



Victorian Government  
Solicitor's Office

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

**Tabcorp VIC Pty Ltd**

**Wagering and Betting Related Agreement –  
*Gambling Regulation Act 2003 (Vic)***

Level 25, 121 Exhibition Street, Melbourne Vic 3000  
Level 33, 80 Collins Street, Melbourne Vic 3000  
DX 300077 Melbourne

Tel +61 3 8684 0444 Fax +61 3 8684 0449  
Tel +61 3 9947 1444 Fax +61 3 9947 1499  
[www.vqso.vic.gov.au](http://www.vqso.vic.gov.au)  
Ref: 2101951

## Table of Contents

<b>1.</b>	<b>Definitions and Interpretation .....</b>	<b>1</b>
1.1	Definitions .....	1
1.2	Interpretation .....	8
1.3	Unfettered discretion .....	10
1.4	Licence and Act to prevail .....	11
1.5	Licence conditions .....	11
1.6	Review by the Minister and Commission .....	11
<b>2.</b>	<b>Agreement.....</b>	<b>12</b>
2.1	Commencement .....	12
2.2	Variation .....	12
2.3	Conduct of Licensee .....	12
<b>3.</b>	<b>Wagering and Betting System .....</b>	<b>12</b>
3.1	Location of Wagering and Betting System .....	12
3.2	Commission's Technical Standards .....	12
3.3	Disaster recovery testing .....	13
3.4	Performance Standards.....	13
3.5	Amended, replaced or supplemented Performance Standards .....	13
<b>4.</b>	<b>Parent Company Guarantee and Indemnity .....</b>	<b>14</b>
<b>5.</b>	<b>Performance Bond .....</b>	<b>14</b>
5.1	Provision of Performance Bond .....	14
5.2	Replacement of Performance Bond .....	15
5.3	Demands under Performance Bond .....	16
5.4	Repayment by the Minister .....	17
5.5	Return of Performance Bond .....	17
<b>6.</b>	<b>Representatives .....</b>	<b>18</b>
6.1	Licensee's Representative.....	18
6.2	State's Representative .....	18
<b>7.</b>	<b>Development and Implementation .....</b>	<b>18</b>
7.1	Development of Implementation Plan.....	18
7.2	Submission of Implementation Plan to the Commission .....	20
7.3	Approval of Implementation Plan .....	20
7.4	Development in accordance with Approved Implementation Plan .....	21
7.5	Monthly report.....	22
7.6	Certification of Implementation Completion .....	22
7.7	Readiness to Conduct Authorised Betting Competitions .....	22
7.8	Licensee's obligation to facilitate transition-in.....	22

<b>8.</b>	<b>Conduct of Authorised Betting Competitions .....</b>	<b>23</b>
8.1	Availability of funds .....	23
8.2	Details to be made available to Players .....	23
8.3	Relationships with Agents and Contractors .....	23
8.4	Exclusive arrangements .....	24
<b>9.</b>	<b>Business Rules .....</b>	<b>25</b>
9.1	Development of Business Rules .....	25
9.2	Submission of Business Rules to the Commission .....	26
9.3	Approval of Business Rules .....	26
<b>10.</b>	<b>Banking .....</b>	<b>26</b>
10.1	Account .....	26
10.2	Account statements .....	27
10.3	Ticket Agents and funds .....	27
<b>11.</b>	<b>Records .....</b>	<b>28</b>
11.1	Retention of Records .....	28
11.2	Copy of Records .....	28
11.3	Inspection of Records .....	28
11.4	Arrangements .....	28
11.5	Preparation of Annual Financial Statements .....	28
11.6	Additional Financial Statements .....	29
11.7	Content of Financial Statements .....	29
11.8	Audit of Licensee .....	30
11.9	Compliance with accounting standards .....	30
11.10	Executive declaration .....	30
11.11	Electronic provision of information .....	31
11.12	Limits on disclosure .....	31
<b>12.</b>	<b>Reporting Requirements .....</b>	<b>31</b>
12.1	Regular reporting requirements .....	31
12.2	Non-regular reporting requirements .....	32
12.3	Content and format of Reports .....	32
12.4	Licence to use information in Reports .....	32
<b>13.</b>	<b>Collection and use of Reportable Data .....</b>	<b>33</b>
<b>14.</b>	<b>Notification of change in situation .....</b>	<b>34</b>
<b>15.</b>	<b>Transition Out .....</b>	<b>34</b>
15.1	Incoming Licensees .....	34
15.2	Transition objectives .....	35
15.3	Transition Out - Dealings .....	35
15.4	Transition Out - Compliance .....	36

15.5	Preparation and approval of Transition Plan .....	36
15.6	Reimbursement by the State .....	38
<b>16.</b>	<b>Intellectual Property .....</b>	<b>38</b>
16.1	Existing Intellectual Property Rights .....	38
16.2	Warranty regarding Intellectual Property Rights .....	39
<b>17.</b>	<b>Insurance .....</b>	<b>39</b>
<b>18.</b>	<b>Liability and Indemnities .....</b>	<b>39</b>
18.1	Licensee relies on own judgment .....	39
18.2	Liability in relation to the Licence .....	39
18.3	Exclusion of liability .....	39
18.4	Indemnities .....	40
<b>19.</b>	<b>General warranties and obligations .....</b>	<b>40</b>
<b>20.</b>	<b>Termination.....</b>	<b>41</b>
<b>21.</b>	<b>Force Majeure .....</b>	<b>42</b>
21.1	Notice of Force Majeure Event .....	42
21.2	Suspension of obligations .....	43
21.3	Mitigation and reinstatement .....	43
21.4	End of Suspension Period .....	43
21.5	Licensee's costs and expenses .....	43
<b>22.</b>	<b>Default.....</b>	<b>44</b>
22.1	Financial Default .....	44
22.2	Other Default .....	44
22.3	Remedying within the Cure Period.....	44
22.4	Remedying with Alternative Arrangements .....	45
22.5	Failure to remedy .....	45
22.6	Ministerial directions and disciplinary actions not affected.....	45
<b>23.</b>	<b>Step-In Right.....</b>	<b>45</b>
23.1	Step-In Rights.....	45
23.2	Steps Assistant Operator may take.....	46
23.3	Exercise of rights by Assistant Operator .....	47
23.4	Operation during step-in.....	47
23.5	Licensee to give all assistance .....	48
23.6	Suspension of obligations .....	48
23.7	Attorney.....	49
23.8	Cessation of step-in .....	49
23.9	Minister and Assistant Operator to act reasonably .....	49
23.10	Liability.....	49

23.11	Other rights.....	50
<b>24.</b>	<b>Temporary Licensee .....</b>	<b>50</b>
24.1	Application.....	50
24.2	Steps Temporary Licensee may take .....	50
24.3	Exercise of rights by Temporary Licensee.....	51
24.4	Operation during Temporary Licence .....	51
24.5	Licensee to give all assistance .....	51
24.6	Attorney.....	52
24.7	Liability.....	52
24.8	Other rights.....	52
<b>25.</b>	<b>Dispute resolution .....</b>	<b>53</b>
25.1	Dispute resolution - general .....	53
25.2	Dispute Notice .....	53
25.3	Negotiation .....	53
25.4	Court Action.....	54
25.5	Other rights.....	54
<b>26.</b>	<b>Goods and Services Tax .....</b>	<b>54</b>
26.1	Construction .....	54
26.2	Consideration GST exclusive.....	54
26.3	Payment of GST.....	54
26.4	Timing of GST payment.....	54
26.5	Tax invoice .....	55
26.6	Adjustment event .....	55
26.7	Reimbursements .....	55
26.8	No Merger.....	55
<b>27.</b>	<b>Notices .....</b>	<b>55</b>
<b>28.</b>	<b>Confidentiality and disclosure .....</b>	<b>56</b>
28.1	Keep Confidential .....	56
28.2	Exceptions to confidentiality.....	56
28.3	Publication of Related Agreement.....	57
28.4	Decisions of the Minister or the Commission .....	57
28.5	Public disclosure.....	57
<b>29.</b>	<b>Privacy and data security .....</b>	<b>59</b>
29.1	Privacy .....	59
29.2	Data security .....	59
<b>30.</b>	<b>Miscellaneous .....</b>	<b>60</b>
30.1	Assignment.....	60
30.2	Severability.....	60

---

30.3	Waiver .....	60
30.4	Governing Law and jurisdiction .....	60
30.5	Surviving provisions .....	60
30.6	Cost of performing obligations .....	60
30.7	Further assurance .....	61
30.8	Counterparts and electronic execution .....	61
30.9	Deemed Breach of Licence .....	61
30.10	Time is of the Essence .....	61
<b>Schedule 1</b>	<b>General .....</b>	<b>63</b>
<b>Schedule 2</b>	<b>Performance Standards .....</b>	<b>64</b>
<b>Schedule 3</b>	<b>Parent Company Guarantee and Indemnity .....</b>	<b>67</b>
<b>Schedule 4</b>	<b>Form of Bond .....</b>	<b>82</b>



Date

18 | 12 2023

**Parties**

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

**Tabcorp VIC Pty Ltd** ACN 668 057 056 of Level 19, Tower 2, 727 Collins Street, Docklands, Victoria 3008 (**Licensee**)

**Background**

- A. The Minister has determined under sections 4.3A.7 and 4.3A.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 Authorised Betting Competitions under the Licence, the Minister enters into this Related Agreement with the Licensee under section 4.3A.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.

**Additional Financial Statements** has the meaning given in **clause 11.5**.

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

**Annual Financial Statements** has the meaning given in **clause 11.5**

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

**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 Authorised Betting Competitions.

**Authorised Betting Competition Assets** means an asset or undertaking of the Licensee that is connected with the Conduct of Authorised Betting Competitions under the Licence, including all systems (including a Wagering and Betting System), accounts, processes, networks and Records.

**Business Rules** means the rules to be developed by the Licensee in accordance with **clause 9**.

**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.

**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 Wagering and Betting System as made and published by the Commission from time to time and in accordance with section 10.1.5A of the Act.

