

**The Honourable Melissa Horne MP, Minister for Consumer
Affairs, Gaming and Liquor Regulation for and on behalf of
the Crown in Right of the State of Victoria**

Keno (VIC) Pty Ltd

**Keno Related Agreement – *Gambling
Regulation Act 2003 (Vic)***

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Date 21/2/2022

Parties

The Honourable Melissa Horne MP, Minister for Consumer Affairs, Gaming and Liquor Regulation for and on behalf of the Crown in Right of the State of Victoria

Keno (VIC) Pty Ltd (ACN 105 341 366) of Level 21, Tower 2, 727 Collins Street, Melbourne VIC 3008 (**Licensee**)

Background

- A. The Minister has determined under sections 6A.3.7 and 6A.3.8 of the Act to grant the application and issue the Licence to the Licensee.
- B. In order to better facilitate the arrangements between the Minister and the Licensee in relation to certain matters relating to the Conduct of Approved Keno Games under the Licence, the Minister enters into this Related Agreement with the Licensee under section 6A.3.10 of the Act.
- C. The parties have agreed on the commercial arrangements which are set out in the terms of this Related Agreement.

Agreed terms

1. Definitions and Interpretation

Words not otherwise defined in this Related Agreement have the same meaning as in the Act, or if defined in the Licence the same meaning as in the Licence, except where a contrary intention appears.

1.1 Definitions

Account Manager means an authorised deposit-taking institution under the *Banking Act 1959 (Cth)* approved by the Commission to hold an Approved Account in accordance with **clause 8**.

Additional Financial Statements has the meaning given in **clause 9.5**.

Agreement Date means the date specified in **Schedule 1** or, if no such date is specified, the date the last party signs this Related Agreement.

Alternative Arrangement has the meaning given in **clause 22.2(a)(iv)**.

Annual Financial Statements has the meaning given in **clause 9.4**.

Approved Account(s) means an account or accounts in the name of the Licensee held with an Account Manager.

Assistant Operator means the Agent appointed by the Licensee as, or otherwise deemed to be, an Assistant Operator under **clause 23**.

Associate has the meaning given in section 1.4 of the Act.

Australian Accounting Standards means the accounting standards issued by the Australian Accounting Standards Board.

Australian Auditing Standards means the auditing standards issued by the Australian Auditing and Assurance Standards Board.

Authorisation includes a consent, approval, licence, permit, registration, resolution, direction, declaration and exemption necessary for the Conduct of Approved Keno Games.

Claim includes any and all liabilities, actions, claims, demands, Proceedings, cause of action, damages, debts, verdicts and judgements (including by way of contribution or indemnity) whatsoever, however it arises and whether it is present or future, fixed or unascertained, actual or contingent, at Law.

Code of Practice means a code of practice as described in, and approved under, the *Privacy and Data Protection Act 2014 (Vic)*.

Commission's Technical Standards means the standards of the Commission in relation to the Keno System as made and published by the Commission from time to time and in accordance with section 10.1.5A of the Act.

Continuing Keno Games has the meaning in **clause 14.1**.

Contractor means a person engaged by the Licensee under clause 7.1 of the Licence to assist the Licensee in the Conduct of Approved Keno Games.

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

Cure Period has the meaning given in **clause 22.2(a)(iii)**.

Cure Plan has the meaning given in **clause 22.3(b)(i)**.

Data means the data referred to in **clauses 11.1(a) and 11.1(b)**.

Dispute Notice means a notice issued in accordance with **clause 25.2**.

Distribution Approach means the method of distributing and selling tickets or entries in an Approved Keno Game, including the nature and general location of Points of Sale.

Encumber or Encumbrance means any mortgage, pledge, lien, hypothecation, charge or other form of security interest or interest in the nature of a security interest.

Failure has the meaning given in **clause 22.2(a)**.

Failure Notice has the meaning given in **clause 22.2(a)**.

Financial Default means the occurrence of any of the following events in relation to the Licensee:

- (a) an application (which is not withdrawn or dismissed within 5 Business Days of the making of that application) is made to a court for an order, or an order is made, that the Licensee be wound up;
- (b) an application (which is not withdrawn or dismissed within 5 Business Days of the making of that application) is made to a court for an order appointing a liquidator or provisional liquidator or a liquidator or provisional liquidator is appointed in respect of the Licensee;
- (c) the Licensee resolves to wind itself up, or otherwise dissolve itself, or gives notice of intention to do so (or the Licensee's creditors resolve, or give notice of intention, to wind the Licensee up), except to reconstruct or amalgamate while solvent on terms approved by the Commission, or is otherwise wound up or dissolved;
- (d) the Licensee is or states in writing that it is insolvent or unable to pay its debts when they fall due;
- (e) the Licensee is deemed to be insolvent or unable to pay its debts when they fall due under any Law;
- (f) as a result of the operation of section 459F(1) of the Corporations Act, the Licensee is taken to have failed to comply with a statutory demand;
- (g) the Licensee suspends payment of its debts;
- (h) a resolution is passed for the reduction of capital of the Licensee or notice of intention to propose such a resolution is given, without the prior written consent of the Commission;
- (i) the Licensee enters into, or resolves (or its creditors or members resolve) to enter into, or an order is made to the effect that the Licensee is subject to, a scheme of arrangement, deed of company arrangement or composition or arrangement with, or assignment for the benefit of, another person (including all or any classes of its creditors), or it proposes (or its directors, creditors or members resolve in favour of) a re-organisation, moratorium or other administration involving all or any of the Licensee's creditors, or a meeting is convened for the purpose of proposing or implementing any of the matters referred to in this sub-paragraph;
- (j) a moratorium of any debts of the Licensee, or an official assignment or a composition or an arrangement (formal or informal) with a person's creditors or any similar proceeding or arrangement by which the assets of the Licensee are subjected conditionally or unconditionally to the control of the Licensee's creditors or a trustee, is in effect, is ordered, entered into or agreed to, or is applied for (and the application is not withdrawn or dismissed within 5 Business Days);
- (k) the Licensee takes any step to obtain protection or is granted protection from its creditors under any applicable legislation or an administrator (including an administrator under Part 5.3A of the Corporations Act) is appointed to the Licensee;

- (l) a controller (as defined in section 9 of the Corporations Act), receiver, manager, receiver and manager, trustee, administrator or similar officer is appointed (whether or not by a court) in respect of the Licensee or any property of the Licensee, or a mortgagee is in possession of the Licensee or any property of the Licensee;
- (m) any execution (including any writ or warrant of execution), garnishee order, Mareva injunction or similar order, attachment, distress or any other process is made, levied or issued against or in relation to the Licensee or any asset of the Licensee; or
- (n) anything analogous or having a substantially similar effect to any of the events specified in the paragraphs above happens under the law of any applicable jurisdiction (even if the law is of a country outside of Australia).

Financial Year means the financial year being the period commencing on 1 July of any year and ending on 30 June of the subsequent year.

FME Claim Notice has the meaning given in **clause 21.1(b)**.

Force Majeure Event means the following events:

- (a) acts of God, including storms, lightning, cyclones, earthquakes, natural disasters, actions of the elements, floods, landslides and mudslides;
- (b) civil riots, rebellions, revolutions, terrorism, civil commotion, insurrections, military and usurped power and war (declared or undeclared);
- (c) fire or explosion caused by acts of God as referred to in paragraph (a); or
- (d) epidemic, pandemic or public health emergency, or any resulting governmental action including mandatory business or workplace closures, full or partial lockdowns of affected areas, quarantines, border closures and travel restrictions,

the consequences of which are beyond the control of the Licensee and could not have been prevented, overcome, remedied or mitigated by the exercise by the Licensee of a standard of care and diligence consistent with that of a prudent and competent person under the circumstances and as a result of which the Licensee breaches or is prevented from or delayed in performing or complying with any of its obligations under this Related Agreement or the Licence.

Funds has the meaning given in **clause 8.3(a)**.

Get Up means any and all:

- (a) designs;
- (b) logos;
- (c) trade marks (whether registered or not);
- (d) ticket layouts;
- (e) ticket formats;
- (f) graphics;

(g) fonts; or

(h) mascots,

associated with Approved Keno Games conducted in the State of Victoria pursuant to the Licence at any time during the Term (whether or not in existence as at the Agreement Date), but excludes:

(i) copyright works and other matter the subject of copyright;

(ii) designs;

(iii) logos;

(iv) trade marks (whether registered or not);

(v) graphics;

(vi) fonts; or

(vii) mascots,

that are used by the Licensee during the Term in relation to:

(viii) its corporate branding; or

(ix) its activities across a range of products and services,

and which are not associated directly with Approved Keno Games.

Implementation Completion means the completion of all activities and things required under the Approved Implementation Plan.

Incoming Licensee means, in respect of a Keno Transition, another person issued a licence to Conduct Continuing Keno Games (including a Temporary Licence), by the Minister in accordance with the Act, who will Conduct Keno Games:

(a) at any time after the Term; and

(b) from the Transition Date.

Indemnified Claims has the meaning given in **clause 18.4(a)**.

Indemnified Parties has the meaning given in **clause 18.4(a)**.

Information means a description of any data, file format, related information or material that is necessary to facilitate the transfer of any necessary data from the Licensee's Keno System to an Incoming Licensee's system.

Information Privacy Principles means the information privacy principles set out in Schedule 1 of the *Privacy and Data Protection Act 2014 (Vic)*.

Intellectual Property Rights means rights in respect of copyright, trade marks, designs, patents, moral rights, confidential information and trade, business or company names, or any rights to the registration of such rights and any applications to register such rights.

IP Indemnified Parties has the meaning given in **clause 16.4(a)**.

IP Sub-Licence Agreement means an agreement under which the State grants a sub-licence to a New Licensee in accordance with the State IP Licence.

Keno Asset means an asset or undertaking of the Licensee that is connected with the Conduct of Approved Keno Games, including all systems (including a Keno System), accounts, processes and Records.

Keno Transition means the transition process under which the Conduct of Continuing Keno Games will be transitioned from the Licensee to one or more Incoming Licensee(s).

Key Milestones means the dates set out in the Approved Implementation Plan which are critical in order to ensure that the Licensee can Conduct Approved Keno Games as required under **clause 6.7**.

Licence means the licence to Conduct Approved Keno Games issued by the Minister to the Licensee on or about the date of this Related Agreement.

Licensed IP means all Intellectual Property Rights subsisting in:

- (a) the Keno Rules; and
- (b) the Get Up,

whether subsisting at the Agreement Date or at any time during the Term.

Licensee's Representative means the representative of the Licensee appointed in accordance with **clause 5.1**, as replaced from time to time in accordance with **clause 5.1**.

Linked Jackpot Arrangement means an arrangement between the Licensee and a licensee in another jurisdiction approved by the Minister in accordance with section 6A.1.3 of the Act.

Linked Jackpot Arrangement Agreement means an agreement entered into by the Licensee and a licensee in another jurisdiction in relation to a Linked Jackpot Arrangement.

Moral Rights means any "moral right" within the meaning of the *Copyright Act 1968* (Cth).

New Licensee means another person issued a licence by the Minister in accordance with the Act, to Conduct Keno Games (including a Temporary Licence) at any time after the Term (this also includes an Incoming Licensee).

New Owner has the meaning given in **clause 16.3(m)**.

Notice has the meaning given in **clause 27(a)**.

Offer has the meaning given in **clause 16.3(k)(i)**.

Parent Guarantee and Indemnity has the meaning given in **clause 4(a)**.

Performance Standards means the minimum standards set out in **Schedule 2**.

Performance Standards Notice has the meaning given in **clause 3.4(a)**.

Personal Information means information or an opinion (including information or an opinion forming part of a database), that is recorded in any form and whether true or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

Point of Sale means a location where tickets or other forms of entry in Approved Keno Game are accepted or sold. If the entries to an Approved Keno Game are issued, made or sold through Interactive Distribution Methods, then the Point of Sale is the point at which the Player is able to purchase the ticket or entry and includes a website, display or any other interface that is presented to the Player.

Privacy & Information Commissioners means the Privacy and Data Protection Deputy Commissioner appointed under the *Privacy and Data Protection Act 2014 (Vic)*; the Information Commissioner and the Public Access Deputy Commissioner appointed under the *Freedom of Information Act 1982 (Vic)*; and the Australian Information Commissioner appointed under the *Privacy Act 1988 (Cth)*.

Privacy Laws means the *Privacy Act 1988 (Cth)*, the *Privacy and Data Protection Act 2014 (Vic)* and all other Australian Laws which relate to the protection of Personal Information.

Prizes Fund means the fund the Licensee is required to establish under section 6A.4.1 of the Act.

Proceedings means any litigation, arbitration, tax claim, dispute, investigation or administrative proceeding.

Protective Data Security Standard means any standard issued under Part 4 of the *Privacy and Data Protection Act 2014 (Vic)*.

Records means all records, materials, books, accounts, reports, statements and documents necessary or appropriate for, or in any way relating to the Conduct of, or the provision of the services in support of the Conduct of, Approved Keno Games, including:

- (a) the Licensee's copy of the agreements it has with Agents, Contractors, and any other persons relating to the Conduct of Approved Keno Games;
- (b) accounts and records of the affairs of the Licensee and such other records as sufficiently explain the financial operations and financial position of the Licensee;
- (c) all records, books, accounts, statements, recorded information and documents used to prepare any returns, financial statements, agreements, accounts, particulars, reports, declarations or other documents the Licensee is required to provide under the Act, the Regulations, the Licence or this Related Agreement;
- (d) all recorded information and documents used to Conduct Approved Keno Games; and
- (e) all records and statements relating to the Approved Accounts.

Report means a report that the Licensee is required to prepare under clauses 10.1 and 10.2.

State IP Licence has the meaning given in clause 16.3(a).

State's Representative means the person appointed from time to time under **clause 5.2**.

Step-In Event means the occurrence of any of the following:

- (a) the Minister receives a recommendation from the Commission under section 6A.3.27(3)(b) of the Act to take disciplinary action against the Licensee, which recommendation must include cancellation or suspension of the Licence;
- (b) the Licensee or an executive officer of the Licensee has been charged with an offence entitling the Minister to exercise his or her discretion under section 6A.3.29 of the Act;
- (c) the Minister exercises his or her discretion under **clause 22.1, 22.2(b) or 22.5(a)**; or
- (d) the Licensee gives a Notice of its intention to surrender the Licence under section 6A.3.24 of the Act.

Step-In Notice has the meaning given in **clause 23.1(a)**.

Supplier has the meaning given in **clause 26.3**.

Suspension Notice has the meaning given in **clause 21.1(c)**.

Suspension Period has the meaning given in **clause 21.1(c)(iii)**.

Tax and Taxes includes any tax, levy, impost, deduction, charge, rate, compulsory loan, withholding or duty by whatever name called levied, imposed or assessed under any Law in Australia or elsewhere including income tax, stamp duty, taxes on the supply of goods and services (including GST), rates, land tax, water and municipal rates, excise duties and customs duties (including other taxes whether incurred by, payable by return or passed on to another person) together with any interest, penalty, charge, fine or fee or other amount of any kind assessed, charged or imposed on or in respect of them and "Taxation" will be construed accordingly.

