

## Parties

Name	<b>Pride Foundation Australia Limited</b>	
ABN	85 116 997 427	
Description	<b>Pride Foundation</b>	
Notice details	Address	Po Box 3066 Murrumbeena VIC 3163 AUSTRALIA
	Email	<a href="mailto:Ruth.mcnair@pridefoundation.org.au">Ruth.mcnair@pridefoundation.org.au</a> ; and <a href="mailto:marketing@pridefoundation.org.au">marketing@pridefoundation.org.au</a>
	Attention	Dr Ruth McNair Penny Wilson

Name	The party who accessed the Licenced Materials via the Pride Foundation's website
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Description	<b>Licensee</b>
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## Background

- A Pride Foundation is the owner or the licensee with rights to further distribute the Licenced Materials.
- B Pride Foundation has agreed to grant to the Licensee a Licence in respect of the Licenced Materials on and subject to the terms and conditions of this Agreement.
- C The Licensee accepts the terms and conditions of this Agreement by accessing the Licenced Materials.

## Agreement

### 1. Definitions and Interpretations

#### 1.1 Definitions

In this document:

**Agreement** means this document including any schedules and annexures.

**Business Day** means a day that is not a Saturday, Sunday or public holiday and on which banks are open for business generally in Melbourne.

**Commencement Date** means the date of this Agreement.

**Copyright** includes all rights under the Copyright Act and in law or equity subsisting in and in relation to any Work.

**Copyright Act** means the *Copyright Act 1968* (Cth).

**Corporations Act** means the *Corporations Act 2001* (Cth).

**Documentation** means any and all printed materials and electronic documentation associated with or containing the Licenced Materials.

**Fundraising Activities** means any telephone appeals, public auctions, doorknock appeals, tin collections, clothing bins, doorknock appeals, traffic intersection and highway collections, golf days, movie nights, trivia nights, dinner dances, balls, public auctions, clothing bins, sale of goods at opportunity shops, appeals run by commercial fundraisers, public appeals to support clubs, associations, causes or people and the sale of goods where part of the sale price is donated to a charitable organisation or cause, public appeals to support clubs, associations, causes or people, or other activities, intended to raise funds.

**Fundraising Rules** has the meaning in clause 7.

**GST** has the meaning given to that term in the A New Tax System (Goods and Services Tax) Act 1999 (Cth);

**Improvement** means any improvement, enhancement, modification, extension, or addition to the Licenced Materials.

**Intellectual Property** means:

- (a) all other Intellectual Property Rights owned by or licensed to the Pride Foundation; and
- (b) all Improvements of or to any of the Intellectual Property Rights referred to above, that are owned by the Pride Foundation.

**Intellectual Property Rights** means all industrial and intellectual property rights, both in Australia and throughout the world, and includes any Copyright, Moral Rights, Words, logos, Trade Marks registered and unregistered, trade names and domain names, designs, rights in get-up, rights in goodwill or to sue for passing off, rights in confidential information (including know-how and trade secrets), registered or, rights in computer technology, database rights, trade or business or company name, indication or source or appellation of origin or other proprietary right, or right of registration of such rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**Licence** has the meaning given to it in clause 2.1.

**Licensed Materials** means Pride Foundation material available on Pride Foundation's website and further described in Schedule 1 to this Agreement as amended from time to time in accordance with this Agreement.

**Moral Rights** means the rights of integrity, rights of attribution and other rights of an analogous nature which may now exist or which may exist in the future under the Copyright Act or under the law of a country other than Australia which is given effect in Australia.

**Publication Rules** means any rules:

- (a) notified by Pride Foundation via its website;
- (b) notified by giving notice to the Licensee;

- (c) imposed on Pride Foundation from third party owners of any portion of the Licensed Materials; and
- (d) any rules imposed by third party platforms that host portions of the Licensed Content.

**Purpose** means to assist individuals or companies who want to fundraise for Pride Foundation Australia for fundraising purposes only.

**Term** means the amount of time that the Licensed Materials are reasonably needed to conduct the fundraising event being undertaken by the Licensee or such other period of time notified by Pride Foundation to the Licensee.

**Trade Mark** means the registered Trade Mark 2247917 for the words "Pride Foundation Australia" in class 36 and any common law trademarks of the Pride Foundation.

## **2. Licence**

### **2.1 Licence grant**

Pride Foundation grants to the Licensee for the Term a non-exclusive, non-assignable, revocable, non-sub licensable licence to use the Licenced Materials consistent with our Publication Rules solely for the Purpose, on the terms of this Agreement (**Licence**).

### **2.2 Term**

This Licence commences on the Commencement Date and continues until the earlier of:

- (a) the expiration of the Term; or
- (b) terminated in accordance with this Agreement.

