

## **SYDNEY KINGS CORPORATE HOSPITALITY**

**NOW THEREFORE**, in consideration of the mutual promises and covenants herein contained and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby represent, warrant and agree as follows:

### **1. Premium Seat**

- 1.1** The Company grants to the Premium Seat Holder, in consideration of the payment of the Licence Fee listed in Section 4 and adherence of the Code of Conduct, a licence to use seat/s for each Event (as defined below) during the Term, in accordance with these terms and conditions.

### **2. Term**

- 2.1 Regular Season.** The term of the Premium Seat Holders licence to use the Premium Seat/s shall commence upon the date of the first Event of the 2021-22 Sydney Kings regular season in the National Basketball League (the "NBL") and, subject to early termination as provided in this Agreement, shall continue to the final Event of the 2021-22 Sydney Kings regular season (the "Term").
- 2.2 Playoffs.** If the Sydney Kings qualifies for and plays games in the NBL post-season Finals Series, which shall include the Semi-Final and Grand Finals (the "Playoffs"), the Premium Seat/s will be made available to the Premium Seat Holder as a right of first refusal for an additional fee in accordance with Section 4.3.

### **3. Event**

- 3.1** "Event" shall mean Sydney Kings regular season home games that are played at Qudos Bank Arena or at such venue where a regular season home game is played (the "Venue").
- 3.2** An Event shall not include Sydney Kings home Playoff games.
- 3.3** Should an Event be played elsewhere other than Qudos Bank Arena, the Company will use reasonable endeavours to provide premium seat/s located in a similar location to the Premium Seat/s at Qudos Bank Arena.

### **4. Licence Fee**

- 4.1** In consideration for the use of the Premium Seat/s and the benefits granted to the Premium Seat Holder under this Agreement, the Premium Seat Holder shall pay to Company the amount plus GST (the "Licence Fee").
- 4.2** The Licence Fee shall be due and payable in the following installments:
- (a) 50% of the Licence Fee upon execution of booking; and
  - (b) 50% of the Licence Fee on 1<sup>st</sup> September 2021
- 4.3** For the avoidance of doubt, the Licence Fee does not include the cost of the Premium Seat/s or any benefits for Sydney Kings home Playoff games. Premium Seat Holder shall have the right to licence the Premium Seat/s for the 2021-22 Sydney Kings home Playoff games, when made available by the Company, at such prices established by the Company, as applicable, and upon such other reasonable terms and conditions as determined by the Company. Pursuant to Section 2.2, the Premium Seat Holder may choose to include the Playoffs for an additional fee.

### **5. Tickets and Access**

- 5.1** The Company shall provide Premium Seat Holder with a ticket required to access the Venue for

each Event for each Premium Seat purchased.

- 5.2 Use of the Premium Seat/s by Premium Seat Holder and its guests shall require the presentation of tickets for admission into the Venue, and is subject to the terms and conditions under which such tickets are issued, including, without limitation, the policies adopted by the issuer of such tickets with respect to the cancellation or postponement of the Event. There shall be no reduction in the Licence Fee due to the cancellation, postponement or rescheduling of any Event.
- 5.3 Access by any person to the Venue and the Premium Seat/s is subject to the relevant terms and conditions of this Agreement, the Code of Conduct, the Venue Conditions of Entry and the Venue Prohibited Items List, as amended by the Venue operator and Company from time to time.
- 5.4 Subject to any direction given by the Company, the Premium Seat Holder may only access and use the Premium Seat/s for the purpose of watching the relevant Event under the licence granted by this Agreement, during the period commencing ninety (90) minutes before the scheduled commencement time of the Event, and concluding a maximum of sixty (60) minutes after the scheduled finishing time of the Event.

## **6. Utilisation of Premium Seat**

- 6.1 The Parties acknowledge that it is important that the Premium Seat/s be comprehensively utilised during the Term.
- 6.2 If the Premium Seat Holder is unable to utilise the Premium Seat/s for a particular Event, the Premium Seat Holder acknowledges that the Company has the right to dress the Premium Seat/s with guests of the Company.