Temporary Licence means a licence issued by the Minister in accordance with section 6A.3.31 of the Act.

Temporary Licensee means a person appointed by the Minister and issued with a Temporary Licence in accordance with section 6A.3.31 of the Act.

Term means the term of the Licence as set out in **clause 2.2** of the Licence.

Third Party Claims has the meaning given in **clause 16.4(a)**.

Transition Date means the date on which an Incoming Licensee takes full responsibility for the Conduct of one or more Continuing Keno Games.

Transition In Period means the period commencing on the Agreement Date and ending on the Licence Commencement Date.

Transition Objectives means the objectives set out in **clause 14.2**

Transition Out Period means the period:

- (a) commencing the earlier of:

- (i) 1 year prior to the expiry of the Licence; or
 - (ii) the date upon which the Licence is surrendered or cancelled; and
- (b) ending on the earlier of:
- (i) 6 months after the expiry of the Licence; or
 - (ii) 12 months after the date upon which the Licence is surrendered or cancelled, provided that an Incoming Licensee is licensed to operate Continuing Keno Games within 6 months of the Transition Out Period commencing.

Transition Plan refers to the plan produced by the Licensee that describes how a proposed Keno Transition will be undertaken, as amended and approved by the State's Representative under **clause 14.5** from time to time.

Venue Items has the meaning given in **Schedule 2**.

1.2 Interpretation

- (a) A provision of this Related Agreement must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of the Related Agreement or the inclusion of the provision in the Related Agreement.
- (b) If an act falls to be done on a day which is not a Business Day, it must (except where an act is expressly required to be performed on a day that is not a Business Day) be done instead on or before the next Business Day.
- (c) In this Related Agreement, headings and background are for convenience only and do not affect interpretation. Except to the extent that the context otherwise requires or except as expressly stated otherwise:
 - (i) references to this Related Agreement include references to all the schedules and annexures in this Related Agreement;
 - (ii) references to parties, clauses, paragraphs, schedules, or annexures in this Related Agreement are references to parties, clauses, paragraphs, schedules and annexures of and to this Related Agreement;
 - (iii) references to any document or agreement (including this Related Agreement) include reference to such document or agreement as amended, novated, replaced or supplemented from time to time;
 - (iv) references to any statute, regulation, by-law or guideline or to any provision of any statute, regulation, by-law or guideline include any modification or re-enactment of, or any provision substituted for, and (in the case of a statute) all statutory and subordinate instruments issued under, such statute, regulation, by-law or guideline or such provision;
 - (v) words in the singular include the plural and vice versa;
 - (vi) words denoting individuals or persons includes a corporation, partnership, joint venture, unincorporated association and a government or statutory body or authority;

- (vii) words denoting any gender includes all genders;
- (viii) references to any party or person include that party's or person's successor or permitted assigns;
- (ix) "writing" and cognate expressions include all means of reproducing words in tangible and permanently visible form;
- (x) where any word or phrase is defined its other grammatical forms have corresponding meanings;
- (xi) to the extent used in this Related Agreement, all accounting terms used in this Related Agreement will have the meaning given to those terms under, and all calculations and determinations as to financial matters will be made in accordance with, accounting principles and practices generally accepted in Australia from time to time and consistently applied;
- (xii) "\$" or "dollars" is a reference to the lawful currency of Australia;
- (xiii) the terms "including" and "include" mean "including" or "include" (as applicable) without limitation;
- (xiv) where an obligation or liability is imposed on the Licensee under this Related Agreement, that obligation or liability is not to be limited or affected by an obligation or liability imposed in another provision of this Related Agreement unless otherwise expressly stated;
- (xv) where a right or remedy is conferred on the Minister or Commission under this Related Agreement, that right or remedy is in addition to, and not in substitution of, any other right or remedy conferred on the Minister or Commission under the Act, the Regulations or the Licence or otherwise according to Law;
- (xvi) the term "may" when used in the context of the power or right exercisable by the Minister or Commission means that the Minister or Commission (as applicable) can exercise that right or power in his or her or its absolute and unfettered discretion and the Minister or Commission (as applicable) has no obligation to the Licensee to do so;
- (xvii) where in this Related Agreement the Minister or Commission may (or it is otherwise contemplated that the Minister or Commission can) give consent or approval or must either give consent or approval or do something else, the Minister or Commission (as applicable) has an absolute and unfettered discretion as to whether he or she or it gives that consent or approval and the Minister or Commission (as applicable) has no obligation to the Licensee to do so;
- (xviii) a reference to "terminate" in relation to a document means terminate, rescind, repudiate, release, cancel, avoid, accept termination, rescission, repudiation, cancellation of, or otherwise bring to an end, that document (other than through full and proper performance under that document in accordance with its terms); and

- (xix) a reference to “suspend” means suspend or otherwise cease to perform.
- (d) If a Government Agency referred to in this Related Agreement:
 - (i) is reconstituted, renamed or replaced, or if its power or functions are transferred to another entity, this Related Agreement is deemed to refer to that new entity; or
 - (ii) ceases to exist, this Related Agreement is deemed to refer to that entity which serves substantially the same purpose or object as the former entity.

1.3 Unfettered discretion

- (a) Nothing in this Related Agreement will in any way unlawfully restrict or otherwise unlawfully affect the unfettered discretion of the State or the Minister to exercise its or his or her executive powers or any of its or his or her functions or powers pursuant to any legislation.
- (b) Without limiting **clause 1.3(a)**, anything which the State or the Minister does, fails to do or purports to do pursuant to its or his or her executive powers or its or his or her functions and powers under any legislation will not be deemed to be an act or omission by the State or the Minister (as applicable) under this Related Agreement.
- (c) Notwithstanding anything contained or implied in this Related Agreement to the contrary, the parties expressly agree that each of the State and the Minister is not obliged in performing any of its or his or her duties and obligations under this Related Agreement to exercise a power, function or duty which is granted to or within the responsibility of a Government Agency in the proper exercise and performance of its legal duties and functions.
- (d) If there is any statement in this Related Agreement that the State or the Minister will:
 - (i) act “reasonably”;
 - (ii) use “reasonable endeavours”;
 - (iii) take “reasonable steps”;
 - (iv) provide “reasonable assistance”; or
 - (v) otherwise act in a reasonable manner,

in relation to an outcome, it means that the State or the Minister (as applicable) will take steps to bring about the relevant outcome so far as it or he or she is reasonably able to do so, having regard to its or his or her resources and other responsibilities, but:

- (vi) each of the State and the Minister cannot guarantee the relevant outcome and no breach of the Related Agreement will occur as a consequence of the outcome not occurring; and
- (vii) each of the State and the Minister does not agree to:

- (A) interfere with or influence the exercise of any statutory power or discretion by any body, including a Government Agency;
 - (B) exercise a power or direction or otherwise act in a manner that promotes the objectives and expected outcomes of this Related Agreement if the State or the Minister (as applicable) regards that exercise as not in the public interest;
 - (C) change, develop or implement policy or legislation in the future in a manner that is only consistent with the objectives and expected outcomes of this Related Agreement; or
 - (D) exercise a power or discretion or otherwise act in a manner that the State or the Minister (as applicable) regards as not being in the public interest.
- (e) Any term of this Related Agreement which does or purports (in whole or part) to bind the State or the Minister to exercise any of its or his or her executive powers or its or his or her functions or powers pursuant to any legislation must be interpreted subject to this **clause 1.3**.

1.4 Licence and Act to prevail

In the interpretation of this Related Agreement, to the extent that there is any inconsistency between the provisions of this Related Agreement and the provisions of the Licence or the Act and any Regulations, then the following descending order of precedence will apply:

- (a) the Act and any Regulations;
- (b) any direction given under the Act;
- (c) the Licence;
- (d) this Related Agreement;
- (e) the Agreements (other than this Related Agreement); and
- (f) any standards made under the Act.

1.5 Licence conditions

The conditions in clauses 4 (Approved Keno Games), 6 (Compliance) and 7 (Agents and Contractors) of the Licence are deemed to also be contractual covenants under this Related Agreement given by the Licensee in favour of the Minister.

2. Agreement

2.1 Commencement

This Related Agreement commences on the Agreement Date and will continue for the Term and such further period as is necessary for the Licensee to comply with and discharge all of its obligations under this Related Agreement.

2.2 Variation

This Related Agreement may be amended or varied, but any amendment or variation to this Related Agreement is not effective unless it is in writing and signed by the parties.

2.3 Conduct of Licensee

The Licensee must at all times act reasonably and in good faith in its dealings with:

- (a) the State (including the Minister and the Commission); and
- (b) Agents and Contractors,

in connection with this Related Agreement.

3. Keno System

3.1 Keno System operation

- (a) The Licensee must ensure (and must procure that its Agents and Contractors ensure) that the Keno System in use is approved by the Commission and operates only as approved and in accordance with the Commission's Technical Standards and any other standards, specifications or conditions determined by the Commission from time to time.
- (b) The Licensee must advise the Commission of the location of the Keno System throughout the Term and, upon receipt of a request from the Commission, provide the Commission with access to the Keno System.
- (c) The Licensee warrants that the Keno System is fit for the purpose of the Conduct of Approved Keno Games in accordance with the Commission's Technical Standards.

3.2 Keno System review

- (a) The Licensee must, before the end of each 5 year period commencing on the anniversary of the Licence Commencement Date (or such other period as approved by the Commission):
 - (i) undertake a review of the Keno System against industry standards and best practices in relation to comparable software, hardware, communications links and infrastructure; and
 - (ii) submit to the Commission a report on the review which provides details of any proposed changes to, or development of, the Keno System required to bring the Keno System into line with such industry standards and best practices, including a plan for the execution of the proposed changes to or development of the Keno System.
- (b) The Commission may provide to the Licensee comments on the report and the Licensee must consider and respond to any such comments.
- (c) The Commission and the Licensee must promptly discuss any disputes or differences in relation to the report and must negotiate in good faith any

amendment to the report or the plan for the execution of the proposed changes to or development of the Keno System.

- (d) The Licensee must act in accordance with the agreed report and plan for the execution of the proposed changes to or development of the Keno System.

3.3 Performance Standards

- (a) The Licensee must comply with the Performance Standards in **Schedule 2** throughout the Term.
- (b) The Minister and the Licensee may expressly agree in writing as to any matters in relation to the interpretation of, and reporting under **clause 10.1** on, the Performance Standards.

3.4 Amended, replaced or supplemented Performance Standards

- (a) The Minister may give the Licensee a notice in writing specifying that the Minister intends to amend, replace or supplement the Performance Standards (**Performance Standards Notice**).
- (b) Within 10 Business Days after receiving a Performance Standards Notice, the Licensee may make representations to the Minister as to:
 - (i) the Licensee's recommendation as to the necessity for and the terms of any amended, replaced or supplemented Performance Standards; and
 - (ii) (if the Licensee considers it appropriate) why the Minister should not exercise his or her discretion under **clause 3.4(d)**.
- (c) The Minister, by written notice to the Licensee, may revoke a Performance Standards Notice.
- (d) If:
 - (i) the Licensee fails to make representations to the Minister within 10 Business Days after receiving a Performance Standards Notice; or
 - (ii) the Minister, after taking into account any representations by the Licensee, reasonably considers that the exercise of his or her discretion to amend, replace or supplement the Performance Standards is appropriate action for the Minister to take having regard to the public interest,

then the Minister may, no less than 10 Business Days after the date of the Performance Standards Notice, amend, replace or supplement the Performance Standards.

- (e) The Licensee will not be obliged to meet any amended, replaced or supplemented Performance Standards until the date that is 40 Business Days after the date of the amended, replaced or supplemented Performance Standards (or such later date as is specified by the Minister in the notice).

4. Parent Guarantee and Indemnity

- (a) On or before the Agreement Date, the Licensee must provide to the Minister an irrevocable guarantee and indemnity in favour of the State in respect of all obligations of the Licensee under the Licence and this Related Agreement from the Licensee's ultimate parent company in the form set out in **Schedule 3** or otherwise on terms acceptable to the Minister (**Parent Guarantee and Indemnity**).
- (b) If the Licensee's ultimate parent company is incorporated outside of Australia, the Licensee must provide to the Minister, in addition to the Parent Guarantee and Indemnity, a legal opinion:
 - (i) from lawyers for the Licensee's ultimate parent company, authorised to practice in the place of incorporation of the Licensee's ultimate parent company:
 - (A) supporting, and in respect of, the Parent Guarantee and Indemnity; and
 - (B) stating that the Parent Guarantee and Indemnity is binding and enforceable against the Licensee's ultimate parent company;
 - (ii) in favour of the State; and
 - (iii) which is otherwise in a form reasonably satisfactory to the Minister.

5. Representatives

5.1 Licensee's Representative

- (a) The Licensee must ensure that at all times a natural person is appointed as its representative for all purposes under the Act, the Licence and this Related Agreement. At the Agreement Date, the Licensee has appointed the person named, or the person holding the position nominated, in **Schedule 1**.
- (b) Any communications with or information given to the Licensee's Representative by or on behalf of the Minister will be deemed to be made or given to the Licensee. The address for service on the Licensee's Representative is the same as the address for service of Notices on the Licensee under **clause 27(b)**.
- (c) The Licensee may revoke the authority or appointment of the Licensee's Representative at any time by giving notice to the Minister provided that it appoints another natural person as an alternative or substitute Licensee's Representative by giving notice to the Minister.

5.2 State's Representative

The Minister has appointed the person named, or the person holding the position nominated, in **Schedule 1**, as the representative of the State for the purposes of this Related Agreement (**State's Representative**). The Minister may change the appointment of the State's Representative by written notice to the Licensee. Subject to the terms of the written appointment, the State's Representative has the capacity to:

- (a) receive and to give notices on behalf of the State and the Minister under this Related Agreement; and
- (b) do all such things and discharge all functions as are expressed to be done or discharged by the State's Representative under this Related Agreement.

6. Development and Implementation

6.1 Development of Implementation Plan

- (a) The Licensee must develop a plan, which details the action the Licensee must arrange or undertake during the Transition In Period for the implementation of Approved Keno Games by the Licence Commencement Date, or such later date as approved by the Minister in writing (**Implementation Plan**).
- (b) The Implementation Plan must include the Preparatory Action authorised by the Licence.
- (c) In the Implementation Plan the Licensee must demonstrate, to the reasonable satisfaction of the State's Representative, that the Licensee has (or will have by the end of the Transition In Period):
 - (i) conducted a live trial of the Keno System as required by the State's Representative, including demonstration of Interactive Distribution Methods;
 - (ii) access to all relevant Intellectual Property Rights and information;
 - (iii) developed and implemented the Keno System;
 - (iv) financial arrangements and resources;
 - (v) staffing and related resources;
 - (vi) distribution processes and networks;
 - (vii) arrangements with Agents and Contractors;
 - (viii) developed and implemented stakeholder management and communications plans;
 - (ix) developed and implemented business support arrangements;
 - (x) developed and implemented a service strategy;
 - (xi) a monitoring and assurance system (which will be monitored by the Commission) regarding the implementation of, and ongoing compliance with, the Licensee's Responsible Gambling Code of Conduct;
 - (xii) developed and complied with an implementation budget; and
 - (xiii) plans and milestones to ensure the efficient, smooth, seamless and uninterrupted transition to the Licensee of the conduct of Keno Games that will be Approved Keno Games and the commencement of other Approved Keno Games,

that are necessary and appropriate to Conduct Approved Keno Games on and from the Licence Commencement Date (or such later date as approved by the Minister in writing).

