

Victorian Netball League Participation Agreement

Date: 1 October 2023

VICTORIAN NETBALL ASSOCIATION INCORPORATED
TRADING AS NETBALL VICTORIA

<INSERT NAME> NETBALL CLUB

TABLE OF CONTENTS

| | | |
|------|---|----|
| 1. | DEFINITIONS AND INTERPRETATION | 4 |
| 1.1 | Definitions..... | 4 |
| 1.2 | Interpretation | 6 |
| 2. | OBJECTIVES AND PRINCIPLES OF CONDUCT | 7 |
| 2.1 | Objectives of the Agreement..... | 7 |
| 2.2 | Principles of Conduct..... | 7 |
| 3. | LICENSEE ACKNOWLEDGEMENT..... | 7 |
| 4. | OBLIGATIONS OF NV | 7 |
| 5. | TERM..... | 8 |
| 5.1 | Initial Term..... | 8 |
| 5.2 | Further Term..... | 8 |
| 6. | PARTICIPATION FEE | 8 |
| 6.1 | Payment | 8 |
| 6.2 | Notification..... | 8 |
| 6.3 | Time for payment..... | 8 |
| 7. | OBLIGATIONS OF LICENSEE..... | 8 |
| 7.1 | Best Interests..... | 8 |
| 7.2 | Structure and control | 9 |
| 7.3 | Compliance with rules..... | 9 |
| 7.4 | Annual Review and Key Performance Indicators (KPI's)..... | 10 |
| 7.5 | Fielding a team | 10 |
| 7.6 | Information..... | 10 |
| 7.7 | Staff | 10 |
| 7.8 | Income..... | 11 |
| 7.9 | Costs | 11 |
| 8. | INTELLECTUAL PROPERTY..... | 11 |
| 8.1 | Licensee Intellectual Property | 11 |
| 8.2 | Grant | 11 |
| 8.3 | Restrictions on use of NV IP | 11 |
| 8.4 | Use..... | 12 |
| 8.5 | Covenants by Licensee..... | 12 |
| 8.6 | Consideration | 12 |
| 8.7 | Enforceability of covenants by Licensee | 12 |
| 8.8 | Use of intellectual property for Other Teams | 13 |
| 9. | SPONSORSHIP, ENDORSEMENT AND TRANSMISSION | 13 |
| 9.1 | Sponsorship Agreements..... | 13 |
| 9.2 | Restrictions on Licensee..... | 13 |
| 9.3 | Release of categories to Licensees | 14 |
| 9.4 | NV may approve certain sponsors | 14 |
| 9.5 | Endorsements | 15 |
| 9.6 | Sponsorship Agreements..... | 15 |
| 10. | WARRANTIES AND REPRESENTATIONS | 15 |
| 11. | ASSIGNMENT AND TRANSFER | 16 |
| 11.1 | No assignment without consent | 16 |
| 11.2 | Deemed transfer..... | 16 |
| 11.3 | Procedure for transfer..... | 16 |
| 11.4 | Conditions precedent for transfer..... | 16 |

| | | |
|------|---------------------------------------|-----------|
| 11.5 | Notification..... | 17 |
| 12. | DISPUTES | 17 |
| 12.1 | Procedure for resolving disputes..... | 17 |
| 12.2 | Commencement of proceedings | 17 |
| 13. | TERMINATION | 18 |
| 13.1 | Termination by licensee..... | 18 |
| 13.2 | Termination by NV..... | 18 |
| 14. | EFFECT OF TERMINATION | 18 |
| 15. | INDEMNITY | 18 |
| 16. | CONFIDENTIALITY | 19 |
| 17. | NOTICES | 19 |
| 18. | GENERAL..... | 19 |
| | SCHEDULE 1 | 21 |

THIS AGREEMENT is dated 1 October 2023.

PARTIES

VICTORIAN NETBALL ASSOCIATION INCORPORATED (ABN 83 704 752 745) trading as **NETBALL VICTORIA** of 10 Brens Drive, Parkville, Victoria, 3052 (**NV**)

and

<INSERT NAME> **NETBALL CLUB** of <insert address> (**Licensee**)

RECITALS

- A. NV is the peak body for Netball in Victoria and conducts the Victorian Netball League ("VNL").
- B. The Licensee wishes to participate in the VNL.
- C. NV agrees to grant to the Licensee, and the Licensee accepts, the right to participate in the VNL on the terms and conditions of this Agreement.

AGREEMENT

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

Where a word is defined in the Constitution or the By-Laws, that word in this Agreement will have the meaning attributed to it in those documents unless the context requires otherwise.

In this Agreement, unless the context requires otherwise, the following expressions have the following meanings.

