

RTI 21-22-28 -

The following has been released in response to a request for information relating to funding agreements with Tasmania JackJumpers.

# Sponsorship Agreement

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Tasmania Basketball Pty Ltd (ACN 642 087 849)

Crown in Right of Tasmania (acting through the Department  
of State Growth)

*Execution Copy*

Released under RTI

# Details

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## Date

## Parties

Name Tasmania Basketball Pty Ltd  
ACN 642 087 849  
Short form name **Tasmanian Club**  
Notice details Level 6, 10 Queens Road, Melbourne VIC 3004  
Email:  
Copy to: [legal@tke.com.au](mailto:legal@tke.com.au)  
Attention: Brad Joyner  
Copy to: Chief Commercial Officer

Name Crown in Right of Tasmania (acting through the Department of State Growth)  
Short form name **Sponsor**  
Notice details Department of State Growth  
Salamanca Building  
4 Salamanca Place, Hobart TAS 7000  
Email: [ots@stategrowth.tas.gov.au](mailto:ots@stategrowth.tas.gov.au)  
Copy to: Director, Events Tasmania  
Attention: Secretary, Department of State Growth

## Background

- A The Tasmanian Club is licensed, or will on or before the Commencement Date be licensed, to field a professional men's basketball team based in Tasmania to compete in the NBL Competition under a Tasmanian NBL Club Licence.
- B The Sponsor has agreed to sponsor the Tasmanian Club for the Term on the terms and conditions set out in this Agreement.

# Agreed terms

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## 1. Definitions and Interpretation

### 1.1 Definitions

In this Agreement unless the context clearly indicates otherwise:

**Annual Report** has the meaning given in clause 6.5(a).

**Approved Marketing Plan** has the meaning given in clause 5.3(c).

**Arena** means an arena, venue or stadium in which a Match is played during the NBL Season.

**Australian Laws** means all laws (including the common law and statutory laws), regulations, orders, subordinate legislation, ministerial directions or directions of regulators in force from time to time in Australia, whether made by a State, Territory, the Commonwealth or a local government.

**Business Day** means:

- (a) for receiving a notice under clause 16, a day that is not a Saturday, Sunday, public holiday or bank holiday in the place where the notice is received; and
- (b) for all other purposes, a day that is not a Saturday, Sunday, bank holiday or public holiday in both of Melbourne, Victoria and Hobart, Tasmania.

**Control** of an entity includes the power to directly or indirectly:

- (a) determine the management or policies of the entity;
- (b) control the membership of the board or other governing body of the entity; or
- (c) control the casting of more than one half of the maximum number of votes that may be cast at a general meeting of the entity,

regardless of whether the power is in writing or not, enforceable or unenforceable, expressed or implied, formal or informal or arises by means of trusts, agreements, arrangements, understandings, practices or otherwise, and **Controlled** has a corresponding meaning.

**Commencement Date** means the later of:

- (a) the date this Agreement is signed by the last party to it;
- (b) the date the Tasmanian Club is licensed to field a professional men's basketball team based in Tasmania to compete in the NBL Competition under a Tasmanian NBL Club Licence; and
- (c) such later date agreed by the parties.

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

**CPI** means the Index published quarterly by the Australian Bureau of Statistics being the Consumer Price Index Weighted Average Eight Capital Cities, provided that:

- (a) if the Australian Bureau of Statistics updates the base year of the CPI due conversion will be made to preserve the intended continuity of calculation by using the appropriate arithmetical factor determined by the Australian Bureau of Statistics; and
- (b) if the CPI ceases to be published then the Tasmanian Club and the Sponsor will agree to replace the CPI with such other index as will be published to replace the CPI and in the absence of such agreement being reached that other index will be as selected as being the index which will appropriately reflect the cost of living in the eight capital cities of the

Australian states and territories by the President for the time being of the Australian Property Institute or his nominee whose fees will be paid equally by the Tasmanian Club and the Sponsor and whose decision will be made as an expert and not as an arbitrator and will be final and binding on both the Tasmanian Club and the Sponsor.

**DEC Development Agreement** means the proposed development agreement between Crown in Right of Tasmania (acting through the Portfolio Minister for the purposes of the *Crown Lands Act 1976* (Tas)) and an LK Entity under which the LK Entity proposes to develop the DEC Land, which is expected to commence on or around 21 August 2020.

**DEC Land** means the land on which the Derwent Entertainment Centre in Hobart is situated, being the land comprised in Folio of the Register Volume 110871 Folio 1.

**DEC Land Sale Agreement** means the proposed land sale agreement between the Glenorchy City Council (as "Vendor") and Crown in Right of Tasmania (acting through the Minister administering the Land Acquisition Act 1993 (Tas)) (as "Purchaser") in respect of the sale and purchase of the DEC Land, under which settlement is expected to occur on or around 21 August 2020.

**DEC Lease** means the proposed operating lease between Crown in Right of Tasmania (acting through the Portfolio Minister for the purposes of the *Crown Lands Act 1976* (Tas)) (as "Landlord") and an LK Entity (as "Tenant") in respect of the DEC Land, which is expected to commence on or around 21 August 2020.

**Design Development Agreement** means the proposed agreement between Crown in Right of Tasmania (acting through the Portfolio Minister for the purposes of the *Crown Lands Act 1976* (Tas)) and an LK Entity under which the parties to that agreement propose to agree detailed construction and development plans for the DEC Land.

**Development Land** means the land surrounding the DEC Land which is comprised in Folios of the Register Volume 157350 Folio 1 and 2 but excluding the GCC Retained Land.

**Draft Marketing Plan** has the meaning given in clause 5.3(a).

**End Date** means the date that is five years after the Lease Commencement Date, unless this Agreement is extended in accordance with clause 2.2 (in which case the End Date will be determined in accordance with clause 2.2(c)) or terminated earlier in accordance with the terms of this Agreement (in which case the End Date will be the date of termination).

**Excluded Loss** means:

- (a) any indirect or consequential loss or consequential loss or damage of any kind whatsoever; and
- (b) any (whether direct, indirect or consequential or otherwise);
  - (i) loss of sales or anticipated sales;
  - (ii) loss of profit or anticipated profit;
  - (iii) loss of revenue or anticipated revenue;
  - (iv) loss of contracts or anticipated contracts;
  - (v) loss of goodwill or reputational damage;
  - (vi) loss of or delay to production;
  - (vii) loss arising from increased operating or overhead costs; and
  - (viii) loss of opportunity;

arising out of or in connection with this Agreement incurred or suffered by a party, or any other person, whether or not foreseeable at the time of entering into this Agreement.

**Excluded Sponsor** means any person whose name, logo or branding that is to be publicly affiliated with the Tasmanian Club, features or includes:

- (a) a geographic name, feature or place located outside of Tasmania; and
- (b) the name 'Tassie' or similar contraction for 'Tasmania'.

**Expected Behaviour Standards** has the meaning given in clause 5.2.

**Extension Period** has the meaning given in clause 2.2(b).

**First Club Season** means the NBL Season in which the Tasmanian Club first competes in the NBL Competition under the Tasmanian NBL Club Licence, which must be no later than the 2021/22 NBL Season.

**GCC Retained Land** means the land to be retained by Glenorchy City Council for the purposes of the public reserve adjacent to the high water mark boundary of the Development Land.

**Home Game** means a Match that includes the Tasmanian Club and is played at a venue located in Tasmania and regarded as a 'home game' for the Tasmanian Club.

**Insolvent** means, in respect of a party, the occurrence of any of the following events:

- (a) a party ceases to, or takes any steps to cease to, conduct its business; or
- (b) a controller, receiver, receiver and manager, official manager, administrator, provisional liquidator, liquidator, trustee or similar official is appointed to a party or over any of the assets or undertakings of that party; or
- (c) a party enters into or resolves to enter into any arrangement, composition or compromise with or assignment for the benefit of its creditors or any class of them; or
- (d) an application or order is made or a resolution is passed for the winding up of a party; or
- (e) a party is unable to pay debts as and when they fall due or is deemed under the Corporations Act to be insolvent

and **Insolvency Event** has a corresponding meaning.

**Intellectual Property Rights** means all intellectual property rights (excluding moral rights as defined at law), whether registered or unregistered, including:

- (a) patents, copyright, registered designs, trademarks (whether registered or unregistered) and the right to have confidential information kept confidential; and
- (b) any application or right to apply for registration of any of those rights.

**Lease Commencement Date** means the "commencement date" (howsoever defined) of the DEC Lease.

**LK Entity** means an entity that is Controlled by Larry Kestelman, and which is reasonably satisfactory to the Sponsor.

**Match** means any games or matches that are operated, sanctioned or endorsed by NBL which is part of the NBL Competition.

**Minimum Community Engagement Obligations** means the community engagement obligations specified in Schedule 3.

**NBL** means National Basketball League Pty Ltd ABN 65 164 187 937.

**NBL Club** means a club that has been licensed by NBL to participate in the NBL Competition during the Term, but does not include the Tasmanian Club unless the context requires.

**NBL Competition** means the professional men's national club basketball competition conducted in the Territory by the NBL, and known as the 'National Basketball League' or 'NBL'.

**NBL Finals Series** means the part of the NBL Season designated by the NBL as the "Finals Series" (or similar) for the NBL Competition.

**NBL Preliminary Series** means the period of time prior to the start of the NBL Regular Season for an NBL Season, during which NBL Clubs may participate in one or more professional men's basketball games.

**NBL Regular Season** means the part of the NBL Season designed by the NBL as the "Regular Season" (or similar) for the NBL Competition, and to avoid doubt, does not include the NBL Final Series or the NBL Preliminary Series.

**NBL Season** means the period of time commencing at the beginning of the officially sanctioned NBL Preliminary Series (as officially sanctioned by the NBL) and ending at the time that the NBL Final Series ends.

**Notice** has the meaning given in clause 16.1(a).

**Ordered Merchandise** has the meaning given in clause 4.6(b).

**Payment Schedule** means the payment schedule for the Sponsorship Fees set out in Item 1 of Schedule 1.

**Permitted Purpose** has the meaning given in clause 6.2(a).

**Personal Information** has the same meaning as in the Privacy Laws.

**Personnel** means employees, partners, agents, officers and subcontractors (including employees of subcontractors) of a party.