- (d) The Licensee must, in the Implementation Plan, set out the Key Milestones for:
- (i) the development and establishment of:
 - (A) all Intellectual Property Rights, Keno Systems and information;
 - (B) financial arrangements and resources;
 - (C) staffing and related resources;
 - (D) distribution processes and networks;
 - (E) arrangements with Agents and Contractors;
 - (F) stakeholder management and communications plans;
 - (G) business support arrangements;
 - (H) a service strategy;
 - (I) a monitoring and assurance system regarding the implementation of, and ongoing compliance with, the Licensee's Responsible Gambling Code of Conduct;
 - (J) an implementation budget; and
 - (K) plans and milestones to ensure the efficient, smooth, seamless and uninterrupted transition to the Licensee of the conduct of Keno Games that will be Approved Keno Games and the commencement of other Approved Keno Games;
 - (ii) the approval by the Commission of a Keno System; and
 - (iii) the Keno Rules made, or to be made, and consented to or otherwise not disallowed by the Commission, in accordance with section 6A.2.11 of the Act.
- (e) The State's Representative will act reasonably in exercising its powers and rights under this **clause 6** and will do all things reasonably necessary to facilitate compliance by the Licensee with this **clause 6**.
- (f) The State's Representative may release the Licensee from any or all of the obligations in **clauses 6.1 to 6.6** if the State's Representative is satisfied that an Implementation Plan, in part or in its entirety, is not required or alternative arrangements are available to facilitate the Licensee's ability to comply with **clause 6.7**.

6.2 Submission of Implementation Plan to the State's Representative

- (a) The Licensee must as soon as possible, but no later than 1 month after the Agreement Date (or such later date as approved by the State's Representative), submit the detailed Implementation Plan to the State's Representative for its approval.
- (b) Without limiting the obligations on the Licensee under **clause 6.1**, the Implementation Plan may contemplate sub-plans which contain further details regarding the activities (and the timeframes and milestones for those activities) that are necessary and appropriate to Conduct Approved Keno Games on and from the Licence Commencement Date (or such later date as approved by the Minister in writing). The Licensee must submit any such sub-plans to the State's Representative for approval in accordance with the timeframe established under the Implementation Plan.
- (c) The Licensee must ensure that the Implementation Plan complies with the requirements of this **clause 6**.
- (d) The Licensee must not proceed with the Implementation Plan unless it has been approved by the State's Representative under **clause 6.3**.

6.3 Approval of Implementation Plan

- (a) Upon the receipt of a proposed Implementation Plan (or any sub-plans contemplated by the Implementation Plan), the State's Representative may:
 - (i) approve the Implementation Plan (or sub-plan);
 - (ii) require an amendment to the Implementation Plan (including any amendment to the Key Milestones) (or sub-plan); or
 - (iii) reject the Implementation Plan (or sub-plan).
- (b) The State's Representative will:
 - (i) consider and provide any feedback on the proposed Implementation Plan (or any sub-plan) in a timely fashion; and
 - (ii) in all events, notify the Licensee of its decision and, if the Implementation Plan (or sub-plan) is rejected or required to be amended, provide reasons for the decision, within 1 month of receiving the Implementation Plan (or sub-plan).
- (c) If the State's Representative requires any amendments to, or rejects the Implementation Plan (or any sub-plan), the Licensee may make a further submission to the State's Representative within 5 Business Days of the notification as to why the amendment should not be made or the Implementation Plan (or sub-plan) not be rejected.
- (d) The State's Representative and the Licensee must promptly discuss any disputes or differences in relation to the Implementation Plan (or any sub-plan), and must negotiate in good faith to agree on the Implementation Plan (or sub-plan).
- (e) If the State's Representative and the Licensee are unable to resolve any disputes or differences in relation to the Implementation Plan (or any

sub-plan) so that the Implementation Plan may be approved by the State's Representative within 3 months after the Agreement Date (or such later date approved by the State's Representative), then the Approved Implementation Plan will be as determined by the State's Representative.

6.4 Development in accordance with Approved Implementation Plan

- (a) The Licensee must act in accordance with the Approved Implementation Plan.
- (b) On written request by the Licensee, the State's Representative may, in his or her absolute discretion, amend or waive a requirement specified in the Approved Implementation Plan (provided that any request to extend a Key Milestone must be made in accordance with **clause 6.4(d)**).
- (c) The Licensee must meet all Key Milestones specified in the Approved Implementation Plan.
- (d) If the Licensee reasonably suspects that any Key Milestones will not be met, then the Licensee must notify the State's Representative immediately, detailing:
 - (i) the expected delay;
 - (ii) the reasons for the delay; and
 - (iii) any proposals to rectify the situation.
- (e) Upon receipt of a notice under **clause 6.4(d)**, the State's Representative may, in his or her absolute discretion, extend the Key Milestones.
- (f) A failure to meet any Key Milestones specified in the Approved Implementation Plan is deemed to be a failure by the Licensee to perform or observe a covenant or obligation in this Related Agreement for the purposes of **clause 22.2**.

6.5 Monthly report

The Licensee must provide the State's Representative with a monthly report from the date of approval of the Implementation Plan until Implementation Completion, detailing:

- (a) the current progress as assessed in accordance with the Approved Implementation Plan; and
- (b) the nature and amount of work that remains to be completed and the timelines for completing that work.

6.6 Certification of Implementation Completion

Upon Implementation Completion being achieved, the Licensee must promptly provide to the State's Representative a certificate from its chief executive officer (or equivalent position), in a form acceptable to the State's Representative, certifying that Implementation Completion has been achieved.

6.7 Readiness to Conduct Approved Keno Games

Despite the Approved Implementation Plan or any other provisions, the Licensee:

- (a) must have all the Keno Systems, processes (including distribution processes), staff, finance and any other things as are necessary for the Conduct of Approved Keno Games established and, to the extent authorised under the Licence, operating effectively, at least one month prior to the Licence Commencement Date (or such later date as approved by the State's Representative); and
- (b) must be able to Conduct each Approved Keno Game in accordance with the requirements for that Approved Keno Game (including the Keno Rules) on and from the Licence Commencement Date (or such later date as approved by the Minister in writing).

6.8 Licensee's obligation to facilitate transition-in

Without limiting any other sub-clause of this **clause 6**, the Licensee must:

- (a) ensure and facilitate (including by entering into arrangements and taking all reasonable action to enforce such arrangements to procure that its Agents and Contractors and any other person under the Licensee's direction or control, ensure and facilitate) the efficient, smooth, seamless and uninterrupted transition of the conduct of Keno Games that will be Approved Keno Games and the Conduct of other Approved Keno Games to the Licensee;
- (b) take any action or undertake any processes which the State requires to facilitate an efficient, smooth, seamless and uninterrupted transition of the Conduct of Approved Keno Games to the Licensee (including taking any action or undertaking any processes which the State requires either in the alternative or in addition to the obligations on the Licensee under this **clause 6**); and
- (c) act reasonably and in good faith towards the State during the Transition In Period.

7. Conduct of Approved Keno Games

7.1 Availability of funds

- (a) On written request from the Commission, the Licensee must demonstrate, to the reasonable satisfaction of the Commission that:
 - (i) not less than the prescribed percentage under the Act (which as at the Agreement Date is 75% under section 6A.4.1 of the Act) of the total amount received by the Licensee for all Approved Keno Games is paid by the Licensee to the Prizes Fund;
 - (ii) the Licensee:
 - (A) is able to pay all prizes to winning Players of Approved Keno Games in accordance with the Keno Rules;

- (B) is able to refund all Approved Keno Game entries in respect of any Approved Keno Game that is not drawn or determined;
 - (C) has accounted for and retained an amount equal to the sum of all prizes won that have not been claimed by the Players and is able to pay all prizes won that might be subsequently claimed and otherwise deal with such unclaimed prizes in accordance with the Act and the *Unclaimed Money Act 2008 (Vic)* as applicable; and
 - (D) is able to pay any Premium Payments as and when payment falls due.
- (b) The Licensee must not allow and must ensure that there are not any Encumbrances on the whole or any part of the Prizes Fund.
 - (c) The Licensee holds all funds in the Prizes Fund on trust for the benefit of persons who from time to time are entitled to payment in accordance with section 6A.4.1 of the Act.
 - (d) It is not sufficient for the purposes of this **clause 7.1** for the Licensee to demonstrate that it has available to it a line of credit, loan, mortgage or any other similar facility for the purposes of paying prizes or refunding any amount.

7.2 Details to be made available to Players

- (a) The Licensee must ensure that:
 - (i) contact details of the Licensee, including a contact name, phone number, email and postal address;
 - (ii) notification of the dispute resolution procedure used to resolve any dispute in relation to a claim for a prize; and
 - (iii) the process by which a complaint may be made to the Licensee or to the Commission,are freely available at any Point of Sale.
- (b) The Licensee must ensure that at all Points of Sale:
 - (i) a copy of all Keno Rules is made available for inspection by members of the public, free of charge on request; and
 - (ii) a notice is displayed stating that the rules are available for inspection.
- (c) Without limiting **clause 7.2(b)**, all Keno Rules must be accessible to members of the public on a website maintained by the Licensee at all times during the Term. The website must be available to the general public at no cost.

7.3 Relationships with Agents and Contractors

- (a) The Licensee must appoint each Agent and engage each Contractor by way of an agreement that is subject to the laws of Victoria, prior to that proposed Agent or Contractor assisting the Licensee to Conduct Approved Keno Games, or, if a Ticket Agent, prior to that Ticket Agent selling any tickets or other forms of entry to Approved Keno Games.
- (b) The agreements the Licensee enters into with its Agents or Contractors must ensure that the Licensee is able to discharge its obligations under the Act, the Regulations, the Licence and this Related Agreement and the Licensee must take all reasonable action to enforce such provisions in the agreements.
- (c) The agreements the Licensee enters into with its Agents or Contractors must prohibit the Agent or Contractor (and any agents or subcontractors of that Agent or Contractor) from undertaking or omitting any action, which may amount to a breach of the Act, the Licence, this Related Agreement or any other Agreements if the Licensee were to undertake or fail to undertake the action.
- (d) Subject to **clause 30.9(b)**, anything an Agent or Contractor does or fails to do in acting for and on behalf of the Licensee or in assisting the Licensee in the Conduct of Approved Keno Games which would be a breach of this Related Agreement if done or failed to be done by the Licensee constitutes a breach of this Related Agreement by the Licensee.
- (e) Without limiting any other obligations under this Related Agreement, the Licensee must:
 - (i) immediately notify its Agents and Contractors if the Licence is amended, suspended or cancelled; and
 - (ii) enter into arrangements and take all reasonable action to enforce such arrangements to procure that its Agents and Contractors ensure that immediately on and from any notification by the Licensee under **clause 7.3(e)(i)**:
 - (A) if the Licence is amended, its Agents and Contractors assist in the Conduct of Approved Keno Games in accordance with the Licence as amended;
 - (B) if the Licence is suspended, its Agents and Contractors cease assisting in the Conduct of Approved Keno Games until the suspension of the Licence is lifted or expires (except to the extent permitted by Law); or
 - (C) if the Licence is cancelled, its Agents and Contractors cease assisting in the Conduct of Approved Keno Games (except to the extent permitted by Law).

7.4 Exclusive arrangements

The Licensee must not:

- (a) enter into contracts, arrangements or understandings with Agents or Contractors; or

- (b) Conduct Approved Keno Games with the assistance of Agents or Contractors,

with the purpose or effect or the likely effect of preventing, restricting or limiting the Agent or Contractor from acting as an agent or distributor for other products (both gambling and non-gambling), except where the Licensee controls the Agent or Contractor, within the meaning of section 50AA of the Corporations Act.

8. Banking

8.1 Account

- (a) The Licensee must maintain Approved Account(s) throughout the Term.
- (b) The Licensee must use Approved Account(s) for all transactions in connection with the Conduct of Approved Keno Games, including any transactions required under or in relation to the Act, Licence or Agreements.
- (c) The Licensee must obtain the prior written approval of the Commission to alter, move or close Approved Account(s).
- (d) The Licensee must ensure that only the Licensee acting through an appropriately authorised officer of the Licensee is permitted to withdraw funds from Approved Account(s).
- (e) The Licensee holds all funds in Approved Account(s) which the Licensee is required to pay to the State under the Act, Licence or Agreements (including any amount payable under Part 4 of Chapter 6A of the Act and any Premium Payment payable under section 6A.3.13 of the Act), on trust for and on behalf of the State.
- (f) Without limitation, the State may access the funds held on trust for and on behalf of the State under **clause 8.1(e)** as and when:
 - (i) an amount becomes due and payable under the Act, Licence, Related Agreement or Agreements; or
 - (ii) the Commission reasonably believes that the Licensee will not be able to pay to the State an amount as and when it becomes due and payable.

8.2 Account statements

- (a) The Licensee authorises the Account Manager to provide the Commission with a statement of the Approved Account(s) and such other particulars relating to the Approved Account(s) as required by the Commission, to the extent permitted by Law.
- (b) Within 3 Business Days of a written request from the Commission, the Licensee must provide the Commission with a letter addressed to the Account Manager confirming the rights of the Commission under this **clause 8.2**.
- (c) The Licensee must pay the reasonable costs of the Account Manager providing the Commission with statements and particulars relating to the Approved Account(s).

8.3 Ticket Agents and funds

- (a) The Licensee must require that each Ticket Agent remits to the Approved Account(s) such amounts the Ticket Agents receives in respect of each ticket or other form of entry in an Approved Keno Game as will enable the Licensee to comply with its obligations under sections 6A.4.1 and 6A.4.2 of the Act (**Funds**).
- (b) The Licensee must ensure that:
 - (i) the Ticket Agent holds the Funds on trust for and on behalf of the Licensee until the Funds are remitted in accordance with **clause 8.3(a)**; and
 - (ii) the Funds are not used for any other purpose.

9. Records

9.1 Retention of Records

The Licensee must maintain and keep all Records (in hard copy or electronic form), other than Records held by the Licensee's Agents or Contractors, at the physical place of business in Victoria of the Licensee (or such other place as the Commission approves in writing) for not less than 7 years after the completion of the matters to which the Records relate.