**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 data and information relating to the Conduct of Authorised Betting Competitions under the Licence, held by or on behalf of the Licensee, its Agents or Contractors, stored by any means, whether structured or unstructured, in whatever form (including physical or electronic form).

**Data Security Breach** has the meaning given in **clause 29.2(b)**.

**Default Rate** means a rate equivalent to 2% per annum above the rate, expressed as a yield per cent per annum (rounded upwards to two decimal places) quoted as the daily buying rate displayed at or about 11:00am (Melbourne time) on the Reuters screen BBSW for Australian bank bills of a three month duration (or in the absence of such publication, an equivalent publication as notified by the Minister).

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

**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)**.

**Former Licensee** means the person who was the holder of a Wagering and Betting Licence, immediately prior to the Licensee.

**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.

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

**Incoming Licensee** means another person issued a Wagering and Betting Licence (including a Temporary Licence) that commences on or around (or up to 6 months following) the expiration of the Term.

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

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

**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.

**Issuer** has the meaning given in **clause 5.1(a)(i)**.

**Key Milestones** means the dates set out in the Approved Implementation Plan which are critical to ensure that the Licensee can Conduct Authorised Betting Competitions as required under **clause 7.7**.

**Licence** means the licence to Conduct Authorised Betting Competitions issued by the Minister to the Licensee on or about the date of this Related Agreement.

**Licensee's Representative** means the representative of the Licensee appointed from time to time in accordance with **clause 6.1**.

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

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

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

**Performance Bond** has the meaning given in **clause 5.1(a)**.

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

**Performance Standards Notice** has the meaning given in **clause 3.5(a)**.

**Point of Sale** means a location where tickets or other forms of entry in Authorised Betting Competitions are accepted or sold by or on behalf of the Licensee. If the tickets or other forms of entry to an Authorised Betting Competition 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).

**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 Authorised Betting Competitions, including:

- (a) the Licensee's copy of the agreements it has with Agents, Contractors, and any other persons relating to the Conduct of Authorised Betting Competitions;
- (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 Authorised Betting Competitions; and
- (e) all records and statements relating to the Approved Accounts.

**Relevant Amount** has the meaning given in clause 5.4(a)(i).

**Report** means a report that the Licensee is required to prepare under clauses 12.1 and 12.2.

**Reportable Data** means the data referred to in clauses 13(a) and 13(b).

**State's Representative** means the person appointed from time to time under clause 6.2.

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

- (a) the Minister receives a recommendation from the Commission under section 4.3A.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 4.3A.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 4.3A.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 4.3A.31 of the Act.

**Temporary Licensee** means a person appointed by the Minister and issued with a Temporary Licence in accordance with section 4.3A.31 of the Act.

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

**Testing Commitment** has the meaning given in **clause 3.3(a)**.

**Ticket Agent Funds** has the meaning given in **clause 10.3(a)**.

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

**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 Conduct Authorised Betting Competitions within 6 months of the Transition Out Period commencing.

**Transition Plan** refers to the plan produced by the Licensee that describes how a proposed Wagering and Betting Transition will be undertaken, as amended and approved by the State's Representative under **clause 15.5** from time to time.

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

**Victorian Racing Industry** means the activities of horse racing, harness racing and greyhound racing in or in relation to Victoria and includes the regulation of such activities (whether mandatory or voluntary) and all stakeholders and participants in such activities, including the Victorian Racing Industry Entities.

**Wagering and Betting System** means any instrument, contrivance or computer hardware or software or any other equipment that the Licensee proposes to use, or will cause or permit to be used for the Conduct of the Authorised Betting Competitions under the Licence, including:

- (a) any backup or redundant system in accordance with the Commission's Technical Standards; and
- (b) any new release or new version of a software module or any patch, update or enhancement to any software module that is made by or on behalf of, or for the benefit of, the Licensee during the Term.

**Wagering and Betting Transition** means the transition process under which the Conduct of Authorised Betting Competitions will be transitioned from the Licensee to one or more Incoming Licensee(s).

## 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 (Authorised Betting Competitions), 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.

#### **1.6 Review by the Minister and Commission**

- (a) Any review, endorsement or approval of, comment upon or input into, by the Minister, the Commission or their respective advisors of any material, document or other information prepared by or provided by the Licensee under or in connection with this Related Agreement (including during or part

of the process of the development and approval of the Implementation Plan under **clause 7**), will not relieve the Licensee of its responsibility for such material, document or information or of its obligations or liabilities under this Related Agreement.

- (b) A failure by the Minister, the Commission or their respective advisers to notify the Licensee of any defect in or concern associated with any such material, document or information will not relieve the Licensee of its liabilities, or constitute a waiver of any of the Minister's rights, under this Related Agreement.

## **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. Wagering and Betting System**

### **3.1 Location of Wagering and Betting System**

- (a) The Licensee must ensure that the Wagering and Betting System is located in Australia unless otherwise approved by the Commission.
- (b) The Licensee must advise the Commission of the location of the Wagering and Betting System throughout the Term and, upon receipt of a request from the Commission, provide the Commission with access to the Wagering and Betting System

### **3.2 Commission's Technical Standards**

- (a) The Licensee must ensure (and must procure that its Agents and Contractors ensure) that the Wagering and Betting 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 warrants that the Wagering and Betting System is fit for the purpose of the Conduct of Authorised Betting Competitions in accordance with the Commission's Technical Standards.

### 3.3 Disaster recovery testing

- (a) In addition to any relevant requirement under the Commission's Technical Standards, the Licensee must perform a test of its disaster recovery processes to the satisfaction of the Minister (or if the Minister so directs, the Commission) within the six month period following each anniversary of the Licence Commencement Date during the Term (or such later time as approved by the Minister) (**Testing Commitment**).
- (b) In the event of any inconsistency between the Commission's Technical Standards and the Testing Commitment, the Testing Commitment will prevail.

### 3.4 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 12.1** on, the Performance Standards.

### 3.5 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 3.5(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 Company 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 Company 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 Company 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 Company Guarantee and Indemnity; and
    - (B) stating that the Parent Company 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. Performance Bond

##### 5.1 Provision of Performance Bond

- (a) On or before the Agreement Date, the Licensee must provide to the Minister an unconditional and irrevocable written undertaking (**Performance Bond**):
  - (i) issued by a financial institution (**Issuer**) that is the holder of a current licence issued by the Australian Prudential Regulation Authority and which has:
    - (A) a credit rating of at least A- (issued by Standard and Poor's Australia) or A3 (in respect of 'Moody's Investor Operator Service'), or the equivalent credit rating issued by another generally recognised international credit rating agency; or



- (B) at any time that all of the four largest Australian banks no longer have at least the credit rating referred to in **clause 5.1(a)(i)(A)**, a credit rating at least as high as that of the Australian bank with the highest credit rating;
- (ii) in the amount of \$5 million (as either a single bond or bonds that in aggregate total \$5 million); and
- (iii) in favour of the State substantially in the form of **Schedule 4** (or in such form and substance as the Minister may otherwise approve),

as security for the performance by the Licensee of its obligations under this Related Agreement and the Licence.

(b) The Licensee must:

- (i) ensure that the Performance Bond:
  - (A) is kept current and enforceable at all times during the Term and until at least 12 months after the cancellation, termination or expiration of the Licence;
  - (B) is renewed annually (or where it applies for a given number of years that the period of the bond is extended annually to apply for that same number of years until at least 12 months after the cancellation, termination or expiration of the Licence);
- (ii) if the State makes a demand on the Performance Bond for an amount less than that referred to in **clause 5.1(a)**, provide a new Performance Bond for that amount when requested by the Minister;
- (iii) pay all expenses associated with the provision and maintenance of the Performance Bond; and
- (iv) take all reasonable steps to ensure it is aware of the credit rating of the Issuer at all times, including any changes to the Issuer's credit rating.

(c) Except as specified in **clause 5.4**, the Minister is not obliged to pay the Licensee interest on a Performance Bond or the proceeds of a Performance Bond.

## 5.2 Replacement of Performance Bond

- (a) If at any time during which the Licensee is required to provide a Performance Bond in accordance with **clause 5.1** the:
  - (i) credit rating of the Issuer of the Performance Bond falls below the rating required under **clause 5.1(a)(i)**; or
  - (ii) such Issuer ceases to have any credit rating at all,
 the Licensee must:

- (iii) notify the Minister promptly of becoming aware of that circumstance; and
  - (iv) within 20 Business Days after the date of such notice, procure the issue to the State of a replacement bond (in the amount and form of the Performance Bond being replaced).
- (b) If under this Related Agreement the Performance Bond is to be replaced, the Minister must return the Performance Bond to the Licensee only upon the Licensee providing the State with a replacement bond.

### 5.3 Demands under Performance Bond

- (a) Without limiting the unconditional nature of the Performance Bond, the Minister may make a demand under the Performance Bond in respect of any amount which:
- (i) the Minister considers is, or at any time may become, due or payable by the Licensee to the Minister under the Licence or the Related Agreement; or
  - (ii) the Minister has incurred, or the Minister considers he or she may incur, arising out of or in respect of or in connection with any breach or failure to comply with a condition of the Licence or any Financial Default or Failure.

Without limiting the foregoing, whenever the Minister makes a demand in respect of the Performance Bond, he or she may do so in respect of all or any of the bonds comprising the Performance Bond.

- (b) The Minister must, as soon as practicable after he or she has made a demand and received payment under the Performance Bond, give a notice to the Licensee, specifying the amount of the demand and the Minister's reason for making the demand.
- (c) If a replacement bond is not provided to the Minister in accordance with **clause 5.2**, the Minister may make a demand under the Performance Bond for the full amount of the Performance Bond at that time.
- (d) The Minister may make a demand under the Performance Bond irrespective of whether or not the amount demanded and the circumstances relating to the amount:
  - (i) are in dispute; or
  - (ii) have been referred for determination in accordance with **clause 25**.
- (e) If the Minister makes a demand under a Performance Bond, or presents a Performance Bond for payment, the Minister does not, and will not be taken to, hold the proceeds on trust.
- (f) The Licensee must not take any action to enjoin or otherwise restrain:
  - (i) the Issuer from paying the Minister under the Performance Bond;

- (ii) the Minister from making a demand or receiving payment under the Performance Bond; or
- (iii) the Minister from using the proceeds of a Performance Bond
- (g) In this **clause 5.3** and **clause 5.4**, the term "amount" includes debts, fees, costs (including legal costs on an indemnity basis), indemnities, charges, duties, penalties, Taxes, losses and expenses.

#### **5.4 Repayment by the Minister**

- (a) If the Issuer of the Performance Bond makes a payment to the State under the Performance Bond and the Minister does not in fact incur, or the Licensee is not or does not in fact otherwise become liable to pay the Minister, an amount which is equal to or greater than the payment made, then the Minister must pay to the Licensee:
  - (i) the part of that payment made which exceeds the amount which the Minister does in fact incur, or which the Licensee is or does in fact otherwise become liable to pay to the State (**Relevant Amount**); and
  - (ii) interest at the Default Rate on the Relevant Amount on a daily basis from (and including) the date the Issuer of the Performance Bond met the demand in respect of the Relevant Amount to the date the Relevant Amount is paid to the Licensee compounded on the last Business Day of each month. Such interest must be paid on the date the Relevant Amount is paid to the Licensee.
- (b) The Licensee acknowledges and agrees that:
  - (i) the Licensee's sole remedy arising out of or in respect of or in connection with the making of a demand by the Minister under, or the utilisation of the proceeds of, the Performance Bond or the payment by an Issuer to the Minister under a Performance Bond is the Licensee's entitlement to payment by the Minister in accordance with **clause 5.4(a)**; and
  - (ii) the Licensee's entitlement to payment by the Minister of the amounts contemplated by **clause 5.4(a)** constitutes an adequate remedy for the Licensee in respect of the occurrence of the circumstances described in **clause 5.4(a)**.

#### **5.5 Return of Performance Bond**

Provided the Licensee has complied with its obligations under this Related Agreement and the Licence, the Minister will return the Performance Bond to the Licensee on the date which is 12 months after the cancellation, termination or expiration of the Licence.

## 6. Representatives

### 6.1 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.

### 6.2 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.

## 7. Development and Implementation

### 7.1 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 Authorised Betting Competitions 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 Commission, that the Licensee has (or will have by the end of the Transition In Period):
  - (i) access to all relevant Intellectual Property Rights, information and a Wagering and Betting System;

- (ii) financial arrangements and resources;
- (iii) developed, in consultation with the Commission, a process for the processing of tickets or other forms of entry issued by the Former Licensee (other than those tickets or other forms of entry issued by the Former Licensee via Interactive Distribution Methods);
- (iv) staffing and related resources including development of an industrial relations engagement strategy;
- (v) distribution processes and networks;
- (vi) developed a plan to ensure the continuity of Authorised Betting Competitions;
- (vii) developed a strategy, as appropriate, for transition in or out of existing Agents or Authorised Venues;
- (viii) entered into arrangements with Sports Controlling Bodies for the use of content;
- (ix) entered into arrangements with media providers that allow content to reach a broad audience;
- (x) developed and implemented a marketing campaign;
- (xi) arrangements with Agents and Contractors;
- (xii) developed and implemented stakeholder management and communications plans;
- (xiii) developed and implemented business support arrangements;
- (xiv) developed and implemented a service strategy;
- (xv) 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;
- (xvi) developed and complied with an implementation budget; and
- (xvii) plans and milestones to ensure the efficient, smooth, seamless and uninterrupted transition to the Licensee of the Conduct of Authorised Betting Competitions to the Licensee,

that are necessary and appropriate to Conduct Authorised Betting Competitions 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) achievement of the matters described in **clause 7.1(c)**;

- (ii) the approval by the Commission of a Wagering and Betting System, to the extent required under section 4.2.3 of the Act; and
  - (iii) the Betting Rules and Betting Exchange Rules made, or to be made, and consented to or otherwise not disallowed by the Commission, in accordance with Division 2, Part 2 of Chapter 4 of the Act.
- (e) The Commission will act reasonably in exercising its powers and rights under this **clause 7** and will do all things reasonably necessary to facilitate compliance by the Licensee with this **clause 7**.
- (f) The Commission may release the Licensee from any or all of the obligations in **clauses 7.1 to 7.6** if the Commission 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 7.7**.

## 7.2 Submission of Implementation Plan to the Commission

- (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 Commission), submit the detailed Implementation Plan to the Commission for its approval.
- (b) Without limiting the obligations on the Licensee under **clause 7.1**, 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 Authorised Betting Competitions 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 Commission 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 7**.
- (d) The Licensee must not proceed with the Implementation Plan unless it has been approved by the Commission under **clause 7.3**.

## 7.3 Approval of Implementation Plan

- (a) Upon the receipt of a proposed Implementation Plan (or any sub-plans contemplated by the Implementation Plan), the Commission 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 Commission 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 Commission requires any amendments to, or rejects the Implementation Plan (or any sub-plan), the Licensee may make a further submission to the Commission 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 Commission 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 Commission 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 Commission within 3 months after the Agreement Date (or such later date approved by the Commission), then the Approved Implementation Plan will be as determined by the Commission.

#### **7.4 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 Commission may, in their 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 7.4(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 Commission 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 7.4(d)**, the Commission may, in their 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**.

## 7.5 Monthly report

The Licensee must provide the Commission 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.

## 7.6 Certification of Implementation Completion

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

## 7.7 Readiness to Conduct Authorised Betting Competitions

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

- (a) must have the Wagering and Betting System, processes (including distribution processes), staff, finance and any other things as are necessary for the Conduct of Authorised Betting Competitions 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 Commission); and
- (b) must be able to Conduct each Authorised Betting Competition in accordance with the requirements for that Authorised Betting Competition (including the Betting Rules and Betting Exchange Rules) on and from the Licence Commencement Date (or such later date as approved by the Minister in writing).

## 7.8 Licensee's obligation to facilitate transition-in

Without limiting any other sub-clause of this **clause 7**, the Licensee must:

- (a) where applicable, act reasonably and in good faith in any dealings with the Former Licensee during the Transition In Period;
- (b) 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 Authorised Betting Competitions to the Licensee;
- (c) take any action or undertake any processes which the State requires to facilitate an efficient, smooth, seamless and uninterrupted transition of the Conduct of Authorised Betting Competitions 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 7**); and

- (d) act reasonably and in good faith towards the State during the Transition In Period.

## **8. Conduct of Authorised Betting Competitions**

### **8.1 Availability of funds**

- (a) On written request from the Commission, the Licensee must demonstrate, to the reasonable satisfaction of the Commission that the Licensee:
  - (i) is able to pay all prizes or dividends upon determination of Authorised Betting Competitions Conducted by the Licensee under the Licence in accordance with the Betting Rules or Betting Exchange Rules;
  - (ii) is able to refund all Authorised Betting Competition entries in respect of any Authorised Betting Competition Conducted by the Licensee under the Licence that is not drawn or determined;
  - (iii) has accounted for and retained an amount equal to the sum of all dividends and prizes won that have not been claimed by the Players and is able to pay all dividends and 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
  - (iv) is able to pay any Premium Payments as and when payment falls due.
- (b) It is not sufficient for the purposes of this **clause 8.1** 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.

### **8.2 Details to be made available to Players**

The Licensee must ensure that:

- (a) contact details of the Licensee, including a contact name, phone number, email and postal address;
- (b) notification of the dispute resolution procedure used to resolve any dispute in relation to a claim for a prize; and
- (c) the process by which a complaint may be made to the Licensee or to the Commission,

are freely available at any Point of Sale.

### **8.3 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 Authorised

- Betting Competitions, or, if a Ticket Agent, prior to that Ticket Agent selling any tickets or other forms of entry to Authorised Betting Competitions.
- (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 Authorised Betting Competitions 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 8.3(e)(i)**,
      - (A) if the Licence is amended, its Agents and Contractors assist in the Conduct of Authorised Betting Competitions in accordance with the Licence as amended;
      - (B) if the Licence is suspended, its Agents and Contractors cease assisting in the Conduct of Authorised Betting Competitions 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 Authorised Betting Competitions (except to the extent permitted by Law).

#### **8.4 Exclusive arrangements**

The Licensee must not:

- (a) enter into contracts, arrangements or understandings with Agents or Contractors; or
- (b) Conduct Authorised Betting Competitions 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 another licensee under the Act, except where the Licensee controls the Agent or Contractor, within the meaning of section 50AA of the Corporations Act.

## 9. Business Rules

### 9.1 Development of Business Rules

- (a) The Licensee must develop rules which detail the way in which the Licensee will:
- (i) accept wagers on Wagering Events;
  - (ii) accept bets on Approved Betting Competitions;
  - (iii) accept offers and bets through the Betting Exchange; and
  - (iv) otherwise issue or sell tickets or other forms of entry in Authorised Betting Competitions

**(Business Rules).**

- (b) The Licensee must demonstrate, to the reasonable satisfaction of the Commission that the Business Rules provide that:
- (i) wagers on Wagering Events;
  - (ii) bets on Approved Betting Competitions;
  - (iii) offers and bets through the Betting Exchange; and
  - (iv) tickets or other forms of entry in Authorised Betting Competitions,

Conducted by the Licensee and placed or purchased by Registered Players resident in Victoria are treated as wagers, bets, offers or purchases made in Victoria with the Licensee for all purposes under the Licence, this Related Agreement and any other Agreement.

- (c) The Business Rules are not to be taken to:
- (i) require the Licensee to place restrictions on Registered Players resident in Victoria from opening accounts with:
    - (A) other wagering and betting providers; or
    - (B) other wagering and betting businesses that are operated by the Licensee,provided that the Licensee does not wilfully divert business from Victoria to such other providers or businesses; or
  - (ii) require the Licensee to do anything in breach of laws relating to the Conduct of gambling, or any other laws, in Victoria or any other jurisdiction in Australia and should be consistent with any actual or potential obligations on the Licensee under such laws.



## 9.2 Submission of Business Rules to the Commission

- (a) The Licensee must as soon as possible, but no later than 1 month after the Agreement Date (or such later date approved by the Commission), submit the detailed Business Rules to the Commission for its approval.
- (b) The Licensee must not proceed with the Business Rules unless they have been approved by the Commission under **clause 9.3**.
- (c) The Licensee must use its best endeavours to ensure that the Business Rules comply with the requirements of this **clause 9** so that they may be approved by the Commission within 3 months after the Agreement Date (or such later date approved by the Commission).

## 9.3 Approval of Business Rules

- (a) Upon the receipt of the proposed Business Rules, the Commission may:
  - (i) approve (with or without conditions) the Business Rules;
  - (ii) require an amendment to the Business Rules; or
  - (iii) reject the Business Rules.
- (b) In making its decision, the Commission will consider:
  - (i) the extent to which the proposed Business Rules comply with the requirements under **clause 9.1(b)**; and
  - (ii) any other matter in relation to the Business Rules which the Commission reasonably considers relevant.
- (c) The Commission must notify the Licensee of its decision and, if the Business Rules are rejected or required to be amended, reasons for the decision, within 10 Business Days of receiving the Business Rules.
- (d) If the Commission requires any amendments to or rejects the Business Rules, the Licensee may make a further submission to the Commission within 5 Business Days of the notification as to why the amendment should not be made or the Business Rules not be rejected.
- (e) The Commission and the Licensee must promptly discuss any disputes or differences in relation to the Business Rules, and must negotiate in good faith to agree on the Business Rules.
- (f) Once approved by the Commission, the Licensee must comply with the Business Rules.

## 10. Banking

### 10.1 Account

- (a) The Licensee must maintain Approved Account(s) throughout the Term and comply with the requirements of section 4.8.2 of the Act.



- (b) The Licensee must obtain the prior written approval of the Commission to alter, move or close Approved Account(s).
- (c) 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).
- (d) The Licensee holds all funds in Approved Account(s) that the Licensee is required to pay to the State under the Act, Licence or Agreements (including any amount payable under Part 6A of Chapter 4 of the Act and any Premium Payment payable under section 4.3A.13 of the Act), on trust for and on behalf of the State.
- (e) Without limitation, the State may access the funds held on trust for and on behalf of the State under **clause 10.1(d)** 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.
- (f) The Licensee must ensure at all times that there are not any Encumbrances on the whole or any part of the Approved Accounts.

## 10.2 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 10.2**.
- (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).

## 10.3 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 Authorised Betting Competition as will enable the Licensee to comply with its obligations under sections 4.6A.3 of the Act (**Ticket Agent Funds**).
- (b) The Licensee must ensure that:
  - (i) the Ticket Agent holds the Ticket Agent Funds on trust for and on behalf of the Licensee until the Ticket Agent Funds are remitted in accordance with **clause 10.3(a)**; and

- (ii) the Ticket Agent Funds are not used for any other purpose.

## 11. Records

### 11.1 Retention of Records

The Licensee must maintain and keep all Records relating to the operation of the Licensee under Chapter 4 of the Act in accordance with section 4.8.4(1A) of the Act.

### 11.2 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.

### 11.3 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.

### 11.4 Arrangements

The Licensee must promptly provide to the Commission, upon the Commission's written request, a copy of any Record that the Licensee has, has access to or controls access to that the Commission believes constitutes or may constitute an arrangement, contract or engagement in connection with the Conduct of Authorised Betting Competitions.

### 11.5 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 11.7**, section 4.8.3 of the Act and any other written requirements of the Commission (**Annual Financial Statements**).
- (b) In accordance with section 4.8.5 of the Act, the Licensee must provide to the Commission a copy of the Annual Financial Statements audited in accordance with **clause 11.8** within 3 months (or any longer period not exceeding 4 months agreed by the Commission) after the end of the Financial Year to which those audited Annual Financial Statements relate.
- (c) 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 Authorised Betting Competitions;
- (ii) the disaggregated financial performance in respect of any individual part or parts of the Conduct of Authorised Betting Competitions or the engagement of Agents or Contractors or of Authorised Betting Competitions themselves (such as ticket sales by particular Ticket Agents, particular Authorised Betting Competitions or particular bet types); and
- (iii) if applicable, the financial statements of the consolidated entity (as defined in the Corporations Act),

(collectively, the **Additional Financial Statements**).

### 11.6 Additional Financial Statements

- (a) 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.
- (b) The Additional Financial Statements must be prepared in accordance with **clauses 11.7, 11.9 and 11.10**.

### 11.7 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 Authorised Betting Competitions (as required for the particular financial statement), 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 Authorised Betting Competitions:
  - (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 11.5(c)(ii) and 11.7(a)(ii)**, a statement of financial performance will include sales revenue, prizes, dividends, taxes, duties and commissions payable to Ticket Agents.

### 11.8 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) In addition to any requirements set out in section 4.8.5 of the Act, the Licensee must:
- (i) ensure that the auditor has 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.

### 11.9 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.

### 11.10 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 Authorised Betting Competitions (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 11.10(a)** to the Commission together with the Annual Financial Statements or any Additional Financial Statements.

### 11.11 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.

### 11.12 Limits on disclosure

- (a) Nothing in **clause 11, 12 or 13** requires the Licensee to disclose any Record, Report or Reportable 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 11.12** does not limit or affect any rights or entitlements of the Minister or the Commission to require disclosure under the Act.

## 12. Reporting Requirements

### 12.1 Regular reporting requirements

- (a) During the Term, the Licensee must provide to the Commission an annual report:
- (i) detailing its compliance with the Testing Commitment;
  - (ii) detailing the Licensee's performance, including its performance against each Performance Standard, and identifying any issues associated with the Authorised Betting Competitions and their operation and measures taken by the Licensee to counter any adverse effects for each Financial Year; and
  - (iii) identifying any issues:
    - (A) associated with the business continuity and viability of the Licensee in Conducting the Authorised Betting Competitions, any projected risks to such continuity or viability and measures taken or to be taken by the Licensee to counter any such risks; or
    - (B) 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.
- (b) The Licensee must provide the annual report to the Commission within 2 months after the end of each Financial Year.

## 12.2 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 Authorised Betting Competitions Conducted by the Licensee:

- (a) within a reasonable time (and in any case, no later than 10 Business Days) upon request from the Commission; or
- (b) within 1 Business Day, if the Licensee becomes aware of:
  - (i) any issues relating to (including non-compliances with) the Licensee's Responsible Gambling Code of Conduct; or
  - (ii) any risks to ongoing business continuity or viability of Authorised Betting Competitions.

## 12.3 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).

## 12.4 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 Incoming Licensee the right to use in relation to the Conduct of Authorised Betting Competitions (including the right to reproduce, publish, modify and amend) the information contained in the Reports which is relevant to the Conduct of Authorised Betting Competitions by the Incoming Licensee.
- (b) If the Minister sub-licences to any Incoming 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 Incoming 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 12.4(a)** and that the exercise of that licence will not infringe any Intellectual Property Rights or Moral Rights of any third party.



**13. Collection and use of Reportable Data**

- (a) The Licensee must collect and store, in a reportable form, complete and accurate data (including aggregated data and disaggregated data) regarding:
- (i) ticket sales for Authorised Betting Competitions; and
  - (ii) the break-down of ticket sales for Authorised Betting Competitions by:
    - (A) authorised gambling type;
    - (B) bet type; and
    - (C) by authorised events.
- (b) The Licensee must also collect and store, in a reportable form, any other data related to the Conduct of Authorised Betting Competitions 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 Reportable Data for a period of not less than 7 years from the date of creation of the Reportable 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 13(a) and 13(b)**; and
  - (ii) details how the Licensee is storing the Reportable 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 Reportable 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 13(a) and 13(b)**, the Licensee must cooperate with and provide information relating to the Conduct of Authorised Betting Competitions under the Licence 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 must ensure that any agreement authorising Ticket Agents requires the Ticket Agent to:
- (i) collect Reportable Data and provide that Reportable Data to the Licensee;
  - (ii) permit any person authorised in writing by the Commission to inspect and take copies of any Reportable Data from the Agent's venue; and
  - (iii) provide any person authorised in writing by the Commission with access to the Agent's venue for the purposes of Reportable Data collection, and information relating to the Conduct of Authorised Betting Competitions under the Licence for the purposes of State commissioned research into gambling.
- (h) 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 Reportable Data and the information contained in the reports required under **clause 13(d)**.
- (i) The Licensee warrants that it has the right to grant all licences in this **clause 13** and that the exercise of the rights licensed under this **clause 13** will not infringe any Intellectual Property Rights or Moral Rights of any third party.

#### 14. 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 Authorised Betting Competitions of a kind specified by the Commission, within the relevant time notified by the Commission.

#### 15. Transition Out

##### 15.1 Incoming Licensees

- (a) The Minister may issue a Wagering and Betting Licence 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 Authorised Betting Competitions prior to the expiry of the Licence.

## 15.2 Transition objectives

- (a) Wagering and Betting Transition will be conducted in accordance with this Related Agreement, the Licensee's most recently approved Transition Plan and any lawful directions of the Commission or State's Representative.
- (b) The objectives of this **clause 15** are to:
  - (i) ensure efficient, smooth, seamless and uninterrupted transition of the Conduct of Authorised Betting Competitions 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 Wagering and Betting Transition are satisfied in a timely fashion; and
  - (vi) promote the objectives of the Act.
- (c) The Licensee must undertake in good faith such activities as may reasonably be required of it to assist in the achievement of the objectives, and the Licensee acknowledges that the intent of the Transition Plan is to give effect to this commitment.
- (d) Nothing in this **clause 15** 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.

## 15.3 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) use reasonable endeavours to 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 the Conduct of Authorised Betting Competitions to the Incoming Licensee;

- (d) act reasonably and in good faith towards the State during the Wagering and Betting Transition; and
- (e) if required by the Minister, novate the Related 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.

#### **15.4 Transition Out - Compliance**

- (a) The Licensee must comply with any lawful directions of the State's Representative in relation to the Wagering and Betting Transition.
- (b) During the Transition Out Period, the Licensee may process tickets or other forms of entry in Authorised Betting Competitions that were sold by the Licensee or its Ticket Agents prior to the expiry of the Term.

#### **15.5 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 Authorised Betting Competitions, the Conduct of Authorised Betting Competitions, 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 Authorised Betting Competitions;
  - (ii) include details of all material agreements and arrangements with any Agent or Contractor in relation to the Conduct of Authorised Betting Competitions (and details of such other agreements and arrangements with any Agent or Contractor in relation to the Conduct of Authorised Betting Competitions as required by the State's Representative);
  - (iii) include a list and contact details of current Agents and Contractors;
  - (iv) include such information and address such issues as required by the State's Representative; and
  - (v) 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 the Conduct of Authorised Betting Competitions, 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 initial purchase price of the equipment paid by the Licensee;
  - (vii) the book value, and method of calculating the book value, of the equipment;
  - (viii) the location of the equipment; and
  - (ix) 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 15.5** 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 Wagering and Betting 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 Wagering and Betting Transition any Transition Plan.



- (j) The Licensee warrants that it has the right to grant the licence in **clause 15.5(i)** and that the exercise of that licence will not infringe any Intellectual Property Rights or Moral Rights of any third party.

## 15.6 Reimbursement by the State

- (a) Subject to **clauses 15.6(b)** and **15.6(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 Wagering and Betting Transition activities (and not merely any activities relating to the Conduct of Authorised Betting Competitions 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 15.6(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 15.6(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 Wagering and Betting Transition to be completed,provided the State has received evidence reasonably satisfactory to the State that the Licensee has incurred the expenses.

## 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 Authorised Betting Competitions.



- (b) The Licensee must obtain all the Intellectual Property Rights required for the Licensee to Conduct Authorised Betting Competitions.

## **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 Authorised Betting Competitions, 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 Authorised Betting Competitions, including the names of the Authorised Betting Competitions.
- (b) The Licensee warrants that in Conducting Authorised Betting Competitions, it will not infringe any Intellectual Property Rights or Moral Rights.

## **17. Insurance**

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

## **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 Authorised Betting Competitions. 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 Authorised Betting Competitions 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 Authorised Betting Competitions (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 Authorised Betting Competitions (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) at all times that it will be able to pay all dividends (whether claimed or unclaimed) upon determination of an Authorised Betting Competition Conducted by it under the Licence in accordance with the Betting Rules or Betting Exchange Rules and refund the price of all Authorised Betting Competition entries in respect of any Authorised Betting Competition Conducted by it under the Licence in accordance with the Betting Rules or Betting Exchange Rules 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 Authorised Betting Competition Assets;
- (f) it protects the Authorised Betting Competition Assets and, at the Licensee's expense, prosecutes or defends all legal proceedings that are necessary for the protection of the Authorised Betting Competition 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 Authorised Betting Competitions;
  - (ii) perform its obligations under the Licence, this Related Agreement, any other Agreements; 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; and
- (m) it will comply with the conditions of and perform its obligations under the Parent Company Guarantee and Indemnity.

## 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, if applicable, 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

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 8.3(d)**) (**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;
  - (ii) the revenue of the State; or
  - (iii) the Victorian Racing Industry.
- (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

The Licensee must, as soon as practicable after receipt of a Failure Notice, 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(e)** 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(e)**.
- (c) The Licensee acknowledges and agrees that if the Minister gives a Step-in Notice to the Licensee under **clause 23.1(a)**, the Minister may:
  - (i) provide a copy of any Step-in Notice given to the Licensee under **clause 23.1(a)** to the Victorian Racing Industry Entities; and
  - (ii) consult with and take into consideration any representations by relevant bodies, as determined by the Minister.
- (d) The Minister, by written notice to the Licensee, may revoke a Step-In Notice.
- (e) 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 Authorised Betting Competitions, providing such steps are reasonable and necessarily taken to Conduct Authorised Betting Competitions in a manner consistent with the requirements of the Act, the Licence, this Related Agreement and any other Agreement:

- (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 Authorised Betting Competitions 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 Authorised Betting Competitions 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 Authorised Betting Competitions 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 Authorised Betting Competitions 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 Authorised Betting Competitions;
  - (ii) use, reproduce, copy or install any or all software, hardware, facilities, computer systems, servers, equipment, network and infrastructure associated with the Conduct of Authorised Betting Competitions;
  - (iii) enter and occupy all physical Points of Sale and premises associated with the Conduct of Authorised Betting Competitions;
  - (iv) exercise all other rights necessary to allow the Assistant Operator to Conduct Authorised Betting Competitions, for any purposes associated with or connected to the Conduct of Authorised Betting Competitions 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 Authorised Betting Competitions 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 Authorised Betting Competition 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 the State exercises its rights under this **clause 23**, the State will use all reasonable endeavours to procure that the Assistant Operator assists in

Conducting Authorised Betting Competitions in a manner which is consistent with the requirements of:

- (i) the Act, the Licence, this Related Agreement, any other Agreements; 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 Authorised Betting Competitions 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 Authorised Betting Competitions; 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 Authorised Betting Competitions (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 Authorised Betting Competitions; 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 Authorised Betting Competitions:

- (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 Authorised Betting Competitions 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 Authorised Betting Competitions as Temporary Licensee;



- (c) acquiring additional or replacement products or services from any suppliers for the purpose of establishing or Conducting Authorised Betting Competitions as Temporary Licensee;
- (d) taking such other steps as are, in the reasonable opinion of the Temporary Licensee, necessary to Conduct Authorised Betting Competitions 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 Authorised Betting Competitions;
- (b) use, reproduce, copy or install any or all software, hardware, facilities, computer systems, servers, equipment, network and infrastructure associated with the Conduct of Authorised Betting Competitions;
- (c) enter and occupy all physical Points of Sale and premises associated with the Conduct of Authorised Betting Competitions;
- (d) exercise all other rights necessary to allow the Temporary Licensee to Conduct Authorised Betting Competitions, for any purposes associated with or connected to the Conduct of Authorised Betting Competitions 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 Authorised Betting Competitions 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 Authorised Betting Competitions; 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 that 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 that survive 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 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, the State's Representative or the Licensee's Representative 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 the Notice 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) any disclosure to officers and employees of the Licensee or its related bodies corporate who have a need to know for the purposes of performing, enforcing or advising on the Licence, Related Agreement or any other Agreement (and only to the extent that each such person has a legitimate need to know that information), provided that before disclosure, each such person has been directed by the Licensee or related body corporate to keep such information confidential;
- (g) any disclosure to persons who have a need to know for the purposes of investing in, or the financing or insurance arrangements of, the Licensee or its related bodies corporate (including their professional advisers and consultants), provided that before disclosure, each such person has agreed in writing with the Licensee to comply with substantially the same confidentiality obligations in respect of the information as those imposed on the Licensee under this Related Agreement;
- (h) 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;
- (i) 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
- (j) 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 Authorised Betting Competitions 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 must:
- (i) 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) where practicable, having regard to the circumstances which gives rise to the need for such public disclosures, announcement or statement, 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) 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, 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 and data security

### 29.1 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 29.1**) 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.

### 29.2 Data security

- (a) The Licensee must take reasonable steps to prohibit and prevent any person not authorised by the Licensee from gaining access to 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 (except to the extent not permissible by Law):
  - (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 29.2(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 Data or allow Data to be taken, disclosed or made available outside of Australia.

- (d) To the extent 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.

### **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, 11.1, 11.2, 11.3, 13, 15, 16, 18, 19, 20, 21, 22, 23, 24, 25, 27, 28** and **29**.
- (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.

#### **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 and electronic execution**

This Related Agreement may be executed electronically and may be executed in any number of counterparts. 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 8.3(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**.

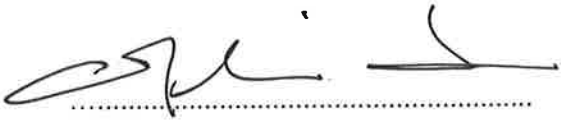
### **30.10 Time is of the Essence**

Time is of the essence of this Related Agreement

**Execution**

**Executed as a deed.**

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

)  
)  
)   
.....

**Executed by Tabcorp VIC Pty Ltd (ACN  
668 057 056) in accordance with section  
127 of the *Corporations Act 2001* (Cth):**

  
.....

Signature of Director

ADAM RYTENSKILD  
.....

Name of Director

  
.....

Signature of Secretary / ~~other Director~~

CHRIS MURPHY  
.....

Name of Secretary / ~~other Director~~



---

**Schedule 1      General**

**Item 1                      Agreement Date**

The date stated on page 1 of this Related Agreement

**Item 2                      Licensee's Representative**

Adam Rytenskild, Managing Director and Chief Executive Officer

**Item 3                      Licensee's Address for Service**

Tabcorp VIC Pty Ltd

Level 19, Tower 2, 727 Collins Street, Docklands, VIC 3008

enquiries@tabcorp.com.au

**Item 4                      Minister's Address for Service**

c/ Executive Director, Gaming and Liquor

Consumer Affairs, Liquor, Gaming and Dispute Services

Department of Justice and Community Safety

Level 29

121 Exhibition Street

Melbourne Vic 3000

Email address: gamingandliquor@justice.vic.gov.au

**Item 5                      State's Representative**

Executive Director, Gaming and Liquor

Consumer Affairs, Liquor, Gaming and Dispute Services

Department of Justice and Community Safety

## Schedule 2 Performance Standards

### 1. Availability of Wagering and Betting System - Authorised Venues

- (a) The Licensee must ensure in each calendar year (or part thereof) throughout the Term that 99.95% of the time the Wagering and Betting System is operational and continuously available to all Authorised Venues (in which components of the Wagering and Betting System are installed) during each such Authorised Venue's standard operating hours (**Venue Availability Requirement**).