Agreement means this agreement between NV and the Licensee and it includes any schedules and annexures.

Business Day means every day on which banks are open for business in Melbourne, Victoria other than a Saturday, Sunday or public holiday.

By-laws means the by-laws of NV in force from time to time in respect to the conduct, operation and management of the netball and / or VNL and, for the avoidance of doubt, this includes the NV Competition Regulations and Operational Manuals, Netball Australia Netball Integrity Policy Framework, Conduct & Disciplinary Policy, Netball Australia Child Safeguarding Policy, National Member Protection Policy (MPP) and Codes of Conduct; and any NV Complaints and Disputes Regulations, (however so named) that may be existing or developed or as amended by NV from time to time.

Commencement Date means 1 October 2023.

Constitution means the constitution of NV as amended from time to time.

Expiry Date means 1 September 2028.

Further Term has the meaning described in **clause 4.2**.

Intellectual Property means all logos, trade marks, copyright, know how, colour designs, team names, business names, trading names, domain names, patents or other intellectual property (whether registered or not) in relation to the Licensee. For the avoidance of doubt, this does not include any such rights in relation to VNL.

Commented [LS1]: Should this be Brens drive?

Licensees means all the licensees which are party to an agreement with NV in a similar form to this Agreement, and includes the Licensee.

KPIs means any key performance indicators agreed to by the parties from time to time, or, in the absence of Agreement, reasonable key performance indicators imposed on Licensee by NV from time to time.

NV means the Victorian Netball Association Incorporated (ABN 83 704 752 745), trading as Netball Victoria, of 10 Brens Drive, Parkville, Victoria, 3052, and its successors and assigns. For the avoidance of doubt, any obligation on, or decision required by, NV under this Agreement shall be able to be discharged, or taken, by the operational staff or the board of NV or the VNL Reference Group in NV's absolute discretion.

NV IP means all logos, trade marks, copyright, know how, colour designs, team names, business names, trading names, domain names, patents or other intellectual property (whether registered or not) in relation to NV and/or the VNL, and expressly includes Registered Australian Trade Mark 1391121 and any other intellectual property which is notified to the Licensee by NV as NV IP from time to time.

Participation Fee means the annual fee specified by NV from time to time and payable by the Licensee under **clause 6**.

Policies means all NV policies, regulations, manuals, or guidelines in force from time to time and includes but is not limited to policies in respect of behaviours, codes of conduct, grievance and disciplinary matters, anti-doping, harassment, blood and pregnancy.

Commented [LS2]: Should this reference child safety given we wil have U18's in the 19U division?

Restraint Area means Victoria.

Restraint Period means a period of 12 months from expiration or termination of this Agreement, whichever is applicable, for the purposes of **clause 8.5**.

Commented [MP3R2]: Agree in principle (am I correct that it will be 23s not 19s under new structure? - in any event, possibility remains of under 18s being involved in VNL)

Sponsorship Agreement means a sponsorship agreement entered into by NV in respect of the VNL.

Term means the period from the Commencement Date until the Expiry Date.

Transmission Agreement means any agreement entered into by NV for the broadcast or narrowcast of any aspect of the VNL in, or by, any medium.

National Netball League means the highest level elite netball competition in Australia currently known as the Suncorp Super Netball League and regardless of changes in title, format and structure of the League.

VNL means the netball competition conducted by NV under the name "Victorian Netball League" or the "VNL" and includes any related pre-season or other tournament organised by NV.

VNL Commercial Guidelines (however so titled) means the written guidelines for all commercial and sponsorship related VNL matters as prescribed and amended from time to time by NV.

VNL Operations Manual (however so titled) means the written guidelines for the conduct, operation and management of the VNL as prescribed and amended from time to time by NV. The parties acknowledge and agree that the name of the VNL may change depending upon naming rights. Such change will be deemed to take effect in this Agreement without the need for formal variation.

VNL Reference Group means the reference group appointed by NV and consisting of 3 to 5 individuals who are independent of VNL teams and who meet with NV staff to provide advice and support in respect of the VNL. NV reserves the right to amend the membership and terms of reference as it sees fit.