## **7. Additional Obligations of Premium Seat Holder**

- 7.1 Premium Seat Holder shall keep and maintain the Premium Seat/s in good repair, order and condition, except for normal wear and tear, and, in addition to the other payments provided for in this Agreement, shall reimburse Company for any costs incurred by Company to repair any damage (other than normal wear and tear) caused by Premium Seat Holder or Premium Seat Holder's guests to the Premium Seat/s or the property of Company therein.
- 7.2 Premium Seat Holder shall, and shall cause its guests to, abide by and observe all rules and regulations established from time to time by Company, the Venue and its affiliates pertaining to the use and occupancy of the Premium Seat/s or the Venue, including, without limitation, rules and regulations governing the consumption of alcoholic beverages, fan behaviour and the placement of advertising and/or signage.
- 7.3 Premium Seat Holder shall, and shall cause its guests to, at all times maintain proper decorum while using the Premium Seat/s and shall comply with all present and future laws, ordinances, orders, rules and regulations of all governmental authorities, and will not suffer or permit any use of the Premium Seat/s in violation thereof.
- 7.4 Premium Seat Holder shall not, and shall cause its guests not to, resell any tickets received or purchased pursuant to this Agreement.
- 7.5 Premium Seat Holder shall not bring into the Venue any illegal drugs or, except as prescribed by a licensed physician, any controlled substance.
- 7.6 Premium Seat Holder may not utilise Premium Seat ticket/s for contests, giveaways or other promotional purposes, unless specifically approved in advance by Company.
- 7.7 If Premium Seat Holder or any of Premium Seat Holder's guests violates Section 7.2, 7.3, 7.4 7.5 or 7.6, Company may, in addition to any other rights Company may exercise as a result of such

violation, eject Premium Seat Holder and/or any of Premium Seat Holder's guests and revoke the licence to use the Premium Seat/s and/or any ticket privilege for the Event at which the violation occurs, without compensation to Premium Seat Holder or Premium Seat Holder's guests, as the case may be.

## **8. Default and Termination**

### **8.1 Default.** "Default" shall include any of the following:

- (a) Premium Seat Holder fails to pay when due any amounts (including, without limitation, any instalment of the Licence Fee) to be paid by Premium Seat Holder pursuant to this Agreement;
- (b) Premium Seat Holder enters into an agreement with any persons for the sale or exchange of ticket/s for the Premium Seat/s or access to the Premium Seat/s.
- (c) Premium Seat Holder otherwise breaches, or defaults in the performance or observation of any of its other obligations under this Agreement;
- (d) Any single breach by the Premium Seat Holder or any of its guests, of the Code of Conduct; or
- (e) Any Insolvency Event occurs. "Insolvency Event" shall mean any of the following: (i) Premium Seat Holder commences a voluntary case concerning itself under any bankruptcy, liquidation or insolvency code; (ii) an involuntary case is commenced against Premium Seat Holder and the petition is not controverted within ten (10) business days, or is not dismissed within sixty (60) days, after commencement of the case; (iii) a custodian is appointed for, or takes charge of, all or substantially all of the property of Premium Seat Holder, (iv) Premium Seat Holder is adjudicated insolvent or bankrupt; or (v) Premium Seat Holder makes a general assignment for the benefit of creditors.

### **8.2 Termination.** If there is a Default by the Premium Seat Holder, Company may elect, in its sole discretion, to take any one or more of the following actions:

- (a) Terminate this Agreement and the rights of Premium Seat Holder hereunder (i) immediately upon written notice to Premium Seat Holder, if such failure, breach or default is not capable of being cured, or (ii) seven (7) days after giving notice to Premium Seat Holder, if such failure, breach or default is capable of being cured and Premium Seat Holder fails to cure within such seven (7) day period; or
- (b) Withhold distribution to Premium Seat Holder of admission tickets and/or parking passes to any Event until Premium Seat Holder's failure, breach or Default is cured or, if admission tickets and/or parking passes for any such Event have already been distributed to Premium Seat Holder, deny Premium Seat Holder and Premium Seat Holder's guests access to the Premium Seat/s until Premium Seat Holder's failure, breach or default is cured.

### **8.3 Consequences of Termination.** Upon termination of this Agreement by Company under Section 8.2:

- (a) Premium Seat Holder's right to the use and occupancy of the Premium Seat/s and all other rights or benefits of Premium Seat Holder under this Agreement shall end;
- (b) Premium Seat Holder shall remain liable for the payment of the Licence Fee and any other amounts (including, but not limited to, interest under Section 8.5) due from Premium Seat Holder under this Agreement as and when due;
- (c) Company shall have no further obligation of any kind to Premium Seat Holder; and
- (d) Company may revoke any admission tickets, and/or parking passes distributed to Premium Seat

Holder pursuant to this Agreement prior to its termination.

#### **8.4 Other Instances Requiring Termination.**

- (a) The Company may terminate this Agreement if the Sydney Kings do not continue to compete, or no longer hold a relevant licence to allow the Sydney Kings to compete, in the National Basketball League.

**8.5** If Premium Seat Holder fails to pay when due any amounts (including, without limitation, any instalment of the Licence Fee) due pursuant to this Agreement, Company shall have the right to charge interest thereon at the rate of three percent (3%) per month (or, if less, the highest rate permitted by law) from the date beginning thirty (30) days after such payment is due and continuing on a monthly basis until such amount is paid. The interest charged shall, to the extent permitted by applicable law, be compounded monthly. Any amount under this Agreement that is not paid when due shall not be considered paid until the interest charged thereon is paid in full. The provisions of this Section 8.5 shall survive termination of this Agreement.