For the purposes of this clause 1(a), the calculation of whether or not the Wagering and Betting System is operational and continuously available in accordance with the Venue Availability Requirement is as follows:

*(number of hours per year)-(total system outage hours per year)/(number of hours per year)*

where:

"total system outage" means end customers are unable to place bets at all Authorised Venues (in which components of the Wagering and Betting System are installed);

"total system outage hours per year" means the aggregate number of hours in a calendar year that a total system outage occurs; and

"number of hours per year" means the aggregate number of standard operating hours in a calendar year of all Authorised Venues (in which components of the Wagering and Betting System are installed).

To the extent any downtime is caused by any of the matters set out in clause 1(b) of this Schedule 2, such downtime will not count towards the calculation of whether the Wagering and Betting System is operational and continuously available.

- (b) The Licensee will not be taken to have failed to meet the Venue Availability Requirement to the extent that any non-compliance with the Venue Availability Requirement is due to:
- (i) regularly scheduled downtime for the purpose of end of day reconciliation or maintenance of the Wagering and Betting System (including Wagering and Betting System upgrades) and of which the Licensee has given prior notice to Authorised Venues;
  - (ii) failures in communication, network or payment systems that are outside the reasonable control of the Licensee;
  - (iii) any failure of items forming part of the Wagering and Betting System that are located in Authorised Venues (e.g. terminals and peripheral equipment for selling tickets and for validating winning tickets, or visual display units, located in an Authorised Venue) (**Venue Items**);

- (iv) any loss, damage or destruction of Venue Items that is outside the Licensee's reasonable control;
- (v) the occurrence of a Force Majeure Event; or
- (vi) malicious damage or interference outside the Licensee's (or its Agents' or Contractors') control,

provided that the Licensee takes all reasonable steps to minimise the impact of any such event on its achievement of the Venue Availability Requirement, including:

- (vii) ensuring that Venue Items undergo regular and appropriate preventative maintenance and that any failure is resolved promptly;
- (viii) ensuring that lost, damaged or destroyed Venue Items are replaced and that the replacement items are made operational as soon as practical; and
- (ix) implementing reasonable security measures to protect the Wagering and Betting System.

- (c) The Licensee must provide to the Commission, within 3 Business Days of the end of each calendar month during the Term, a written report detailing:
  - (i) whether the Venue Availability Requirement was met during the calendar year to date, and if not, the causes of the failure to achieve the Venue Availability Requirement and the action the Licensee has taken or will take to address those causes; and
  - (ii) any events of the types specified in paragraph (b) above that occurred during the calendar year to date, the impact that those events had on the availability of the Wagering and Betting System and the steps taken or to be taken by the Licensee to minimise the impact of such events.

## 2. Availability of Wagering and Betting System - Interactive Distribution Methods

- (a) The Licensee must ensure in each calendar year (or part thereof) throughout the Term that 99.95% of the time the Wagering and Betting System is operational and continuously available to all potential Players via Interactive Distribution Methods (**Interactive Distribution Availability Requirement**). For the purposes of this clause 2(a), the calculation of whether or not the Wagering and Betting System is operational and continuously available in accordance with the Interactive Distribution Availability Requirement is as follows:

*(number of hours per year)-(total system outage hours per year)/(number of hours per year)*

where:

"total system outage" means end customers are unable to place bets via all Interactive Distribution Methods;

"total system outage hours per year" means the aggregate number of hours in a calendar year that a total system outage occurs; and

"number of hours per year" means the total number of hours in a calendar year.

To the extent any downtime is caused by any of the matters set out in clause 2(b) of this Schedule 2, such downtime will not count towards the calculation of whether the Wagering and Betting System is operational and continuously available.

- (b) The Licensee will not be taken to have failed to meet the Interactive Distribution Availability Requirement to the extent that any non-compliance is due to:
- (i) regularly scheduled downtime for the purpose of end of day reconciliation or maintenance of the Wagering and Betting System (including Wagering and Betting System upgrades);
  - (ii) failures in communication, network or payment systems that are outside the reasonable control of the Licensee;
  - (iii) the occurrence of a Force Majeure Event; or
  - (iv) malicious damage or interference outside the Licensee's (or its Agents' or Contractors') control ,
- provided that the Licensee takes all reasonable steps to minimise the impact of any such event on its achievement of the Interactive Distribution Availability Requirement, including:
- (v) ensuring that the Wagering and Betting System undergoes regular and appropriate preventative maintenance and that any failure is resolved promptly; and
  - (vi) implementing reasonable security measures to protect the Wagering and Betting System.
- (c) The Licensee must provide to the Commission, within 3 Business Days of the end of each calendar month during the Term, a written report detailing:
- (i) whether the Interactive Distribution Availability Requirement was met during the calendar year to date, and if not, the causes of the failure to achieve the Interactive Distribution Availability Requirement and the action the Licensee has taken or will take to address those causes; and
  - (ii) any events of the types specified in paragraph (b) above that occurred during the calendar year to date, the impact that those events had on the availability of the Wagering and Betting System and the steps taken or to be taken by the Licensee to minimise the impact of such events.

**Schedule 3 Parent Company Guarantee and Indemnity****Date****Parties**

**The Honourable Melissa Horne MP, Minister for Casino, Gaming and Liquor Regulation for and on behalf of the Crown in right of the State of Victoria** of Level 26, 121 Exhibition Street, Melbourne, Victoria 3000 (**Minister**)

**Tabcorp Holdings Limited** (ACN 063 780 709) of Level 19, Tower 2, 727 Collins Street, Docklands, Victoria 3008 (**Guarantor**)

**Tabcorp VIC Pty Ltd** (ACN 668 057 056) of Level 19, Tower 2, 727 Collins Street, Docklands, Victoria 3008 (**Subsidiary**)

**Background**

- A) The Minister has determined under sections 4.3A.7 and 4.3A.8 of the Act to grant the application and issue the Licence to the Subsidiary.
- B) The Subsidiary is a wholly owned subsidiary of the Guarantor.
- C) The Minister has entered, or intends to enter, into the Related Agreement with the Subsidiary in relation to the Licence.
- D) The Related Agreement requires the Subsidiary to procure the Guarantor to execute this document.

**Agreed terms****1. Definitions and interpretation****1.1 Definitions**

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

**Act** means the *Gambling Regulation Act 2003 (Vic)*.

**Costs** includes charges and expenses, including those incurred in connection with advisors.

**Deed** means this document, including any schedule or annexure to it.

**Indemnified Parties** has the meaning given in **clause 3(b)**.

**Law** means:

- (a) common law; and

- (b) Commonwealth, Victorian or local government legislation, regulations, by-laws and other subordinate regulations.

**Licence** means a wagering and betting licence issued under the Act to the Subsidiary.

**Loss** includes any cost, expense, loss, damage or liability that is present, fixed or unascertained, actual or contingent and, to the extent not prohibited by Law, any fine or penalty.

**Obligations** means all of the obligations and resultant liabilities of the Subsidiary to the State or to any Player including any obligations and resultant liabilities arising under or by reason of:

- (a) the Licence;
- (b) the Related Agreement; or
- (c) the conduct of Authorised Betting Competitions, any other transaction, matter or event contemplated by the Licence or the Related Agreement,

and includes any liabilities or obligations which:

- (d) are liquidated or unliquidated;
- (e) are present, prospective or contingent;
- (f) are in existence before or come into existence before or come into existence on or after the date of this Deed; or
- (g) relate to the payment of money or the performance or omission of any act, and irrespective of:
  - (h) the circumstances in which each liability or obligation comes to be secured by this Deed; or
  - (i) the capacity in which the Subsidiary comes to owe such liability or obligation.

**Power** means any right, power, authority, discretion, remedy or privilege conferred by the Licence, Related Agreement, the Act or other Law.

**Related Agreement** means the agreement entered into between the Minister and the Subsidiary in accordance with section 4.3A.10 of the Act dated on or about the date of this Deed.

**Security Interest** means any mortgage, charge, lien, pledge, hypothecation, title retention arrangement, trust or power, as, or having effect as, a security for the payment of any monetary obligation or the observance of any other obligation.

**State** means the Crown in right of the State of Victoria.



## 1.2 Interpretation

- (a) A provision of this Deed must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of the document or the inclusion of the provision in the document.
- (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 Deed, 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 parties, clauses or paragraphs in this Deed are references to parties, clauses and paragraphs of and to this Deed;
  - (ii) references to any document or agreement (including this Deed) include reference to such document or agreement as amended, novated, replaced or supplemented from time to time;
  - (iii) references to any statute or regulation or to any provision of any statute or regulation 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 or regulation or such provision;
  - (iv) words in the singular include the plural and vice versa;
  - (v) partnership, joint venture, unincorporated association and a government or statutory body or authority;
  - (vi) words denoting any gender includes all genders;
  - (vii) references to any party or person include that party's or person's successor or permitted assigns;
  - (viii) "writing" and cognate expressions include all means of reproducing words in tangible and permanently visible form;
  - (ix) where any word or phrase is defined its other grammatical forms have corresponding meanings;
  - (x) to the extent used in this Deed all accounting terms used in this Deed 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;
  - (xi) "dollars" is a reference to the lawful currency of Australia;
  - (xii) the terms "including" and "include" mean "including" or "include" (as applicable) without limitation;

- (xiii) where an obligation or liability is imposed on the Subsidiary or Guarantor under this Deed, that obligation or liability is not to be limited or affected by an obligation or liability imposed in another provision of this Deed unless otherwise expressly stated;
- (xiv) where a right or remedy is conferred on the Minister under this Deed, that right or remedy is in addition to, and not in substitution of, any other right or remedy conferred on the Minister under the Act, the Regulations or the Licence or otherwise according to Law;
- (xv) the term "may" when used in the context of the power or right exercisable by the Minister means that the Minister can exercise that right or power in his or her or its absolute and unfettered discretion and the Minister has no obligation to the Subsidiary or Guarantor to do so;
- (xvi) where in this Deed the Minister may (or it is otherwise contemplated that the Minister can) give his or her consent or approval or must either give his or her consent or approval or do something else, the Minister has an absolute and unfettered discretion as to whether he or she gives that consent or approval and the Minister has no obligation to the Subsidiary or Guarantor to do so;
- (xvii) a reference to "termination" 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
- (xviii) a reference to "suspended" means suspended or otherwise cease to be performed.

