



COUNSEL TO GREAT COMPANIES

Drafting Corporate Sponsorship Agreements

Strafford

September 27, 2016

Peter J. Kinsella, Partner
303.291.2328

Perkins Coie LLP

Disclaimer

This presentation is for educational purposes only and does not constitute legal advice. If you require legal advice, you should consult with your attorney.

The information provided in this presentation does not necessarily reflect the opinions of Perkins Coie LLP, its clients or even the author



Common Sponsorship Agreement Contract Terms

Grant of Rights / Scope / Activation -1

Exemplary License Clause:

Team hereby grants to Sponsor a limited license during the Term to: (a) advertise and promote the fact that Sponsor is an “official sponsor of the _____,” (b) use, reproduce and display the Team Marks in connection with advertising and promotion of Sponsor’s goods and services in the Product and Services Category, and (c) promote Sponsor’s sponsorship, subject to the terms and conditions of use set forth herein.

Grant of Rights / Scope / Activation -2

Exemplary Endorsement Grant Clause:

... to use, and display the Athlete Identification alone or with other trademarks of Company, in all cases, on or for the Products including, but not limited to, on Product packaging and in any related advertising, promotional, informational and other materials.

“***Athlete Identification***” means Licensor’s name, voice, nickname, likeness, and anything else that identifies Licensor, including, without limitation, photographic or graphic representations of Licensor, Licensor’s signature, and statements by Licensor

Grant of Rights / Scope / Activation -3

Exemplary Arena Clause:

During the Term, Arena will provide Sponsor with the elements set forth in Exhibit A (“Elements”).

Costs, including but not limited to signage (collectively, “Content”) associated with the production and execution of Elements, will be the sole responsibility of Sponsor, except that Arena will pay for fifty percent (50%) of construction costs of the _____.

Grant of Rights / Scope / Activation -4

Exemplary Arena Elements

The restaurant located at [Arena Location] (“Restaurant”) will be rebranded to [_____] .

Sponsor Logo and Brand will be used with all references to the Restaurant

Sponsor’s ketchup dispensers will be located throughout the designated Restaurant. No third-party ketchup will be served in the Arena.

Sponsor’s ketchup will be prominently featured in all Restaurant menus

Grant of Rights / Scope / Activation -5

Display of Sponsor Products in Arena

Sponsor will be permitted to a display in the Arena Sponsor promotional materials and/or products of a mutually agreed upon size, type, quality, and final configuration and consistent with the overall theme of the facility and the permitted use by other sponsors (but with due regard given to Sponsor's status as the primary sponsor of the Team).

Grant of Rights / Scope / Activation -6

Exemplary Hospitality Elements

One (1) Private Luxury Suite (“Suite”) for all pre-season, regular season and playoff games played by the Team at the Arena Center. (Note: Suite not available for other events)

Sponsor will pay for all additional costs associated with its use of the Suite (i.e. food and beverage, catering, etc.)

Sponsor’s use of the Suite will be consistent with and pursuant to the rights and obligations of “Licensee” (as that term is defined in the Suite License Agreement). Sponsor will adhere to all the terms of the Suite Agreement during the Term and during its use of the Suite

Grant of Rights / Scope / Activation -7

Tickets / Passes

Team will provide Sponsor with a minimum of [__] tickets and VIP passes for each Game, which Sponsor may use at its sole discretion.

Sponsor shall receive a total of two hundred (200) tickets per game for preseason and regular season Team home games at the Stadium. Location and specific games shall be determined by Team in its sole discretion in advance of each season.

Grant of Rights / Scope / Activation -8

Exemplary Racing Team Sponsorship Elements

Team Assets. The location of the Sponsor Marks in connection with the sponsorship of the Team, and all related Rider racing apparel (“Rider Uniforms”), Racing Bikes, Rider helmets (“Rider Helmets”), Rider shoes, gloves, and other racing apparel (“Rider Accessories”), race day Crew apparel (“Crew Uniforms”), the Team cars, haulers/transporters (“Team Transporters”), and all related racing equipment of Team (collectively with Rider Uniforms, Rider Helmets, Rider Accessories, Crew Uniforms, and Team Transporters, the “Team Assets”) will be as set forth in Exhibit _____; and in all cases, the Sponsor Marks will be prominently placed and larger than any other sponsor brands, logos or marks.

Grant of Rights / Scope / Activation -9

Access to Team Facilities

Team will ensure that all Team facilities will be available to Sponsor for [] Sponsor VIP tours, receptions, meetings, and functions with reasonable advance notice, with Sponsor paying the administrative and staffing costs and incidental costs of any special requests in conjunction with such functions, such as set up and cleanup costs, catering food and beverage, any required equipment rentals, or the costs of Team personnel which might be needed to service the special functions after normal business hours

Grant of Rights / Scope / Activation -10

Exemplary Signage and Radio Elements

Virtual Signage: Half a period (10:00 minutes) behind one (1) goal for all locally televised LA Kings home games played at STAPLES Center

One (1) :30 Pre-Game Radio spot during all Game broadcasts

One (1) :30 In-Game Radio spot during all Game broadcasts

Grant of Rights / Scope / Activation -11

In Market Promotion

One (1) thirty (30) day promotion/sweepstakes to be run during a mutually agreed upon period (during the Team's regular season) ("Promotion")

- Team to support Promotion via internal marketing
- One (1) social media post per week (From either Facebook, Twitter or Instagram) during the thirty (30) day Promotion period
- One (1) :10 PA announcement (content to be approved by Team), scoreboard logo and LED signage during two (2) mutually agreed upon Games at the Arena during the Promotion period

Grant of Rights / Scope / Activation -12

Play-offs

Unless otherwise explicitly stated herein, the foregoing elements/rights provided hereunder are for the regular season only. In the event the Team qualifies for the playoffs, Sponsor shall be required, subject to availability, to purchase such Elements at the playoff rate card established therefore by the Team. Payment for all playoff Elements shall be due within thirty (30) days after the final game played by the Team.

Grant of Rights / Scope / Activation -13

Example Event Elements

Sponsor's logo and a hyperlink to its official website will appear in the sponsors section of the official Event website.

Sponsor will be entitled to one (1) promotional message related to its Event sponsorship on each of the Event's Facebook and Twitter pages, content subject to Event's prior written approval.

Sponsor logo and a hyperlink to its official website will appear in the sponsors section of the official Event Facebook page.

Sponsor's activation space at the Festival Event will be marked on the Official Event map.

Sponsor's logo will be included in all email blasts that include sponsors.

One (1) 4-color full page ad for Sponsor in the Event's official guide

Grant of Rights / Scope / Activation -14

Players and Coaches

With the exception of certain group player licensing rights that may be made available to Sponsor pursuant to the Team's rights under the [Player Agreement], Sponsor acknowledges that this Agreement does not grant it any rights with respect to the name, likeness, signature or other attributes of any player, coach, or other employee of the Team. Sponsor shall be responsible for securing whatever rights may be required for the use of such names, likenesses, signatures or other attributes and may only do so with the prior written consent of the Team Companies.

Sponsor represents that it will not exercise the rights granted in this Agreement in any manner that will imply Sponsor has obtained any such rights without separate written authorization from the appropriate player, coach or employee.

Grant of Rights / Scope / Activation -15

SPONSOR'S USE OF PLAYER LIKENESS. Sponsor is granted the right to use any Player Likeness, and with prior written approval from the Licensor, each such use shall be subject to the following terms and conditions:

A. Rule of Four. Subject to the collective bargaining agreement ... any use of Player Likenesses must include a minimum of four (4) athletes used both equally and collectively (the "Rule of Four"). Under the Rule of Four, Sponsor will have the right to use Player Likenesses provided that the photograph(s), rendering, or video footage includes either: (i) a group of four (4) or more Club players, in uniform, appearing together, or (ii) a Player Likeness appearing with three (3) or more other Club Player Likenesses, all in uniform, as part of a series, set, collectible or as part of a sequential product (e.g., trading cards, posters, pins, etc.) all with equal representation, in any given application.

Grant of Rights / Scope / Activation -16

If fewer than four (4) Club players are used for any promotional or advertising piece, Sponsor will be responsible for securing the rights to use each individual Player Likeness. Sponsor must provide documentation to League confirming that it has secured such rights.

Grant of Rights / Scope / Activation -17

Appearances.

If Sponsor is entitled to Club player/mascot appearances or participation in events or clinics as part of its Rights, such appearances and participation is subject to player/mascot availability, will not exceed ninety (90) minutes in duration and will be conducted in accordance with the policies and procedures established by Licensor. Licensor will determine which player(s) appear(s) at the events or clinics. The payment of all costs and expenses attributable thereto (including, without limitation, reasonable travel expenses) will be borne by Sponsor unless otherwise set forth in the Term Sheet.

Grant of Rights / Scope / Activation -18

Pass-Through Rights to Third Parties.