1.2 Interpretation

In this Agreement, unless the subject or the context otherwise requires:

- (a) Words importing the singular include the plural and vice versa.
- (b) Words importing any gender include the other genders.
- (c) References to persons include corporations and bodies politic.
- (d) References to a person include the legal personal representatives, successors and permitted assigns of that person.
- (e) A reference to a statute, ordinance, code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them (whether of the same or any other legislative authority having jurisdiction).
- (f) References to this or any other document include the document as varied or replaced, and notwithstanding any change in the identity of the parties.
- (g) References to writing include any mode of representing or reproducing words in tangible and permanently visible form, and include e-mail.
- (h) An obligation of two or more parties shall bind them jointly and severally.
- (i) If a word or phrase is defined, cognate words and phrases have corresponding definitions.
- (j) References to a body which has ceased to exist or has been reconstituted, amalgamated, reconstructed or merged, or the functions of which have become exercisable by any other person or body in its place, shall be taken to refer to the person or body established or constituted in its place or the person or body by which its functions have become exercisable.
- (k) Reference to any thing (including, without limitation, any amount) is a reference to the whole or any part of it and a reference to a group of things or persons is a reference to any one or more of them.
- (l) Headings shall be ignored in construing this document.

- (m) If any day appointed or specified by this Agreement for the payment of any money or the doing of any act or thing falls on a day that is not a Business Day, the day so appointed or specified shall be deemed to be the next day that is a Business Day.

2. OBJECTIVES AND PRINCIPLES OF CONDUCT

2.1 Objectives of the Agreement

The parties acknowledge and agree that the primary objectives of this Agreement are to:

- (a) promote the VNL and all Licensees;
- (b) enable each party to meet their respective public interest, commercial and sporting objectives and obligations; and
- (c) promote and conduct all activities in such a manner that VNL is viewed as the exemplar netball competition in Victoria in terms of standard of netball, coaching, umpiring, governance and compliance with codes of conduct and behaviours by all parties.

2.2 Principles of Conduct

The parties agree to:

- (a) act in such a way as is consistent with, and conducive to, achievement of the objectives in **clause 2.1**;
- (b) deal with one another in good faith in all dealings, acts, matters and things; and
- (c) co-operate with one another including conducting in good faith such discussions and negotiations as may be necessary or desirable to resolve amicably any difference or dispute which may arise between them.

3. LICENSEE ACKNOWLEDGEMENT

The Licensee acknowledges and agrees that this Agreement may restrict its absolute freedom in respect of the VNL, and that such restrictions are necessary and reasonable and in the interest of both parties and in the public interest and for the purposes of protecting the sport of Netball including the conduct of the VNL, the operation of NV, the conduct and operation of Netball in Victoria and the development and participation of competitors in Netball.

4. OBLIGATIONS OF NV

In consideration of the Participation Fee, NV:

- (a) will operate the VNL for the Term in accordance with the competition structure in place as at the Commencement Date and only alter such competition structure following consultation with the Licensees and noting that in general, such changes would only be made if any Licensee withdrew or was terminated from the VNL;

- (b) reserves the right to amend this license following consultation with the Licensees, noting that any changes would be made in good faith and seek to avoid any material impact to Licensees; and
- (c) grants the Licensee the right to participate in the VNL for the Term unless terminated earlier and otherwise on the terms and conditions of this Agreement.

5. TERM

5.1 Initial Term

The rights and obligations under this Agreement apply on and from the Commencement Date until the Expiry Date or the earlier termination of this Agreement.

5.2 Further Term

In its sole discretion, NV may elect to extend this Agreement for a set period subject to:

- (a) satisfactory compliance by the Licensee with this Agreement during the Term; and
- (b) compliance with any supplementary performance criteria or KPIs provided to Licensee by NV from time to time.
- (c) acceptance by the Licensee of any changes by NV to the terms and conditions of this Agreement and/or the management, operation and conduct of the VNL.

6. PARTICIPATION FEE

6.1 Payment

In consideration of the grant of rights under **clause 3(b)**, the Licensee will pay to NV:

- (a) the Participation Fee (if any); and
- (b) all monies levied under the By-laws (if any) from time to time.

6.2 Notification

NV will notify the Licensee of the Participation Fee at least four months prior to the first scheduled game of the following VNL season. The Participation Fee will be determined by NV in its absolute discretion.

6.3 Time for payment

All payments must be made in full according to the payment schedule set by NV from time to time.

7. OBLIGATIONS OF LICENSEE

7.1 Best Interests

- (a) The Licensee must at all times act in the best interests of, and must ensure it protects the reputation of, NV, the VNL, all Licensees, and the sport of Netball generally. The Licensee must use its best endeavours to ensure that all

Licensee employees, contractors and volunteers also comply with this provision.

- (b) The Licensee must at all times use its best endeavours to promote and develop Netball and to provide benefit to Netball and related community groups in its operational locality.
- (c) The Licensee must use all reasonable endeavours to achieve the KPIs.