## 2. Guarantee

- (a) The Guarantor unconditionally and irrevocably separately guarantees to the State and to the Subsidiary the due and punctual performance and satisfaction of all of the Obligations of the Subsidiary.
- (b) If the Subsidiary defaults in the performance of any of its Obligations, the Guarantor will, if required to do so by the State on demand, immediately perform any of the Obligations then required to be performed by the Subsidiary in the same manner as the Subsidiary is required to perform the Obligations.

## 3. Indemnity

- (a) The Guarantor agrees to unconditionally and irrevocably indemnify the Subsidiary with respect to any liability that may arise in respect of its Obligations.
- (b) The Guarantor as a separate and additional and primary liability unconditionally and irrevocably agrees to indemnify the State, the Minister and the Commission (and each of their respective representatives, members, officers, employees, contractors and agents) (**Indemnified**

**Parties)** and at all times keep indemnified the Indemnified Parties against any Loss suffered or incurred by the Indemnified Parties arising out of or in any way in connection with:

- (i) any failure by the Subsidiary to perform any of the Subsidiary's Obligations; or
  - (ii) an obligation the Subsidiary would otherwise have under the Licence or Related Agreement being found to be void, voidable or unenforceable as a consequence of an act, error, omission or breach of any of the Licence or Related Agreement by the Subsidiary.
- (c) The Guarantor unconditionally and irrevocably agrees to indemnify the Indemnified Parties and at all times keep indemnified the Indemnified Parties against any Loss suffered or incurred by the Indemnified Parties arising out of or in any way in connection with any failure by the Subsidiary to observe or perform the obligation to pay the Premium Payment as specified in the Licence for the intended duration of the Licence, regardless of the cancellation, suspension or surrender of the Licence at any time.

#### **4. Liability as Guarantor and Indemnifier**

- (a) Any reference in this Deed to the obligations and liabilities of the Guarantor will be construed as a reference to its obligations or liabilities, whether as a guarantor or indemnifier or both under this Deed. The use of the expression "Guarantor" in this Deed in relation to a party is not to be construed as diminishing that party's obligations as an indemnifier under this Deed.
- (b) The Guarantor will not be discharged, released or excused from this Deed by an arrangement made between the Subsidiary and the Guarantor or between the State and the Guarantor or between the State and the Subsidiary with or without the consent of the Guarantor, or by any other inference arising out of the conduct between the parties.
- (c) The Obligations of the Subsidiary will continue in force and effect until the completion of the undertakings of this Deed by the Guarantor.
- (d) Where the Guarantor is required to perform the Obligations in accordance with this Deed, the Guarantor agrees, subject to any necessary approval under the Act, to the novation of the Licence or the Related Agreement from the Subsidiary to the Guarantor if requested by the Minister.
- (e) The rights and obligations under this Deed continue until all obligations of the Guarantor under this Deed have been performed, observed and discharged and afterwards, without any further action being required by any party, this Deed will terminate.

#### **5. Nature and preservation of liability**

- (a) The liability of the Guarantor under this Deed is absolute and is not subject to the performance of any condition precedent or subsequent, including any condition between the Guarantor and the Subsidiary.

- (b) This Deed binds each person who has signed it despite:
- (i) any person, whether expressed to be a party to this Deed or not, not executing this Deed, the Licence or the Related Agreement;
  - (ii) the execution of this Deed, the Licence or the Related Agreement being invalid or irregular in any way;
  - (iii) this Deed, the Licence or the Related Agreement being or becoming unenforceable, void or voidable against any other person.
- (c) The liability of the Guarantor under this Deed will not be affected by any act, omission, matter or thing which but for this **clause 5(c)**, might operate in Law to release the Guarantor from that liability or to reduce the Guarantor's liability under this Deed, including any of the following:
- (i) **(Invalidity etc.)**: the Licence or the Related Agreement, or any payment or other act, the making or doing of which would otherwise form part of the Obligations being or becoming or being conceded to be frustrated, illegal, invalid, void, voidable, unenforceable or irrecoverable in whole or in part for any reason whether past, present or future;
  - (ii) **(Time or indulgence)**: the State granting time, waiver or other indulgence or concession to, or making any composition or compromise to the Subsidiary;
  - (iii) **(Forbearance)**: the State not exercising or delaying (whether deliberately or otherwise) in the exercise of any Power it has for the enforcement of any Obligation;
  - (iv) **(Variation)**: any variation, novation or alteration to or substitution of this Deed, the Licence or Related Agreement, whether or not that variation is substantial or material;
  - (v) **(Release)**: the full, partial or conditional release or discharge by the State or by operation of Law of the Subsidiary from its obligations under the Licence or Related Agreement;
  - (vi) **(Change of constitution)**: any change for any reason in the name or manner in which the Guarantor or the Subsidiary carries on business;
  - (vii) **(Preference)**: any claim by any person that a payment to, receipt by, or other transaction in favour of the State in or towards satisfaction of the Obligations is void, voidable, or capable of being set aside under any Law relating to bankruptcy, insolvency, or liquidation being upheld, conceded, or compromised;
  - (viii) **(Administration)**: the provisions of section 415D or 440J of the Corporations Act operating to prevent or delay:
    - (A) the enforcement of this Deed against the Guarantor; and/or

- (B) any claim for contribution against the Guarantor;
- (ix) **(Disclaimer)**: a disclaimer of any contract or property (including the Licence or Related Agreement) made by a liquidator of the Subsidiary or the Guarantor;
- (x) **(Event of Insolvency)**: the occurrence before, on or at any time after the date of this Deed, of any dissolution of or external administration procedures of the Subsidiary under Chapter 5 of the Corporations Act or any other Law in relation to the Guarantor or the Subsidiary; or
- (xi) **(Acquiescence or other omission)**: any laches, acquiescence or other act, neglect, default, omission or mistake by the State.

## 6. No representation by the State

The Guarantor acknowledges that it has not entered into this Deed as a result of any representation, promise, warranty, statement or inducement to it by or on behalf of the State, the Subsidiary or any other person.

## 7. Void or voidable transactions

If a claim that a payment or transfer to the State under the Licence or Related Agreement or this Deed is void or voidable (including a claim under laws relating to liquidation, administration, insolvency or protection of creditors) is upheld, conceded or compromised, then the State is entitled immediately as against the Guarantor to the rights to which it would have been entitled under this Deed as if the payment or transfer has not occurred.

## 8. The Guarantor's rights are suspended

- (a) Subject to **clause 8(c)**, as long as any obligation is required, or may be required, to be complied with in connection with this Deed, the Guarantor may not, without the Minister's consent:
  - (i) avoid by any defence or reduce its liability under this Deed by claiming that it, the Subsidiary or any other person has a right of set-off or counterclaim against the State;
  - (ii) exercise any right to contribution or subrogation which it might otherwise be entitled to claim and enforce against the Subsidiary until all the Obligations have been satisfied;
  - (iii) exercise any legal right to claim to be entitled to the benefit of another guarantee, indemnity, mortgage, charge or other encumbrance given in connection with the Licence or Related Agreement or any other amount payable under this Deed;
  - (iv) claim an amount from the Subsidiary, or another guarantor, under a right of indemnity; or
  - (v) claim an amount in the liquidation, administration or insolvency of the Subsidiary or of another guarantor of any of the Subsidiary's Obligations.

- (b) This **clause 8** continues after this Deed ends.
- (c) The Guarantor may receive payment from, or enforce a claim against, the Subsidiary, or another guarantor, to the extent that such payment or enforcement does not prejudice the rights of the State under this Deed.

## **9. Representations and warranties**

### **9.1 Guarantor's representations and warranties**

The Guarantor represents and warrants to the State and to the Subsidiary that:

- (a) this Deed constitutes a valid and legally binding obligation on it in accordance with its terms;
- (b) the execution, delivery and performance of this Deed by it does not breach any Law, or any document or agreement to which it is a party or which is binding on it or any of its assets;
- (c) it is not in default in the payment of any material sum or in the satisfaction of any material obligation in respect of any material financial liability and no event has occurred which with the giving of notice, lapse of time or other condition could constitute a default in respect of any material financial liability;
- (d) the most recent financial reports of the Guarantor delivered to the State:
  - (i) have been prepared in accordance with accounting principles and practices generally accepted in Australia; and
  - (ii) give a true and fair view of the financial condition of the Guarantor as at the date to which they relate, and the results of the Guarantor's operations for the accounting period ended on that date, and since that date there has been no material adverse change in the financial condition of the Guarantor as shown in those reports or statement;
- (e) the Guarantor and the Subsidiary have, so far as is material to their ability to perform their obligations under this Deed or to perform the Obligations (as the case may be), complied with all Laws;
- (f) at the date of execution of this Deed, the Guarantor is not the trustee of any trust, except as a trustee under any deed of cross guarantee for the purpose of any Australian Securities and Investment Commission Individual or Class Order, nor does it hold any property subject to or impressed by any trust;
- (g) the execution, delivery, and performance of this Deed does not violate its constitution or any Law applying to it and, if the Guarantor, the Subsidiary or any of its subsidiaries is listed on the Australian Stock Exchange or any other stock exchange, those listing requirements or rules;
- (h) it has taken all corporate and other action required to enter into this Deed and to authorise the execution and delivery of this Deed and the performance and satisfaction of its obligations under this Deed;



- (i) it has filed all material corporate notices and effected all material registrations with the Australian Securities and Investments Commission or similar office in its jurisdiction of incorporation and in any other jurisdiction as required by Law, and all those filings and registrations are current, complete, and accurate;
- (j) this Deed is executed for valuable consideration, the receipt and adequacy of which the Guarantor acknowledges;
- (k) it is not insolvent and is not the subject of a direction under, or having effect as if it were a direction under, section 14 of the *Australian Securities and Investment Commission Act 2001* (Cth), or the subject of an investigation under, or taken to be under, that Act;
- (l) it has full legal capacity and power to own its property and assets and carry on its business as it is now being conducted;
- (m) this Deed constitutes a valid and legally binding obligation, enforceable in accordance with its terms, to rank at all times at least equally with all of its other present and future unsecured payment obligations (including contingent obligations), other than those which are mandatorily preferred by Law and that the Guarantor has taken all action required to ensure that its obligations under this Deed so rank and will continue to so rank;
- (n) at the date of execution of this Deed, to the knowledge of the Guarantor or any of its officers, no litigation, arbitration, mediation, conciliation, criminal or administrative proceedings are taking place, pending or threatened against it or any of its subsidiaries or any of its or their property which, if adversely determined, could have either separately or in aggregate make it unable to perform the Obligations;
- (o) all information which it has given to the State in connection with this Deed:
  - (i) was, when provided, true and accurate in all material respects and not misleading, whether by omission or otherwise; and
  - (ii) to the extent it contained forecasts or opinions, such forecasts and opinions were made or formed after due and careful consideration on the part of the Guarantor's relevant officers based on the best information available to it and were fair and reasonable when made or formed.