If pre-approved in writing by Licensor, Sponsor may include trade names, trademarks, service marks, logos, symbols, or other copyrighted or proprietary identifiers of an approved third party on or in connection with items or materials which bear the Licensor Marks (“Pass-Through Rights”). In limited circumstances in which the Licensor permits Pass-Through Rights to a third party (e.g., if such third party is a distributor or retailer of Sponsor’s products) then such Pass-Through Rights must be exercised in accordance with the following guidelines ...

Arena - Non-Signage Events

Team may determine in its sole discretion that certain events at the Stadium from time to time, including, but not limited to the Olympic Games, Super Bowl, World Cup Soccer, NCAA championships, college football bowl games, college football championship games and other events, may require that signage and advertising be covered, obscured or temporarily removed during the event or may prohibit signage or advertising for any party other than a sponsor of the event itself.

Exclusivity

The rights granted to Sponsor herein are exclusive to Sponsor within the Product and Services Category with respect to [Arena / Marks / Designation].

For use with closely related categories...

- For purposes of clarity, Team will not enter into a sponsorship agreement / permit or authorize others to use any of the Marks or a Designation party with respect to _____

Exclusivity – Exceptions

The exclusivity granted in this Agreement is not intended to apply to Temporary Advertising granted separately by teams or promoters of other events.

“Temporary Advertising” means temporary advertising and promotional rights within the [bowl / stage / performance / seating areas] of the Arena and the fascia board ring or LEDs (e.g., courtside scorer’s table, basket stanchions, chair backs, ice resurfacing machines, dasherboards, scoreboard identification and messages, fascia board ring messages and advertising, public address system announcements, game or event program advertising, and event related promotions (e.g., event tee-shirts).

Use of Marks

Any such use of the Trademarks by Sponsor is: (i) subject to prior approval by the Team, which approval shall not be unreasonably withheld, conditioned or delayed as to the form of such name and logo, and (ii) must use the Team's established logo-type, trademark or service mark...

In no event will Sponsor have the right to use the Trademarks outside of a _____ mile home radius measured from the Arena without obtaining the prior written approval of the Team and the League.

Approval Process

Sponsor will submit to the Team all advertising or promotional materials involving any Team Marks at least ten (10) business days prior to the production of such materials. Sponsor need not receive specific approval to release such advertising or promotional materials to the public. However, the Team will have the right, at any time during the ten (10) day period, to object to any advertising or promotional materials, and Sponsor will not use the advertising or promotional material if the Team objects to their use.

IP Rights

Typical Clauses

- 1) Ownership acknowledgement
- 2) Notification of Infringement
- 3) Quality Standards
- 4) Marking requirements

Subordination/Compliance

This Agreement and the rights granted to Sponsor hereunder are subject to the review and prior written approval of the League, and will in all respects be subordinate to, and shall not prevent the issuance, entering into, or amendment of, any of the following, each as may be issued, entered into or amended from time to time: (a) the constitution, bylaws, resolutions and other rules, regulations, policies, directives, rulings and/or orders of any applicable sport governing body, and, (b) the rules, regulations, and/or policies of the League, in each case as in effect on the date hereof and as may be amended from time to time.

Force Majeure

Neither Party will be liable for failure to comply with any of the terms or conditions of this Agreement when such failure to comply has been caused by fire, war, insurrection, labor disturbances, work stoppages, terrorism, government restrictions, natural disasters, weather, or acts of God beyond the reasonable control of the parties, provided the Party so affected gives prompt notice to the other. In the event of a suspension or any obligation by reason of this Section which extends beyond ___ days, this Agreement will be tolled or terminated at the discretion of Team.

Lost Games

If there is a Work Stoppage that results in the cancellation of more than [x%] percent of the scheduled regular season Games for a season (“Lost Game Threshold”), then the consideration payable by Sponsor for the applicable season may be reduced by an amount equal to the product of the portion of such consideration allocated to rights granted hereunder to Sponsor with respect to regular season Games that are not received as a result of the Work Stoppage multiplied by a fraction: (a) the numerator of which is the number of such regular season Games which are canceled as a result of a Work Stoppage, and (b) the denominator of which is the total number of regular season Games scheduled for such season (“Loss Game Value”).

Work Stoppage

In the event that [an entire Season] is lost due to a Work Stoppage, the parties may mutually agree to toll the Agreement for such Season, and that Sponsor's obligation to pay the applicable consideration shall be tolled during such year. In such case, the parties may extend the Term of the Agreement for an additional year, by entering into a written agreement no later than ninety (90) days following the date that MLS announces the cancellation of the MLS League season. In the event that the parties do not agree to toll the Agreement, Sponsor may terminate the Agreement by ...