**Privacy Laws** means the Privacy Act 1988 (Cth) (including the APPs), the Spam Act 2003 (Cth) and any other requirement under Australian Law and industry code relating to the handling of Personal Information.

**Promotional Material** means public (including media) announcements, advertising material, or other publications relating to the Tasmanian Club and other promotional material on any platform or medium (including, without limitation, print, radio, digital, social media, online or email), in each case, which are prepared by or are authorised to be prepared on behalf of the Tasmanian Club.

**Refund Amount** means the aggregate of:

- (a) the "Refund Amount" as defined in Item 2 of Schedule 1; and
- (b) the "2021/2022 Refund Amount" as defined in Item 3 of Schedule 1.

**Related Entity** has the meaning given in the Corporations Act.

**Related Bodies Corporate** has the meaning given in section 50 of the Corporations Act.

**Renewal Notice** has the meaning given in clause 2.2(a).

**Relevant Year** has the meaning given in Item 2 of Schedule 1.

**Sponsor Benefits** means the benefits provided by the Tasmanian Club to the Sponsor as set out in clause 4.

**Sponsor IP** means the Sponsor's logo, symbols, emblems, designs, colours, images and other indicia and trademarks owned by or licensed to the Sponsor, as specified in Schedule 2, as updated by the parties from time to time.

**Sponsorship Fees** means the cash consideration to be provided by the Sponsor in accordance with Item 1 of Schedule 1.

**Tasmanian Buy Local Costs** means amounts spent by the Tasmanian Club on the purchase of Tasmanian based products and services, including (but not limited to) remuneration paid to Tasmanian Club Personnel who principally reside in Tasmania during the NBL Regular Season, but excluding the purchase of airfares. Amounts spent on purchases from a Related Entity must not exceed normal market rates.

**Tasmanian Club IP** means the trademarks, name, logos, colours and images, in each case in respect of the Tasmanian Club, owned by the Tasmanian Club.

**Tasmanian Club Personnel** means Personnel employed or engaged by the Tasmanian Club, or the NBL solely or principally for the benefit of the Tasmanian Club (such as 'Next Star' players), including directors and team officials (such as coaches, doctors, referees, managers and support staff) and Tasmanian Club Players.

**Tasmanian Club Player** means a basketball player that competes for the Tasmanian Club.

**Tasmanian NBL Club Licence** means a licence agreement between the NBL and the Tasmanian Club pursuant to which the Tasmanian Club is authorised by the NBL to field a team to compete in the NBL Competition, with the team required to be based in Tasmania.

**Tasmanian Operating Costs** means all expenses incurred by the Tasmanian Club through its business operations, including rent, equipment, inventory, marketing, payroll, insurance, licence fees, promotional and marketing costs, in each case solely in connection with the NBL Competition, and includes Team Establishment Costs. Expenses incurred on purchases from a Related Entity must not exceed normal market rates.

**Tasmanian Team Merchandise** has the meaning given in clause 4.6(a).

**Tasmanian Team Name** means the team name of the Tasmanian Club, being the name by which the team that the Tasmanian Club fields to compete in the NBL Competition is known.

**Team Establishment Costs** means all expenses incurred by the Tasmanian Club or the NBL in establishing the Tasmanian Club as a team to compete in the NBL Competition.

**Term** means the term of this Agreement as stated in clause 2.

**Territory** means Australia and New Zealand.

**Withheld Amount** has the meaning given in clause 6.1(b).

**Year** means a consecutive period of 12 months during the Term except or provided that:

- (a) Year 1 will commence on the Commencement Date;
- (b) Year 2 and each subsequent Year will commence on each anniversary of the Commencement Date; and
- (c) the final Year will be a period of less than 12 months, commencing in accordance with the preceding subclause and ending on the End Date.

## 1.2 Interpretation

In this Agreement, except where the context otherwise requires:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;

- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this Agreement, and a reference to this Agreement includes any schedule or annexure;
- (d) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (e) a reference to **A\$, \$A, AUD or dollars**, is to Australian currency;
- (f) a reference to time is to the time in Hobart, Tasmania;
- (g) a reference to a party is to a party to this Agreement, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;
- (h) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (i) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (j) a word or expression defined in the Corporations Act has the meaning given to it in the Corporations Act;
- (k) the meaning of general words is not limited by specific examples introduced by **including**, **for example** or similar expressions;
- (l) any agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- (m) any agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally; and
- (n) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day.

### **1.3 Headings**

Headings are for ease of reference only and do not affect interpretation.

### **1.4 Construction**

A rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this Agreement or any part of it.

### **1.5 Delegation**

- (a) The Sponsor may by notice, in writing, to the Tasmanian Club delegate the exercise of any right, function or responsibility which the Sponsor has under or in connection with this Agreement. Any such delegation may be:
  - (i) to a person or to the holder of a position (for the time being) in the State Government Department responsible for the administration of this Agreement;
  - (ii) revoked, changed or re-delegated by notice, in writing, to the Tasmanian Club; and



- (iii) unlimited or may be subject to such conditions as the Sponsor determines from time to time.
- (b) Nothing in this clause 1.5 affects or limits the operation of any delegation given by the Sponsor independently of this Agreement or any power of a person to act on behalf of the Sponsor.
- (c) Subject to any further notice by the Sponsor to the Tasmanian Club, each Secretary, Acting Secretary and Deputy Secretary, in each case for the time being, of the State Government Department responsible for the administration of this Agreement is taken to be delegate of the Sponsor, and may exercise any right, function or responsibility which the Sponsor has under or in connection with this Agreement.

## 2. Term

### 2.1 Initial Term

This Agreement commences on the Commencement Date and ends on the End Date.

### 2.2 Extension of Term

- (a) The Tasmanian Club may, no later than 4 months prior to the End Date or 1 month after the end of the 2024/25 NBL Regular Season (whichever is the later to occur), notify the Sponsor that it wishes to extend this Agreement for a further period of five years ("**Renewal Notice**").
- (b) At the time that the Tasmanian Club provides a Renewal Notice, the Tasmanian Club must also provide evidence satisfactory to the Sponsor that the Audience Condition has been satisfied.
- (c) If the Tasmanian Club provides a Renewal Notice and the Sponsor confirms in writing that the Sponsor is satisfied that the Audience Condition has been satisfied:
  - (i) the Agreement will be extended by five years so that the End Date will be the date that is ten years after the Lease Commencement Date (this further five year period being the "**Extension Period**");
  - (ii) this Agreement will continue in accordance with its terms for the Extension Period; and
  - (iii) to avoid doubt, the Tasmanian Club does not have an option to extend this Agreement beyond the end of the Extension Period and any such extension is subject to agreement by the parties (in their absolute discretion).

### 2.3 Further Period

If this Agreement is extended for the Extension Period in accordance with clause 2.2, the parties agree that, no later than 21 months before the End Date, the parties will meet to discuss whether or not this Agreement will be extended or renewed for a further period, and if so, the terms on which such extension or renewal will occur. For the avoidance of doubt, nothing in this clause requires the Sponsor to extend or renew this Agreement for a further period.

### 2.4 Key principles for clause 2

In this clause 2:

- (a) **Audience Condition**, is satisfied if the Average Game Attendance, expressed as a percentage, for the 2024/25 NBL Regular Season was at least 65%.
- (b) **Aggregate Game Attendance** means, for a NBL Regular Season, the amount that is the

aggregate of the Game Attendances for each Home Game during that NBL Regular Season;

- (c) **Average Game Attendance** means the amount that is calculated by:
  - (i) taking the Aggregate Game Attendance;
  - (ii) dividing the Aggregate Game Attendance by the Total Home Games; and
  - (iii) multiplying it by 100.
- (d) **Free Ticket** means, for a person attending a Home Game, a ticket that has been provided to that person for free and without the requirement for that person to acquire other goods or services from the NBL or the Tasmanian Club. However, none of the following tickets are **Free Tickets**:
  - (i) a ticket provided to a person as part of a paid sponsorship or paid membership benefit; or
  - (ii) a ticket provided to a person for participating in a paid basketball clinic; or
  - (iii) a ticket provided to a person for free by a person who has purchased that ticket for consideration equivalent to the face value of that ticket payable by the general public.
- (e) **Game Attendance** for a Home Game means the amount that is calculated by:
  - (i) taking the total number of people who attended the Home Game as a spectator (excluding any person that attended the Home Game with a Free Ticket); and
  - (ii) dividing that number by the total number of seats allocated for spectators at that Home Game.
- (f) **Total Home Games** means the total number of Home Games for the 2024/25 NBL Regular Season.

### 3. Exclusivity

#### 3.1 No exclusivity offered

The Sponsor acknowledges and agrees that this Agreement does not create or confer any benefits of exclusivity to the Sponsor in relation to being a sponsor of the Tasmanian Club.

#### 3.2 Other sponsorship arrangements

Without limiting clause 3.1, the Sponsor acknowledges and agrees that the Tasmanian Club may enter into sponsorship agreements or arrangements with other persons, or carry out promotional activities for other persons, in each case without the Sponsor's approval, provided that.

- (a) it is not reasonably expected that such other sponsorship agreements or arrangements, or promotional activities, would adversely impact on the Australian public's opinion of Tasmania as a place to live, work, visit or invest; and
- (b) such other sponsorship agreements or arrangements are not with Excluded Sponsors.

### 4. Sponsor Benefits

#### 4.1 Tasmanian Team Name

During the Term, the Tasmanian Club must ensure that the Tasmanian Team Name:

- (a) includes the word "Tasmania" or "Tasmanian" (or such substitute word or words

approved by the Sponsor in writing);

- (b) features on the playing uniforms of the Tasmanian Club Players in a manner that is consistent with the way major sponsors of other NBL Clubs are featured on playing uniforms; and
- (c) features on courtside signage at the Arena in which each Home Game is played in a manner that is consistent with the way major sponsors of other NBL Clubs are featured on courtside signage.

