

Key considerations

Topic	Practical considerations		Legal principles
	For the sponsor	For the club / player / organisation	
<i>Drafting considerations</i>			
Time Periods	Whilst you may want to lock in a club or player for the long term, the longer a party (especially one with less bargaining power / no legal representation) is locked into dealing with you, the less likely it is to be reasonable or therefore enforceable.	Consider pushing back on overly-long time periods where they are not reasonable in the circumstances.	Rights of first refusal and matching rights restrict a party's liberty to carry on business in the manner of its choice. Such 'restraint of trade' provisions are invalid unless reasonable in the circumstances.
Part match	Do you want the option to match offers from third parties for only parts of the deal you have in place? E.g. only certain types of product. Consider express words to provide for these sorts of scenarios.	If the sponsor is comparatively small (in terms of product range), consider adding terms to restrict the existing sponsor's right to match only to third party offers with the ability to provide an equivalent range i.e. so you are free to seek out sponsors with a wider range of products.	When Rory McIlroy transferred to Nike in 2012, Oakley are reported to have brought a claim for breach of matching rights. But with Nike's range being much wider than Oakley's, it is not clear whether Oakley's offer to match was valid as there was no mechanism in the contract for calculating the matching financial terms required for a broader product endorsement (the case was settled).
Third party commercial terms to be matched	Be as clear as possible in specifying what terms you are required to match in a third party offer e.g. payment terms and duration. The more generic and vague the requirement to match, the easier it is for your counterparty to argue you haven't fully or properly matched.	The advantage of a vague or generic requirement to match (such as a requirement to match "all material terms") is that it may be easier down the line to argue that the sponsor has not fully or properly matched. However, if such argument results in court proceedings, you are very unlikely to recover all your costs of the proceedings even if the court rules in your favour. If your counterparty wants to define the terms to be matched, consider carefully what these should be.	Contractual disputes often arise from vague or unclear drafting of key terms. Clarity and precision in drafting key terms can reduce the likelihood of a commercial disagreement arising in the first place and/or resulting in costly litigation.
Recurring right to match	If you want to be able to match a further offer by a third party, consider including express words recognising this.	Consider time limiting any recurring rights to match in a contract.	This came up in the first judgment in the Sports Direct v Rangers FC saga . Sports Direct was able to show it had a recurring right to match as there was express recognition in one of the clauses that there could be multiple matching rights.

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Good faith	<p>Do you want your counterparty to act in a manner that is faithful to your bargain (in other words, act in 'good faith')?</p> <p>If so, it is recommended that you add express words into the contract. Consider whether there are particular events or scenarios that should be subject to a duty of good faith e.g. the negotiation of a renewal of the contract - or whether, given the collaborative and long-term nature of the sponsorship contract, a duty of good faith should apply to all dealings in relation to the contract.</p>		<p>A duty of good faith is implied into contracts known as 'relational contracts'. Whether a specific contract is relational will depend on the facts, but in the context of sponsorship agreements there are opposing views: in the fifth Sports Direct v Rangers FC judgment, the judge did not consider the contract was relational; by contrast, in New Balance v Liverpool FC, the parties readily agreed it was a relational contract. It is therefore better to add express reference to duties of good faith if that is what the parties want.</p>
Format	<p>Split out rights of first refusal and matching rights clauses into separate clauses/sub-clauses.</p> <p>This often makes things clearer and increases the chances of the remainder of the agreement being unaffected.</p>		<p>If a provision in a contract is found to be invalid, the contract only remains effective if you can 'sever' the invalid part. To be severable, the offending provision has to be capable of being removed without adding to the remaining wording. Sub-clauses are easier to remove in this way.</p>
Remedies	<p>To increase the options available to you if your counterparty is in breach, consider including an express clause recognising that you should be entitled to seek an injunction / specific performance to enforce the agreement or prevent breach. A cap on damages in an agreement may also assist in arguing for injunction / specific performance.</p>		<p>In recent cases, the presence of such express clauses have been factors in the courts granting equitable remedies such as an injunction.</p>
The price of including a matching clause	<p>Consider the commercials and value of the deal without any matching rights vs with matching rights. Would it be more financially advantageous to obtain a higher value deal for the duration of the contract but forgo a matching right?</p>	<p>If you would prefer to have greater freedom to contract with whoever you like at the end of a contract, consider whether you're willing to accept a lower amount for the sponsorship deal in return for no matching rights at all.</p>	

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<i>Exercise of matching rights considerations</i>			
Drafting of the third-party terms		If you would prefer to contract with a new sponsor rather than your existing one, consider specifying in greater detail the third-party terms your existing sponsor must match.	The existing sponsor will need to scrutinise the terms more carefully to assess whether in fact they can or want to match those specific terms. Your ability to use the drafting of the third-party terms to add hurdles to the incumbent's ability to match will depend on the drafting of the underlying matching clause (and potentially any terms regarding the duty to act in good faith). For an example of where the drafting of the third party terms was used to good effect for the club, see the recent New Balance v Liverpool FC case .
Notification of intention to match	If you wish to match a third-party offer, follow the steps set out in the contract to the letter. Does the clause require only notification of a willingness to match the relevant matchable terms or does it require the submission of terms? What is the timeframe for the notification? Does the notification need to be in writing?		In the third Sports Direct v Rangers FC judgment, all Sports Direct needed to do (having received notice from Rangers FC of a third party offer) was send a written notice of its willingness to match. This notice constituted acceptance, which resulted in a binding contract being formed upon the sending of the notice.
Third party agreement already entered into	If you find out your counterparty has already entered into an agreement relating to rights you have matching rights for, do not delay in seeking relief from the courts. In addition, identify or seek disclosure of documents that could show the counterparty's recognition of your matching rights.	It is risky to enter into an agreement with a third party before resolving the matching rights position. If your agreement with the third party recognises that a claim could be made by the existing sponsor (or there is other evidence showing you went into the third party agreement with "open eyes" about a claim from the existing sponsor), this could result in your agreement with the third party being unwound - and you could be on the hook for the third party's losses as a result.	Sports Direct obtained an injunction 'undoing' Rangers FC's agreement with a third party which had been concluded in breach of Sports Direct's matching rights in both the first judgment in the Sports Direct v Rangers FC saga and the fifth judgment .