Make-Good Benefits

In the event that the Team is unable to provide any benefits under this Agreement, then Sponsor is entitled to receive “make good benefits” of a value comparable or greater than the value of benefits to be provided as part of the Sponsorship Rights that are not provided (the “Lost Sponsorship Benefits”). The Parties will promptly meet to determine make good benefits to be provided to compensate for Lost Sponsorship Benefits. In the event that the Parties are unable to agree on the make good benefits to be provided, then the make good benefits will be determined under the arbitration process set forth in Section 12.

Renewal Rights / Term / Termination

- A termination for convenience right is typically difficult to obtain, except for a later term of a multi-year agreement.
- If such a right is granted, it typically requires significant advance notice.

Payment

Sponsor will pay the Team the amounts as set forth in Exhibit A. In the event that the Team doesn't receive any payment from Sponsor on or before the applicable payment due date, the Team may consider said failure to pay a material breach, and may elect to charge Sponsor a late fee of 1.5% per month of the payment then due and owing until it is paid in full. If Sponsor fails to cure such default within five (5) days of written notice, the Team may elect to terminate this Agreement pursuant to Section 6.

The foregoing amounts are net of any commissions owing to advertising agencies or other third parties and the Team has no responsibility for the payment of any such commissions.

Value in Kind

Many sponsorship agreements may have a cash and a value-in-kind component.

The value-in-kind is often provided pursuant to a modified version of the Sponsors standard form or the material clauses are incorporated into the Sponsorship Agreement.

Morals Clause / Reverse Morals Clause

If either party hereto or any of its officers, directors, board members, principals, employees, agents, or representatives commits any act which, in the reasonable and good faith opinion of the other party, would disparage or impair the reputation and integrity of the other party hereto (including, without limitation, being convicted of any felony or a crime involving moral turpitude, ethical violations or any other act of moral turpitude), the other party hereto shall have the right to terminate this Agreement without liability to the other party upon thirty (30) days written notice.

NOTE: Better to be specific than vague

Morals Clause / Reverse Morals Clause - 2

Company will have the right to terminate this Agreement for any of the following reasons:

If the publicized (through national, responsible media) alleged or actual conduct of Talent is illegal or otherwise grossly offensive to generally accepted standards of behavior (including, but not limited to, illicit drug use or public intoxication) so as to lead Company to reasonably believe that public association with Talent would tend to subject Company to ridicule, contempt, controversy, embarrassment, or scandal.

Warranties

- Typical formation, authorization and due execution warranties
- Specific warranties concerning Sponsor's products and services (particularly if VIK is being provided)

Indemnity vs. Warranty

A breach of warranty can lead to a breach of contract claim and termination of the Agreement.

An indemnity is typically used to provide contractual protection in a manner that limits breach of contract claims.

Indemnity -- Scope of Obligation

What is covered?

- claims? allegations? final decisions?
- type of damages? finally awarded damages or as costs are incurred? attorney fees?
- covered activities
 - simply the existence of the product or software
 - claims directed at the “use” of the product or software
- what type of intellectual property rights are covered?
 - patents, copyrights, trademarks, trade secrets?

Indemnification - 2

Traditional exemplary indemnity clause

Vendor will indemnify, defend, and hold Customer, its affiliates and their principals, agents and personnel harmless against all costs, fees, expenses, damages and liabilities (including attorneys' fees and other defense costs) suffered, incurred or awarded against Customer as a result of any third party claim, suit or dispute relating to or arising from:

Indemnification - 3

Defend and Pay Awarded Damages

Vendor will **defend** Customer against any third party claim, action, proceeding or suit, and will **pay for the resulting costs and damages finally awarded** against Customer to such third party by a court of competent jurisdiction or agreed to in settlement by Vendor, arising from:

Limits on Liability - 1

- An agreement may attempt to limit or alter the measure of damages available
- Different forms of limitations
 - Limitations on the amount damages
 - Limitations on the type of damages (i.e., consequential, incidental, etc.)
 - Limitations on other remedies (e.g., limit remedy to repair, replace, re-performance)
- UCC governs most software transactions, but not pure service agreements - applicability of unconscionability and failure of essential purpose doctrines are less defined

Limits on Liability - 2

Common Exceptions (may apply to limitation amount and/or limitation on type of damages)

- Payment obligations
- Breach of confidentiality
- Improper use of IP
- Death
- Personal Injury
- Property Damage

Insurance

Commercial General Liability Insurance

Product liability insurance (especially if marks are being used to promote goods and services)



Thanks!

Peter Kinsella

PKinsella@PerkinsCoie.com

303.291.2328