#### **4.2 Location of Home Games**

- (a) During the Term, the Tasmanian Club must ensure that during the First Club Season and each subsequent NBL Season:
  - (i) at least 14 Home Games are played in Tasmania; and
  - (ii) in respect of such Home Games:
    - (A) at least 11 Home Games are played at the Derwent Entertainment Centre (or, if the redevelopment works in respect of the Derwent Entertainment Centre have not been completed by the commencement of the 2021/2022 NBL Season, then until those works are completed and the Derwent Entertainment Centre is fit to host Home Games, at another venue in Tasmania approved, in writing, by the Sponsor (such approval not to be unreasonably withheld)); and
    - (B) at least 2 Home Games are played in the north of Tasmania (e.g. Launceston), subject to the availability of a suitable Arena.
- (b) The parties agree to negotiate if the Tasmanian Club requires additional Sponsorship Fees in order to make hosting a Home Game in Tasmania other than at the Derwent Entertainment Centre financially viable. For the avoidance of doubt, the Sponsor is under no obligation to provide any additional Sponsorship Fees.

#### **4.3 Promotion of Tasmanian Club**

- (a) During the Term, the Tasmanian Club must include in all Promotional Material, an acknowledgement or representation that the Tasmanian Club is sponsored by the Tasmanian Government, to the extent that in accordance with 'major sponsorship arrangements' for other NBL Clubs it is customary to do so or is otherwise reasonably requested by the Sponsor, having regard to the nature of the Promotional Material.
- (b) The acknowledgement referred to in clause 4.3(a) must be in a form and substance approved in writing by the Sponsor and once approved, may be used by the Tasmanian Club on all subsequent Promotional Material until the Sponsor expressly advises otherwise in writing.
- (c) The Tasmanian Club must give the Sponsor reasonable notice of planned media conferences and promotional events (being not less than 10 days, unless it is not possible to provide such period of notice) concerning the establishment of Tasmanian Club or significant developments affecting the operation of the Tasmanian Club. If required by the Sponsor, the Tasmanian Club must consult with the Sponsor concerning the timing, planning and conduct of such conference and events.
- (d) Without limiting clause 4.3(c), the Tasmanian Club must host a season launch prior to the start of the First Club Season and each NBL Season thereafter. The Tasmanian Club must consult with the Sponsor concerning the timing, planning and conduct of each such season launch.

- (e) The Sponsor reserves the right to make public (including media) announcements in relation to, and otherwise report on, any aspect of this Agreement, the Tasmanian Club, the NBL Competition or the Derwent Entertainment Centre after consulting the Tasmanian Club.

#### 4.4 Tickets

- (a) Subject to clause 4.4(b), the Tasmanian Club will provide 20 General Admission tickets to the Sponsor in respect of each Home Game during the Term (including any Match played in Tasmania that is a part of the NBL Finals Series and involves the Tasmanian Club).
- (b) The Sponsor must request tickets it is entitled to under clause 4.4(a) at least 14 days' prior to the relevant Home Game (otherwise the Tasmanian Club may release the tickets to the public).

#### 4.5 Corporate Hospitality Package

In addition to the tickets to be provided under clause 4.4, the Tasmanian Club must provide a corporate hospitality package to the Sponsor (for up to 10 guests of the Sponsor) at each Home Game during the Term (including any Match played in Tasmania that is a part of the NBL Finals Series and involves the Tasmanian Club).

#### 4.6 Team Merchandise

- (a) The Tasmanian Club or the NBL is expected to licence a range of official merchandise in respect of the Tasmanian Club, which will include one or more marks in respect of the Tasmanian Club (**Tasmanian Team Merchandise**).
- (b) During each Year (from and including the First Club Season), the Sponsor may order Tasmanian Team Merchandise from the Tasmanian Club or the Tasmanian Club's relevant supplier in accordance with the Tasmanian Club's (or its relevant supplier's) usual ordering processes (**Ordered Merchandise**).
- (c) The Sponsor may order Ordered Merchandise with an aggregate value (based on recommended retail price) of \$5,000 (incl. GST) at no cost to the Sponsor. If the Sponsor does not order Ordered Merchandise with an aggregate value of at least \$5,000 (incl. GST), the balance is forfeited, does not carry over to a subsequent Year and does not survive the termination or expiry of this Agreement.

### 5. Other Obligations

#### 5.1 Community Engagement

- (a) The Tasmanian Club will ensure that the Tasmanian NBL Club Licence will include an obligation on the Tasmanian Club to, during the Term, interact with local Tasmanian basketball teams and support the development of the sport of basketball within schools in Tasmania.
- (b) The Tasmanian Club must:
  - (i) comply with its obligations in the Tasmanian NBL Club Licence where a failure to do so will, or is likely to have, a material adverse impact on the Tasmanian Club, the Sponsor or the Sponsor Benefits to be provided to the Sponsor; and
  - (ii) meet or exceed the Minimum Community Engagement Obligations.
- (c) Without limiting clause 5.1(a) and clause 5.1(b), the Tasmanian Club must use its best endeavours to enter into, and must comply with, any memorandum of understanding

entered into with Basketball Tasmania in relation to the elite pathway for Tasmanian basketball players and how the Tasmanian Club will support and augment the local basketball community in Tasmania.

## 5.2 Expected Behaviour Standards

The Tasmanian Club must ensure that, at all times, Tasmanian Club Personnel:

- (a) comply with those provisions of relevant NBL codes of conduct which, if not complied with, will or are reasonably likely to adversely impact on the Sponsor's reputation;
- (b) act professionally;
- (c) act ethically;
- (d) do not engage in any unlawful activity;
- (e) treat people with respect and without harassment, victimisation or discrimination;
- (f) do not act in a manner that brings disrepute to the Sponsor or the State of Tasmania; and
- (g) do not make any public statements (including through 'social media') which are derogatory of Tasmanians or Tasmania as a place to live, work, visit or invest,

(the **Expected Behaviour Standards**).

Without limiting the Sponsor's rights under clause 8, in the event that the Sponsor (acting reasonably) believes the Expected Behaviour Standards have been breached by any Tasmanian Club Personnel, the Tasmanian Club must, if requested to do so by the Sponsor, consult with the Sponsor in relation to the impact of that breach on the Sponsor and this Agreement.

## 5.3 Marketing Plan

- (a) By no later than 3 months prior to the start of the First Club Season, the Tasmanian Club must prepare a draft marketing plan for the activities necessary to promote the establishment and operation of the Tasmanian Club during the Term, including (at a minimum) a plan to:

- (i) promote the Tasmanian Club domestically and internationally;
- (ii) identify persons who can act as 'Ambassadors' of the Tasmanian Club (such as a high profile or marquee player),

(the **Draft Marketing Plan**), and provide the Draft Marketing Plan to the Sponsor for review and comment.

- (b) The Sponsor must meet with the Tasmanian Club to review the Draft Marketing Plan and the parties must use best endeavours to agree on a final version of the Marketing Plan as soon as reasonably practicable.
- (c) Once the Marketing Plan has been approved by the Sponsor (**Approved Marketing Plan**), the Tasmanian Club must comply with and must not depart from the Approved Marketing Plan
- (d) The Tasmanian Club must review with the Sponsor, and with the approval of the Sponsor update, the Approved Marketing Plan:
  - (i) prior to the start of each NBL Season during the Term;
  - (ii) if a significant change to the scope of the Tasmanian Club's operations occurs; and
  - (iii) upon written request from the Sponsor.

- (e) Any changes to the Approved Marketing Plan must only be made with the prior consent of the Sponsor (which must not be unreasonably withheld), and such amended plan will become the Approved Marketing Plan under this Agreement.
- (f) The Sponsor does not incur or assume any liability to the Tasmanian Club by reviewing or approving any Marketing Plan.

## 6. Sponsorship Fees

### 6.1 Sponsorship Fees

- (a) Subject to clause 6.1(b) The Sponsor must pay the Sponsorship Fees to the Tasmanian Club in accordance with Item 1 of Schedule 1 and the Payment Schedule.
- (b) If, on any date that Sponsorship Fees are due and payable in accordance with Item 1 of Schedule 1 and the Payment Schedule, the Tasmanian Club has breached any of its obligations under this Agreement and such breach has not been remedied, the Sponsor may withhold an amount equal to 2% of the Sponsorship Fees that would otherwise be payable on that date (such amount being the "Withheld Amount"). The Withheld Amount will be due and payable to the Tasmanian Club within 28 days after the date that all relevant breaches of this Agreement have been remedied.
- (c) For the avoidance of doubt, the Sponsor's right to withhold amounts under clause 6.1(b) in no way limits the Sponsor's other rights under this Agreement (including any rights the Sponsor has to terminate this Agreement under clause 8).

### 6.2 Utilisation of Sponsorship Fees

- (a) The Tasmanian Club is not required to expend all Sponsorship Fees received for a Year in that Year, but must only use the Sponsorship Fees received from the Sponsor for one or more of the following purposes (each a **Permitted Purpose**):
  - (i) Tasmanian Operating Costs; and
  - (ii) any other purpose approved by the Sponsor (such approval not to be unreasonably withheld).
- (b) The Sponsor acknowledges that the Sponsorship Fees received by the Tasmanian Club may be deposited into or comingled with a common pool of funds or bank account maintained by the Tasmanian Club.
- (c) The Tasmanian Club does not breach clause 6.2(a) if the Tasmanian Club uses an amount equal to the Sponsorship Fees for a Permitted Purpose, whether or not the Tasmanian Club uses the specific Sponsorship Fees paid by the Sponsor to the Tasmanian Club.

### 6.3 Refund of Sponsorship Fees

- (a) The Sponsor acknowledges and agrees that the payment the Sponsorship Fees to the Tasmanian Club in accordance with Item 1 of Schedule 1 is not refundable by the Tasmanian Club to the Sponsor for any reason (including the poor performance of the Tasmanian Club in the NBL Competition) except to the extent:
  - (i) that the Tasmanian Club is liable to pay the Refund Amount;
  - (ii) provided under clause 8.4(f); or
  - (iii) this Agreement is terminated due to the fraud or wilful misconduct of the Tasmanian Club.