9.2 Copy of Records

- (a) If requested by the Commission in writing, the Licensee must, at its own cost, provide the Commission with a copy of any of the Records or any specified parts of them.
- (b) Where the Commission requests a copy of Records, the Licensee must, if requested by the Commission, provide certification by an appropriately authorised officer of the Licensee that the copy is a true copy of the Records.

9.3 Inspection of Records

The Licensee must, at its own cost:

- (a) at all reasonable times, permit any person authorised in writing by the Commission to inspect and take copies of any Records of the Licensee, any of its Agents or Contractors or any other person under the Licensee's direction or control; and
- (b) comply with all lawful requests by a person authorised by the Commission with respect to the inspection or copying of Records.

9.4 Preparation of Annual Financial Statements

- (a) The Licensee must, as soon as practicable after the end of each Financial Year, prepare the financial statements so as to comply with **clause 9.6**, section 6A.5.1 of the Act and any other written requirements of the Commission (**Annual Financial Statements**).

- (b) The Licensee must provide to the Commission a copy of the Annual Financial Statements audited in accordance with **clause 9.7** within 3 months (or such longer period as agreed to by the Commission) after the end of the Financial Year to which those audited Annual Financial Statements relate.

9.5 Additional Financial Statements

- (a) In addition to the audited Annual Financial Statements, the Licensee must, at its own cost, upon written request from the Commission, provide the Commission with financial statements for the period specified in the request and covering:
- (i) the financial operations and position of the business of the Licensee related to Approved Keno Games;
 - (ii) the disaggregated financial performance in respect of any individual part or parts of the Conduct of Approved Keno Games or the engagement of Agents or Contractors or of Approved Keno Games themselves (such as ticket sales by particular Points of Sale or of particular Approved Keno Games); and
 - (iii) if applicable, the financial statements of the consolidated entity (as defined in the Corporations Act),
- (collectively, the **Additional Financial Statements**).
- (b) The Licensee must provide the Additional Financial Statements by the date specified in the request, or if no time is specified:
- (i) for Additional Financial Statements that have previously been requested for a different time period, within 10 Business Days of being notified; or
 - (ii) for Additional Financial Statements that have not previously been requested, within 30 Business Days of being notified.
- (c) The Additional Financial Statements must be prepared in accordance with **clauses 9.6, 9.8 and 9.9**.

9.6 Content of financial statements

- (a) The Annual Financial Statements and any Additional Financial Statements must give a true and fair view of the financial operations and position of the business of the Licensee related to Approved Keno Games (as required for the particular financial statement), including Keno Games conducted in accordance with a Linked Jackpot Arrangement, and in any case the financial statement must include in respect of the transactions and financial position of the operations of the Licensee related to Approved Keno Games:
- (i) a statement of cash flow for the period of that financial statement;
 - (ii) a statement of financial performance for the period of that financial statement; and

- (iii) a statement of financial position as at the date of the financial statement.
- (b) For the purposes of **clauses 9.5(a)(ii)** and **9.6(a)(ii)**, a statement of financial performance will include sales revenue, prizes, taxes, duties and commissions payable to Ticket Agents.

9.7 Audit of Licensee

- (a) The Licensee must, as soon as practicable after the end of each Financial Year, cause the Annual Financial Statements (and the Records where required in writing by the auditor or the Commission) of the Licensee to be audited by an independent auditor in accordance with the Australian Auditing Standards.
- (b) The Licensee must:
 - (i) ensure that the auditor has right of access at all times to the Records of the Licensee;
 - (ii) cooperate with the auditor such that the auditor may obtain from any Agent or Contractor of the Licensee or any other person under the Licensee's direction or control, any information, assistance and explanations necessary for the performance of the duties of the auditor in relation to the audit; and
 - (iii) take action to obtain the cooperation of any Agent or Contractor of the Licensee or any other person under the Licensee's direction or control to provide the auditor with any information, assistance and explanations necessary for the performance of the duties of the auditor in relation to the audit.
- (c) The Licensee must cause the auditor's report to be lodged with the Commission within 3 months after the end of the Financial Year to which the report relates (or such longer period as agreed to by the Commission).

9.8 Compliance with accounting standards

The Licensee must ensure that the Annual Financial Statements, any Additional Financial Statements and all associated financial Records of the Licensee comply with the Australian Accounting Standards.

9.9 Executive declaration

- (a) The Licensee must procure, in respect of each year's Annual Financial Statement and any Additional Financial Statements, a declaration from its chief executive officer and chief financial officer (or equivalent positions), acceptable to the Commission, as to whether, in that person's opinion:
 - (i) the accounts and statements comply with the Australian Accounting Standards;
 - (ii) the accounts and statements reflect a true and fair view of the financial position of the Licensee, or the business of the Licensee related to Approved Keno Games (as the case requires); and

- (iii) the Licensee has sufficient and effective internal controls to ensure that the person making the declaration would be aware of any material information relating to the production of that Annual Financial Statement or any Additional Financial Statements (as the case requires).
- (b) The Licensee must provide the declarations required under **clause 9.9(a)** to the Commission together with the Annual Financial Statements or any Additional Financial Statements.

9.10 Electronic provision of information

If required by the Commission, the Licensee must provide at its own cost an electronic copy (to the extent practicable, in a format suitable for content extraction) of Records, Annual Financial Statements, Additional Financial Statements and other documents or information the Licensee is required to provide under this Related Agreement.

9.11 Limits on disclosure

- (a) Nothing in **clause 9, 10 or 11** requires the Licensee to disclose any Record, Report or Data to the Minister, Commission or any person authorised by the Commission to the extent that the disclosure would breach any Law or require a waiver of legal professional privilege.
- (b) This **clause 9.11** does not limit or affect any rights or entitlements of the Minister or the Commission to require disclosure under the Act.

10. Reporting requirements

10.1 Regular reporting requirements

During the Term, the Licensee must provide to the Commission an annual report:

- (a) identifying the Licensee's actual sales against the Licensee's marketing projections for each Financial Year. The report must set out in respect of those figures an analysis of the actuals, variations, explanations and mitigation actions being taken by the Licensee (including amendments to its marketing strategies);
- (b) detailing the Licensee's performance, including its performance against each Performance Standard, and identifying any issues associated with the Approved Keno Games and their operation, distribution networks and measures taken by the Licensee to counter any adverse effects for each Financial Year;
- (c) identifying any issues:
 - (i) associated with the business continuity and viability of the Licensee in Conducting the Approved Keno Games, any projected risks to such continuity or viability and measures taken or to be taken by the Licensee to counter any such risks; or
 - (ii) relating to the Licensee's Responsible Gambling Code of Conduct (including non-compliances) that have arisen for each Financial Year, and measures taken by the Licensee to rectify its effects or

non-compliance, and approaches that will be implemented by the Licensee in the next Financial Year;

- (d) setting out the Licensee's Distribution Approach, including identifying the number and types of Points of Sale for each Financial Year, and any movements in the number and types of Points of Sale;
- (e) setting out the Licensee's sales and financial performance for the Financial Year in which the report is provided compared against its forecasts, a forward looking commentary for the remaining period of the Licence as compared with the Licensee's original 20 year forecasts and an explanation of strategies and growth initiatives (including marketing strategies and details of technology and product improvements).

The Licensee must provide the annual report to the Commission within 2 months after the end of each Financial Year.

10.2 Non-regular reporting requirements

The Licensee must provide a report to the Commission identifying any issues relating to (including non-compliances with) the Licensee's Responsible Gambling Code of Conduct and any risks to ongoing business continuity or viability of Approved Keno Games:

- (a) within a reasonable time (and in any case, no later than 10 Business Days) upon request from the Commission; or
- (b) immediately, if the Licensee becomes aware of any issues relating to (including non-compliances with) the Licensee's Responsible Gambling Code of Conduct and any risks to ongoing business continuity or viability of Approved Keno Games.

10.3 Content and format of Reports

The Licensee must provide all Reports in the format, and containing such information, as specified by the Commission from time to time. The Commission may specify different formats and information for each type of Report. Where the specified formats and information requested by the Commission are materially different from previously existing formats and information, the Commission and the Licensee will agree the period for the provision of the Report, with such period not to exceed 3 months (or such later date as approved by the Commission).

10.4 Licence to use information in Reports

- (a) The Licensee grants the Minister a royalty-free, perpetual, irrevocable licence to use (including the right to reproduce, publish, modify and amend) and sub-licence to any New Licensee the right to use in relation to the Conduct of Approved Keno Games (including the right to reproduce, publish, modify and amend) the information contained in the Reports which is relevant to the Conduct of Approved Keno Games by the New Licensee.
- (b) If the Minister sub-licences to any New Licensee the right to use (including the right to reproduce, publish, modify or amend) information contained in the Reports, the Minister will include in the sub-licence provisions requiring the New Licensee:

- (i) to form its own views on the accuracy and completeness of the information contained in the Reports; and
 - (ii) not to bring any Claim against the Licensee in relation to any inaccuracy or incompleteness of the information contained in the Reports.
- (c) The Licensee warrants that it has the right to grant the licence in **clause 10.4(a)** and that the exercise of that licence will not infringe any Intellectual Property Rights or Moral Rights of any third party.

11. Information and data

11.1 Collection and use of Data

- (a) The Licensee must collect and store, in a reportable form, complete and accurate data (including aggregated data and disaggregated data relating to individual Points of Sale) regarding:
- (i) how many tickets or entries were sold in Approved Keno Games;
 - (ii) the break-down of ticket or entry sales by Approved Keno Game; and
 - (iii) in relation to Keno Games under a Linked Jackpot Arrangement, data relating to those games in both Victoria and other applicable jurisdictions under the arrangement, including prizes paid or payable in relation to those games, the value of tickets sold, and any other data advised by the Commission in accordance with **clause 11.1(b)**.
- (b) The Licensee must also collect and store, in a reportable form, any other data the Commission advises by notice in writing. The Licensee must commence collecting and storing such data no later than 28 days after the date of the Commission's notice in writing (or such later date as approved by the Commission).
- (c) The Licensee must store the Data for a period of not less than 7 years from the date of creation of the Data.
- (d) During the Term, every 12 months after the Licence Commencement Date, the Licensee must provide a report to the Commission that:
- (i) contains a declaration from the Licensee's chief executive officer, chief operating officer or chief technology officer as to whether the Licensee has complied with its obligations under **clauses 11.1(a) and 11.1(b)**; and
 - (ii) details how the Licensee is storing the Data.
- (e) The Licensee must, at its own cost:
- (i) at all reasonable times, permit any person authorised in writing by the Commission to inspect and take copies of any Data stored by the Licensee, any of its Agents or Contractors or any other person under the Licensee's direction or control; and

- (ii) comply with all lawful requests by that person authorised by the Commission with respect to the inspection or copying.
- (f) In addition to any obligations under **clauses 11.1(a) and 11.1(b)**, the Licensee must cooperate with and provide information in its possession, custody or control, or the possession, custody or control of its Agents or Contractors, to the Commission, or any person authorised by the Commission in writing, for the purposes of State commissioned research into gambling.
- (g) The Licensee grants the Minister a royalty-free, perpetual and irrevocable licence to use (including the right to reproduce, publish, modify and amend) and sub-licence the right to use (including the right to reproduce, publish, modify and amend) the Data and the information contained in the reports required under **clause 11.1(d)**.
- (h) The Licensee warrants that it has the right to grant all licences in this **clause 11** and that the exercise of the rights licensed under this **clause 11** will not infringe any Intellectual Property Rights or Moral Rights of any third party.

11.2 Data security

- (a) The Licensee must take reasonable steps to prohibit and prevent any person not authorised by the Licensee from gaining access to the Data.
- (b) If the Licensee becomes aware that any Data has become lost or corrupted or there is unauthorised access to that Data (**Data Security Breach**), it will:
 - (i) take immediate action to contain the Data Security Breach and prevent any further compromise of Data, and notify the Commission as soon as possible of the Data Security Breach and any action taken (or to be taken) in response;
 - (ii) as soon as reasonably practicable, notify the Commission in advance if it is required by Law or otherwise intends to report the Data Security Breach to any of the Office of the Australian Information Commissioner or any affected individuals;
 - (iii) comply with the Commission's reasonable directions in relation to the Data Security Breach, including providing the Commission with a reasonable opportunity to be involved with and approve any report or notification under **clause 11.2(b)(ii)**;
 - (iv) provide reasonable assistance to the State if the State seeks to report the Data Security Breach to any of the Privacy & Information Commissioners or notify any affected individuals; and
 - (v) review the Data Security Breach and take action to prevent further breaches.
- (c) The Licensee must not, and must ensure that its Agents and Contractors do not, without the Commission's prior written consent take, disclose or make available the Data or allow the Data to be taken, disclosed or made available outside of Australia.

- (d) To the extent the Data is 'public sector data' within the meaning of the *Privacy and Data Protection Act 2014 (Vic)*, the Licensee agrees not do any act or engage in any practice that contravenes a Protective Data Security Standard or would give rise to contravention of a Protective Data Security Standard by the Minister or the State in respect of any Data collected, held, used, managed, disclosed or transferred by the Licensee on behalf of the Minister or State under or in connection with this Related Agreement.

12. Notification of change in situation

- (a) The Commission may specify:
- (i) certain changes in situations to be notifiable changes in situation; and
 - (ii) the time by which the Commission must be notified of such changes in situation (which must at least 10 Business Days after the change in situation occurs),
- by giving written notice to the Licensee.
- (b) The Licensee must (and must procure that its Agents, Contractors and any other person under the Licensee's direction or control) give the Commission written notice of any change in situation associated with or connected to the Licence, the Agreements or the Conduct of Approved Keno Games of a kind specified by the Commission, within the relevant time notified by the Commission.

13. Review of Licence

- (a) On written request from the Minister, the Licensee must make itself, its Agents and Contractors and any other person under the Licensee's direction or control, and its Records, available to the Minister, and render all assistance and information the Minister considers necessary, for the purposes of the Minister conducting a review of the Conduct of Approved Keno Games and the Licence.
- (b) The written request from the Minister must specify the periods during which the review will occur, and must name those persons whom the Minister authorises to conduct the review and to whom the Licensee is required to provide information and assistance.
- (c) The Minister may undertake a review of the Conduct of Approved Keno Games and the Licence at any time during the Term.

14. Transition out

14.1 New Licensees

- (a) The Minister may issue a Keno Licence for the Conduct of Keno Games to one or more Incoming Licensees.
- (b) The licence issued to an Incoming Licensee may authorise the Incoming Licensee to undertake Preparatory Action in respect of the Approved Keno Games or Keno Games similar or equivalent to the Approved Keno Games (collectively, the **Continuing Keno Games**), prior to the expiry of the Licence.