**8.6** The remedies of Company under this Section 8 shall not limit or exclude any other right or remedy set forth herein or otherwise available to Company at law or in equity, including, but not limited to, Company's right to receive indemnification under Section 9.

**8.7** No waiver by Company of any default or breach by Premium Seat Holder of its obligations under this Agreement shall be construed to be a waiver or release of any other default or breach or subsequent default or breach by Premium Seat Holder under this Agreement, and no failure or delay by Company in the exercise of any right or remedy provided for in this Agreement shall be construed to constitute a forfeiture or waiver thereof or of any other right or remedy available to Company.

#### **9. Liability Indemnification**

**9.1** Premium Seat Holder, Premium Seat Holder's guests, and all other persons who attend any Event at the Venue in connection with Company's provision of the Premium Seat/s, hereby assume all risks and dangers incidental to attending any Event at the Venue, whenever or however they occur, including but not limited to the danger of being injured by balls and other objects and other patrons, and agrees that neither Company, nor any sports team or league, nor any other person or entity producing, performing or participating in any Event, nor any of their respective affiliates, agents or assignees, shall be liable for injuries from such causes. Company shall not be liable or responsible for any loss, damage or injury, including death, to any person or property, that may result directly or indirectly from such attendance at the Venue or upon use of the Premium Seat/s, the Venue, the Venue garage, any other parking area or elsewhere, resulting from any cause whatsoever, including, but not limited to, theft or vandalism, except to the extent the same is attributable to the gross negligence or wilful misconduct of Company, Venue manager or its officers, directors, managers, owners, agents, subcontractors or employees. In the event of any conflict between this Section 9.1 and any other language in or provision of this Agreement, this Section 9.1 shall govern.

**9.2** Premium Seat Holder agrees to indemnify and hold harmless Company, Venue manager, and their officers, affiliates, owners, directors, partners, agents and employees from and against any and all claims, demands, obligations, causes of action, losses, lawsuits and damages, including, without limitation, reasonable attorneys' fees and legal costs by reason of any claim, suit or judgment (together "Losses"), to the extent such Losses result from or arise in whole or in part out of: (i) the gross negligence or willful misconduct of Premium Seat Holder or Premium Seat Holder's guests, except to the extent such claims or damages may be due to or caused in whole or in part by the gross negligence or willful misconduct of Company, the Venue manager, or its employees, contractors or agents; or (ii) any material breach by Premium Seat Holder or Premium Seat Holder's guests of any term or provision of this Agreement, including without limitation, its representations,

warranties or material obligations under this Agreement.

**9.3** Premium Seat Holder hereby waives all rights of recovery against Company and any Venue manager for or arising out of damage to or destruction of any property of Premium Seat Holder located within the Premium Seat/s or the Venue.

**9.4** In the event the Company is held liable, the aggregate liability of the Company under this Agreement in respect of loss or damage suffered by the Premium Seat Holder, whether in contract, tort (including negligence) or for breach of statutory duty or in any other way, will not exceed the Licence Fee actually paid by the Premium Seat Holder under this Agreement.

## **10. Representations about the Events**

The Premium Seat Holder acknowledges and agrees that the Company gives no warranty, and makes no representation, regarding the quality or timing of Events to be held at the Venue during the Term and will not be liable to the Premium Seat Holder for any loss, damage, cost or expense suffered or incurred by the Premium Seat Holder arising from the quality or timing of Events (or lack thereof) held at the Venue during the Term and will not be liable to refund any or all of the Licence Fee to the Premium Seat Holder.

## **11. Implied Warranties**

Where any statute implies in this Agreement any term, condition or warranty, and that statute voids or prohibits terms of a contract excluding, restricting or modifying the application of or exercise of, or liability under that term, condition or warranty, then that term, condition or warranty is deemed to be included in the Agreement but any liability of the Company for any breach of that term, condition or warranty may be limited to:

(a) in the case of services, to any one of the following:

- (i) the supplying of the services again; or
- (ii) the payment of the cost of having the services again; and

(b) in the case of goods, to any one of the following:

- (i) the replacement, repair or the supply of equivalent goods;
- (ii) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
- (iii) the payment of the cost of having the goods repaired.