7.2 Structure and control

The Licensee will:

- (a) comply with the corporate and governance structures and constitutional requirements of NV as notified to the Licensee from time to time;
- (b) be a member of NV under the Constitution. For the avoidance of doubt the Licensee entity must affiliate with NV and all persons on the Licensee Committee and in positions of decision making (including but not limited to coaching, high performance and selection personnel) must be individual members of NV and all organisational and individual affiliation / membership fees must be paid in full each year of the Agreement;
- (c) not alter its name, structure, ownership, control, domicile or home playing venue without the prior written consent of NV;
- (d) not mortgage, charge or otherwise encumber the rights granted under this Agreement or hold this Agreement on trust for any person;
- (e) provide, whenever requested by NV, proof that the Licensee is financially stable and in a position to meet its financial commitments, including:
 - (i) audited financial statements;
 - (ii) budgets for the current and future years by 30 November each year; or
 - (iii) proof of the Licensee's ability to fund budgeted expenditure;
- (f) ensure all Licensee representatives (in any capacity) are aware of and adhere to their obligations under the documents referred to in **clause 7.3**; and
- (g) ensure that its players are available (if required) for State, National, Australian Netball Championships or Super Netball / elite national/international competition (however so titled) commitments, as determined by relevant State, National, Australian Netball Championships or Super Netball coaches and/or NV High Performance staff.

7.3 Compliance with rules

The Licensee must at all times and in all respects comply with:

- (a) the Constitution;
- (b) the By-Laws;
- (c) all Transmission Agreements and Sponsorship Agreements;

- (d) NV Competition Rules;
- (e) the VNL Operations Manual;
- (f) the VNL Commercial Guidelines;
- (g) the Policies; and
- (h) such other documents endorsed by NV in respect of the VNL and advised to the Licensee from time to time and any updates and modifications to such documents. All documents above are available from NV.

7.4 Annual Review and Key Performance Indicators (KPI's)

- (a) The Licensee must participate in and provide all information to NV for an annual review of the VNL and all Licensees. All information required for the annual review will be communicated to Licensees prior to the start of each VNL season.
- (b) KPIs will be distributed to Licensees and must be addressed as part of the annual review. These KPIs may be subject to change from year to year.

Commented [LS4]: should this be all information required for annual review will be communicated prior to the start of the competition season

7.5 Fielding a team

- (a) The Licensee shall advise NV in writing, within one month of the conclusion of each VNL season, that for the following VNL season if it isn't capable of participating in the VNL by fielding a team in all divisions of the VNL or as otherwise required by NV.
- (b) The Licensee shall ensure all of its players are contracted using the VNL official player contract/registration form as provided by NV from time to time.
- (c) The Licensee shall ensure contracts will only be negotiated/signed with the proscribed time frame as set by NV from year to year.

7.6 Information

The Licensee shall provide such documents and information as are reasonably requested or required by NV from time to time in order to satisfy NV that the Licensee is complying with this Agreement.

7.7 Staff

- (a) The Licensee must engage all staff (paid or volunteer) required to field a professional, high-level team including head coach and support staff. Where applicable, such staff will have to meet the requirements set out in the Operations Manual.
- (b) The Licensee will engage its athletes, coaches and other personnel in accordance with appropriate laws and agrees that it alone, and not NV nor the VNL, has the contractual or employment relationship with these persons and indemnifies NV from any liability in regard to such engagements.

7.8 Income

Subject to this Agreement and the VNL Commercial Guidelines, the Licensee may raise funds from various sources as the Licensee sees fit including, but not limited to, securing sponsorship of the Licensee and hosting round robin home games.

7.9 Costs

The Licensee must bear all costs of fielding a team in the VNL and administering the Licensee. Such costs shall include, but are not limited to, staff costs, team allowances, player salaries and staging and management of events.

8. INTELLECTUAL PROPERTY

8.1 Licensee Intellectual Property

The Licensee acknowledges and agrees that all Intellectual Property vests in NV for the Term. Clubs must register their name and logo.

8.2 Grant

Subject to **clause 8.3**, NV grants the Licensee:

- (a) an exclusive, royalty free, irrevocable licence to use and sub-licence the Intellectual Property (including, but not limited to, the name of the Licensee and any logo or mark of the Licensee); and
- (b) a non-exclusive, royalty free, revocable licence to use the name of the VNL and any logo or mark of the VNL (provided the Licensee obtains NV's prior written approval to any such use);

for the Term for the purpose of the Licensee's participation in the VNL, promoting the VNL and promoting the Licensee's participation in the VNL.