14.2 Transition objectives

- (a) The objectives of this **clause 14** are to:
 - (i) ensure efficient, smooth, seamless and uninterrupted transition of the Continuing Keno Games from one licensee to another;
 - (ii) ensure that each Incoming Licensee is able to transition in to its licence effectively and efficiently;
 - (iii) protect the interest of the public and Players;
 - (iv) reduce the risk of loss of revenue of the State;
 - (v) ensure that the requirements of the State's Representative in relation to Keno Transition are satisfied in a timely fashion; and
 - (vi) promote the objectives of the Act.
- (b) The Licensee must undertake in good faith such activities as may reasonably be required of it to assist in the achievement of the Transition Objectives, and the Licensee acknowledges that the intent of the Transition Plan is to give effect to this commitment.
- (c) Nothing in this **clause 14.2** is to be interpreted in such a way so as to require the Licensee to do anything or act in a manner contrary to its rights and obligations under the Licence.

14.3 Transition out - dealings

During the Transition Out Period, the Licensee must, in respect of each Incoming Licensee:

- (a) act reasonably in its dealings with, and where applicable, negotiate in good faith with, the Incoming Licensee;
- (b) enter into arrangements and take all reasonable action to enforce such arrangements to procure that its Agents and Contractors act reasonably and in good faith towards the Incoming Licensee;
- (c) ensure and facilitate (including by entering into arrangements and taking all reasonable action to enforce such arrangements to procure that its Agents, Contractors and any other person under the Licensee's direction or control ensure and facilitate) the efficient, smooth, seamless and uninterrupted transition of Continuing Keno Games to the Incoming Licensee;
- (d) act reasonably and in good faith towards the State during the Keno Transition; and
- (e) if required by the Minister, transfer or assign any part of the Keno Assets and novate the Related Agreement, any Linked Jackpot Arrangement Agreement, any other Agreements and agreements or contracts to which it is a party to the Incoming Licensee and procure as a condition of the novation that the Incoming Licensee execute such documents as are required by the Minister to give effect to such novation.

14.4 Transition out - compliance

The Licensee must comply with any lawful directions of the State's Representative in relation to the Keno Transition.

14.5 Preparation and approval of Transition Plan

- (a) The Licensee must develop a proposed Transition Plan and submit it to the State's Representative for approval within 6 months of the Licence Commencement Date (or such longer period as agreed to by the State's Representative).
- (b) The Licensee must update and resubmit its Transition Plan to the State's Representative for approval every 12 months (or as frequently as directed by the State's Representative). The updated Transition Plan must include up to date information, including any updated information to reflect changes to Approved Keno Games, the Conduct of Approved Keno Games, or assets.
- (c) The proposed or updated Transition Plan prepared by the Licensee must:
 - (i) include an asset register, including intellectual property and a certified equipment index related to the Conduct of Approved Keno Games;
 - (ii) include the Information relating to the Approved Keno Games;
 - (iii) include the names, brands and Keno Rules of the Approved Keno Games;
 - (iv) include details of all material agreements and arrangements with any Agent or Contractor in relation to the Conduct of Approved Keno Games (and details of such other agreements and arrangements with any Agent or Contractor in relation to the Conduct of Approved Keno Games as required by the State's Representative);
 - (v) include a list and contact details of current Agents and Contractors;
 - (vi) apply to all Approved Keno Games as though all of the Approved Keno Games were Continuing Keno Games, in the absence of a direction by the State's Representative;
 - (vii) include such information and address such issues as required by the State's Representative; and
 - (viii) be in a form required by the State's Representative.
- (d) The equipment index required as part of the asset register must include sufficient information to permit the Commission to monitor the specific equipment used by the Licensee in relation to all Keno Systems to Conduct Approved Keno Games from time to time, including:
 - (i) the specific nature of the equipment;
 - (ii) the name of the manufacturer;

- (iii) the year of manufacture;
 - (iv) a description of the model;
 - (v) the serial number or other identifying mark of the equipment;
 - (vi) the location of the equipment; and
 - (vii) whether the equipment is leased, encumbered or owned by a third party. If so, the index must include details of the lease, Encumbrance or owner.
- (e) The Licensee must certify, in a form approved by the State's Representative, the accuracy of the equipment index and submit such certificate as part of the proposed or updated Transition Plan. The approval of the Transition Plan by the State's Representative does not constitute a representation by the State's Representative that it has approved the equipment index.
- (f) The State's Representative will consider the proposed or updated Transition Plan and approve or reject it. If the State's Representative rejects the proposed or updated Transition Plan in any respect, the Licensee must meet with the State's Representative and negotiate in good faith in an endeavour to settle the plan. The proposed or updated Transition Plan, once accepted and finalised, will constitute the Transition Plan.
- (g) The Licensee must use its best endeavours to ensure that the proposed or updated Transition Plan complies with the requirements of this **clause 14.5** so that it may be approved by the State's Representative within 2 months after the date the Licensee is required to submit the proposed or updated Transition Plan.
- (h) The Licensee must comply with the most recently approved Transition Plan with respect to the Keno Transition.
- (i) The Licensee grants the Minister a royalty-free, perpetual, irrevocable licence to use (including the right to reproduce, publish, modify and amend), and sub-licence to any Incoming Licensee the right to use (including the right to reproduce, publish, modify and amend), in connection with the Keno Transition any Transition Plan.
- (j) The Licensee warrants that it has the right to grant the licence in **clause 14.5(i)** and that the exercise of that licence will not infringe any Intellectual Property Rights or Moral Rights of any third party.

14.6 Reimbursement by the State

- (a) Subject to **clauses 14.6(b)** and **14.6(c)**, the State will reimburse the Licensee for any out of pocket expenses incurred by the Licensee, to the extent that such out of pocket expenses:
- (i) are approved by the Minister in writing, prior to such expenses being incurred;
 - (ii) relate directly to carrying out the Keno Transition activities (and not merely any activities relating to the Conduct of Approved Keno Games by the Licensee); and

- (iii) are substantiated by written documents (including, for example, in the form of time sheets or invoices) in a form approved by the State's Representative.
- (b) The State will not reimburse the Licensee for any costs or expenses incurred by the Licensee in respect of:
 - (i) preparing, updating, finalising and obtaining approval of Transition Plans; and
 - (ii) participating in the dispute resolution process in **clause 25.2**.
- (c) The State is not obliged to reimburse the Licensee for any expenses incurred in respect of an activity covered by **clause 14.6(a)** that is required as a direct or indirect consequence of breach or possible breach of the Licence or this Related Agreement by the Licensee or its Agents or Contractors.
- (d) The State will reimburse the Licensee for out of pocket expenses specified in **clause 14.6(a)** 30 Business Days after the later of:
 - (i) the end of the Transition Out Period; or
 - (ii) the date on which the State's Representative considers the Keno Transition to be completed,

provided the State has received evidence reasonably satisfactory to the State that the Licensee has incurred the expenses.

14.7 Unclaimed prizes

- (a) After the cancellation or expiry of the Licence, the Licensee must:
 - (i) retain an amount equal to the sum of all prizes won that have not been claimed by the Players and deal with such prizes in the manner specified in section 6A.3.39D of the Act; or
 - (ii) pay all prizes to eligible Players in accordance with the Keno Rules.
- (b) Section 6A.3.39D of the Act will apply to any prizes that remain unclaimed for 6 months after the cancellation or expiry of the Licence.

15. Player

- (a) The Licensee must at all times act reasonably and in good faith in its dealings with Players.
- (b) Without limiting **clause 15(a)**, the Licensee must ensure that any fee it imposes upon a Player to establish, use or maintain an account in connection with that Player purchasing a ticket or entry into an Approved Keno Game or accessing a related product or service is reasonable (including in relation to the cost incurred by the Licensee in providing that account, product or service).

16. Intellectual property

16.1 Existing Intellectual Property Rights

- (a) The Licensee acknowledges that the Minister and the State are unable to, and will not, provide any access for the Licensee to any Intellectual Property Rights in relation to the Approved Keno Games.
- (b) It is the Licensee's responsibility to obtain all the Intellectual Property Rights required for the Licensee to Conduct Approved Keno Games, including such rights as are necessary to permit the Licensee to grant the State IP Licence.

16.2 Warranty regarding Intellectual Property Rights

- (a) The Licensee warrants that as and when the Licensee is required to carry out the Preparatory Action and Conduct the Approved Keno Games, it owns or has the right to use all the Intellectual Property Rights used by it (or its employees, Agents or Contractors) to carry out the Preparatory Action and Conduct Approved Keno Games, including the Licensed IP and the names of the Approved Keno Games.
- (b) The Licensee warrants that in Conducting Approved Keno Games, it will not infringe any Intellectual Property Rights or Moral Rights.
- (c) The Licensee acknowledges that it does not have and will not have any Intellectual Property Rights in the name "keno".

16.3 State IP Licence

- (a) Subject to the provisions of this clause 16.3, the Licensee grants to the State a non-exclusive, royalty-free, perpetual and irrevocable licence to:
 - (i) use (including the right to reproduce, publish, modify and amend); and
 - (ii) sub-licence the right to use (including the right to reproduce, publish, modify and amend),

the Licensed IP in relation to Approved Keno Games, including in relation to Conducting Approved Keno Games (**State IP Licence**).

- (b) Under the State IP Licence, the State may only sub-licence rights in relation to the Licensed IP to any one or more New Licensees, and any such sub-licence will:
 - (i) be limited to the geographical area of Victoria, except that any New Licensee may be permitted by the sub-licence to use the Licensed IP in advertising and promotional materials outside Victoria where those advertising and promotional materials primarily target members of the public in Victoria;
 - (ii) notwithstanding the date of execution of the relevant IP Sub-Licence Agreement, not commence earlier than the date on which the New Licensee is able to take Preparatory Action or otherwise on the surrender, cancellation or expiration of the Licence;

- (iii) if the State considers appropriate, include provisions allowing a New Licensee to permit third parties to use the Licensed IP for the New Licensee's business purposes relating to the Conduct of Keno Games; and
 - (iv) otherwise be on the terms the State considers appropriate.
- (c) If:
 - (i) there are multiple New Licensees at any time, the State may sub-licence the Licensed IP to each of them;
 - (ii) a New Licensee ceases to hold a Keno Licence, the State may sub-licence the Licensed IP to any subsequent New Licensee.
- (d) Any Intellectual Property Rights associated with the Conduct of Approved Keno Games which vest in the Licensee or are licensed to the Licensee after the Agreement Date and which would otherwise have formed part of the Licensed IP had they existed as at the Agreement Date, will form part of the Licensed IP for the purposes of this Related Agreement and the State IP Licence.
- (e) The Licensee warrants and represents that, on and from the Licence Commencement Date:
 - (i) it has the authority to grant the State IP Licence, including all necessary consents from any other person with any right, title or interest in or to the Licensed IP; and
 - (ii) the Licensed IP, the use or sub-licensing by the State of the Licensed IP in accordance with this Related Agreement and the use of the Licensed IP by any New Licensee in accordance with an IP Sub-Licence Agreement will not infringe any Intellectual Property Rights or Moral Rights of any third party.
- (f) The Licensee will provide to the Minister, within 3 months after the Agreement Date and, afterwards, promptly upon request by the Minister made at any time when the State is intending to enter into an IP Sub-Licence Agreement, a list identifying all of the Licensed IP subsisting at the relevant time.
- (g) Except:
 - (i) as set out in **clause 16.3(k)(i)**; and
 - (ii) for the rights expressly granted by this Related Agreement,the State acquires no interest in the Licensed IP by virtue of this Related Agreement.
- (h) The Minister may require that the Licensee take such actions, including making such applications, executing such documents and instituting or defending such proceedings, as are required in the reasonable opinion of the Minister to protect and preserve any of the State's rights under the State IP Licence or any New Licensee's rights under an IP Sub-Licence Agreement. If the Licensee is not in breach of **clause 16.3(e)**, and the indemnity in **clause 16.4(a)** does not apply, the State will pay the reasonable costs of the Licensee taking such action as approved by the

Minister in writing (provided that the Licensee notifies such costs to the Minister a reasonable period before incurring them). If the Licensee fails to take any action under this **clause 16.3(h)** within a reasonable period, the State may take such action in the name of the Licensee (in addition to any other right or remedy of the State).

(i) The Licensee must:

- (i) promptly notify the Minister in writing of any actual or suspected infringement of any of the Licensed IP, or any challenge to the rights of the Licensee, the State or any New Licensee in respect of the Licensed IP, that comes to the Licensee's attention;
- (ii) unless otherwise agreed by the Minister in his or her absolute discretion, take all reasonable steps to maintain registration in Australia of those elements of the Get Up that are registered at the Agreement Date and to obtain and maintain registration in Australia of those elements of the Get Up that are the subject of applications for registration at the Agreement Date, become the subject of applications for registration during the Term or comprise trade marks that are used extensively in connection with Approved Keno Games during the Term. Following the Term, the Licensee must notify the State of its reasonable costs to take such steps under this **clause 16.3(i)(ii)** after the Term. This notice must be given a reasonable time before the costs are incurred. If the State agrees to pay the reasonable costs of the Licensee as notified to the State and approved by the Minister in writing, the Licensee must take the relevant steps. If the State does not agree to pay such costs, the Licensee is not required to take the relevant steps. This **clause 16.3(i)(ii)** does not require the Licensee to pursue any application for registration that it reasonably considers is unlikely to achieve registration;
- (iii) promptly notify the Minister in writing of any change to the registration status of any element of the Get Up;
- (iv) keep the Minister reasonably informed in writing of all claims or proceedings involving any actual or suspected infringement of any of the Licensed IP, or any challenge to the rights of the Licensee in respect of the Licensed IP;
- (v) take all reasonable steps to maintain in effect any licence under which the Licensee has obtained rights in relation to the Licensed IP. If the Licensee is unable to maintain such a licence, it must notify the Minister in writing, giving as much notice as is practical that the relevant licensed rights may not or cannot be maintained. Once any licensed rights cease to be licensed to the Licensee, those rights will be deemed excluded from the definition of "Licensed IP". Following the Term, The Licensee must notify the State of its reasonable costs to maintain a licence under this **clause 16.3(i)(v)** after the Term. This notice must be given a reasonable time before the costs are incurred. If the State agrees to pay the reasonable costs of the Licensee as notified to the State and approved by the Minister in writing, the Licensee must maintain the licence. If the State does not agree to pay such costs, the Licensee is not required to maintain the relevant licence; and

- (vi) fully co-operate with the State and any New Licensee in registering their respective licence interests, if required by the State or a New Licensee.
- (j) The State must use reasonable endeavours to notify the Licensee promptly in writing of any infringement of any of the Licensed IP, or any challenge to the rights of the Licensee or the State or any New Licensee in respect of the Licensed IP, that comes to the Minister's attention.
- (k) If the Licensee wishes to sell any Licensed IP, the following will apply:
 - (i) the Licensee must give the Minister a notice in writing setting out the terms, including the price, on which the Licensee will sell the specified Licensed IP. This notice will constitute an offer to sell the specified Licensed IP to the State (**Offer**); and
 - (ii) within 30 days of receipt of the Offer the Minister may notify the Licensee in writing that the State will purchase the specified Licensed IP on the terms set out in the Offer. If so, the Licensee must sell and the State must purchase the specified Licensed IP at the price and on the terms set out in the Offer.
- (l) If the Minister does not notify the Licensee in accordance with **clause 16.3(k)(ii)**, the Licensee may, until the date that is 180 days after the date of the Offer, sell the relevant Licensed IP to a third party for a price that is no less than the price offered to the State and otherwise on terms no more favourable to the purchaser than the terms offered to the State.
- (m) The Licensee may only transfer its ownership in the Licensed IP to a third party (**New Owner**) if the New Owner agrees to license the Licensed IP to the State on the same terms and conditions as contained in this **clause 16.3**, subject to the State agreeing directly in favour of the New Owner, to continue to observe all of the State's obligations in relation to the Licensed IP.
- (n) The State is not required to, nor will be responsible for, the enforcement of any rights specified in the IP Sub-Licence Agreement for the benefit of the Licensee. If a notice is required to be issued to a New Licensee by the Licensee in respect of the IP Sub-Licence Agreement, the Licensee will provide a copy of that notice to the Minister at the same time as the notice is given to the New Licensee.