## **12. Miscellaneous**

**12.1 Notices.** Notices to Premium Seat Holder shall be made or given to Premium Seat Holder at the address first written above. Notices to Company shall be sent to Building B, 1 Herb Elliott Avenue, Sydney Olympic Park, NSW 2127, attention: Katrina Lindner. All notices and other documents given or delivered under this Agreement shall be given in writing either by (i) personal delivery (as evidenced by a signed receipt), (ii) certified mail, and return receipt requested, (iii) email or facsimile transmission, or (iv) nationally recognised overnight delivery service. Notices shall be deemed received upon actual receipt or refusal thereof. Either party may change its address for notice from time to time by written notice, delivered according to the provisions of this Section 12.1.

## **12.2 Successors and Assignment**

(a) This Agreement, and all the terms and provisions hereof, shall inure to the benefit of and be binding upon the parties hereto, and their respective heirs, executors, administrators, personal

representatives, and permitted successors and permitted assigns. No amendment or modification to this Agreement shall be effective unless the same is in writing and signed by both Company and Premium Seat Holder.

- (b) Premium Seat Holder shall not sell or assign this Agreement or its rights or obligations under this Agreement to any other person or entity without the prior written consent of Company, which Company may withhold in its sole discretion. Premium Seat Holder may request Company's consent to any proposed assignment by written notice to Company, which notice shall include the terms of the proposed assignment and the name and address of the proposed assignee and evidence of the assignee's financial capacity to perform its obligations under this Agreement. Company shall have the right to request additional information from the proposed assignee in its sole discretion. If Company grants its consent to the proposed assignment, such assignment shall not relieve Premium Seat Holder of any of its obligations under this Agreement, unless Company otherwise agrees in writing.
- (c) Company may sell, assign, pledge or otherwise transfer or encumber this Agreement (together with the Licence Fee, if applicable, and all other monies Company holds on Premium Seat Holder's account) and any or all of its rights and obligations hereunder to any other entity, including, but not limited to, any source of, or guarantor or insurer of, financing or any trustee, collateral agent or other entity appointed in connection with such financing, whether by security agreement, collateral assignment, transfer or otherwise.

### **12.3 Relocation of Seats**

Prior to the start of the 2021-22 NBL season, if the Company reconfigures the seating arrangement of the premium seats at the Arena, the Company in their discretion shall have the ability to relocate the Premium Seat Holder to premium seat/s located in a similar location. If the Premium Seat Holder does not find the new location acceptable, the Premium Seat Holder shall have the ability to terminate this Agreement and be refunded any and all amount for the Licence Fee that the Premium Seat Holder has already remitted to the Company.

### **12.4 Rights**

This Agreement does not confer upon Premium Seat Holder any right, title, estate or interest in the Company, Venue, the Premium Seat/s or any of the furniture, fixtures, or equipment of Company located therein, other than the limited licence to use and obtain access to the Venue and the Premium Seat/s in accordance with this Agreement.

### **12.5 Governing Law and Jurisdiction**

This Agreement is governed by the laws of New South Wales. Each of the Parties irrevocably submits to the exclusive jurisdiction of the courts of New South Wales.

### **12.6 Entire Agreement**

This Agreement contains the entire agreement of the parties with respect to the matters provided for herein, and shall supersede any written instrument or oral agreement previously made or entered by them with respect to those matters.

### **12.7 Counterparts**

- (a) This Agreement may be executed in any number of counterparts which may be exchanged between the Parties by post, electronically or in person.
- (b) All counterparts, taken together, constitute one instrument.
- (c) A Party may execute this Agreement by signing any counterpart.

## **12.8 Intellectual Property**

- (a) The Premium Seat Holder may not use the name, logo or mark of the Company without the prior written consent of the Company.
- (b) Premium Seat Holder acknowledges that the image, likeness and/or name of Premium Seat Holder or Premium Seat Holder's guests may be used as part of any live or recorded video display or other transmission in any media of all or part of the event and in material disseminated by Company, its sponsors or the NBL.

## **12.9 Severability**

If the whole or any part of a provision of this Agreement is void, unenforceable or illegal in a jurisdiction it is severed for that jurisdiction. The remainder of this Agreement has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected. This section has no effect if the severance alters the basic nature of this Agreement or is contrary to public policy.

## **12.10 Waivers**

- (a) Waiver of any right arising from a breach of this Agreement or of any right, power, authority, discretion or remedy arising upon default under this Agreement must be in writing and signed by the Party granting the waiver.
- (b) A failure or delay in exercise, or partial exercise, of:
  - (i) a right arising from a breach of this Agreement; or
  - (ii) a right, power, authority, discretion or remedy created or arising upon default under this Agreementdoes not result in a waiver of that right, power, authority, discretion or remedy.
- (c) A Party is not entitled to rely on a delay in the exercise or non exercise of a right, power, authority, discretion or remedy arising from a breach of this Agreement or on a default under this Agreement as constituting a waiver of that right, power, authority, discretion or remedy.
- (d) This section may not itself be waived except by writing.

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