8.3 Restrictions on use of NV IP

- (a) Subject to this Agreement, the Licensee must not use NV IP until it has sought and received written consent from NV, such consent may be withheld by NV in its absolute discretion.
- (b) The Licensee must submit each application of NV IP to NV for approval prior to use. The Licensee shall allow five Business Days for NV to approve each submission. Where such use is approved, NV grants the Licensee a non-exclusive, non-transferable, royalty-free licence to use and reproduce NV IP for such period as is agreed but in any event for no longer than the Term in accordance with this Agreement or any directions made by NV.
- (c) Nothing in this Agreement shall give the Licensee any additional rights in respect of any NV IP or of the goodwill associated with any NV IP. The Licensee acknowledges that, except as expressly provided in this Agreement, it shall not acquire any rights in respect of any NV IP and that all such rights and the associated goodwill are, and shall remain, vested in NV.
- (d) The Licensee shall not cause or permit anything which may damage or endanger NV's title to NV IP or assist or allow others to do so.

- (e) The Licensee shall take all such steps as NV may reasonably require to assist NV in maintaining the validity and enforceability of NV IP during the Term.
- (f) The Licensee shall notify NV of any suspected infringement of NV IP as soon as the Licensee becomes aware of such infringement.

8.4 Use

The Licensee agrees:

- (a) that title to and ownership of all rights granted to it under this Agreement and the associated goodwill remains at all times vested in NV;
- (b) to use the rights granted under this clause in a manner consistent with the image of the VNL; and
- (c) not to use the rights granted under this clause in a manner which will or is likely to bring the VNL, NV, the Licensee, other Licensees or the sport of Netball into disrepute.

8.5 Covenants by Licensee

In consideration of NV assigning the Intellectual Property to the Licensee under **clause Error! Reference source not found.**, the Licensee covenants that it will not (except with NV's prior written consent) directly or indirectly, whether solely or jointly with any other person and whether as principal, agent, director, executive officer, employee, shareholder, partner, financier, joint venturer, adviser, consultant or otherwise:

- (a) during the Restraint Period and within the Restraint Area, use the Intellectual Property to carry on or be engaged or involved in any Netball competition; or
- (b) counsel, procure or otherwise assist any person to do any of the acts referred to in **clause 8.5(a)**, including selling, assigning or licensing the Intellectual Property to any person to do any of the acts referred to in **clause 8.5(a)**.

8.6 Consideration

NV and the Licensee each acknowledge that the assignment of the Intellectual Property by NV to the Licensee under **clause Error! Reference source not found.** constitutes good and valuable consideration for the purposes of **clauses Error! Reference source not found.** to **8.7**.

8.7 Enforceability of covenants by Licensee

- (a) NV and the Licensee each acknowledge that the covenants given in **clause 8.5** are:
 - (i) material to NV's decision to assign the Intellectual Property to the Licensee upon expiration or termination of this Agreement under **clause Error! Reference source not found.**;
 - (ii) fair and reasonable with regard to subject matter, area and duration, and reasonably required by NV to protect itself; and
 - (iii) given for the benefit of NV and are enforceable by it against the Licensee.

- (b) While the undertakings in **clause 8.5** are considered by the parties to be reasonable in all the circumstances, if any part or provision of such clauses are held invalid as an unreasonable restraint of trade or for any other reason, but would have been valid if part of the wording had been deleted, or the Restraint Area or the Restraint Period, or the range of activities dealt with reduced in scope, those undertakings will apply with such modifications as may be necessary to make them valid and effective.
- (c) If there is a breach by the Licensee of any of the obligations under **clauses 8.5 to 8.7** (inclusive), then NV will be entitled to equitable relief, including injunction and specific performance, in addition to all other remedies available to it at law, by statute or otherwise.

8.8 Use of intellectual property for Other Teams

- (a) The Licensee must not use the intellectual property in relation to any team, club or entity that is not participating in the VNL unless it has sought and received consent from NV, such consent can be withheld by NV in its absolute discretion. Such consent may be granted on any terms and conditions which NV deems appropriate.

9. SPONSORSHIP, ENDORSEMENT AND TRANSMISSION

9.1 Sponsorship Agreements

The Licensee:

- (a) agrees to abide by the terms and conditions of any Sponsorship Agreement; and
- (b) agrees to provide to NV, at the time of entering into this Agreement and annually thereafter, details of any or all existing sponsorship and endorsement agreements to which it is a party. Such details are to be outlined by the Licensee in the form of **Schedule 1** to this Agreement. The Licensee further agrees to advise NV in writing immediately of any change/s to such agreements.