## **3. Use and Promotions**

- (a) The Licensee agrees to use the Licenced Materials solely and exclusively for the Purpose and will provide to Pride Foundation for Pride Foundation's prior written approval all proposed uses of the Licenced Materials, which approval will not be unreasonably withheld or delayed, or in accordance with the law.
- (b) The Licensed Materials may not be altered or otherwise modified by Licensee without express written permission from Pride Foundation.
- (c) The Licensee must ensure that the Licenced Materials are used at all times in accordance with any written or verbal directions given to the Licensee by Pride Foundation from time to time in respect to its use and will immediately advise Pride Foundation upon becoming aware of any non-compliance with such directions.

## **4. Pride Foundation Trade Marks and trade names**

- (a) Licensee agrees not to modify any Pride Foundation Trade Mark or trade name supplied with the Licensed Materials.
- (b) Licensee may request to use any Pride Foundation Trade Mark or trade name to promote the Licensed Materials subject to Pride Foundation's permission which may be granted or withheld at its sole discretion.

- (c) Licensee agrees that Pride Foundation may require any use of its Licensed Materials, Trade Marks and trade names to be solely in accordance with its brand usage guidelines.

## **5. Title**

- (a) The Licensee acknowledges Pride Foundation's title or rights as licensor of the Licenced Materials.
- (b) Licensee agrees that it shall not take any action which would or might invalidate or put in dispute Pride Foundation's rights and or title to the Licensed Material.
- (c) The Licensee shall not use in its business any other business name, Trade Mark or logo which is similar to or substantially similar to or so nearly resembles any of the Licensed Materials as to be likely to cause deception or confusion among the public.

## **6. Indemnity**

- (a) The Licensee hereby indemnifies and agrees to keep indemnified Pride Foundation against any actions, suits, claims, demands, proceedings, losses, damages, compensation, sums of money, costs (including solicitor and client costs), charges and expenses arising out of:
  - (i) the use of the Licenced Materials by the Licensee; or
  - (ii) the creation of all Improvements, extensions or additions based upon or to the Licenced Materials created or caused to be created by this Licensee.

## **7. Fundraising Rules**

All Fundraising Activities undertaken by the Licensee must be undertaken strictly in accordance with all applicable laws including, without limitation, any obligations relating to fundraising under the Australian Consumer Law (ACL), the *Charitable Fundraising Act 1991* (NSW), *Charitable Fundraising Regulation 2021* (NSW), the *Fundraising Act 1998* (Vic) and the *Fundraising Regulations 2019* (Vic), *Collections for Charitable Purposes Act 1939* (SA), *Collections Act 1966* (QLD), *Collections Regulation 2008* (QLD), *Collections for Charities Act 2001* (Tas), *Collections for Charities Regulations 2021* (Tas), *Charitable Collections Act 1946* (WA), *Charitable Collections Regulations 1947* (WA), *Street Collections (Regulation) Act 1940* (WA), *Street Collections Regulations 1999* (WA), *Gaming and Wagering Commission Act 1987* (WA) and *Liquor Control Act 1988* (WA) (**Fund Raising Rules**).

## **8. Improvements and new developments**

### **8.1 Improvements**

The parties agree that all rights, title and interest in and to all Improvements, extensions or additions based upon or to the Licenced Materials created or caused to be created by the Licensee shall vest immediately upon creation solely and exclusively in Pride Foundation.

### **8.2 Assignment**

- (a) For the purposes of giving effect to clause 8.1, the Licensee hereby assigns to Pride Foundation, as an assignment of future interests (including, without limitation, the assignment of future copyright in accordance with section 197 of the *Copyright Act 1968* (Cth)) of all right, title and interest in all Intellectual Property

Rights created by the Licensee as a result of the Licence granted to it by Pride Foundation under this document.

- (b) The Licensee hereby covenants to do all things reasonably within its power to facilitate the assignment to Pride Foundation contained in this clause 8.2 including, without limitation, the procuring of such assignments from third parties or consents from third parties and consents for the purpose of Moral Rights.
- (c) The Licensee, to the maximum extent permitted by law, waives all its (or where necessary, will procure that other persons waive) Moral Rights in any Improvements and irrevocably consents (or where necessary, will procure that other persons irrevocable consent) to Pride Foundation using and dealing with Improvements as Pride Foundation sees fit, free of further consideration or notice.

## **9. Licensee Obligations**

### **9.1 Receipt of funds**

Any monies received by any of the Licensee, the Licensee's employees or the Licensee's contractors, in the course of fund raising undertaken by the Licensee using the Licenced Materials, must be:

- (a) provided to the Pride Foundation as soon as possible after being received and in any event not later than 3 Business Days after being received; and
- (b) handled strictly in accordance with the Fund Raising Rules.