16.4 Intellectual property indemnity

- (a) The Licensee indemnifies and holds harmless the State, the Minister, the Commission, any New Licensee who enters into an IP Sub-Licence Agreement and each of their respective representatives, members, officers, employees, contractors or agents (**IP Indemnified Parties**) from and against all losses, damages, costs, liabilities and expenses arising directly or indirectly, as a result of, associated or in connection with any Claim by a third party against any of the IP Indemnified Parties alleging that the Licensed IP or the use or sub-licensing by the State of the Licensed IP or the use of the Licensed IP by any New Licensee in accordance with an IP Sub-Licence Agreement constitutes an infringement of the Intellectual Property Rights or Moral Rights of that third party (**Third Party Claim**).

- (b) If any Third Party Claim is successful, or if it is agreed by the Licensee that there is an infringement of the Intellectual Property Rights of the relevant third party, then without limiting the rights or remedies of any of the IP Indemnified Parties, the Licensee must at no cost to any of the IP Indemnified Parties, render the relevant activity non-infringing by procuring the right or consent to exercise the relevant Intellectual Property Rights.
- (c) The State holds the benefit of the indemnity on trust for each of the IP Indemnified Parties and the State may enforce such indemnity on behalf of all or any of the IP Indemnified Parties against the Licensee.
- (d) The State may provide, and may take reasonable steps to procure that the other IP Indemnified Parties provide, reasonable assistance to the Licensee, in relation to the Licensee's handling of any Third Party Claim. Any State action under this **clause 16.4** is at the discretion of the State and at the Licensee's cost,
- (e) Nothing in **clause 16.4** applies to the extent that a Third Party Claim arises as a result of the breach of the licence granted under **clause 16.3** or the IP Sub-Licence Agreement by any of the IP Indemnified Parties.

17. Insurance

The Licensee must take out and maintain the insurances that a prudent person would obtain and maintain in order to Conduct the Approved Keno Games and the conduct of a prudent person will be benchmarked at least against the insurances taken out by a person conducting activities which are substantially similar to the Conduct of the Approved Keno Games.

18. Liability and indemnities

18.1 Licensee relies on own judgment

Except as expressly provided to the contrary, the Licensee enters into this Related Agreement and the Licence in reliance on its own judgment and following review of the viability of the Keno Games it has sought (or intends to seek) approval for under section 6A.2A.1 of the Act. The Licensee has not relied on any conduct, statements, warranties or representations made to the Licensee or to any other person by or on behalf of the State, the Minister or the Commission or any of their respective representatives, members, officers, employees, contractors and agents.

18.2 Liability in relation to the Licence

Except as expressly provided to the contrary, no action lies against the State, the Minister or the Commission or any of their respective representatives, members, officers, employees, contractors and agents and no compensation is payable to the Licensee in relation to anything done or purported to be done or not done in connection with the issue of the Licence or the Licence being suspended, cancelled or surrendered.

18.3 Exclusion of liability

- (a) The Licensee is solely responsible for the Conduct of Approved Keno Games and releases the State, the Minister and the Commission (and any of their respective representatives, members, officers, employees, contractors and agents) from and against any Claim, arising directly or indirectly, to compensate the Licensee or any other person for any losses,

damages, costs, liabilities or expenses incurred or suffered by the Licensee or any other person as a result of, associated or in connection with the Conduct of Approved Keno Games (including the Licence being suspended, cancelled or surrendered), including where the loss, damage, cost, liability or expense is caused by the Licensee following any lawful directions of the Minister or the Commission.

- (b) The Licensee must require, and use its best endeavours to procure, a similar release of liability, in the form and substance satisfactory to the Minister, from all its Agents and Contractors.

18.4 Indemnities

- (a) The Licensee indemnifies the State, the Minister and the Commission (and each of their respective representatives, members, officers, employees, contractors and agents) (**Indemnified Parties**) from and against any Claim, including costs or expenses (**Indemnified Claims**), arising directly or indirectly, as a result of, associated or in connection with the Conduct of Approved Keno Games (including the Licence being suspended, cancelled or surrendered), including any Claims from Agents, Contractors, Players or other persons, except for any Claims which result directly from the negligence or fraud of, or breach of the Agreements by, any of the Indemnified Parties.
- (b) The State holds the benefit of the indemnity in **clause 18.4(a)** on trust for each of the Indemnified Parties and the State may enforce such indemnity on behalf of all or any of the Indemnified Parties.
- (c) The State will liaise and consult with the Licensee in relation to the proper and appropriate handling of any Indemnified Claims.

19. General warranties and obligations

The Licensee warrants at the Agreement Date and on each day until the Related Agreement terminates, and must at all times during the Term ensure that:

- (a) it will be able to demonstrate (to the reasonable satisfaction of the Commission) that it will be able to pay all prizes (whether claimed or unclaimed) upon determination of an Approved Keno Game and refund the price of all Approved Keno Game entries in respect of any Approved Keno Game if it is not drawn or determined;
- (b) it is duly incorporated and is validly existing under the laws of its jurisdiction of incorporation, with full power and authority to enter into this Related Agreement, comply with the conditions of the Licence, perform its obligations under this Related Agreement and perform its obligations under any other Agreements;
- (c) this Related Agreement has been duly authorised, executed and delivered by the Licensee and constitutes a legal, valid and binding obligation of the Licensee enforceable against it in accordance with its terms, and no other proceedings on the part of the Licensee are necessary to authorise this Related Agreement;
- (d) the execution and delivery of this Related Agreement, and the performance by the Licensee of its obligations, do not:

- (i) conflict with the constitution or by-laws of the Licensee;
 - (ii) constitute a violation of or a default under any agreements or arrangements to which the Licensee is a party; or
 - (iii) contravene any Law;
- (e) there are no Encumbrances over any part of the Keno Assets;
- (f) it protects the Keno Assets and, at the Licensee's expense, prosecutes or defends all legal proceedings that are necessary for the protection of the Keno Assets to the extent appropriate in accordance with prudent business practice;
- (g) it is not the subject of a Financial Default;
- (h) it complies with all Laws relating to the conduct of gambling in Victoria or elsewhere, including matters arising under this Related Agreement;
- (i) it has declared and will continue to declare to the Commission any breach of any Laws relating to the conduct of gambling in Victoria or elsewhere (including any offences it has committed), and will provide all material particulars as soon as practicable (and in all events no later than one Business Day) after the Licensee becomes aware of that breach (or offence);
- (j) it obtains and renews all Authorisations required for the Licensee to:
- (i) Conduct the Approved Keno Games;
 - (ii) perform its obligations under the Licence, this Related Agreement, any other Agreements and any Linked Jackpot Arrangement (including a Linked Jackpot Arrangement Agreement); and
 - (iii) carry on business;
- (k) it will, and is capable of, complying with the Commission's Technical Standards;
- (l) all information provided in writing by or on behalf of the Licensee to the Minister and the Commission (including the expression of interest and application to apply for the Licence submitted by the Licensee) was in all material respects true and accurate and not misleading by omission;
- (m) it will comply with the conditions of and perform its obligations under the Parent Guarantee and Indemnity; and
- (n) if it is party to a Linked Jackpot Arrangement, it will comply with the conditions of and perform its obligations under the Linked Jackpot Arrangement, including any Linked Jackpot Arrangement Agreement.

20. Termination

- (a) This Related Agreement will terminate upon expiration of the Transition Out Period or such further period as is necessary for the Licensee to comply with and discharge any relevant obligations under the Related Agreement.

- (b) Despite any other provisions to the contrary, the Related Agreement may be terminated by agreement in writing between the Licensee and the Minister.

21. Force Majeure

21.1 Notice of Force Majeure Event

- (a) If the Licensee becomes aware of any matter likely to constitute a Force Majeure Event that may prevent or delay the Licensee in performing any of its obligations under the Licence or this Related Agreement, the Licensee must immediately give notice of that matter and all relevant particulars to the Minister.
- (b) As soon as reasonably practicable but no later than 5 Business Days after the occurrence of an event considered by the Licensee to constitute a Force Majeure Event, the Licensee must give to the Minister a notice (**FME Claim Notice**) setting out the following:
 - (i) the nature of the event;
 - (ii) the obligations of the Licensee under the Licence or this Related Agreement affected by the event and the nature and extent of the event's effect on those obligations;
 - (iii) the estimated period during which the Licensee's obligations will be affected by the event;
 - (iv) a plan and timetable describing the actions planned to be taken to prevent, overcome, remedy or mitigate the effects of the event; and
 - (v) all other relevant particulars reasonably known to the Licensee.
- (c) The Minister will consider the FME Claim Notice and if the Minister is reasonably satisfied that the FME Claim Notice is materially correct and that the event described in the FME Claim Notice constitutes a Force Majeure Event, then the Minister will give a notice (**Suspension Notice**) to the Licensee which states that:
 - (i) a Force Majeure Event has occurred;
 - (ii) to the extent permitted by Law, those obligations of the Licensee under the Licence or this Related Agreement which will be suspended; and
 - (iii) the maximum period during which those obligations will be suspended (**Suspension Period**).
- (d) The Licensee must on request by the Minister and otherwise at reasonable intervals throughout the Suspension Period, including whenever the circumstances set out in the FME Claim Notice change, give to the Minister:
 - (i) an updated plan and timetable, describing the action taken and the action proposed by the Licensee to comply with its obligations under this **clause 21**, which is acceptable to the Minister;

- (ii) details of any changes to the circumstances set out in the FME Claim Notice; and
 - (iii) details of any other matter relevant to the Force Majeure Event or the Licensee's obligations under the Licence or this Related Agreement.
- (e) The Licensee may, at any time, request an extension to the Suspension Period by notice to the Minister. The notice must specify the reason why the Licensee makes that request, the extension requested and any other information relevant to the assessment of the request. The Minister may accept or reject the request in whole or in part at the Minister's absolute discretion.
- (f) The Licensee must at all times, to the reasonable satisfaction of the Minister, comply with and diligently pursue all actions under the then current plan and timetable provided to the Minister under the FME Claim Notice and as updated by **clause 21.1(d)**.

21.2 Suspension of obligations

The relevant obligations of the Licensee under the Licence and this Related Agreement will, subject to the Licensee's compliance with **clauses 21.1(b), 21.1(d), 21.1(f) and 21.3**, be suspended in accordance with the Suspension Notice during the Suspension Period.

21.3 Mitigation and reinstatement

The Licensee must use its best endeavours (including the expenditure of funds and rescheduling of resources) to overcome, remedy or mitigate the effect of each Force Majeure Event.

21.4 End of Suspension Period

The Suspension Period immediately ceases if:

- (a) the Minister notifies the Licensee that the Minister is of the opinion; or
- (b) the Licensee notifies the Minister,

that the effect of the Force Majeure Event has been overcome or remedied. The Licensee must immediately notify the Minister if the Force Majeure Event has been so overcome or remedied.

21.5 Licensee's costs and expenses

The State, the Minister and the Commission have no liability to pay or reimburse the Licensee for any losses, damages, costs and expenses incurred by the Licensee as a result of, associated or in connection with a Force Majeure Event including for remedying any disruption to the performance of the Licensee's obligations under this Related Agreement or the Licence.

22. Default

22.1 Financial Default

- (a) If a Financial Default occurs in respect of the Licensee, then the Minister may, in addition to any other remedies he or she has under the Act, treat the Financial Default as a Step-In Event and immediately proceed in accordance with **clause 23**.

22.2 Other default

- (a) If the Licensee fails to comply with this Related Agreement (including as a consequence of **clause 7.3(d)**) or a Linked Jackpot Arrangement Agreement (**Failure**), then the Minister may, in addition to any other remedies he or she has under the Act, give the Licensee a notice in writing (**Failure Notice**) specifying:
- (i) that such a Failure has occurred;
 - (ii) the events or circumstances constituting the Failure;
 - (iii) if the Failure is capable of being cured or remedied, a reasonable period from the date of the Failure Notice in which to cure or remedy the Failure (**Cure Period**); and
 - (iv) if the Failure is not capable of being cured or remedied, any reasonable requirements to redress the prejudice, loss or harm arising from the failure (including compensation to the State) (**Alternative Arrangements**).
- (b) Despite **clause 22.2(a)**, if in the Minister's sole opinion, the Failure is of a serious nature, then the Minister may treat the Failure as a Step-In Event and immediately proceed in accordance with **clause 23**. For the purposes of this **clause 22.2(b)**, a Failure is of a serious nature if it materially adversely affects, or is capable of materially adversely affecting:
- (i) the interest of the public or the Players; or
 - (ii) the revenue of the State.
- (c) The Licensee may, at any time, request an extension to the Cure Period by notice to the Minister. The notice must specify the reason why the Licensee is not able to cure or remedy the Failure within the existing Cure Period, the additional time required and any other information relevant to the assessment of the request. The Minister may accept or reject the request at his or her absolute discretion.

22.3 Remediating within the Cure Period

- (a) Upon receipt of a Failure Notice, if the Failure is capable of being cured or remedied, the Licensee must cure or remedy the Failure within the Cure Period.
- (b) In addition to its obligations under **clause 22.3(a)**, the Licensee must:
- (i) provide the Minister (no later than 5 Business Days after receipt of a Failure Notice) with a written plan which specifies how the

Failure occurred and how the Licensee intends to remedy the Failure (**Cure Plan**). The Cure Plan must be one which, if followed, could reasonably be expected to remedy the Failure within the Cure Period;

- (ii) remedy the Failure in accordance with the Cure Plan and comply with any reasonable directions of the Minister in relation to the Cure Plan; and
- (iii) provide the Minister with regular updates (no less frequently than every 10 Business Days) on the progress of the remedy under the Cure Plan.

