other party's Contact Person as identified in the School Application Form and is effective upon receipt.

25. Governing law and jurisdiction

25.1 This Agreement is governed by the laws in force in the State of Victoria and the parties submit to the non-exclusive jurisdiction of the courts in Victoria and the Commonwealth of Australia.

26. Survival

Termination or expiration in whole or in part of the Agreement does not affect those provisions and those obligations of a party which by their very nature survive termination.

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