9.2 Restrictions on Licensee

Subject to **clauses 9.3** and **9.4**, the Licensee agrees:

- (a) not to engage in or continue with negotiations or discussions or enter into any arrangements whatsoever with any prospective sponsor who:
 - (i) conducts business in any categories from time to time notified to the Licensee by NV; or
 - (ii) is in a category of business in which NV, in respect of the VNL or otherwise, has sponsors or is currently negotiating, discussing or finalising a Sponsorship Agreement; and
- (b) not to engage in or continue with negotiations or discussions or enter into any arrangements whatsoever with any entity in respect of any form of transmission from time to time notified by NV as a category of transmission in which NV, in

respect of the VNL or otherwise, has an arrangement or is currently negotiating, discussing or finalising a Transmission Agreement;

- (c) not to enter into any arrangement whatsoever if it would require the Licensee to promote or be associated with any of the following products or services (note that if there is any confusion as to what company or product may fall into these categories then a determination from NV is to be sought prior to any third party negotiations; and such determination by NV will be final):
 - (i) cigarettes including tobacco products;
 - (ii) alcohol;
 - (iii) sex industry;
 - (iv) gambling; or
 - (v) Any elite netball team other than the team operated by NV, Without prior written consent from Netball Victoria. For the purposes of this paragraph "elite netball team" includes any team competing in the Suncorp Super Netball Competition.
- (d) to obtain prior written consent from NV before entering into any form of sponsorship agreement or partnership with the following sponsor categories:
 - (i) hotels and nightclubs;
 - (ii) sport / dietary supplements;
 - (iii) fast service food; or
 - (iv) any other elite sporting team, club or code

In all instances NV reserves the right to not allow the Licensee to obtain sponsorship from any of the above mentioned organisations.

NV reserves the right to expand these set of categories at any time and without any formal variation required to this Agreement. The Licensee should refer to the VNL Commercial Guidelines for further information and clarification.

9.3 Release of categories to Licensees

If by 30 November in any year NV has not entered a Sponsorship Agreement with category sponsor for the upcoming VNL season, it may provide written notice to Licensee that Licensee may obtain its own sponsor from the relevant category. The Licensee may obtain such a sponsor for the term set out in that written notice. If the relevant term is not specified in the written notice, Licensee may obtain the sponsor in the relevant category for a maximum of one (1) VNL season, being the upcoming season.

9.4 NV may approve certain sponsors

- (a) The Licensee must advise NV of any contractual arrangement it intends to enter prior to doing so, if there is a reasonable possibility that such contractual arrangement may give rise to a conflict for the Licensee, NV or the VNL.

- (b) The Licensee may apply to NV for NV's written consent (which may be withheld at NV's discretion) to the Licensee engaging in discussions and entering into a sponsorship arrangement or other agreement with any sponsor or other entity otherwise prohibited under **clause 9.2**.

9.5 Endorsements

The Licensee must not, and must ensure that its employees, agents or officers do not endorse any goods or services directly connected with the sport of Netball (including but not limited to netballs, netball rings, netball related apparel and scoring equipment) without the prior written consent of NV which shall not unreasonably be withheld.

9.6 Sponsorship Agreements

- (a) Subject to **clauses 9.1(b), 9.2 and 9.4(a)**, the Licensee will not be required by NV to terminate any pre-existing, notified sponsorship arrangement that complies with this Agreement. Prior to entering into any Sponsorship Agreement, NV shall use reasonable endeavours to ensure the values of the Licensee's sponsorship arrangements are not compromised.
- (b) Notwithstanding **clause 9.6(a)**, nothing in this Agreement prohibits NV in any way from entering into any Sponsorship Agreement on such terms and conditions as NV sees fit.

10. WARRANTIES AND REPRESENTATIONS

The Licensee warrants and represents that it:

- (a) is validly incorporated under the laws of the jurisdiction of its incorporation;
- (b) has the power to enter into and perform its obligations under this Agreement and that (as applicable) every provision in its constitution, by-laws, memorandum or articles which requires compliance in order to execute and perform its obligations and exercise its rights under this Agreement, has been complied with;
- (c) is not under any disability or obligation which would or might prevent or restrict it from effectively organising, promoting, marketing and conducting teams in the VNL or in the discharge of its obligations under this Agreement;
- (d) will conduct its operations in relation to the VNL in good faith with the intent of maintaining the VNL on a permanent, sound and secure footing;
- (e) will not seek to in any way establish or participate in any competition which is in conflict with the VNL;
- (f) will not, nor permit its employees, agents or officers to do or perform, or fail to do or perform any act which prejudices or brings into disrepute NV, the VNL or the sport of netball.

11. ASSIGNMENT AND TRANSFER

11.1 No assignment without consent

The rights granted under this Agreement are personal to the Licensee and the Licensee may not directly or indirectly transfer or assign any or all of the rights or obligations under this Agreement without the prior written consent of NV under **clause 11.3**.