## 9.2 Representations and warranties repeated

Each representation and warranty in this Deed will be repeated on each day while any of the Obligations remain to be performed or satisfied and remain outstanding (whether or not then due for payment) with reference to the facts and circumstances then subsisting, as if made on each such day.

## 9.3 Reliance on representations and warranties

The Guarantor acknowledges that the State has entered into this Deed on the basis of the representations and warranties in **clause 9.1** and **9.2**.

## 10. Notification of certain events

- (a) Until the Guarantor's obligations under this Deed are extinguished, fulfilled, terminated or otherwise cease, the Guarantor will immediately notify the State in writing if it becomes aware of the occurrence of any of the following:
- (i) **(Litigation)**: any litigation, arbitration, mediation, conciliation, criminal or administrative proceeding or labour dispute taking place, pending or, to the knowledge of the Guarantor or any of its officers, threatened against the Guarantor, the Subsidiary or any of its or their property, assets or revenues that involves a claim that, if adversely determined, could have either separately or in aggregate a material adverse effect on the Guarantor's performance of the Obligations; or
  - (ii) **(Appointment as trustee)**: if it becomes or is appointed the trustee of any trust or comes to hold any property subject to or impressed by any trust.
- (b) The Guarantor will provide the State with complete details in relation to any of the above immediately that any of them become aware of those matters.

## 11. Notices

- (a) A notice or other communication connected with this Deed (**Notice**) has no legal effect unless it is in writing.
- (b) The address of the Guarantor, the Subsidiary and the Minister for service of Notices are as detailed in **clause 11(f)** below. Any party may amend their address for service by giving notice to the other parties.
- (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 Deed or subsequently notified.
- (d) If the Notice is sent or delivered in a manner provided by **clause 11(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 the Notice 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.

- (f) The parties' address for Notices are:

**The Guarantor**

Address: Tabcorp Holdings Limited  
Level 19, Tower 2, 727 Collins Street,  
Docklands, Victoria 3008

Email address: enquiries@tabcorp.com.au

For the attention of: Adam Rytenskild, Managing Director and  
Chief Executive Officer

**The Subsidiary**

Address: Tabcorp VIC Pty Ltd  
Level 19, Tower 2, 727 Collins Street,  
Docklands, Victoria 3008

Email address: enquiries@tabcorp.com.au

For the attention of: Adam Rytenskild, Managing Director and  
Chief Executive Officer

**The Minister**

Address: Level 29, 121 Exhibition Street  
Melbourne, Victoria 3000

Email address: gamingandliquor@justice.vic.gov.au

For the attention of: Executive Director, Gaming and Liquor

## 12. Miscellaneous

### 12.1 No assignment, novation, mortgage or charge

- (a) The Guarantor must not create any Security Interest, or allow any Security Interest to subsist, over this Deed, without the Minister's written approval.
- (b) Subject to **clause 12.1(c)**, no party may assign or novate its rights, interests or obligations under this Deed except with the prior written consent of the other party (which other party may grant or withhold its consent in its absolute and unfettered discretion).
- (c) The Minister may assign or novate its rights, interests or obligations under this Deed to any other State entity, agency or instrumentality by written notice to the Guarantor, provided that such assignment or novation is made to the same entity, agency or instrumentality to which the Minister assigns or novates the Related Agreement.
- (d) The parties must promptly, and no later than 10 Business Days from notice being delivered in accordance with **clause 12.1(c)**, execute a deed in a form reasonably satisfactory to the Minister (at no additional Cost to the State) giving effect to the notified assignment or novation.

### 12.2 Costs

- (a) Except as otherwise set out in this Deed, each party must pay its own Costs in relation to preparing, negotiating and executing this Deed and any document related to this Deed.
- (b) The Guarantor agrees to pay or reimburse the State on demand for:
  - (i) the State's Costs in enforcing this Deed including legal Costs in accordance with any written agreement as to legal Costs or, if no agreement, on whichever is the higher of a full indemnity basis or lawyer and own client basis; and
  - (ii) all duties, fees, Taxes and charges which are payable in connection with this Deed or a payment or receipt or other transaction contemplated by it. If any payment to the State by the Guarantor under this Deed is a reimbursement or indemnification, calculated by reference to a loss or Cost incurred by the State, then any such payment will be reduced by the amount of any input tax credit to which the State is entitled for that loss or Cost.

### 12.3 Payments

The Guarantor agrees to make payments under this Deed:

- (a) in full without set-off or counterclaim, and without any deduction in respect of Taxes unless prohibited by Law; and
- (b) in the currency in which the payment is due, and otherwise in Australian dollars, in immediately available funds.

## 12.4 Governing Law and jurisdiction

This Deed is governed by the Law of Victoria. The parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them. The parties will not object to the exercise of jurisdiction by those courts on any basis.

## 12.5 Indemnities

- (a) Each guarantee and indemnity in this Deed:
- (i) is a continuing obligation despite any intervening payment, settlement or other thing;
  - (ii) extends to all of the Subsidiary's Obligations;
  - (iii) is separate and independent from the other obligations of the parties; and
  - (iv) survives termination, completion or expiration of the Licence or Related Agreement, in respect of any accrued rights of the State.
- (b) It is not necessary for a party to incur expense or to make any payment before claiming under a guarantee or enforcing a right of indemnity conferred by this Deed.

## 12.6 Severability

Each provision of this Deed is individually severable. If any provision is or becomes illegal, unenforceable or invalid in any jurisdiction it is to be treated as being severed from this Deed in the relevant jurisdiction, but the rest of this Deed will not be affected. The legality, validity and enforceability of the provision in any other jurisdiction will not be affected.

## 12.7 Variation

No variation of this Deed will be of any force or effect unless it is in writing and signed by the Guarantor and the Minister.

## 12.8 Counterparts and electronic execution

This Deed may be executed electronically and may be executed in any number of counterparts and by the different parties on different counterparts, each of which constitutes an original of this Deed. All counterparts taken together constitute one and the same instrument.

## 12.9 Waivers

- (a) A waiver of any right, power or remedy under this Deed must be in writing signed by the party granting it. A waiver is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.
- (b) The fact that a party fails to do, or delays in doing, something the party is entitled to do under this Deed does not amount to a waiver.

### **12.10 Dispute resolution**

Any dispute under or arising out of or in connection with this Deed or the interpretation or construction of this Deed will be resolved in accordance with the dispute resolution process set out in the Related Agreement.



**Executed** as a deed and delivered on the date shown on the first page.

**Executed by Tabcorp Holdings Limited** (ACN 063 780 709) in accordance with section 127 of the *Corporations Act 2001* (Cth):

.....  
Signature of Director

.....  
Signature of Secretary / other Director

.....  
Name of Director

.....  
Name of Secretary / other Director

**Executed by Tabcorp VIC Pty Ltd** (ACN 668 057 056) in accordance with section 127 of the *Corporations Act 2001* (Cth):

.....  
Signature of Director

.....  
Signature of Secretary / other Director

.....  
Name of Director

.....  
Name of Secretary / other Director

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

)  
)  
)

.....  
Signature of the Minister

**Schedule 4 Form of Bond**

This deed poll (**Bond**) made the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

**In favour of:** The Honourable Melissa Horne MP, Minister for Casino, Gaming and Liquor Regulation for and on behalf of the Crown in Right of the State of Victoria  
(**Minister**)

**Given by:** \_\_\_\_\_ (**Bank**)

**Recitals**

- A. By agreement dated [ \_\_\_\_\_ ] (**Related Agreement**) between Tabcorp VIC Pty Ltd (**Licensee**) and the Minister, the Licensee agreed to conduct Authorised Betting Competitions.
- B. Under the provisions of the Related Agreement, the Licensee is required to provide this Bond to the Minister.

**Definitions**

In this Bond:

**Act** means the *Gambling Regulation Act 2003 (Vic)*.

**Authorised Betting Competitions** means the betting competitions that the Licensee is authorised to conduct under section 4.3A.1 of the Act.

**Licence** means the licence to conduct Authorised Betting Competitions issued by the Minister to the Licensee section 4.3A.8 of the Act.

**This deed poll provides**

1. The Bank unconditionally and irrevocably undertakes and covenants to pay to the Minister immediately upon demand without reference to the Licensee and notwithstanding any notice given by the Licensee to the Bank not to do so, any sum or sums which may from time to time be demanded in writing by the Minister to a maximum aggregate sum of \$5 million.
2. The Bank's liability under this Bond will be a continuing liability and will continue until payment is made under this Bond of the maximum aggregate sum or the Minister notifies the Bank that this Bond is no longer required.
3. The liability of the Bank under this Bond will not be discharged or impaired by reason of any variation or variations (with or without the knowledge or consent of the Bank) in any of the stipulations or provisions of the Act, the Licence or the Related Agreement or acts or things to be executed, performed and done under the Act, the Licence or the Related Agreement or by reason of any breach or breaches of the Act, the Licence or the Related Agreement by the Licensee or the Minister.
4. This Bond will be governed by and construed in accordance with the laws for the time being of Victoria.

**Signed, sealed and delivered** as a deed poll.

[insert execution clause]