22.4 Remediating with Alternative Arrangements

Upon receipt of a Failure Notice, if the Failure is not capable of being cured or remedied, then the Licensee must as soon as practicable, comply to the reasonable satisfaction of the Minister with any Alternative Arrangements specified in the Failure Notice.

22.5 Failure to remedy

If the Licensee fails to comply with any one or more of the requirements specified in **clause 22.3** or **22.4**, then the Minister may:

- (a) proceed in accordance with **clause 23**; or
- (b) exercise any rights in relation to ministerial directions or (after receiving a recommendation from the Commission) disciplinary actions provided under the Act.

22.6 Ministerial directions and disciplinary actions not affected

- (a) Nothing in this Related Agreement affects the ability of the Minister or the Commission to exercise any rights in relation to directions or disciplinary actions provided under the Act.
- (b) Any Failure or a breach of any provision of this Related Agreement constitutes a contravention of the whole Related Agreement.

23. Step-In Right

23.1 Step-In Rights

- (a) If a Step-In Event occurs, then the Minister may, in addition to any other remedies he or she has under the Act but provided that the Licence has not been cancelled, suspended or surrendered, give the Licensee a notice in writing (**Step-In Notice**) specifying that:
 - (i) such a Step-In Event has occurred; and
 - (ii) the Minister proposes to exercise his or her discretion under **clause 23.1(d)** no less than 10 Business Days after the date of the Step-In Notice.
- (b) Within 5 Business Days after receiving a Step-In Notice, the Licensee may make representations to the Minister as to:

- (i) the Licensee's recommendation as to the Assistant Operator; and
 - (ii) why the Minister should not exercise his or her discretion under **clause 23.1(d)**.
- (c) The Minister, by written notice to the Licensee, may revoke a Step-In Notice.
- (d) If:
 - (i) the Licensee fails to make representations to the Minister within 5 Business Days after receiving a Step-In Notice; or
 - (ii) the Minister, after taking into account any representations by the Licensee, reasonably considers that the exercise of his or her discretion is appropriate action for the Minister to take having regard to the extent of any Failure, the interest of the public or Players or the risk to the revenue of the State,

then the Minister may, no less than 10 Business Days after the date of the Step-In Notice, require the Licensee to, and the Licensee must, appoint an Assistant Operator nominated by the Minister as an agent of the Licensee to take the steps permitted under this **clause 23**.

23.2 Steps Assistant Operator may take

The Assistant Operator is entitled, as agent of the Licensee, to take any of the following steps under this **clause 23** in respect of the Conduct of Approved Keno Games:

- (a) assisting in exercising all or any of the Licensee's powers, and assisting in performing all or any of the Licensee's obligations, including exercising all of the Licensee's rights with respect to any of its Agents, Contractors and all other persons under the Licensee's direction or control, for the purposes of assisting in establishing or Conducting Approved Keno Games as an Agent of the Licensee (but this does not affect any function or obligation of the Licensee under a gaming Act, gaming regulations, the Licence, this Related Agreement or any other Agreements);
- (b) operating and managing any account (including the Approved Account(s)) operated by the Licensee for the purpose of assisting in establishing or Conducting Approved Keno Games as an Agent of the Licensee;
- (c) acquiring additional or replacement products or services from any suppliers for the purpose of assisting in establishing or Conducting Approved Keno Games as an Agent of the Licensee;
- (d) taking such other steps as are, in the reasonable opinion of the Assistant Operator, necessary to assist in Conducting Approved Keno Games in accordance with the Act, the Licence, this Related Agreement and any other Agreements;
- (e) taking such steps as are, in the reasonable opinion of the Assistant Operator, necessary to carry out the obligations of the Licensee under the Transition Plan; and
- (f) electing to cease exercising any of its rights referred to above.

23.3 Exercise of rights by Assistant Operator

- (a) The Licensee appoints the Assistant Operator as its agent until cessation of step-in under **clause 23.8** to exercise any rights the Licensee has to:
- (i) use, reproduce, modify or adapt any or all Intellectual Property Rights associated with the Conduct of Approved Keno Games;
 - (ii) use, reproduce, copy or install any or all software, hardware, facilities, computer systems, servers, equipment, network and infrastructure associated with the Conduct of Approved Keno Games;
 - (iii) enter and occupy all physical Points of Sale and premises associated with the Conduct of Approved Keno Games;
 - (iv) exercise all other rights necessary to allow the Assistant Operator to Conduct Approved Keno Games, for any purposes associated with or connected to the Conduct of Approved Keno Games in Victoria; and
 - (v) permit third parties (being contractors of the Assistant Operator) to do any of (i) to (iv) above for any purposes associated with or connected to the Conduct of Approved Keno Games in Victoria.
- (b) If the Minister appoints an Incoming Licensee to replace the Licensee, the Licensee may, with the Minister's consent, transfer or assign any part of Keno Assets to the Incoming Licensee provided that such assignment will not affect the rights of the Assistant Operator under this **clause 23**.

23.4 Operation during step-in

- (a) When exercising its rights under this **clause 23** the State will use all reasonable endeavours to, and the Assistant Operator must, assist in Conducting Approved Keno Games in a manner which is consistent with the requirements of:
- (i) the Act, the Licence, this Related Agreement, any other Agreements and any Linked Jackpot Arrangement; and
 - (ii) to the extent that they are lawful and reasonable, the obligations of the Licensee under any agreements entered into with Agents or Contractors.
- (b) The Assistant Operator will receive all revenue, incur all liabilities and pay all expenses associated with or connected to the Conduct of Approved Keno Games as agent of the Licensee so that the Licensee will either be entitled to any surplus or be required to bear any loss which occurs from the time of the Assistant Operator's appointment under **clause 23.1** until cessation of step-in under **clause 23.8**.
- (c) The Licensee must reimburse the State for all costs and expenses incurred by the State in exercising its rights under this **clause 23**, including any fees or other amounts paid by the State to the Assistant Operator, and the Minister may from time to time provide to the Licensee a written notice detailing the amount of those costs and expenses required to be reimbursed by the Licensee, and the Licensee or the Assistant Operator as

agent of the Licensee must pay to the State the amount specified in that notice within 5 Business Days after receipt of that notice.

23.5 Licensee to give all assistance

- (a) The Licensee must assist the Assistant Operator in whatever way possible in the exercise of the Assistant Operator's rights under this **clause 23** and must ensure that the Licensee's Agents, Contractors and all other persons under the Licensee's direction or control do everything necessary or appropriate to cooperate with the Assistant Operator in the exercise of the rights granted in this **clause 23**.
- (b) Without limiting **clause 23.5(a)**, the Licensee must allow the Assistant Operator to have access to:
 - (i) any premises occupied by the Licensee or under its control and must ensure that such access is given by all Agents, Contractors and all other persons under the Licensee's direction or control, in connection with the provision by the Licensee of all services in support of the Conduct of Approved Keno Games; and
 - (ii) all Records (and the State will have the Assistant Operator keep such materials in confidence subject to any disclosure requirements or rights under Law applicable to the Minister, the State or the Assistant Operator).

23.6 Suspension of obligations

Upon the Minister appointing an Assistant Operator under this **clause 23** to perform the Licensee's obligations under the Licence and this Related Agreement, the obligations of the Licensee to perform those obligations may be suspended at the Minister's discretion to the extent and for such period as is necessary to permit the Assistant Operator to exercise those obligations and to Conduct the Approved Keno Games (and despite anything to the contrary in **clause 23.2(a)**).

23.7 Attorney

The Licensee:

- (a) irrevocably appoints the Assistant Operator as its attorney to assist in exercising all or any of the Licensee's powers, and assist in performing all or any of the Licensee's obligations, in accordance with this **clause 23**; and
- (b) agrees to ratify and confirm whatever action the Assistant Operator takes in accordance with this **clause 23**.

23.8 Cessation of step-in

The Minister will procure that the Assistant Operator ceases exercising the rights under this **clause 23** as soon as:

- (a) the Minister has appointed an Incoming Licensee to replace the Licensee and the Incoming Licensee is sufficiently established to Conduct the Continuing Keno Games; or
- (b) the Minister otherwise determines that it is appropriate to terminate the exercise of the rights under this **clause 23**, for example where:

- (i) the Licensee remedies the Financial Default or the Failure to the reasonable satisfaction of the Minister; or
- (ii) the Licensee revokes a notice of its intention to surrender the Licence; or
- (iii) the Licence has been suspended, cancelled or surrendered.

23.9 Minister and Assistant Operator to act reasonably

In exercising its rights under this **clause 23**, the Minister must act, and will procure that the Assistant Operator acts, at all times, reasonably and in good faith having regard to all the circumstances under which they are exercising their rights.

23.10 Liability

- (a) The Licensee agrees that the Minister and the State will not be liable to the Licensee for any losses incurred by the Licensee resulting from the appointment of the Assistant Operator and the exercise by the Assistant Operator of the rights under this **clause 23** except to the extent that the Minister does not act in accordance with **clause 23.9**.
- (b) The Licensee agrees that the Assistant Operator will not be liable to the Licensee for any losses incurred by the Licensee resulting from the appointment of the Assistant Operator and the exercise by the Assistant Operator of the rights under this **clause 23**, except to the extent that the Assistant Operator does not act in accordance with **clause 23.9** or breaches any provision of the Licence or Related Agreement.
- (c) The Licensee agrees that the Minister, the State and the Assistant Operator are not obliged to overcome or mitigate any risk or consequences in respect of which the Minister, the State or the Assistant Operator exercises its rights under this **clause 23** but with the consent of the Minister, the Licensee can have the opportunity to overcome or mitigate such risk or consequences.
- (d) Subject to **clause 23.4**, the Licensee will not be liable to the Minister or the State for any losses incurred by the State resulting from the appointment of the Assistant Operator and the exercise by the Assistant Operator of the rights under this **clause 23** except to the extent that the Licensee does not act in accordance with **clause 23.5** or **23.7(b)**.

23.11 Other rights

- (a) The exercise by the Minister of his or her rights under this **clause 23** does not affect any other rights or entitlements of the Minister or the Commission (whether under the Act, the Licence, this Related Agreement or any other Agreement).
- (b) As reflected in the definition of Step-In Event, the Minister under this Related Agreement may appoint an Assistant Operator in advance of, or in circumstances which may not necessary require or permit, the appointment of a Temporary Licensee under the Act.

24. Temporary Licensee

24.1 Application

If the Minister issues a Temporary Licence and appoints a Temporary Licensee:

- (a) subject to the terms and conditions of the Temporary Licence; and
- (b) to the extent permitted by Law,

the terms of this **clause 24** apply.

24.2 Steps Temporary Licensee may take

Subject to the terms and conditions of the Temporary Licence, the Licensee agrees that the Temporary Licensee is entitled to take any of the following steps under this **clause 24** in respect of the Conduct of Approved Keno Games:

- (a) exercise all or any of the Licensee's powers, and perform all or any of the Licensee's obligations, including exercising all of the Licensee's rights with respect to any of its Agents, Contractors and all other persons under the Licensee's direction or control, for the purposes of establishing or Conducting Approved Keno Games as Temporary Licensee;
- (b) operating and managing any account (including the Approved Account(s)) operated by the Licensee for the purpose of establishing or Conducting Approved Keno Games as Temporary Licensee;
- (c) acquiring additional or replacement products or services from any suppliers for the purpose of establishing or Conducting Approved Keno Games as Temporary Licensee;
- (d) taking such other steps as are, in the reasonable opinion of the Temporary Licensee, necessary to Conduct Approved Keno Games in accordance with the Act, the Licence, this Related Agreement and any other Agreements;
- (e) taking such steps as are, in the reasonable opinion of the Temporary Licensee, necessary to carry out the obligations of the Licensee under the Transition Plan; and
- (f) electing to cease exercising any of its rights referred to above.

24.3 Exercise of rights by Temporary Licensee

The Licensee appoints the Temporary Licensee as its agent until the Temporary Licence is cancelled or otherwise terminates to exercise any rights the Licensee has to:

- (a) use, reproduce, modify or adapt any or all Intellectual Property Rights associated with the Conduct of Approved Keno Games;
- (b) use, reproduce, copy or install any or all software, hardware, facilities, computer systems, servers, equipment, network and infrastructure associated with the Conduct of Approved Keno Games;
- (c) enter and occupy all physical Points of Sale and premises associated with the Conduct of Approved Keno Games;

- (d) exercise all other rights necessary to allow the Temporary Licensee to Conduct Approved Keno Games, for any purposes associated with or connected to the Conduct of Approved Keno Games in the State; and
- (e) permit third parties (being contractors of the Temporary Licensee) to do any of (a) to (d) above for any purposes associated with or connected to the Conduct of Approved Keno Games in Victoria.

24.4 Operation during Temporary Licence

The Licensee must reimburse the State for all costs and expenses incurred by the State in exercising its rights under the Act to appoint a Temporary Licensee including any fees or other amounts paid by the State to the Temporary Licensee and the Minister may from time to time provide to the Licensee a written notice detailing the amount of those costs and expenses required to be reimbursed by the Licensee, and the Licensee must pay to the State, the amount specified in that notice within 5 Business Days after receipt of that notice.

24.5 Licensee to give all assistance

- (a) The Licensee must assist the Temporary Licensee in whatever way possible in the exercise of the Temporary Licensee's rights under both this **clause 24** and under the Temporary Licence issued under the Act, and must ensure that the Licensee's Agents, Contractors and all other persons under the Licensee's direction or control do everything necessary or appropriate to cooperate with the Temporary Licensee in the exercise of the rights granted in this **clause 24**.
- (b) Without limiting **clause 24.5(a)**, the Licensee must allow the Temporary Licensee to have access to:
 - (i) any premises occupied by the Licensee or under its control and must ensure that such access is given by all Agents, Contractors and all other persons under the Licensee's direction or control, in connection with the provision by the Licensee of all services in support of the Conduct of Approved Keno Games; and
 - (ii) all Records (and the State will have the Temporary Licensee keep such materials in confidence subject to any disclosure requirements or rights under Law applicable to the Minister, the State or the Temporary Licensee).

24.6 Attorney

The Licensee:

- (a) irrevocably appoints the Temporary Licensee as its attorney to exercise all or any of the Licensee's powers, and perform all or any of the Licensee's obligations under this Related Agreement or any other Agreements, agreements or contracts to which it is a party; and
- (b) agrees to ratify and confirm whatever action the Temporary Licensee takes in accordance with this **clause 24**.

24.7 Liability

- (a) The Licensee agrees that the Minister and the State will not be liable to the Licensee for any losses incurred by the Licensee resulting from the appointment of a Temporary Licensee and the exercise by the Temporary Licensee of the rights under this **clause 24**.
- (b) The Licensee agrees that the Temporary Licensee will not be liable to the Licensee for any losses incurred by the Licensee resulting from the appointment of the Temporary Licensee and the exercise by the Temporary Licensee of the rights under this **clause 24**, except to the extent that the Temporary Licensee breaches any provision of this **clause 24**.
- (c) Subject to **clause 24.4**, the Licensee will not be liable to the Minister or the State for any losses incurred by the State resulting from the appointment of the Temporary Licensee and the exercise by the Temporary Licensee of the rights under this **clause 24** except to the extent that the Licensee does not act in accordance with **clause 24.5** or **24.6(b)**.

24.8 Other rights

The exercise by the Temporary Licensee of its rights under this **clause 24** does not affect any other rights or entitlements of the Temporary Licensee (whether under the Act, the Temporary Licence, the Licence, this Related Agreement or any other Agreement).

25. Dispute resolution

25.1 Dispute resolution - general

- (a) This **clause 25** applies to any dispute under or in relation to this Related Agreement which arises after the termination of the Related Agreement, including any dispute under or in relation to any indemnity given under any clause of this Related Agreement which survives the termination of this Related Agreement under **clause 30.5**.
- (b) The parties must use all reasonable endeavours to resolve any dispute to which this **clause 25** applies.

25.2 Dispute Notice

- (a) If a dispute arises between the parties to which this **clause 25** applies and a party wishes to have a dispute resolved or determined, that party must issue a dispute notice to the other party which must include:
 - (i) a statement that it is a notice under this **clause 25.2**;
 - (ii) the basis for the claim;
 - (iii) the facts relied upon in support of the claim in sufficient detail to permit verification or assessment of the claim;
 - (iv) details of all amounts claimed and how those amounts have been calculated or claimed; and
 - (v) details of any other relief sought,

(Dispute Notice).

25.3 Negotiation

- (a) The parties agree that the Minister (or the State's Representative) and the Licensee must meet within 5 Business Days of the date on which a Dispute Notice is served.
- (b) The Minister (or the State's Representative) and the Licensee must consult and negotiate in good faith, and use their reasonable endeavours to resolve the dispute within 10 Business Days of the date on which the Dispute Notice is received (or such later date as the parties may agree).
- (c) All resolutions of a dispute agreed to by the Minister (or the State's Representative) and the Licensee must be reduced to writing and signed by or on behalf of each party in order to be contractually binding on the parties.
- (d) Purported resolutions which do not comply with the requirements in **clause 25.3(c)** will not be contractually binding on the parties.

25.4 Court action

- (a) The State and the Licensee must not commence or maintain a court action or proceeding upon a dispute to which this **clause 25** applies until the State and the Licensee have first taken part in a negotiation in accordance with **clause 25.3**.
- (b) Despite anything in this clause, the parties may commence court proceedings in relation to any dispute or claim arising under or in connection with this Related Agreement where the State or the Licensee seeks urgent interlocutory relief.

25.5 Other rights

The exercise by the Minister of his or her rights under this **clause 25** does not affect any other rights or entitlements of the Minister or the Commission (whether under the Act, the Licence, this Related Agreement or any other Agreement).

26. Goods and Services Tax

26.1 Construction

In this **clause 26**:

- (a) words and expressions which are not defined in this Related Agreement but which have a defined meaning in GST Law have the same meaning as in the GST Law;
- (b) GST Law has the same meaning given to that expression in the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*; and
- (c) references to GST payable and input tax credit entitlement include GST payable by, and the input tax credit entitlement of, the representative member for a GST group of which the entity is a member.

26.2 Consideration GST exclusive

Unless otherwise expressly stated, all sums payable or consideration to be provided under this Related Agreement are exclusive of GST.

26.3 Payment of GST

If GST is payable on any supply made by a party (or any entity through which that party acts) (**Supplier**) under or in connection with this Related Agreement, the recipient will pay to the Supplier an amount equal to the GST payable on the supply.

26.4 Timing of GST payment

The recipient will pay the amount referred to in **clause 26.3** in addition to and at the same time that the consideration for the supply is to be provided under this Related Agreement.

26.5 Tax invoice

The Supplier must deliver a tax invoice or an adjustment note to the recipient before the Supplier is entitled to payment of an amount under **clause 26.3**. The recipient can withhold payment of the amount until the Supplier provides a tax invoice or an adjustment note, as appropriate.

26.6 Adjustment event

If an adjustment event arises in respect of a taxable supply made by a Supplier under this Related Agreement, the amount payable by the recipient under **clause 26.3** will be recalculated to reflect the adjustment event and a payment will be made by the recipient to the Supplier or by the Supplier to the recipient as the case requires.

26.7 Reimbursements

Where a party is required under this Related Agreement to pay or reimburse an expense or outgoing of another party, the amount to be paid or reimbursed by the first party will be the sum of:

- (a) the amount of the expense or outgoing less any input tax credits in respect of the expense or outgoing to which the other party is entitled; and
- (b) if the payment or reimbursement is subject to GST, an amount equal to that GST.

26.8 No merger

This **clause 26** does not merge in the completion or termination of this Related Agreement or on the transfer of the property supplied under this Related Agreement.

27. Notices

- (a) A notice or other communication connected with this Related Agreement (**Notice**) has no legal effect unless it is in writing, signed by the Minister or sender's representative appointed under **clause 5** and delivered in accordance with this **clause 27**.

- (b) The address of the Licensee and the Minister for service of Notices at the Agreement Date are as detailed in **Schedule 1**. Either party may amend their address for service by giving Notice to the other.
- (c) In addition to any other method of service provided by Law, the Notice may be:
- (i) sent by email to;
 - (ii) sent by prepaid post to; or
 - (iii) delivered at,
- the address of the addressee set out in this Related Agreement or subsequently notified.
- (d) If the Notice is sent or delivered in a manner provided by **clause 27(c)**, it must be treated as given to and received by the party to which it is addressed:
- (i) if sent by post, on the sixth business day (in the place of receipt) after posting (if posted to an address in the same country), or the tenth business day (in the place of receipt) after posting (if posted to an address in another country);
 - (ii) if delivered in person or by courier, upon delivery; or
 - (iii) if delivered by email, the earlier of:
 - (A) the time the sender receives an automated message from the intended recipient's information system confirming delivery of the email; and
 - (B) three hours after the time the email is sent (as recorded on the device from which the sender sent the email) unless the sender receives, within that three hour period, an automated message that the email has not been delivered.
- (e) If any notice or document is delivered or deemed to be delivered:
- (i) after 5.00 pm in the place of receipt; or
 - (ii) on a day which is a Saturday, Sunday or public holiday in the place of receipt,
- it is taken as having been delivered at 9.00 am on the next day which is not a Saturday, Sunday or public holiday in that place.

28. Confidentiality and disclosure

28.1 Keep confidential

Subject to **clauses 28.2, 28.3 and 28.4**, the Licensee must keep the contents of this Related Agreement and all documents and information made available to it under, or in connection with, or in the course of the performance of, the Licence, this Related Agreement or any other Agreements, confidential and must not disclose the same to any other person without the prior written consent of the Minister.

28.2 Exceptions to confidentiality

Clause 28.1 will not apply in the following circumstances:

- (a) any disclosure required by Law;
- (b) in respect of information already in the public domain (other than as a result of breach of this clause 28);
- (c) any disclosure required by any applicable stock exchange listing rules;
- (d) disclosure to solicitors, barristers or other professional advisers under a duty of confidentiality;
- (e) disclosure to a banker or other financial institution relevant to a party, to the extent required for the purpose of raising funds or maintaining compliance with credit arrangements, if the banker or financial institution first gives a binding covenant to the Minister to maintain confidentiality of the information, in form and substance satisfactory to the Minister;
- (f) disclosure by the Licensee to an Agent, Contractor or Associate, for that Agent, Contractor or Associate to perform obligations under the Act, the Licence, this Related Agreement or any other Agreement, if the Agent, Contractor or Associate first gives a binding covenant to the Minister to maintain confidentiality of the information, in form and substance satisfactory to the Minister;
- (g) disclosure which the Minister requires the Licensee to make to enable the Minister to comply with his or her statutory reporting obligations, or reporting obligations to a Government Agency; or
- (h) any disclosure to the State.

28.3 Publication of Related Agreement

The Minister or the Commission may release or otherwise publish this Related Agreement in whole or in part including publication on the appropriate Government Agency website without further reference to the Licensee.

28.4 Decisions of the Minister or the Commission

The Minister or the Commission may cause all decisions relating to the Conduct of Approved Keno Games by the Licensee to be published and made available to members of the general public.

28.5 Public disclosure

- (a) The Licensee agrees that disclosure by the State, the Minister, the Commission or any Government Agency (in addition to any other disclosures the State may make) may be required or permitted:
 - (i) under sections 10.1.31, 10.1.32 or 10.1.33 of the Act;
 - (ii) under the *Freedom of Information Act 1982 (Vic)*;
 - (iii) under the *Ombudsman Act 1973 (Vic)*;

- (iv) under the *Independent Broad-based Anti-corruption Commission Act 2011 (Vic)*;
 - (v) to satisfy the disclosure requirements of the Victorian Auditor General, or to satisfy the requirements of Parliamentary accountability;
 - (vi) in the case of the Minister, to fulfil his or her duties of office; or
 - (vii) to otherwise comply with Law.
- (b) The Licensee must, at its own cost and expense, use its best endeavours to assist the State, a Minister, the Commission or a Government Agency in meeting its obligations under **this clause 28.5**.
- (c) The Licensee:
- (i) must not (and must ensure that its Agents, Contractors and Associates do not) make any public disclosures, announcements or statements in relation to the Licence or this Related Agreement or the Minister's or the Commission's involvement in the Licence or this Related Agreement without the Minister's prior consent (which will not be unreasonably withheld), other than where such disclosure, announcement or statement is required under **clauses 28.2(a) or 28.2(c)**;
 - (ii) must use its best endeavours to agree with the Minister the wording and timing of all public disclosures, announcements and statements by it or its Agents, Contractors or Associates relating to the Licence or this Related Agreement or the Minister's or the Commission's involvement in the Licence or this Related Agreement before the relevant disclosure, announcement or statement is made;
 - (iii) must give the Minister a draft of any proposed disclosure, announcement or statement (including media releases) relating to the Licence or this Related Agreement or the Minister's or the Commission's involvement in the Licence or this Related Agreement and must obtain the Minister's approval of the disclosure, announcement or statement (including media releases) before distributing such disclosure, announcements or statement; and
 - (iv) as soon as practicable, must give to the Minister a copy of any disclosure, announcement or statement (including media release) agreed to or approved by the Minister under **this clause 28.5**.

29. Privacy

- (a) The Licensee must comply with its obligations (and ensure that its employees, Agents or Contractors comply with their obligations) under any applicable Privacy Laws when accessing, collecting, using, disclosing or otherwise handling any Personal Information for the purpose of, or under or in connection with, this Related Agreement or the Licence.
- (b) If this Related Agreement constitutes a "State contract" within the meaning of either or both of the *Privacy Act 1988 (Cth)* and the *Privacy and Data*

Protection Act 2014 (Vic), then the Licensee agrees (without limiting its obligations under **clause 29(a)**) to be bound by the Information Privacy Principles and any applicable Code of Practice with respect to any act done or practice engaged in by the Licensee for the purpose of, or under or in connection with, this Related Agreement or the Licence in the same way, and to the same extent, as the State or the Minister would have been bound had it been directly done or engaged in by the State or the Minister.

30. Miscellaneous

30.1 Assignment

The Licensee must not assign, sublicense, mortgage or otherwise deal with its rights or obligations under this Related Agreement unless a provision of this Related Agreement expressly provides otherwise.

30.2 Severability

If anything in this Related Agreement is unenforceable, illegal or void then it is severed and the rest of this Related Agreement remains in force.

30.3 Waiver

A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right. The exercise of a power or right does not preclude either its exercise in the future or the exercise of any other power or right. A waiver is not effective unless it is in writing. Waiver of a power or right is effective only in respect of the specific instance to which it relates and for the specific purpose for which it is given.

30.4 Governing Law and jurisdiction

The Law of Victoria governs this Related Agreement. The parties submit to the non-exclusive jurisdiction of the courts of Victoria and of the Commonwealth of Australia.

30.5 Surviving provisions

- (a) An indemnity given under this Related Agreement survives the frustration, rescission, suspension, termination or expiration of this Related Agreement.
- (b) All clauses that by their nature survive expiration or termination of this Related Agreement will remain in full force, which include **clauses 1.2, 9.1, 9.2, 9.3, 11, 13, 14, 16, 18, 19, 20, 21, 22, 23, 24, 25, 27 and 28**.
- (c) Any rights or obligations accrued prior to the frustration, rescission, suspension, termination or expiration of this Related Agreement or as a result of a Failure survive the frustration, rescission, suspension, termination or expiration of this Related Agreement.
- (d) The dispute resolution procedures in **clause 25** continue in force even where this Related Agreement has been fully performed, survive frustration, rescission, suspension, termination or expiration of this Related Agreement and this clause applies even where this Related Agreement is otherwise void or voidable.

30.6 Cost of performing obligations

A party who has an obligation to do anything under the Act, Regulations, the Licence, this Related Agreement or any other Agreements must perform that obligation at its own cost and expenses, unless a provision of this Related Agreement expressly provides otherwise.

30.7 Further assurance

Each party must promptly and at its own cost sign, execute, deliver and do all such acts and things as may be necessary or reasonably required of it to carry out and give full effect to this Related Agreement and the rights and obligations of the parties to them.

30.8 Counterparts

This Related Agreement may be executed in any number of counterparts and all counterparts taken together will constitute one and the same instrument.

30.9 Deemed breach of Licence

- (a) For the purposes of clause 6.2(b) of the Licence, a Failure (other than in respect of **clauses 1.5, 18.3(b), 23.5 and 24.5**) will not be deemed to be a breach of the Licence unless the Licensee has failed to comply with any one or more of the requirements specified in **clauses 22.3 or 22.4**.
- (b) For the purposes of **clause 7.3(d)**, such a deemed breach will not be deemed to be a breach of the Related Agreement unless the Licensee has failed to comply with any one or more of the requirements specified in **clauses 22.3 or 22.4**.

30.10 Time is of the essence

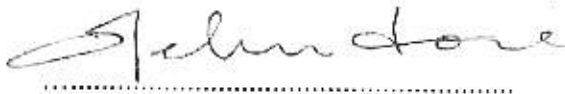
Time is of the essence of this Related Agreement

Keno Related Agreement – *Gambling Regulation Act 2003 (Vic)*

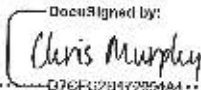
Execution

Executed as a deed.

Signed sealed and delivered)
by Hon Melissa Horne MP, Minister for)
Consumer Affairs, Gaming and Liquor)
Regulation for and on behalf of the)
Crown in right of the State of Victoria:



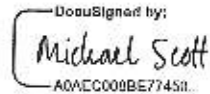
Executed by)
Keno (VIC) Pty Ltd (ACN 105 341 366))
in accordance with section 127 of the)
Corporations Act 2001 (Cth):)

DocuSigned by:

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Signature of Director

Chris Murphy

Name of Director

DocuSigned by:

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Signature of Secretary / other Director

Michael Scott

Name of Secretary / other Director