### **9.2 Notification**

The Licensee must notify Pride Foundation immediately in writing of any actual, suspected or anticipated damage to, or any infringement against the Licenced Materials or any rights connected or associated with the Licenced Materials of which it becomes aware and which is not already within the knowledge of Pride Foundation.

### **9.3 Assistance**

The Licensee must fully assist and co-operate with Pride Foundation in stopping any damage to, or any infringement against, the Licenced Materials, or any rights connected or associated with them.

### **9.4 Protection of Licenced Materials**

- (a) The Licensee acknowledges, warrants and represents to Pride Foundation that it will only use the Licenced Materials as permitted by this Agreement.
- (b) The Licensee covenants with Pride Foundation that it will not do or permit, cause or suffer to be done, or omit to do anything, concerning the use of the Licenced Materials which may, or would be likely to bring Pride Foundation or the Licenced Materials into disrepute or ridicule.
- (c) The Licensee will do all things necessary to ensure that its officers, employees, contractors and agents do not cause a breach of this Agreement.

## **10. Termination**

### **10.1 Term**

This Agreement will commence on the Commencement Date and continue for the Term or until earlier terminated in accordance with this clause 10.

## **10.2 Termination for breach**

Pride Foundation may terminate this Agreement without cause and with immediate effect.

## **10.3 Consequences of termination or expiry**

Upon termination or expiry of this Agreement for any reason:

- (a) all rights and licences granted to the Licensee under this Agreement will cease;
- (b) the Licensee must:
  - (i) pay any funds raised from the fundraising activities by the Licensee to the Pride Foundation, as soon as possible and in any event no later than 3 Business Days after termination or expiry of this Agreement;
  - (ii) cease all and any use of the Licenced Materials;
  - (iii) deal with each item of the Licenced Materials in the way directed by Pride Foundation; and
  - (iv) return promptly to Pride Foundation all documents and materials in its possession relating to the Licenced Materials.

Termination or expiry of this Agreement does not affect any accrued rights or remedies a party may have as at the date of termination or expiry.

## **11. General**

### **11.1 Notices**

- (a) Any notice or other communication to a party under this document must be in writing and delivered personally, sent by prepaid mail, or sent by email transmission to the recipient at the address or the email appearing in the parties details or such other address or email number as the recipient may have notified to the sender.
- (b) All Licensee's must provide to Pride Foundation their name, email address and residential address or physical business address via Pride Foundation website and any notice to the Licensee under this Agreement may be made to any such email address or address.
- (c) A notice is deemed to be received:
  - (i) if delivered personally, on the date of delivery;
  - (ii) if sent by prepaid post, 5 Business Days after posting; and
  - (iii) if sent by email transmission, on confirmation of receipt by the intended recipient.

### **11.2 Continuing Obligations**

The Licensee's obligation under any provisions that by their inherent nature must survive termination or expiry of this Agreement, continue to apply after expiration or termination of this Agreement.

### **11.3 Costs**

Each party will pay its own costs relating to the preparation, negotiation and performance of this document.

### **11.4 Waiver**

- (a) A failure or delay in exercise, or partial exercise, of a right, power, authority, discretion or remedy arising from a breach of or default under this document, does not result in a waiver of that right, power, authority, discretion or remedy.
- (b) A party is not entitled to rely on a delay in the exercise or non-exercise of a right, power, authority, discretion or remedy arising from a breach of this document or default under this document as constituting a waiver of that right, power, authority, discretion or remedy.

### **11.5 Further Assurance**

All parties must do all things reasonably necessary to give full effect to this document and the transactions contemplated by this document.

### **11.6 Severability**

If any part of this document is, or becomes, legally invalid or unenforceable, the remainder of this document subsists and remains enforceable.

### **11.7 Entire Understanding**

This document contains the entire agreement between the parties. All representations or agreements, whether oral or in writing made prior to the date of this document and relating to any matter dealt with in this document are merged in this document and do not have any effect from the date of this document.

### **11.8 Governing Law**

- (a) This document is governed by the law of Victoria, Australia.
- (b) Each party irrevocably submits to the non-exclusive jurisdiction of the courts of Victoria and waives any objection to the venue of any legal process on the basis that the process has been brought in any inconvenient forum.

### **11.9 Assignment**

Pride Foundation may assign its rights under this document without the consent of the other party.

# Schedule 1 - Contract particulars

<b>Term</b>	
<b>Licensed Materials include but may not be limited to:</b>	Logos, postcards, bunting, information brochures and posters.
<b>Publication Rules</b>	Licensee must comply with any rules imposed on Pride Foundation from third party owners of any portion of the Licensed Materials as well as any rules imposed by third party platforms that host portions of the Licensed Materials.