11.2 Deemed transfer

Subject to the discretion of NV to determine otherwise, if any of the following events occur in relation to a Licensee, that event will be deemed a transfer of its rights under this Agreement and **clauses 11.3** to **11.5** will apply.

- (a) There is a change in the ownership of a Licensee which is a company limited by guarantee, including:
 - (i) an alteration to more than 15% of the membership of the Licensee; or
 - (ii) if the Licensee admits new members aggregating in number more than 15% of the total membership at the time this Agreement was entered into.
- (b) There is a change in the ownership of a Licensee which is an incorporated association, including the Licensee ceasing to be registered as an incorporated association under the relevant State legislation under which it was incorporated at the time this Agreement was entered into.

11.3 Procedure for transfer

Any request by the Licensee to transfer or assign this Agreement must be in the form of a written application to NV specifying full particulars of the proposed transferee, including but not limited to:

- (a) information relating to the financial standing, expertise and facilities available to the proposed transferee to operate teams;
- (b) details of all executive officers and directors of proposed transferee (if applicable) and the legal and beneficial holders of any issued share capital; and
- (c) such other information as may reasonably be required by NV.

11.4 Conditions precedent for transfer

Any transfer or assignment of the rights under this Agreement is subject to:

- (a) the Licensee paying all outstanding monies due under this Agreement;
- (b) the compliance by the Licensee with any reasonable conditions imposed by NV;
- (c) the Licensee procuring any proposed transferee to enter into an agreement with NV in substantially the same form and on substantially the same terms as this Agreement; and
- (d) NV's consent, which may be withheld in its absolute discretion.

11.5 Notification

NV will notify the Licensee in writing of any application for approval of the transfer or assignment of this Agreement and may impose such conditions on the transfer as it consider fit.

11.6 Changes in name, colours and/or logo

If the Licensee wishes to change its name and/or logo and/or uniform colours it must notify NV and provide any information as reasonably sought by NV to satisfy itself that there is no transfer or assignment of rights under this Agreement, and provide adequate details as to the reason for the request. Such changes may not be made without the prior written consent of NV, which will not be unreasonably withheld.

12. DISPUTES

12.1 Procedure for resolving disputes

Subject to **clause 12.2** if a dispute arises out of or in relation to this Agreement:

- (a) the party concerned about the matter will raise it with the president, chief executive or other relevant representative(s) of the other party and provide details of the general nature of the dispute;
- (b) the parties must confer in good faith with a view to resolving the matter. For the avoidance of doubt, in the instance of dispute whether between licensees or between a licensee/s and NV, the licensee/s (through participation by as many position holders / representatives as directed or agreed by NV) must, as a condition of this Agreement, attend any meeting requested by NV set to discuss the dispute related matters;
- (c) if the matter is not settled initially the parties must meet again in good faith and discuss a resolution of the dispute prior to mediation. If the matter is still not settled following this further discussion, it must be discussed between the representative(s) of all Parties in the presence of the nominated mediator. All parties to the dispute must bear their own costs in regard to mediation and also will bear an equal share of NV's costs in the instance that NV is required to investigate or mediate (or organise an investigation or mediation) into any dispute arising under this Agreement; whether the dispute be between licensees or with NV. Failure by any party to attend as required will in itself be deemed a breach by that party of this Agreement; and
- (d) NV shall determine which by laws or policies will apply in the instance of any dispute, regardless of whether the dispute is between licensees or between a licensee/s and NV.

12.2 Proposed new regulations

The Licensee agrees that should NV introduce new Complaints and Disputes Regulations which it determines shall apply to the VNL, then those Regulations will replace clauses 12.1(a)-(d) and those clauses will no longer be of force and effect and all complaints and disputes shall be managed in accordance with those new Regulations. NV undertakes to consult with existing Licensees prior

Commented [LS5]: would failure to pay costs also be a breach and if yes, should it be explicitly referenced here?

Commented [MP6R5]: Failure to pay any costs due under the agreement would be grounds for a dispute/a breach, as payment is a term of the agreement. I don't think it needs to be referred to explicitly as a breach unless it was going to be something attracting a specific/greater consequence.

to the adoption and application of such Regulations however their final composition and application will be determined in NV's absolute discretion.

12.3 Commencement of proceedings

- (a) Subject to **clause 12.2(b)**, the parties agree to attempt to resolve any dispute in accordance with the procedure set out in **clause 12.1**, prior to taking any further action or commencing any proceedings in a court of law.
- (b) This **clause 12** will not affect either party's rights to terminate this Agreement or to seek interlocutory relief in a court of competent jurisdiction.