#### **6.4 Record Keeping**

The Tasmanian Club agrees to keep and retain for the Term, and for seven years thereafter, accurate financial statements (including statements of cash flow and financial position) and books of account and records of all transactions relating to the Tasmanian Club including Tasmanian Operating Costs and Tasmanian Buy Local Costs.

The Tasmanian Club's financial statements must show, as separate items, the receipt, use and expenditure of the Sponsorship Fees.

#### **6.5 Annual Reporting**

- (a) No later than 60 days before the start of each financial year (other than the financial year commencing 1 July 2020), the Tasmanian Club must prepare and provide to the Sponsor the following reports in respect of the operation of the Tasmanian Club in the NBL Competition:
  - (i) budgeted expenditure for the Tasmanian Club for the upcoming financial year;
  - (ii) budgeted revenue for the Tasmanian Club for the upcoming financial year (including estimated total attendances at Matches to be held during the upcoming financial year); and
  - (iii) budgeted Tasmanian Operating Costs and Tasmanian Buy Local Costs for the upcoming financial year;
- (b) Within 90 days after the end of each financial year (being each twelve-month period ending 30 June), the Tasmanian Club must prepare and provide to the Sponsor the following reports in respect of the operation of the Tasmanian Club in the NBL Competition:
  - (i) financial statements (including statements of cash flow and financial position);
  - (ii) expenditure for the Tasmanian Club for the previous financial year;
  - (iii) revenue for the Tasmanian Club for the previous financial year (including total attendances at Home Games held during the financial year); and
  - (iv) Tasmanian Operating Costs and Tasmanian Buy Local Costs for the previous financial year.

#### **6.6 Audit**

- (a) The Tasmanian Club must, upon request from the Sponsor, allow the Auditor-General of Tasmania (or his or her nominee) to:
  - (i) audit, inspect, and to take copies of, the Tasmanian Club's accounts, records and financial statements relating to the receipt, use and expenditure of the Sponsorship Fees; and
  - (ii) audit the accuracy of the Tasmanian Operating Costs and Tasmanian Buy Local Costs disclosed to the Sponsor under Item 2 of Schedule 1, in accordance with this clause 6.6.

If the Auditor-General does not appoint or nominate an auditor, the Sponsor may nominate an auditor to perform the functions in paragraphs (i) and (ii) above.

- (b) If the Sponsor wishes to conduct an audit, the following process will apply:
  - (i) the Tasmanian Club must provide to the auditor reasonable access to all books, records, premises, Tasmanian Club Personnel and other resources required in

order to undertake the audit, in each case, at reasonable times during the Tasmanian Club's usual business hours on Business Days; and

- (ii) the Sponsor must pay for the costs of the audit unless the auditor determines that the Tasmanian Operating Costs have been overstated by more than 3%, in which case, the Tasmanian Club must pay the auditor's reasonable costs (and bear its own costs in respect of the audit).
- (c) If it is found as a result of the audit that:
  - (i) the Sponsor has been underpaid the Refund Amount (or has not been paid a Refund Amount in circumstances where it was so entitled) – the Tasmanian Club must pay the Sponsor the amount of the underpayment or the Refund Amount (as applicable) by:
    - (A) applying a set-off equal to the amount of the underpayment or the Refund Amount (as applicable) against the next instalment or instalments of the Sponsorship Fees payable by the Sponsor; and
    - (B) to the extent that there are no further instalments of the Sponsorship Fees against which to set-off the underpayment or the Refund Amount (as applicable), paying the Refund Amount to the Sponsor in cash within 30 days of the result of the audit; or
  - (ii) the Sponsor has been overpaid the Refund Amount – the amount of the overpayment must be paid by the Sponsor to the Tasmanian Club within 30 days of the result of the audit.
- (d) Clause 6.6(c) survives the expiry or termination of this Agreement.

## **7. Intellectual Property Rights**

### **7.1 Ownership**

Except as provided in this clause 7, nothing in this Agreement affects the ownership of Intellectual Property Rights of either the Sponsor or the Tasmanian Club, and each party retains ownership and title to their Intellectual Property Rights.

### **7.2 Sponsor Intellectual Property**

- (a) Subject to clause 7.2(c), the Sponsor grants to the Tasmanian Club and the NBL a non-exclusive, non-transferable, royalty-free, irrevocable licence during the Term to use the Sponsor IP in accordance with the rights and obligations of the Tasmanian Club under this Agreement.
- (b) Without limiting clause 4.3, the Tasmanian Club must comply with, and must ensure that the NBL complies with, any guidelines or requirements of the Sponsor in utilising the Sponsor IP.
- (c) The Tasmanian Club must submit:
  - (i) all promotional and other material incorporating the Sponsor IP; and
  - (ii) all publicity material, media releases and similar material which directly or indirectly refer to the Sponsor or to the Sponsor IP,to the Sponsor for approval at least three Business Days prior to any production deadline and such material cannot be published without the Sponsor's prior written approval.
- (d) The Sponsor must act reasonably in exercising its rights under this clause having regard



to the Tasmanian Club's rights and obligations under this Agreement and the legitimate interests of the NBL in promoting the NBL Clubs and the NBL Competition.

- (e) The Tasmanian Club acknowledges that, other than the limited licence granted to it under clause 7.2(a), it does not have, and the NBL does not have, any Intellectual Property Rights in any material provided by the Sponsor under, or in connection of, this Agreement.

### **7.3 Tasmanian Club Intellectual Property**

- (a) Subject to clause 7.3(c), the Tasmanian Club grants to the Sponsor a non-exclusive, non-transferable, royalty-free, irrevocable licence during the Term to use the Tasmanian Club IP in accordance with the rights and obligations of the Sponsor under this Agreement.
- (b) The Sponsor must ensure that it complies with any guidelines or requirements of the Tasmanian Club and the NBL (as notified to the Sponsor) in utilising the Tasmanian Club IP.
- (c) The Sponsor must submit:
  - (i) all promotional and other material incorporating the Tasmanian Club IP; and
  - (ii) all publicity material, media releases and similar material which directly or indirectly refer to NBL or the Tasmanian Club or include the Tasmanian Club IP,to the Tasmanian Club for approval at least three Business Days prior to any production deadline and such material cannot be published without the Tasmanian Club's prior written approval.
- (d) The Tasmanian Club must act reasonably in exercising its rights under this clause having regard to the Sponsor's rights and obligations under this Agreement and the legitimate interests of the Sponsor.
- (e) The Sponsor acknowledges that, other than the limited licence granted to it under clause 7.3(a), it does not have any Intellectual Property Rights in any material provided to the Sponsor under, or in connection of, this Agreement.

## **8. Termination**

### **8.1 End Date**

This Agreement will terminate automatically on the End Date.

### **8.2 Right of termination**

The Sponsor may terminate this Agreement immediately if:

- (a) the Tasmanian Club repudiates this Agreement;
- (b) the Tasmanian Club materially breaches this Agreement (including, without limitation, by breaching any obligation under clauses 3.2, 4.1, 4.2, 5.1, 5.2, 6.3 or 7.2(b)) and that breach, if capable of being remedied, is not remedied to the reasonable satisfaction of the Sponsor within 10 Business Days after notice of breach from the Sponsor;
- (c) the Tasmanian Club commits a material breach of this Agreement (including, without limitation, by breaching any obligation under clauses 3.2, 4.1, 4.2, 5.1, 5.2, 6.3 or 7.2(b)) which is not capable of being remedied;
- (d) the Tasmanian Club ceases to hold a Tasmanian NBL Club Licence or the Tasmanian NBL Club Licence is suspended for a period of time exceeding 60 days, in each case, for any reason;

- (e) the NBL ceases to operate the NBL Competition as a league in which there are NBL Clubs based in the majority of Australian States;
- (f) the Tasmanian Club commits more than six breaches of this Agreement in any rolling period of six consecutive months (irrespective of whether the breach is remedied, or capable of being remedied, but provided that the Sponsor provided notice of such breaches to the Tasmanian Club within a reasonable period of time after becoming aware of such breach);
- (g) the Tasmanian Club has failed to ensure that the Tasmanian Club Personnel adhere to the Expected Behaviour Standards and has not remedied that breach to the Sponsor's reasonable satisfaction within 10 Business Days;
- (h) in the opinion of the Sponsor (acting reasonably), the Expected Behaviour Standards have been breached in a way that is materially detrimental to the Australian public's opinion of Tasmania as a place to live, work, visit or invest;
- (i) the Tasmanian Club's usual training venue is not, or ceases to be, located in Tasmania; or
- (j) the operational management structure for the Tasmanian Club in the form and substance accepted by the Sponsor for the purposes of Schedule 1 is varied in a way that materially decreases:
  - (i) the number of Tasmanian Club Personnel in the management structure; or
  - (ii) the number of Tasmanian Club Personnel that ordinarily reside in Tasmania, without the prior written consent of the Sponsor; or
- (k) the Sponsor is permitted to terminate this Agreement under clause 17.3(f); or
- (l) by 21 September 2020, for any reason:
  - (i) the DEC Land Sale Agreement has not been duly executed;
  - (ii) the purchase of the DEC Land and Development Land under the DEC Land Sale Agreement has not been completed by the Sponsor; or
  - (iii) the DEC Lease or the DEC Development Agreement or the Design Development Agreement has not been duly executed by each party; or
  - (iv) in the event that any of the DEC Lease, the DEC Development Agreement or the Design Development Agreement is executed before 21 August 2020, any such document is terminated before 21 August 2020 for any reason.

### **8.3 Termination for breach or insolvency**

Without limiting clause 8.2, either party may terminate this Agreement on notice to the other party at any time if the other party:

- (a) has committed a material breach of this Agreement (including the warranties provided) and such breach has not been remedied within seven days following the receipt of written notice from the party not in default; or
- (b) in the case of the Tasmanian Club, it is subject to an Insolvency Event.

### **8.4 Effect of termination**

Upon termination in accordance with clause 8:

- (a) any antecedent rights and obligations shall not be affected;
- (b) the right to receive the Sponsor Benefits, to the extent not already supplied, will cease;

- (c) the Tasmanian Club's right to receive Sponsorship Fees will cease (other than Sponsorship Fees where:
  - (i) the "Due Date" for payment of such fees has occurred (as set out in Item 1 of Schedule 1); and
  - (ii) the Tasmanian Club has provided the Sponsor with a tax invoice for such Sponsorship Fees, whether or not the due date for the payment of the tax invoice is prior to the date of termination);
- (d) the requirement of the Tasmanian Club to comply with clause 5 ends;
- (e) each party must at its own expense seek to remove and immediately cease to use the other party's Intellectual Property Rights; and
- (f) without limiting the Tasmanian Club's obligations in relation to payment of the Refund Amount, in the event that the Sponsor has terminated this Agreement under clause 8.2 or 8.3 before 21 August 2020, the Tasmanian Club must refund any instalment of the Sponsorship Fee paid to the extent it has not already been expended or committed to be expended on the Permitted Purpose.

## 9. Warranties

The Tasmanian Club represents warrants that:

- (a) it has full legal capacity, power and authority to enter into and perform this Agreement and its obligations in connection with this Agreement;
- (b) it has obtained all consents, approvals, permits, licences and authorities needed to enter into and perform its obligations under this Agreement;
- (c) the use of the Tasmanian Club IP in accordance with the licence granted under clause 7.3(a) does not and will not infringe the rights of any other person and the Tasmanian Club has full legal power and authority to grant such licence;
- (d) it will comply with all applicable laws, codes of conduct and industry standards when exercising its rights or complying with its obligations under this Agreement; and
- (e) the Tasmanian Club is, or will be on or before the Commencement Date, licensed to field a professional men's basketball team based in Tasmania to compete in the NBL Competition in the 2021/2022 NBL Season under a Tasmanian NBL Club Licence and a director of the NBL has provided a certificate to the Sponsor confirming that the Tasmanian NBL Club Licence has been granted and any conditions for the issue to that Tasmanian NBL Club Licence attached to that licence have been met.

## 10. Confidential information

### 10.1 Confidential Information

In this Agreement, "**Confidential Information**" means the terms of this Agreement, Personal Information and all information which is disclosed by a party to the receiving party under or in relation to this Agreement, whether it was disclosed before, on or after the date of this Agreement, including the Annual Report and the Tasmanian Club's records, but does not include the following:

- (a) any information which is in or becomes part of the public domain otherwise than through a breach of this Agreement by the receiving party;

- (b) the receiving party can prove was already known to it at the time of disclosure by the disclosing party; or
- (c) the receiving party acquired from a source other than the disclosing party, where that source is entitled to disclose the information.

Despite any confidentiality or intellectual property right subsisting in this Agreement, a party may publish all or any part of this Agreement without reference to another party. If a party publishes all or any part of this Agreement, that party must, to the extent reasonably practicable, provide notice to the other party of such publication. Nothing in this clause 11.1 derogates from a party's obligations under the *Personal Information Protection Act 2004* (Tas) or the *Privacy Act 1988* (Cwlth).

## **10.2 Confidential Information to be kept confidential**

Except as otherwise permitted under this Agreement:

- (a) the receiving party will treat as confidential all of the Confidential Information in its possession; and
- (b) the receiving party will not disclose Confidential Information to third parties without the prior written consent of the other party and it will take all reasonable precautions to ensure that its Related Bodies Corporate will maintain the confidentiality of that Confidential Information.

## **10.3 Permitted disclosures**

Each party may disclose (or permit the disclosure of) Confidential Information:

- (a) as required by law or by the rules of any securities exchange or regulatory agency having jurisdiction over such party or its ultimate holding company;
- (b) to its Related Bodies Corporate and its and their respective Related Bodies Corporate who have a need to know in connection with this Agreement and will ensure that such persons maintain the confidentiality of that Confidential Information;
- (c) to an employee, agent, officer, director, auditor, contractor or professional adviser of the receiving party on a need to know basis in connection with this Agreement and subject to the recipient maintaining the confidentiality of that Confidential Information;
- (d) to enable a Minister to discharge his or her duties to Parliament, including answering a question;
- (e) to any professional adviser; and
- (f) to any bona fide assignee or prospective assignee or prospective purchaser of the business of the assignor.

to the extent necessary for either party to establish, perform or enforce its rights or obligations under this Agreement or in connection with any dispute arising under this Agreement.

## **10.4 Other permitted disclosures to NBL**

- (a) The Tasmanian Club may disclose (or permit the disclosure of) Confidential Information of the Sponsor to the NBL.
- (b) The Sponsor may disclose (or permit the disclosure of) Confidential Information to enable a Minister to discharge his or her duties to Parliament, including answering a question.

## 11. Privacy

### 11.1 Privacy obligations

- (a) Each party will comply with all Privacy Laws in the performance of their obligations under this clause.
- (b) Without limiting its obligations under clause 11.1(a), each party must:
  - (i) use Personal Information only as necessary to fulfil its obligations under this agreement;
  - (ii) only collect, access, use, store, disclose or otherwise deal with Personal Information in accordance with Privacy Laws;
  - (iii) not disclose Personal Information except:
    - (A) to its Personnel to the extent necessary for fulfilling its obligations under this Agreement;
    - (B) as required by Australian Law, subject to each party giving notice to the other party promptly when it becomes aware that such a disclosure may be required; or
    - (C) with the express prior written consent of the other party;
  - (iv) ensure that any person, including its Personnel, to whom Personal Information is disclosed under this Agreement does not do or omit to do anything which, if done or omitted to be done by the party, would constitute a breach of this clause 11;
  - (v) ensure that all subcontractors to whom Personal Information is disclosed comply with Privacy Laws, the party's Privacy Policy and that subcontractors agree to provisions having the same effect as this clause 11;
  - (vi) not do any act, engage in any practice, or omit to do any act or engage in any practice that:
    - (A) would result in a breach of a Privacy Law if the Privacy Law applied to those things done, engaged in or omitted to be done by the party; or
    - (B) would cause the party to breach or be taken to breach a Privacy Law.

## 12. Liability

- (a) To the extent permitted by Australian Law, the maximum aggregate liability of a party to the other party arising under or in connection with this Agreement in a calendar year (whether in contract, tort (including negligence), statute, equity or otherwise) is limited to the total Sponsorship Fees that have been paid by the Sponsor in that calendar year.
- (b) Notwithstanding any other clause of this Agreement and to the extent permitted by law, no party is liable to the other party in contract, tort (including negligence), statute, equity or otherwise for any kind of Excluded Loss, arising out of or in connection with this Agreement, incurred or suffered by a party or any other person.
- (c) The exclusion or limitation of liability in clauses 12(a) and (b) do not apply in respect of the liability of a party:
  - (i) for a breach by that party of clause 7.2 or 7.3, 9(c), 10 or 10; or
  - (ii) for death or personal injury for which that party is liable at law; or

- (iii) for any unlawful act or activity by that party;
- (iv) for fraud, gross negligence or wilful misconduct by that party; or
- (v) to pay the Sponsorship Fees or a Refund Amount.

## 13. Disputes

Neither party will commence legal proceedings (other than urgent interlocutory proceedings) for 30 Business Days without first notifying the other party of any dispute and attempting to resolve the dispute. If the matter is unable to be resolved on this basis, either party may bring legal proceedings.

Each party acknowledges that monetary compensation may not be a sufficient remedy for any breach of this Agreement and that the other party may seek and obtain specific performance or injunctive relief as a remedy for any breach or threatened breach of this Agreement, in addition to any other remedies available at law.

## 14. Goods and services tax

### 14.1 Warranty

Each party:

- (a) warrants to the other that at the time of each supply occurring it will have an Australian Business Number and will be registered for GST purposes; and
- (b) indemnifies the other against any losses resulting from it not having an Australian Business Number or being registered for GST purposes.

### 14.2 Interpretation

- (a) GST means any tax imposed on the supply of goods or services which is imposed or assessed under a GST Law.
- (b) GST Law means a New Tax System (Goods and Services Tax) Act 1999 (Cth).
- (c) For the avoidance of doubt, reference to GST payable by, or a GST credit entitlement of, a party to this Agreement includes a reference to GST payable by, or a GST credit of, the representative member (or group representative) of a GST group of which that party is a member.

### 14.3 Consideration is GST exclusive

Unless clearly indicated to the contrary, and otherwise as provided in this clause, all amounts of consideration payable referred to in this Agreement are exclusive of GST.

### 14.4 Gross up of consideration

If an amount of GST is payable on a supply under this Agreement:

- (a) the recipient of the supply must pay, in addition to the other consideration payable or to be provided for the supply, an amount equal to the GST payable on the supply; and
- (b) the recipient must pay the additional amount to the supplier at the same time and in the same manner as the other consideration.

However the recipient need not pay the additional amount until the supplier gives the recipient a tax invoice for the supply to which the payment relates.

#### **14.5 Reimbursements (net down)**

If any party is entitled to payment of any costs or expenses by way of reimbursement or indemnity, the claim must exclude any amount for which that party obtains an input tax credit.

#### **14.6 Tax invoices**

The Recipient need not make a payment for a taxable supply made under or in connection with this Agreement until the Supplier has given the Recipient a tax invoice for the supply to which the payment relates.

#### **14.7 Adjustments**

If for any reason (including, without limitation, the occurrence of an adjustment event) the amount of GST payable on a supply varies from the GST amount paid to the supplier, the parties will account to each other for the difference. If the recipient is required to pay an additional amount under this clause, and the reason an additional amount is payable is because of the occurrence of an adjustment event, the recipient need not pay the additional amount until the supplier gives the recipient an adjustment note for the adjustment event to which the payment relates.

### **15. Withholding Tax**

If any payments under this Agreement are subject to withholding or deduction of taxes which may be required by law at the source of payment:

- (a) the payer shall provide the payee with all pertinent documentation to aid in the making of a claim in respect of any such withholding taxes available to the payee for use as a credit, refund or deduction in any relevant tax jurisdiction;
- (b) the payer will pay the taxes so deducted or withheld to the competent authorities; and
- (c) the payee authorises the payer to deduct and withhold such taxes from required payments under this Agreement.

In regard to Australian no-ABN withholding tax, this clause will not apply where the payee furnishes a statement by a supplier, on the terms set out in this Agreement, to the payer, prior to any payment being due and payable.

### **16. Notices and other communications**

#### **16.1 Service of notices**

A notice, demand, consent, approval or communication under this Agreement ("Notice") must be:

- (a) in writing, in English and signed by a person duly authorised by the sender; and
- (b) sent by email or post to the recipient's address for Notices specified in the Details, as varied by any Notice given by the recipient to the sender.

#### **16.2 Effective on receipt**

A Notice given in accordance with clause 16.1 takes effect when taken to be received (or at a later time specified in it), and is taken to be received:

- (a) if hand delivered, on delivery;
- (b) if sent by prepaid post, on the seventh Business Day after the date of posting (or on the twelfth Business Day after the date of posting if posted to or from a place outside Australia);

- (c) if sent by email at the time shown in the delivery communication report generated by the sender's email system,

but if the delivery, receipt or transmission is not on a Business Day or is after 5.00pm on a Business Day, the Notice is taken to be received at 9.00am on the next Business Day.

## **17. Miscellaneous**

### **17.1 Alterations**

This agreement may be altered, varied or amended only in writing signed by each party and in accordance with clause 17.16 where applicable.

### **17.2 Approvals and consents**

Except where this Agreement expressly states otherwise, a party may, in its discretion, give conditionally or unconditionally or withhold any approval or consent under this Agreement.

### **17.3 Change in Control**

- (a) If a change in Control is likely to occur in respect of the Tasmanian Club, the Tasmanian Club must notify the Sponsor, providing particulars of the proposed change in Control, including details of the new person who will acquire Control of the Tasmanian Club.
- (b) Within fourteen days of the notice provided by the Tasmanian Club to the Sponsor under clause 17.3(a), the parties must meet to discuss the proposed change in Control.
- (c) The Sponsor must, within fourteen days of the meeting under clause 17.3(b), notify the Tasmanian Club that:
  - (i) it approves of the change in Control; or
  - (ii) it rejects the change in Control.
- (d) The Sponsor must act reasonably in deciding whether it approves or rejects the change in Control. The Sponsor must not unreasonably withhold its consent to the change in Control if the Tasmanian Club (or the party acquiring Control) demonstrates to the Sponsor (acting reasonably) that the party acquiring Control has the necessary financial resources and commercial acumen to Control an entity that operates a team in the NBL Competition and such party is of good repute and will not, in any way, adversely impact the reputation of the Sponsor.
- (e) If the Sponsor approves the change in Control, the change in Control will be taken to be permitted by this Agreement and the Tasmanian Club may give effect to the change in Control without breaching this Agreement.
- (f) If:
  - (i) the Tasmanian Club fails to notify the Sponsor of any proposed change in Control before it occurs; or
  - (ii) the Tasmanian Club does not comply with any of its obligations under this clause 17.3; or
  - (iii) the Sponsor rejects the change in Control (acting reasonably),and, in any case, despite that, the Tasmanian Club gives effect to the change in Control, the Sponsor may terminate this Agreement on 5 Business Days' notice.

### **17.4 Change in Ownership**

- (a) If a change in ownership is likely to occur in respect of the Tasmanian Club (but is not a



change in Control to which clause 17.3 applies), the Tasmanian Club must notify the Sponsor, providing particulars of the proposed change in ownership, including details of the new person who will acquire an ownership in the Tasmanian Club.

- (b) The Tasmanian Club is not required to obtain the consent or approval of the Sponsor for a change in ownership in respect of the Tasmanian Club provided that the identity of the person acquiring the ownership interest is of good repute and not such that it will, or is reasonably likely to, adversely impact on:
  - (i) the Sponsor's reputation; or
  - (ii) the Tasmanian Club's reputation.

#### **17.5 Assignment**

- (a) The Sponsor may only assign this Agreement or a right under this Agreement with the prior written consent of the Tasmanian Club.
- (b) The Tasmanian Club must not assign this Agreement or a right under this Agreement without the prior written consent of the Sponsor.

#### **17.6 Costs**

Each party must pay its own costs of negotiating, preparing and executing this Agreement.

#### **17.7 Survival**

Clauses 1, 6.1, 6.3, 6.4, 6.6, 8.4, 9, 11, 12, 13, 14, 15, 16, 17 and any indemnity or any obligation of confidence or privacy under this Agreement is independent and survives termination or expiry of this Agreement. Any other term by its nature intended to survive termination or expiry of this Agreement (including any definitions required to support that term) survives termination of this Agreement.

#### **17.8 Counterparts**

This agreement may be executed in counterparts. All executed counterparts constitute one document.

#### **17.9 No merger**

The rights and obligations of the parties under this Agreement do not merge on completion of any transaction contemplated by this Agreement.

#### **17.10 Entire agreement**

This agreement constitutes the entire agreement between the parties in connection with its subject matter and supersedes all previous agreements or understandings between the parties in connection with its subject matter.

#### **17.11 Further action**

Each party must do, at its own expense, everything reasonably necessary (including executing documents) to give full effect to this Agreement and any transaction contemplated by it.

#### **17.12 Severability**

A term or part of a term of this Agreement that is illegal or unenforceable may be severed from this Agreement and the remaining terms or parts of the term of this Agreement continue in force.

#### **17.13 Waiver**

A party does not waive a right, power or remedy if it fails to exercise or delays in exercising the right, power or remedy. A single or partial exercise of a right, power or remedy does not prevent another or further exercise of that or another right, power or remedy. A waiver of a right, power or remedy must be in writing and signed by the party giving the waiver.

#### **17.14 Relationship**

Except where this Agreement expressly states otherwise, it does not create a relationship of employment, trust, agency or partnership between the parties.

#### **17.15 Announcements**

- (a) A public announcement in connection with this Agreement or any transaction contemplated by it must be agreed by the parties before it is made, except:
  - (i) if required by an Australian Law or a regulatory body (including a relevant stock exchange), in which case the party required to make an announcement must, to the extent practicable, first consult with and take into account the reasonable requirements of each other party; or
  - (ii) to the extent permitted in clause 17.15(b).
- (b) The Sponsor may make public (including media) announcements in relation to, and otherwise report on, any aspect of this Agreement, the sponsorship of the Tasmanian Club, after consulting with the Tasmanian Club in good faith ahead of such announcement or report.

#### **17.16 Privity**

To the extent that this agreement confers or is expressed to confer a right, power or privilege in favour of the NBL, the parties agree that such right, power or privilege:

- (a) is held by the Tasmanian Club on trust for the NBL;
- (b) is intended to be, and is, directly enforceable by, the NBL; and
- (c) may not be varied by the parties without the NBL's prior written consent.

#### **17.17 Governing law and jurisdiction**

This agreement is governed by the law of the State of Tasmania and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of the State of Tasmania.

### **18. Section 69 of the Criminal Code Act 1924**

Nothing in this agreement is intended to prevent, is to be taken to prevent, or prevents, the free exercise by the Governor, by any member of the Executive Council, or by any Minister of the Crown, of any duties or authorities of his or her office. Any provision of this agreement that is inconsistent with this clause is of no legal effect to the extent of the inconsistency.

## Schedule 1 – Sponsorship Fees and Payment Schedule

### Item 1. Sponsorship Fees

The Sponsor must, in respect of each Year described in the first column of the table below, pay the Sponsorship Fees described in the middle column of the table below, on or before the due date specified for the Sponsorship Fees in the right column of the table below, subject to:

- (a) Item 2 of this Schedule;
- (b) clause 6.1(b);
- (c) clause 6.6(c); and
- (d) the Tasmanian Club providing the Sponsor with a tax invoice for each Sponsorship Fee payment obligation at least 28 days prior to the date for the payment of instalment of the Sponsorship Fee.

Year	Sponsorship Fees (excl. GST)	Due Date
Year 1	\$1,500,000	<p>The later of:</p> <ul style="list-style-type: none"> <li>(a) the date of this Agreement; and</li> <li>(b) the date that the Tasmanian Club provides evidence to the Sponsor that it is licensed to field a professional men's basketball team based in Tasmania to compete in the NBL Competition under a Tasmanian NBL Club Licence in the 2021/22 NBL Season.</li> </ul>
	\$1,000,000	<p>The later of:</p> <ul style="list-style-type: none"> <li>(a) 30 November 2020; and</li> <li>(b) the date that each and every one of the following conditions are satisfied: <ul style="list-style-type: none"> <li>(i) public announcement of the Tasmanian Team Name and public launch of Tasmanian Club IP;</li> <li>(ii) provision to the Sponsor of the of membership and marketing strategy for the Tasmanian Club; and</li> <li>(iii) public launch of Tasmanian Club website and social media channels.</li> </ul> </li> </ul> <p>The deliverable required by subclause (b)(ii) above must be in a form and substance acceptable to the Sponsor, acting reasonably.</p>
	\$500,000	<p>The later of:</p> <ul style="list-style-type: none"> <li>(a) 31 January 2021; and</li> </ul>

Year	Sponsorship Fees (excl. GST)	Due Date
		<p>(b) the date that the Tasmanian Club has provided each and every one of the following items to the Sponsor:</p> <ul style="list-style-type: none"> <li>(i) the current list of persons signed to be Tasmanian Club Players;</li> <li>(ii) details of the operational management structure of the Tasmanian Club in Tasmania; and</li> <li>(iii) details of the confirmed location for the Tasmanian Club's training venue within Tasmania; and</li> <li>(iv) a signed (or, absent a signed document, evidence of the steps taken by the Tasmanian Club (which must be best endeavours) to enter into a memorandum of understanding) with Basketball Tasmania to outline elite pathway for Tasmanian players and how the Tasmanian Club will support and augment the local basketball community in Tasmania.</li> </ul> <p>The deliverable required by:</p> <ul style="list-style-type: none"> <li>(a) subclauses (b)(i) to (iii) above – must be in a form acceptable to the Sponsor acting reasonably; and</li> <li>(b) subclause (b)(ii) above – must also be in substance acceptable to the Sponsor acting reasonably.</li> </ul>
Year 2	\$1,530,000	<p>The later of:</p> <ul style="list-style-type: none"> <li>(a) 31 August 2021; and</li> <li>(b) the date that the Tasmanian Club has provided each and every one of the following items to the Sponsor (each in form acceptable to the Sponsor): <ul style="list-style-type: none"> <li>(i) the full team list for the 2021/22 NBL Season;</li> <li>(ii) evidence that the fixture for the Tasmanian Club for the 2021/22 NBL Season complies with requirements of clause 4.2 of this Agreement; and</li> <li>(iii) details of the Tasmanian Club's media strategy for 2021/22 NBL Season.</li> </ul> </li> </ul> <p>The deliverable required by:</p>

Year	Sponsorship Fees (excl. GST)	Due Date
		(a) subclauses (b)(i) to (iii) above – must be in a form acceptable to the Sponsor acting reasonably; and  (b) subclause (b)(iii) above – must also be in substance acceptable to the Sponsor acting reasonably.
	\$1,020,000	The later of: (a) 31 October 2021; and (b) the date that the Tasmanian Club has provided each and every one of the following items to the Sponsor (each in form acceptable to the Sponsor): <ul style="list-style-type: none"> <li>(i) details of the Tasmanian Club's community training activities for 2021/22 NBL Season; and</li> <li>(ii) details of the Tasmanian Club's membership number at the start of 2021/22 NBL Season.</li> </ul>
	\$510,000	The later of: (a) 30 April 2022; and (b) the date that the Tasmanian Club has provided each and every one of the following items to the Sponsor: <ul style="list-style-type: none"> <li>(i) an end of season report for the Tasmania Club including details in relation to media and marketing work undertaken by the Tasmanian Club, membership numbers and community activities; and</li> <li>(i) attendance data for all Home Games.</li> </ul>
Year 3	\$1,050,600	The later of: (a) 31 August 2022; and (b) the date that the Tasmanian Club has provided each and every one of the following items to the Sponsor: <ul style="list-style-type: none"> <li>(i) the full team list for the 2022/23 NBL Season;</li> <li>(ii) evidence that the fixture for the Tasmanian Club for the 2022/23 NBL Season complies</li> </ul>

Year	Sponsorship Fees (excl. GST)	Due Date
		with requirements of clause 4.2 of this Agreement; and (iii) details of the Tasmanian Club's media strategy for 2022/23 NBL Season.
	\$540,600	The later of: (a) 30 April 2023; and (b) the date that the Tasmanian Club has provided each and every one of the following items to the Sponsor: (i) an end of season report for the Tasmania Club for the 2022/23 NBL Season including details in relation to media and marketing work undertaken by the Tasmanian Club, membership numbers and community activities; and (ii) attendance data for all Home Games during the 2022/23 NBL Season.
Year 4	\$816,612	The later of: (a) 31 August 2023; and (b) the date that the Tasmanian Club has provided each and every one of the following items to the Sponsor: (i) the full team list for the 2023/24 NBL Season; (ii) evidence that the fixture for the Tasmanian Club for the 2023/24 NBL Season complies with requirements of clause 4.2 of this Agreement; and (iii) details of the Tasmanian Club's media strategy for 2023/24 NBL Season.
	\$551,412	The later of: (a) 30 April 2024; and (b) the date that the Tasmanian Club has provided each and every one of the following items to the Sponsor: (i) an end of season report for the Tasmania Club for the 2023/24 NBL Season including details in relation to media and marketing

Year	Sponsorship Fees (excl. GST)	Due Date
		<p>work undertaken by the Tasmanian Club, membership numbers and community activities; and</p> <p>(ii) attendance data for all Home Games during the 2023/24 NBL Season.</p>
Year 5	\$832,944	<p>The later of:</p> <p>(a) 31 August 2024; and</p> <p>(b) the date that the Tasmanian Club has provided each and every one of the following items to the Sponsor:</p> <p>(i) the full team list for the 2024/25 NBL Season;</p> <p>(ii) evidence that the fixture for the Tasmanian Club for the 2024/25 NBL Season complies with requirements of clause 4.2 of this Agreement; and</p> <p>(iii) details of the Tasmanian Club's media strategy for 2024/25 NBL Season.</p>
	\$562,440	<p>The later of:</p> <p>(a) 30 April 2025; and</p> <p>(b) the date that the Tasmanian Club has provided each and every one of the following items to the Sponsor:</p> <p>(i) an end of season report for the Tasmania Club for the 2024/25 NBL Season including details in relation to media and marketing work undertaken by the Tasmanian Club, membership numbers and community activities; and</p> <p>(ii) attendance data for all Home Games during the 2024/25 NBL Season.</p>
Year 6 (and each subsequent Year) <sup>2</sup>	\$1,500,000 + CPI <sup>3</sup>	<p>The later of:</p> <p>(a) 31 August in that Year; and</p> <p>(b) the date that the Tasmanian Club has provided each and every one of the following items to the Sponsor:</p> <p>(i) the full team list for the NBL Season to be conducted in that Year;</p> <p>(ii) evidence that the fixture for the Tasmanian Club for the NBL Season to be conducted in</p>

Year	Sponsorship Fees (excl. GST)	Due Date
		that Year complies with requirements of clause 4.2 of this Agreement; and  (iii) details of the Tasmanian Club's media strategy for the NBL Season to be conducted in that Year.
	\$500,000+CPI <sup>3</sup>	The later of:  (a) 30 April in that Year; and  (b) the date that the Tasmanian Club has provided each and every one of the following items to the Sponsor:  (i) an end of season report for the Tasmania Club for the NBL Season conducted in that Year including details in relation to media and marketing work undertaken by the Tasmanian Club, membership numbers and community activities; and  (ii) attendance data for all Home Games during the NBL Season conducted in that Year.
<p><sup>1</sup> Any refund to the Sponsorship Fees under Item 2 of this Schedule are disregarded for the purposes of calculating the Sponsorship Fees for a Year.</p> <p><sup>2</sup> Sponsorship Fees only applicable if the Agreement is extended for the Extension Period under clause 2.2.</p> <p><sup>3</sup> The percentage increase in CPI from the start of the previous Year to the start of the current Year.</p>		

## Item 2. Refund of Sponsorship Fees – Operating Costs, Tasmanian Buy Local Costs and Misapplied Funds

The Tasmanian Club must refund part of the Sponsorship Fees paid in respect of a Relevant Year in accordance with the following:

- (a) within 45 days of the end of the Relevant Year, the Tasmanian Club must provide the Sponsor with a report (certified by a director of the Tasmanian Club) setting out:
  - (i) the Tasmanian Operating Costs; and
  - (ii) the Tasmanian Buy Local Costs; and
  - (iii) the manner in which Sponsorship Fees paid in respect of a Relevant Year were utilised, for the Relevant Year (as applicable);
- (b) If:
  - (i) the amount that is 30% of the Tasmanian Operating Costs for the Relevant Year is less than the Sponsorship Fees paid or payable in respect of that Relevant Year (the difference being the "Operating Cost Shortfall"); or



- (ii) the Tasmanian Buy Local Costs for the Relevant Year is less than \$500,000 (plus GST) (the difference between the Tasmanian Buy Local Costs for the Relevant Year and \$500,000 (plus GST) being the "**Tasmanian Buy Local Cost Shortfall**"); or
- (iii) an amount of Sponsorship Fees for the Relevant Year are applied other than for a Permitted Purpose (such amount being the "**Misapplied Funds**"),

the Sponsor must issue the Tasmanian Club a tax invoice for the aggregate of the Operating Cost Shortfall (if any) and the Tasmanian Buy Local Cost Shortfall (if any) and the Misapplied Funds (if any) (the aggregate of such amounts being the "**Refund Amount**");

- (c) within 30 days of receiving the tax invoice from the Sponsor in accordance with subclause (b), the Tasmanian Club must pay the Refund Amount by
  - (i) applying a set-off equal to the Refund Amount against the next instalment or instalments of the Sponsorship Fees payable by the Sponsor; and
  - (ii) to the extent that there are no further instalments of the Sponsorship Fees against which to set-off the Refund Amount, pay the Refund Amount to the Sponsor in cash within 60 days of the end of the Relevant Year.

The rights and obligations in this Item 2 survive the expiry or termination of this Agreement and to avoid doubt, are subject to the audit rights in clause 6.6.

In this Item 2, "**Relevant Year**" means:

- (a) in respect of the calculation of Tasmanian Operating Costs and Operating Cost Shortfall – each Year other than the first two Years of the Term; and
- (b) in respect of the calculation of Tasmanian Buy Local Costs and Tasmanian Buy Local Cost Shortfall – each Year other than the first Year of the Term; and
- (c) in respect of the calculation of Misapplied Funds, each Year of the Term.

To avoid doubt, the Tasmanian Club is not required to refund any Operating Cost Shortfall or Tasmanian Buy Local Cost Shortfall in respect of a Year that is not a Relevant Year for such a shortfall.

### **Item 3. Refund of Sponsorship Fees – Failure to participate in 2021/2022 NBL Season**

If the Tasmanian Club does not compete in the NBL Competition under the Tasmanian NBL Club Licence in the 2021/2022 NBL Season in a manner that complies with clause 4.2, the Sponsor may, at any time, issue the Tasmanian Club a tax invoice for 50% of the Sponsorship Fees paid in respect of the first Year of the Term ("**2021/2022 Refund Amount**").

Within 30 days of receiving the tax invoice from the Sponsor, the Tasmanian Club must pay the 2021/2022 Refund Amount to the Sponsor in cash.

## **Schedule 2 – Sponsor IP**

Details of the Sponsor IP can be found at [www.communications.tas.gov.au/styleguide](http://www.communications.tas.gov.au/styleguide)

Released under RTI

## Schedule 3 -- Minimum Community Engagement Obligations

The Minimum Community Engagement Obligations are as set out below.

- (a) By no later than 3 months after the Commencement Date, the Tasmanian Club must work with the Sponsor to prepare a community engagement plan that outlines the community engagement activities to be undertaken by the Tasmanian Club over the next 12-month period (**Draft Engagement Plan**).
- (b) The Draft Engagement Plan must, as a minimum, include details as to how the Tasmanian Club will:
  - (i) work with other organisations (including, for example, Basketball Tasmania) to promote basketball in Tasmania;
  - (ii) support and promote (through social media and other promotional material and activities) key messages of the State Government of Tasmania as agreed from time to time (for example, messages in relation to physical activity, healthy eating, combatting violence against women and children and school retention);
  - (iii) make Tasmanian Club Players and coaches available to assist with sport sector priority projects and other relevant State Government of Tasmania sponsored events;
  - (iv) develop a partnership or other relationship or understanding with other sporting bodies in Tasmania (including, for example, Basketball Tasmania, Physical DisABILITY Sports Tasmania and Good Sports); and
  - (v) provide access to the Tasmanian Club and Home Games to disadvantaged members of Tasmanian society.
- (c) The Tasmanian Club must meet with the Sponsor to review the Draft Engagement Plan and allow the Sponsor to suggest amendments or additions to the community engagement plan.
- (d) The Tasmanian Club must use its best endeavours to agree on a final version of the community engagement plan with the Sponsor (acting reasonably) as soon as reasonably practicable (such agreed plan being the **Approved Engagement Plan**).
- (e) The Tasmanian Club must use its best endeavours to comply with and not depart from the Approved Engagement Plan.
- (f) The Tasmanian Club must review and, in consultation with the Sponsor, use best endeavours to update the Approved Engagement Plan:
  - (i) prior to the start of the First Club Season and each subsequent NBL Season during the Term;
  - (ii) if a significant change to the scope of the Tasmanian Club's operations occurs; and
  - (iii) upon written request from the Sponsor.

## Signing page

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**EXECUTED** as an agreement.

**Executed by Tasmania Basketball Pty Ltd**  
under section 127 of the *Corporations Act*

Signature of Sole Director and Company Secretary ←

Larry Kestelman

Print Name

**Executed on behalf of The Crown in Right  
of Tasmania** by the person named below in  
the presence of the witness named below:

Witness print name and position

Witness print address

Signature

Print name and position

1 July 2020

To: Crown in Right of Tasmania (acting through the Department of State Growth (the "**Beneficiary**")  
Department of State Growth  
Salamanca Building  
4 Salamanca Place, Hobart TAS 7000

National Basketball League Pty Ltd (ABN 65 164 187 937) ("**Guarantor**") of Level 6, 10 Queens Road, Melbourne VIC 3004 unconditionally and irrevocably guarantees to the Beneficiary the payment of the Guaranteed Money.

As a separate undertaking, the Guarantor agrees to pay the Guaranteed Money on demand from the Beneficiary as if it were the principal debtor if:

- (a) the Obligor does not comply with its obligations to pay the Guaranteed Money in accordance with the Sponsorship Agreement; or
- (b) an obligation the Obligor would otherwise have to pay the Guaranteed Money under the Sponsorship Agreement is found to be void, voidable or unenforceable.

A demand may be made at any time and from time to time during the Term and whether or not the Beneficiary has made demand on the Obligor.

As a separate undertaking, the Guarantor indemnifies the Beneficiary against, and agrees to reimburse and compensate the Beneficiary for, any liability or loss arising from, and any Costs, charges or expenses incurred if an obligation is unenforceable against, or a monetary obligation cannot be recovered, from the Guarantor, under the immediately preceding paragraphs, or from the Obligor because of any circumstance whatsoever. The Guarantor agrees to pay amounts due under this indemnity on demand from the Beneficiary.

The following terms apply to this document:

**1 Interpretation**

In this document:

**Sponsorship Agreement** means the agreement entitled Sponsorship Agreement dated on or about the date of this document between the Beneficiary and the Obligor.

**Sponsorship Fees** has the meaning given to that term in the Sponsorship Agreement.

**Costs** includes charges and expenses, including those incurred in connection with advisers and any legal costs on a full indemnity basis.

**Guaranteed Money** means all money which:

at any time;

under Item 2 ("Refund of Sponsorship Fees – Operating Costs, Tasmanian Buy Local Costs and Misapplied Funds") or Item 3 ("Refund of Sponsorship Fees – Failure to participate in 2021/2022 NBL Season") of Schedule 1 ("Sponsorship Fees and Payment Schedule") of the Sponsorship Agreement;

whether under law or otherwise (including liquidated or unliquidated damages for default or breach of any obligation); and

whether or not of a type within the contemplation of the parties at the date of this document:

- (a) the Obligor is or may become actually or contingently liable to pay to the Beneficiary; or
- (b) the Obligor would have been liable to pay the Beneficiary but the amount remains unpaid by reason of the Obligor's insolvency.

**Obligor** means Tasmania Basketball Pty Ltd (ACN 642 087 849).

**Term** means eleven (11) years from the date of the Sponsorship Agreement.

**Total Fees Paid** means the total Sponsorship Fees paid by the Beneficiary to the Obligor under the Sponsorship Agreement.

## **2 Consideration**

The Guarantor acknowledges that the Beneficiary is acting in reliance on the Guarantor incurring obligations and giving rights under this document.

## **3 Liability Cap**

The Guarantor's maximum aggregate liability under or in connection this document (including, without limitation, principal, interest, fees, charges, costs, expenses, damages or any other amounts in connection with any guarantee or indemnity) is limited to the Total Fees Paid plus any amount that the Guarantor is liable for under clause 11 of this document.

## **4 Termination**

- (a) This document terminates at the earlier of the following times:
  - (i) at the conclusion of the Term; and
  - (ii) the time that the parties agree in writing to terminate this document.
- (b) Termination of this document does not affect the Guarantor's liability with respect to any demand made by the Beneficiary under or in connection with this document prior to the date of termination.

## **5 Extent of guarantee and indemnity**

This document is a continuing obligation and extends to all of the Obligor's obligations in connection with the Guaranteed Money. The Guarantor waives any right it has of first requiring the Beneficiary to commence proceedings or enforce any other right, against the Obligor or any other person, before claiming from the Guarantor under this document.

**6 No merger**

This document does not merge with or adversely affect, and is not adversely affected by, any of the following:

- (a) any other guarantee, indemnity, or any mortgage, charge or other encumbrance, or other right, power or remedy to which the Beneficiary is entitled; or
- (b) a judgment which the Beneficiary obtains against the Guarantor, the Obligor or any other person in connection with the Sponsorship Agreement.

The Beneficiary may still exercise its rights under this document as well as under the judgment, encumbrance or right, power or remedy.

**7 Rights of the Beneficiary are protected**

The Guarantor agrees that rights given to the Beneficiary under this document, and the Guarantor's liabilities under it, are not affected by any act or omission of the Beneficiary or any other person. For example, those rights and liabilities are not affected by:

- (a) any act or omission:
  - (i) varying, replacing, supplementing, extending or restating in any way and for any reason the Sponsorship Agreement;
  - (ii) releasing the Obligor or giving the Obligor a concession (such as more time to pay); or
- (b) acquiescence or delay by the Beneficiary or any other person.

**8 Guarantor's rights are suspended**

As long as any obligation is required, or may be required, to be complied with in connection with this document, the Guarantor may not, without the Beneficiary's consent:

- (a) reduce its liability under this document by claiming that it or the Obligor or any other person has a right of set-off or counterclaim against the Beneficiary; or
- (b) claim, or exercise any right to claim, to be entitled (whether by way of subrogation or otherwise) to the benefit of another guarantee, indemnity, or other right (including, without limitation, a mortgage, charge or other encumbrance):
  - (i) in connection with the Sponsorship Agreement or any other amount payable under this document; or
  - (ii) in favour of a person other than the Beneficiary in connection with any obligations of, or any other amounts payable, by the Obligor to, or for the account of, that other person; or
- (c) claim an amount from the Obligor, or another guarantor, under a right of indemnity or contribution.

If the Beneficiary asks, the Guarantor agrees to notify any relevant person of the terms of this clause and other parts of this document that may be relevant. The Guarantor also authorises the Beneficiary to do so at any time in its discretion and without first asking the Guarantor to do it. This applies despite anything else in this document.

This clause continues after this document ends.

**9 Reinstatement of rights**

Under law relating to liquidation, administration, insolvency or the protection of creditors, a person may claim that a transaction (including a payment) in connection with this document or the Sponsorship Agreement is void or voidable. If a claim is made and upheld, conceded or compromised, then:

- (a) the Beneficiary is immediately entitled as against the Guarantor to the rights in connection with this document or the Sponsorship Agreement to which it was entitled immediately before the transaction; and
- (b) on request from the Beneficiary, the Guarantor agrees to do anything (including signing any document) to restore to the Beneficiary any mortgage, charge or other encumbrance (including this document) held by it from the Guarantor immediately before the transaction.

The Guarantor's obligations under this clause are continuing obligations, independent of the Guarantor's other obligations under this document and continue after this document ends.

**10 Not a trustee**

The Guarantor represents and warrants that its obligations under this document are valid and binding and that it does not enter into this document in the capacity of a trustee of any trust or settlement.

**11 Costs**

The Guarantor agrees to pay or reimburse, within 3 business days of demand:

- (a) the Beneficiary's Costs of exercising, enforcing or preserving rights, powers or remedies (or considering doing so), against the Guarantor in connection with this document; and
- (b) all stamp duty, registration fees and similar taxes or fees payable or assessed as being payable in connection with this document or any other transaction contemplated by this document.

**12 Governing law**

The law in force in the State of Tasmania governs this document. The Guarantor and the Beneficiary submit to the non-exclusive jurisdiction of the courts of that place.

**EXECUTED as a deed**



**Execution Page**

**Guarantor**

Executed by National Basketball League Pty  
Ltd in accordance with section 127 of the  
Companies Act 1993 (Cth) signed by:

Director

LARRY KESTELMAN  
Print name

\*Director / \*Secretary

Graeme Wade  
Print name

**Beneficiary**

Executed on behalf of The Crown in  
Right of Tasmania by the person  
named below in the presence of the  
witness named below:

Witness print name and position

Signature

Peter Gutwein  
Print name and position

Witness print address

Rel

d under RTI