13. TERMINATION

13.1 Termination by licensee

Provided the Licensee has paid all monies due under this Agreement, the Licensee may terminate this Agreement by advising NV in writing within one month of the conclusion of the VNL season.

13.2 Termination by NV

NV may by notice to the Licensee terminate this Agreement immediately, or take such other action as it sees fit, if:

- (a) the Licensee breaches a term of this Agreement, such breach being incapable of remedy;
- (b) the Licensee breaches a term of this Agreement (including but not only failing to meet any KPI) and does not remedy such breach with 14 days of written notice of such breach from NV;
- (c) the Licensee continues to breach or fails to abide by the Constitution, the By-Laws, or the Policies after written notice from NV of such breach or failure;
- (d) NV ceases to conduct the VNL; or
- (e) the Licensee becomes unregistered, insolvent, files for bankruptcy, loses its legal capacity to meet its obligations under this Agreement or is unable to pay its debts when they become due.

14. EFFECT OF TERMINATION

Upon termination of this Agreement for any reason:

- (a) all rights granted under this Agreement terminate; and
- (b) the Licensee shall immediately cease any and all use of NV IP and shall return all such NV IP provided to it.

15. INDEMNITY

The Licensee indemnifies and will keep NV and its officers, employees, agents and contractors indemnified against all losses, costs, claims, damages, expenses and

liabilities arising from any claim or proceeding made, brought or commenced by any person arising out of or in connection with:

- (a) the VNL; and
- (b) any breach of this Agreement by the Licensee,

except to the extent such losses, costs, claims, damages, expenses and liabilities were caused or contributed to a negligent act or omission of NV or any of its officers, employees, agents or contractors.

16. CONFIDENTIALITY

- (a) The terms of this Agreement are confidential between NV and the Licensee and each of them agrees not to disclose its terms to any third party without the express prior written consent of the other party.
- (b) **Clause 16(a)** does not prevent disclosure by either party of the existence of this Agreement, disclosure to their respective advisors or disclosure as required by law.
- (c) This **clause 16** shall survive the expiry or termination of this Agreement.

17. NOTICES

- (a) The Licensee must ensure its contact details are kept up to date and advise NV of any changes to contact details. By the 1st of February each year (or other date as notified by NV) the Licensee will provide NV with a list of all position holders and their contact details not limited to individual email and mobile phone number. This will include but not be limited to positions including President, Vice President, Secretary, Treasurer, Committee Members, Primary Care and Coaching staff. The Licensee is not permitted to give only one contact person for multiple positions; it must provide a minimum of 5 contact personnel and their roles / titles.
- (b) A notice, approval, consent, request or other communication under this Agreement must be in writing and sent by electronic mail or prepaid post or facsimile, to the address of the addressee set out in this Agreement or advised by the parties from time to time.
- (c) A notice, approval, consent, request or other communication takes effect from the time it is received unless a later time is specified in it and it is deemed to be received on the third day after posting if sent by post and on the following business day if sent by facsimile or electronic mail.

18. GENERAL

- (a) The parties acknowledge that the relationship between them is not an agency, a partnership, joint venture or employment relationship.
- (b) A change or amendment to this Agreement must be in writing and signed by both parties.
- (c) A party does not waive its rights or powers under this Agreement by:

- (i) failing to exercise a right;
 - (ii) only exercising part of a right; or
 - (iii) delaying in the exercise of a right.
- (d) This Agreement together with the Constitution, the By-Laws, the Policies, the VNL Operations Manual and any other documentation of NV referred to in this Agreement as amended from time to time, constitute the entire agreement between the parties relating to its subject matter and replaces all previous representations and agreements on the subject matter.
- (e) Any provision in this Agreement will be read down to the extent necessary to prevent that provision or this Agreement being invalid, voidable or unenforceable in the circumstances.
- (f) This Agreement is governed by the laws of Victoria, Australia and the parties submit to the non-exclusive jurisdiction of the courts of Victoria, Australia.

EXECUTION

EXECUTED by **VICTORIAN NETBALL ASSOCIATION INCORPORATED TRADING AS NETBALL VICTORIA (ABN 83 704 752 745)** by being signed by:

)
)
)
)
)
)
)

Signature of director/secretary

Signature of director

Name of director/secretary (please print)

Name of director (please print)

EXECUTED by **<insert name> NETBALL CLUB** by being signed by:

)
)
)
)
)
)
)

Signature of director/secretary

Signature of director

Name of director/secretary (please print)

Name of director (please print)

SCHEDULE 1

| Name of sponsor (company) | Commencement date of contract | Category | Length of contract/term |
|--------------------------------------|--|-----------------|------------------------------------|
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |