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

Tattersall's Sweeps Pty Ltd

Ancillary Agreement – Gambling Regulation Act 2003 (Vic)

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Date 1 June 2017

Parties

The Honourable Marlene Kairouz MP, Minister for Consumer Affairs, 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

Tattersall's Sweeps Pty Ltd ABN 99 081 925 662 of Level 1, 411 Collins Street, Melbourne, Victoria 3000 (**Licensee**)

Background

- A The Minister has determined to issue the Licence to the Licensee under sections 5.3.2 and 5.3.6 of the Act.
 - 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 Public Lotteries under the Licence, the Minister enters into this Agreement with the Licensee under section 5.3.7A of the Act.
 - C The parties have agreed on the commercial arrangements which are set out in the terms of this Agreement.
 - D Nothing in this Agreement restricts or fetters, or is intended to restrict or fetter, the Minister or the Commission's powers under the Act and should not be read to restrict any discretionary powers of the Minister or the Commission.
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Agreed terms

1 Definitions

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

1.1 Definitions

Account Manager means an authorised deposit-taking institution under the *Banking Act 1959* (Cth) approved by the Commission to hold an Approved Account in accordance with **clause 7**.

Additional Financial Statements has the meaning given in **clause 8.5**

Adverse Event means an event as described in **clause 20.1**.

Agreement Date means the date specified in **Schedule 1** or, if no such date is specified, the date of execution of this Agreement.

Alternative Arrangement has the meaning given in **clause 21.2(a)(iv)**.

Annual Financial Statements means the financial statements and accounts to be prepared by the Licensee under section 5.5.2 of the Act.

Approved Account(s) means an account or accounts in the name of the Licensee or in the name of a Related Body Corporate of the Licensee, held by an Account Manager.

Assistant Operator means the Agent appointed by the Licensee as, or otherwise deemed to be, an Assistant Operator under **clause 22**.

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 Assurances Standards Board.

Authorisation includes a consent, approval, licence, permit, registration, resolution, direction, declaration and exemption necessary for the Conduct of Authorised Public Lotteries.

Bloc Trade Marks means the logos and trade marks used in the Conduct of the Authorised Public Lotteries by the Licensee which are jointly owned by the Licensee or the Licensee's ultimate parent company and the other parties to the Bloc Agreements, or are solely owned by the Licensee or the Licensee's ultimate parent company but covered by a Bloc Agreement.

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

Code of Practice means any applicable code of practice in accordance with the *Privacy and Data Protection Act 2014 (Vic)*.

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

Continuing Lotteries has the meaning given in **clause 12.1**.

Contractor means a person engaged by the Licensee under clause 8.1 of the Licence to assist the Licensee in the Conduct of Authorised Public Lotteries.

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

Cure Period has the meaning given in **clause 21.2(a)(iii)**.

Cure Plan has the meaning given in **clause 21.3(b)(i)**.

Data means data and information relating to the Conduct of Authorised Public Lotteries, held by or on behalf of the Licensee, its Agents Contractors or Distributors,

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 10.2(b)**.

Dedicated Areas means an area within a Distributor's premises that is to be made available only for the sale of tickets or entries in Authorised Public Lotteries.

Dispute Notice means a notice issued in accordance with **clause 24.2**.

Distribution Approach means the method of distributing and selling tickets or entries in an Authorised Public Lottery, including the nature and general location of Points of Sale.

Encumber or **Encumbrance** means any mortgage, pledge, lien, hypothecation, charge or other form of security interest or interest in the nature of a security interest, but for the avoidance of doubt does not include being party to a deed of cross guarantee for the purposes of Australian Securities and Investments Commission (ASIC) Class Order 98/1418 or substantially equivalent individual order or class order issued by ASIC pursuant to the Corporations Act and does not include being a guarantor within a debt arrangement in which the ultimate parent entity is also a guarantor.

Extension Date means the date of the Minister's determination under section 5.3.8C(2) of the Act to extend the Licence for the Extended Term.

Failure has the meaning given in **clause 21.2(a)**.

Failure Notice has the meaning given in **clause 21.2(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 19.1(b)**.

Force Majeure Event means the following events:

- (o) acts of God, including storms, lightning, cyclones, earthquakes, natural disasters, actions of the elements, floods, landslides and mudslides;
- (p) civil riots, rebellions, revolutions, terrorism, civil commotion, insurrections, military and usurped power and war (declared or undeclared); or

(q) fire or explosion caused by acts of God as referred to in paragraph (o), 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 Agreement or the Licence.

Funds has the meaning given in **clause 7.3(a)**.

Get Up means any and all:

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

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

- (i) copyright works and other matter the subject of copyright;
- (ii) designs;
- (iii) logos;
- (iv) trade marks (whether registered or not);
- (v) graphics;
- (vi) fonts; or
- (vii) mascots,

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

- (viii) its corporate branding, including but not limited to Tatts Group, Tatts, Tattersall's and the Lott and subsequent updates, modifications or re-branding of such; or
- (ix) its activities across a range of products and services,

and which are not associated with a particular Authorised Public Lottery.

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

Incoming Licensee means, in respect of a Lottery Transition, another person issued a licence to Conduct Public Lotteries (including a Temporary Licence), by the Minister in accordance with the Act, who will Conduct Public Lotteries from the Transition Date.

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

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

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

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

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

Interactive Distribution Availability Requirement has the meaning given in **Schedule 3**.

IP Indemnified Parties has the meaning given in **clause 14.5(a)**.

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

Key Milestones means the dates set out in the Implementation Plan which are critical in order to ensure that the Licensee can Conduct Authorised Public Lotteries as required under **clause 5.7**.

Licence means the licence to Conduct Authorised Public Lotteries issued by the Minister to the Licensee on or about the date of this Agreement.

Licensed IP means all Intellectual Property Rights subsisting in:

- (a) the Lottery Rules;
- (b) the Get Up;
- (c) the Bloc Trade Marks; and
- (d) the Product Trade Marks,

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

Licensee's Representative means the representative of the Licensee appointed in accordance with **clause 4** and as initially detailed in **Schedule 1**, as replaced from time to time in accordance with **clause 4**.

Liquidated Damages means the amount payable by the Licensee to the State in respect of the agreed amount of loss which the State will suffer as a result of a specified event, as set out in **Schedule 2**.

Lottery Asset means an asset or undertaking of the Licensee that is connected with the Conduct of Authorised Public Lotteries, including all systems (including a Lottery System), accounts, processes, distribution networks, Bloc Agreements and Records.

Lottery Materials has the meaning given in **clause 14.3**.

Lottery Outlet Availability Requirement has the meaning given in **Schedule 3**.

Lottery Outlets has the meaning given in **Schedule 3**.

Lottery System means the technical systems necessary for the Conduct of the Authorised Public Lotteries in accordance with the requirements of the Licence and this Agreement and approved by the Commission in accordance with section 5.2.1A(1) of the Act.

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

Marketing Plan means the initial marketing plan set out in Schedule AP of the licensee's response to the invitation to Apply for a Public Lottery Licence under the Act, as revised annually in accordance with clause 4(b) of **Schedule 3**.

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

New Licensee means another person issued a licence to Conduct Public Lotteries (including a Temporary Licence), by the Minister in accordance with the Act at any time in the future (for the avoidance of doubt, this also includes the Incoming Licensee).

New Owner has the meaning given in **clause 14.4(p)**.

Notice has the meaning given in **clause 26(a)**.

Offer has the meaning given in **clause 14.4(n)(i)**.

Outlet Items has the meaning given in **Schedule 3**.

Parent Guarantee and Indemnity has the meaning given in **clause 3(a)**.

Performance Standards means the minimum standards set out in **Schedule 3**.

Performance Standards Notice has the meaning given in **clause 2.6(a)**.

Personal Information has the meaning given in the *Privacy Act 1988* (Cth).

Point of Sale means a location where entries to an Authorised Public Lottery are accepted or sold. If the entries to an Authorised Public Lottery are issued, made or sold by or from an Interactive Distribution Method, then the Point of Sale is the point at which the Player is able to purchase the ticket or entry and includes the website, display or any other interface that is presented to the Player.

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

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

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).

Product Trade Marks means the logos and trade marks that are associated with an Authorised Public Lottery in the State of Victoria and owned by the Licensee or the Licensee's ultimate parent company but excludes that part of those logos and trade marks that contain the Licensee's name or the Licensee's ultimate parent company's name.

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 Public Lotteries, including:

- (a) the Licensee's copy of the agreements it has with Agents, Contractors, Distributors and any other persons relating to the Conduct of Authorised Public Lotteries;
- (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 Agreement;
- (d) all recorded information and documents used to Conduct Authorised Public Lotteries; and
- (e) all records and statements relating to the Approved Accounts.

Related Body Corporate has the meaning given in section 50 of the Corporations Act.

Report means a report that the Licensee is required to prepare under **clauses 9.1** and **9.2**.

Reportable Data means the data referred to in **clauses 10.1(a)** and **10.1(b)**.

State IP Licence means the licence to use and to sub-licence the Licensed IP that the Licensee grants to the State under **clause 14.4**.

State's Representative means the person appointed from time to time under **clause 29.4**.

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

- (a) the Minister receives a recommendation from the Commission under section 5.3.22 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 5.3.24 of the Act;
- (c) the Minister exercises his or her discretion under **clause 21.1**, **21.2(b)** or **21.5(a)**; or
- (d) the Licensee gives a Notice of its intention to surrender the Licence under section 5.3.20 of the Act.

Step-In Notice has the meaning given in **clause 22.1(a)**.

Supplier has the meaning given in **clause 25.3**.

Suspension Notice has the meaning given in **clause 19.1(c)**.

Suspension Period has the meaning given in **clause 19.1(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, without limitation, 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 5.3.27 of the Act.

Temporary Licensee means a person appointed by the Minister with a Temporary Licence in accordance with section 5.3.27 of the Act.

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

Third Party Claims has the meaning given in **clause 14.5(a)**.

Transition Date means the date on which the Incoming Licensee takes full responsibility for the Conduct of Public Lotteries.

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 operate Continuing Lotteries within 6 months of the Transition Out Period commencing.

Transition Objectives means the objectives set out in **clause 12.3**

Transition Plan refers to the plan produced by the Licensee that describes how a proposed Lottery Transition will be undertaken, as amended and approved by the State's Representative under **clause 12.7** from time to time.

1.2 Interpretation

- (a) A provision of this Agreement must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of the Agreement or the inclusion of the provision in the 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 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 Agreement include references to all the schedules and annexures in this Agreement;
 - (ii) references to parties, clauses, paragraphs, schedules, or annexures in this Agreement are references to parties, clauses, paragraphs, schedules and annexures of and to this Agreement;
 - (iii) references to any document or agreement (including this 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 Agreement, all accounting terms used in this 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 Agreement, that obligation or liability is not to be limited or affected by an obligation or liability imposed in another provision of this Agreement unless otherwise expressly stated;

- (xv) where a right or remedy is conferred on the Minister or Commission under this 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 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 Agreement:
- (i) is reconstituted, renamed or replaced, or if its power or functions are transferred to another entity, this Agreement is deemed to refer to that new entity; or
 - (ii) ceases to exist, this Agreement is deemed to refer to that entity which serves substantially the same purpose or object as the former entity.

1.3 Unfettered discretion

The parties acknowledge and agree that:

- (a) nothing in this 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 Agreement;
- (c) without limiting any express obligation of the State or the Minister under this Agreement, notwithstanding anything contained or implied in this Agreement to the contrary, the parties expressly acknowledge and 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 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 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 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 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 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; and

(e) any term of this 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 Agreement, to the extent that there is any inconsistency between the provisions of this 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 Agreement;

- (e) the Agreements (other than this Agreement); and
- (f) any standards made under the Act.

1.5 Licence conditions

The conditions in clauses 4, 6 and 8 of the Licence are deemed to also be contractual covenants under this Agreement given by the Licensee in favour of the Minister. For the avoidance of doubt, a breach of such a contractual covenant is not subject to **clause 29.10**.

2 Agreement

2.1 Commencement

This 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 Agreement.

2.2 Variation

This Agreement may be amended or varied, but any amendment or variation to this 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, for the avoidance of doubt, the Minister and the Commission); and
- (b) Agents, Contractors and Distributors,

in connection with this Agreement.

2.4 Performance Standards

The Licensee must comply with the Performance Standards in **Schedule 3** throughout the Term.

2.5 Lottery System

- (a) The Licensee must ensure that the Lottery System used in undertaking Preparatory Action and to Conduct Authorised Public Lotteries is approved by the Commission and operates only as approved and in accordance with the Commission's Technical Standards and any other standards, specifications or conditions determined by the Commission from time to time.
- (b) The Licensee must also enter into arrangements and take all reasonable action to enforce such arrangements to procure that its Agents, Contractors and Distributors comply with, to the extent applicable to them, the Commission's Technical Standards and any other standards, specifications or conditions determined by the Commission from time to time.
- (c) The Licensee must advise the Commission of the location of the Lottery System throughout the Term and, upon receipt of a request from the Commission, provide the Commission with access to the Lottery System.

- (d) The Licensee warrants that the Lottery System is fit for the purpose of the Conduct of Authorised Lotteries in accordance with the Commission's Technical Standards.

2.5A Lottery System review

- (a) The Licensee must, before the end of each 5 year period commencing on the anniversary of the Licence Commencement Date (or such other period as agreed to by the Commission) undertake a review (**Technology Review**) of the Lottery System to:
 - (i) evaluate the performance of the Lottery System and compare it with current world industry standards and best practices, including the World Lottery Association standards; and
 - (ii) identify whether changes and improvements are required to the Lottery System to ensure that it meets industry standards and best practice for the Conduct of Authorised Public Lotteries.
- (b) Where the Licensee conducts public lotteries in another jurisdiction and has an obligation in that jurisdiction to undertake an equivalent review of its system for conducting public lotteries, the Licensee may request approval from the Commission (which the Commission may give or withhold in its sole discretion) to change the timeframe and frequency for completion of the Technology Review to align with the review to be undertaken in that other jurisdiction.
- (c) On completion of the Technology Review, the Licensee must submit a report on the Technology Review to the Commission. If the Licensee proposes changes to the Lottery System following the Technology Review, the report must include:
 - (i) details of such proposed changes to the Lottery System; and
 - (ii) a plan for the execution of the proposed changes to the Lottery System.
- (d) The Commission may provide comments on the report to the Licensee and the Licensee must consider and respond to any such comments.
- (e) The Commission and the Licensee must promptly discuss any disputes or differences in relation to the report and must negotiate in good faith any amendment to the report (including any plan for the execution of proposed changes to the Lottery System).
- (f) The Licensee must act in accordance with the agreed report (including any plan, contained in the agreed report, for the execution of the proposed changes to the Lottery System).

2.6 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 2.6(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, provided that the Licensee will not be obliged to meet any amended, replaced or supplemented Performance Standards until the date that is 30 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).
- (e) The Minister and the Licensee may expressly agree in writing as to any matters in relation to the interpretation of, and reporting under **clause 9.1** on, the Performance Standards.

3 Parent Guarantee and Indemnity

- (a) In circumstances where the Licensee is not an ultimate parent company, 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 Agreement from the Licensee's ultimate parent company in the form set out in **Schedule 4** or otherwise on terms acceptable to the Minister (**Parent Guarantee and Indemnity**).
- (b) If the Licensee's ultimate parent company is incorporated outside of Australia, the Licensee must provide to the Minister, in addition to the Parent Guarantee and Indemnity, a legal opinion:
 - (i) from lawyers for the Licensee's ultimate parent company, authorised to practice in the place of incorporation of the Licensee's ultimate parent company:
 - (A) supporting, and in respect of, the Parent Guarantee and Indemnity; and
 - (B) stating that the Parent Guarantee and Indemnity is binding and enforceable against the Licensee's ultimate parent company;
 - (ii) in favour of the State; and
 - (iii) which is otherwise in a form reasonably satisfactory to the Minister.

4 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 Agreement.
- (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. For the avoidance of doubt, the address for service on the Licensee's Representative is the same as the address for service of Notices on the Licensee under **clause 26(b)**.
- (c) The Licensee may revoke the authority or appointment of the Licensee's Representative at any time by giving notice to the Minister provided that it appoints another natural person as an alternative or substitute Licensee's Representative by giving notice to the Minister.

5 Development and Implementation

5.1 Development of Implementation Plan

- (a) The Licensee must develop an Implementation Plan, which details the action the Licensee must arrange or undertake during the Transition In Period for the implementation of Authorised Public Lotteries by the Licence Commencement Date, or such other date agreed in the Licence by the Minister.
- (b) The Implementation Plan must include the Preparatory Action authorised by the Licence.
- (c) In the Implementation Plan the Licensee must demonstrate, to the reasonable satisfaction of the State's Representative, that the Licensee has (or will have by the end of the Transition In Period):
 - (i) conducted a live trial of the Lottery System as required by the State's Representative;
 - (ii) access to all relevant Intellectual Property Rights and information;
 - (iii) developed and implemented the Lottery System;
 - (iv) financial arrangements and resources;
 - (v) staffing and related resources;
 - (vi) distribution processes and networks;
 - (vii) arrangements with Agents, Contractors and Distributors;
 - (viii) developed and implemented stakeholder management and communications plans;
 - (ix) developed and implemented business support arrangements;
 - (x) developed and implemented a service strategy;
 - (xi) a monitoring and assurance system (which will be monitored by the Commission) regarding the implementation of, and ongoing compliance with, the Licensee's Responsible Gambling Code of Conduct;

- (xii) developed and complied with an implementation budget; and
- (xiii) plans and milestones to ensure the efficient, smooth, seamless and uninterrupted transition to the Licensee of the conduct of public lotteries that will be Authorised Public Lotteries and the commencement of other Authorised Public Lotteries,

that are necessary and appropriate to Conduct Authorised Public Lotteries on and from the Licence Commencement Date (or as agreed with the Minister and specified in the Licence).

- (d) The Licensee must, in the Implementation Plan, set out the Key Milestones for:
 - (i) the development and establishment of:
 - (A) all Intellectual Property Rights, Lottery Systems and information;
 - (B) financial arrangements and resources;
 - (C) staffing and related resources;
 - (D) distribution processes and networks;
 - (E) arrangements with Agents, Contractors and Distributors;
 - (F) stakeholder management and communications plans;
 - (G) business support arrangements;
 - (H) a service strategy;
 - (I) a monitoring and assurance system regarding the implementation of, and ongoing compliance with, the Licensee's Responsible Gambling Code of Conduct;
 - (J) an implementation budget; and
 - (K) plans and milestones to ensure the efficient, smooth, seamless and uninterrupted transition to the Licensee of the conduct of public lotteries that will be Authorised Public Lotteries and the commencement of other Authorised Public Lotteries;
 - (ii) the approval by the Commission of a Lottery System; and
 - (iii) the Lottery Rules made, or to be made, and consented to or otherwise not disallowed by the Commission, in accordance with section 5.2.5 of the Act.
- (e) The State's Representative will act reasonably in exercising its powers and rights under this **clause 5** and will do all things reasonably necessary to facilitate compliance by the Licensee with this **clause 5**.

5.2 Submission of Implementation Plan to the State's Representative

- (a) The Licensee must as soon as possible, but no later than 1 month after the Agreement Date (or such later date as approved by the State's Representative), submit the detailed Implementation Plan to the State's Representative for its approval.
- (b) 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 Public

Lotteries on and from the Licence Commencement Date (or as agreed with the Minister and specified in the Licence). Without prejudice to the obligations on the Licensee under **clause 5.1**, the Licensee must submit any such sub-plans to the State's Representative for approval in accordance with the timeframe established under the Implementation Plan.

- (c) The Licensee must not proceed with the Implementation Plan unless it has been approved by the State's Representative under **clause 5.3**.
- (d) The Licensee must use its best endeavours to ensure that the Implementation Plan complies with the requirements of this **clause 5** so that it may be approved by the State's Representative within 4 months after the Agreement Date (or such later date approved by the State's Representative).

5.3 Approval of Implementation Plan

- (a) Upon the receipt of a proposed Implementation Plan (or any sub-plans contemplated by the Implementation Plan), the State's Representative may:
 - (i) approve the Implementation Plan (or sub-plan);
 - (ii) require an amendment to the Implementation Plan (including any amendment to the Key Milestones) (or sub-plan); or
 - (iii) reject the Implementation Plan (or sub-plan).
- (b) The State's Representative will:
 - (i) consider and provide any feedback on the proposed Implementation Plan (or any sub-plan) in a timely fashion; and
 - (ii) in all events, notify the Licensee of its decision and, if the Implementation Plan (or sub-plan) is rejected or required to be amended, provide reasons for the decision, within 20 Business Days of receiving the Implementation Plan (or sub-plan).
- (c) If the State's Representative requires any amendments to or rejects the Implementation Plan (or any sub-plan), the Licensee may make a further submission to the State's Representative within 15 Business Days of the notification as to why the amendment should not be made or the Implementation Plan (or sub-plan) not be rejected.
- (d) The State's Representative and the Licensee must promptly discuss any disputes or differences in relation to the Implementation Plan (or any sub-plan), and must negotiate in good faith to agree on the Implementation Plan (or sub-plan).
- (e) If the State's Representative and the Licensee are unable to resolve any disputes or differences in relation to the Implementation Plan (or any sub-plan) so that the Implementation Plan may be approved by the State's Representative within 6 months after the Agreement Date (or such later date approved by the State's Representative), then the Implementation Plan will be as determined by the State's Representative.

5.4 Development in accordance with Implementation Plan

- (a) The Licensee must act in accordance with the Implementation Plan.

- (b) The Licensee must meet all Key Milestones specified in the Implementation Plan.
- (c) If the Licensee reasonably suspects that any Key Milestones will not be met, then the Licensee must notify the State's Representative immediately, detailing:
 - (i) the expected delay;
 - (ii) the reasons for the delay; and
 - (iii) any proposals to rectify the situation.
- (d) Upon receipt of a notice under **clause 5.4(c)**, the State's Representative may, in its absolute discretion, extend the Key Milestones.
- (e) For the avoidance of doubt, a failure to meet any Key Milestones specified in the Implementation Plan is deemed to be a failure by the Licensee to perform or observe a covenant or obligation in this Agreement for the purposes of **clause 21.2**.

5.5 Monthly Report

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

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

5.6 Certification of Implementation Completion

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

5.7 Readiness to Conduct Authorised Public Lotteries

- (a) Despite the Implementation Plan or any other provisions, the Licensee:
 - (i) must have all the Lottery Systems, processes (including distribution processes), staff, finance and any other things as are necessary for the Conduct of Authorised Public Lotteries established and, to the extent authorised under the Licence, operating effectively, at least 3 months prior to the Licence Commencement Date (or such later date as approved by the State's Representative); and
 - (ii) must be able to Conduct each Authorised Public Lottery in accordance with the requirements for that Authorised Public Lottery (including the Lottery Rules) on and from the Licence Commencement Date (or such other date agreed by the Minister for that Authorised Public Lottery and specified in the Licence).
- (b) If the Licensee is unable to Conduct an Authorised Public Lottery in accordance with **clause 5.7(a)(ii)**, then the Licensee must pay Liquidated Damages in the amount specified in **Schedule 2** to the State in respect of that Authorised Public Lottery. The Parties agree that the amounts specified in **Schedule 2** are a

reasonable pre-estimate of the agreed amount of loss that the State will suffer by reason of any such delay and are not a penalty. The payment of Liquidated Damages does not relieve the Licensee from any of its other obligations and liabilities under this Agreement or from any liability at common law.

5.8 Licensee's obligation to facilitate transition

- (a) Without prejudice to any other sub-clause of this **clause 5**, the Licensee must:
 - (i) ensure and facilitate (including by entering into arrangements and taking all reasonable action to enforce such arrangements to procure that its Agents, Contractors, Distributors 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 public lotteries that will be Authorised Public Lotteries and the Conduct of other Authorised Public Lotteries to the Licensee; and
 - (ii) act reasonably and in good faith towards the State during the Transition In Period, including taking any action or undertaking any processes which the State requires to facilitate an efficient, smooth, seamless and uninterrupted transition of the Conduct of Authorised Public Lotteries to the Licensee.
- (b) For the avoidance of doubt, the Licensee must take any action or undertake any processes which the State requires either in the alternative or in addition to the obligations on the Licensee under this **clause 5**.

6 Conduct of Authorised Public Lotteries

6.1 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 to a winning Player who has a valid ticket or entry in that Authorised Public Lottery in accordance with the Lottery Rules, unless that payment obligation is discharged by an Agent, Contractor or Distributor of the Licensee;
 - (ii) is able to refund all Authorised Public Lottery entries in respect of any Authorised Public Lottery that is not drawn or determined;
 - (iii) has accounted for and retained an amount equal to the sum of all prizes won that have not been claimed by the Players and is able to pay all prizes won that might be subsequently claimed and otherwise deal with such unclaimed prizes in accordance with the Act and the *Unclaimed Money Act 2008* (Vic) as applicable; and
 - (iv) is able to pay any Premium Payments as and when payment falls due.
- (b) Where an Authorised Public Lottery is the subject of a Bloc Agreement, the Licensee must, if requested by the Minister, demonstrate to the reasonable satisfaction of the Minister that the funds available to all participants in the Bloc Agreement (regardless of whether these amounts are held collectively or individually by each participant) are sufficient to make any payment or refund any

amount the Licensee is obliged to pay or refund and that the Licensee is entitled to access such funds for this purpose.

- (c) It is not sufficient for the purposes of this **clause 6.1** 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.

6.2 Details to be made available to Players

- (a) The Licensee must use best endeavours to ensure (including by imposing, and taking all reasonable action to enforce, an equivalent obligation on its Distributors to ensure) that:
 - (i) contact details of the Licensee, including a contact name, phone number, email and postal address;
 - (ii) notification of the dispute resolution procedure used to resolve any dispute in relation to a claim for a prize; and
 - (iii) the process by which a complaint may be made to the Licensee or to the Commission,are freely available at any Point of Sale.
- (b) The Licensee must make a copy of all Lottery Rules available for inspection by members of the public, and free of charge, at all Points of Sale.
- (c) Without limiting **clause 6.2(b)**, all Lottery Rules must be accessible to members of the public on a website maintained by or on behalf of the Licensee for the purposes of the Licence at all times during the Term at no cost.

6.3 Relationships with Agents, Contractors and Distributors

- (a) The Licensee must appoint each Agent and engage each Contractor and Distributor by way of an agreement that is subject to the laws of Victoria, prior to that proposed Agent, Contractor or Distributor assisting the Licensee to Conduct Authorised Public Lotteries, or, if a Distributor, prior to that Distributor selling any tickets or other forms of entry to Authorised Public Lotteries.
- (b) The Licensee must ensure that any agreement it enters into with an Agent, Contractor or Distributor:
 - (i) does not prevent; and
 - (ii) provides that the Agent, Contractor or Distributor must not do anything which prevents,the Licensee from discharging its obligations under the Act, the Regulations, the Licence and this Agreement and the Licensee must take all reasonable action to enforce such provisions in those agreements.
- (c) The agreements the Licensee enters into with its Agents, Contractors or Distributors must prohibit the Agent, Contractor or Distributor (and any agents or subcontractors of that Agent, Contractor or Distributor) from undertaking or omitting any action, which may amount to a breach of the Act, the Licence, this Agreement or any other Agreements if the Licensee were to undertake or fail to undertake the action.
- (d) Subject to **clause 29.10(b)**:

- (i) anything an Agent, Contractor or Distributor does or fails to do in acting for and on behalf of the Licensee or in assisting the Licensee in the Conduct of Authorised Public Lotteries; or
- (ii) a Related Body Corporate of the Licensee does or fails to do in dealing with an Approved Account,

which would be a breach of this Agreement if done or failed to be done by the Licensee, constitutes a breach of this Agreement by the Licensee.

(e) Without limiting any other obligations under this Agreement, the Licensee must:

- (i) immediately notify its Agents, Contractors and Distributors if its Licence is suspended or cancelled, or amended in a manner which is likely to have an effect on or be relevant to its Agents, Contractors and Distributors; and
- (ii) enter into arrangements and take all reasonable action to enforce such arrangements to procure that its Agents, Contractors and Distributors ensure that immediately on and from any notification by the Licensee under **clause 6.3(e)(i)**,
 - (A) if the Licence is amended, its Agents, Contractors and Distributors assist in the Conduct of Authorised Public Lotteries in accordance with the Licence as amended;
 - (B) if the Licence is suspended, its Agents, Contractors and Distributors cease assisting in the Conduct of Authorised Public Lotteries until such time as the lifting or expiry of the suspension of the Licence (except to the extent permitted by Law); or
 - (C) if the Licence is cancelled, its Agents, Contractors and Distributors cease assisting in the Conduct of Authorised Public Lotteries (except to the extent permitted by Law).

6.4 Exclusive Arrangements with Distributors

(a) The Licensee must not:

- (i) enter into contracts, arrangements or understandings with a Distributor; or
- (ii) Conduct Authorised Public Lotteries with the assistance of a Distributor, with the purpose or effect or the likely effect of preventing, restricting or limiting the Distributor from acting as a distributor for other products (both gambling and non-gambling), except where the Licensee controls the Distributor, within the meaning of section 50AA of the Corporations Act.

(b) **Clause 6.4(a)** does not preclude the Licensee requiring, as part of its operational standards and distributor arrangements, a Distributor to have a Dedicated Area within the Distributor's premises to be made available only for the Conduct of the Licensee's Authorised Public Lotteries, provided the size, location and scale are reasonable having regard to the nature of the Distributor's business.

7 Banking

7.1 Account

- (a) The Licensee must maintain Approved Account(s) throughout the Term.
- (b) The Licensee must use Approved Account(s) for all transactions in connection with the Conduct of Authorised Public Lotteries, including any transactions required under or in relation to the Act, Licence or Agreements.
- (c) The Licensee must obtain the prior written approval of the Commission to alter, move or close Approved Account(s).
- (d) Where an Approved Account(s) is in the name of:
 - (i) the Licensee, 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);
 - (ii) a Related Body Corporate of the Licensee, the Licensee will do all things necessary to ensure that only the Licensee acting through an appropriately authorised officer of the Licensee is permitted to withdraw funds to the credit of that Approved Account(s) held in connection with the Conduct of Authorised Public Lotteries, including any funds which the Licensee is required to pay to the State under the Act, Licence or Agreements.
- (e) The Licensee holds all funds in Approved Account(s) which the Licensee is required to pay to the State under the Act, Licence or Agreements (including any amount payable under Part 4 of Chapter 5 of the Act and any Premium Payment payable under section 5.3.9 of the Act), on trust for and on behalf of the State.
- (f) Without limitation, the State may access the funds held on trust for and on behalf of the State under **clause 7.1(e)** as and when:
 - (i) such amount becomes due and payable under the Act, Licence, Agreement or Agreements; or
 - (ii) the Commission reasonably believes that the Licensee will not be able to pay to the State that amount as and when it becomes due and payable.
- (g) Where an Approved Account(s) is in the name of a Related Body Corporate of the Licensee, the Licensee will:
 - (i) do all things necessary to ensure it has authority and appropriate arrangements in place to comply with subclauses (a), (b), (c), (e) and (f) of this **clause 7.1**; and
 - (ii) upon written request by the State, provide evidence which demonstrates, to the State's satisfaction, that the Licensee has the authority and appropriate arrangements in place to comply with **clause 7.1(g)(i)** and **clause 7.2(a)**.

7.2 Account Statements

- (a) The Licensee authorises the Account Manager (and where an Approved Account(s) is in the name of a Related Body Corporate of the Licensee, will do all things necessary to ensure that Related Body Corporate 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) Upon written request from the Commission, the Licensee must provide the Commission, within 3 Business Days of a written request from the Commission, with a letter addressed to the Account Manager confirming the rights of the Commission under this **clause 7.2**.
- (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).

7.3 Distributors and funds

- (a) The Licensee must require that each Distributor remits to the Approved Account(s) such amounts the Distributor receives in respect of each ticket or other form of entry in an Authorised Public Lottery as will enable the Licensee to comply with its obligations under sections 5.4.1 and 5.4.3 of the Act (**Funds**).
- (b) The Licensee must use best endeavours to ensure (including by imposing, and taking all reasonable action to enforce, an equivalent obligation on its Distributors to ensure) that its Distributors hold the Funds on trust for and on behalf of the Licensee until the Funds are remitted in accordance with **clause 7.3(a)** and the Funds are not used for any other purpose.

8 Records

8.1 Retention of Records

The Licensee must maintain and keep all Records (in hard copy or electronic form), other than Records held by the Licensee's Agents, Contractors or Distributors, at the physical place of business in Victoria of the Licensee (or such other place as the Commission approves in writing) for a period of 7 years from their creation.

8.2 Copy of Records

- (a) If requested by the Commission in writing, the Licensee must, at the cost of the Licensee, provide the Commission with a copy of any of the Records or any specified parts thereof.
- (b) Where the Commission requests a copy of Records in accordance with **clause 8.2(a)**, 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.

8.3 Inspection of Records

The Licensee must at its own cost, 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 must comply with all lawful requests by that person authorised by the Commission with respect to the inspection or copying of Records.

8.4 Preparation of Annual Financial Statements

- (a) The Licensee must, as soon as practicable after the end of each Financial Year, prepare the Annual Financial Statements so as to comply with **clause 8.6**, section 5.5.1 of the Act and any other written requirements of the Commission.
- (b) The Licensee must provide to the Commission a copy of the Annual Financial Statements audited in accordance with **clause 8.7** within 3 months (or such longer period as agreed to by the Commission) after the end of the Financial Year to which those audited Annual Financial Statements relate.

8.5 Additional Financial Statements

- (a) In addition to the audited Annual Financial Statements, the Licensee must, upon written request from the Commission, and at the cost of the Licensee, 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 Public Lotteries;
 - (ii) the disaggregated financial performance in respect of any individual part or parts of the Conduct of Authorised Public Lotteries or the engagement of Agents, Contractors or Distributors of Authorised Public Lotteries themselves (such as ticket sales by particular Distributors or of particular Authorised Public Lotteries); and
 - (iii) if applicable, the financial statements of the consolidated entity (as defined in the Corporations Act),
(collectively, the **Additional Financial Statements**).
- (b) The Licensee must provide the Additional Financial Statements by the date specified in the request, or if no time is specified:
 - (i) for Additional Financial Statements that have previously been requested for a different time period, within 10 Business Days of being notified; or
 - (ii) for Additional Financial Statements that have not previously been requested, within 30 Business Days of being notified,
provided that the financial statements of the consolidated entity are only required to be provided 65 Business Days after the end of the relevant Financial Year.
- (c) The Additional Financial Statements must be prepared in accordance with **clauses 8.6, 8.8 and 8.9**.

8.6 Content of Financial Statements

- (a) The Annual Financial Statements and any Additional Financial Statements must give a true and fair view of the financial operations and position of the business of the Licensee related to Authorised Public Lotteries (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 Public Lotteries:
 - (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 8.5(a)(ii)** and **8.6(a)(ii)**, a statement of financial performance will include sales revenue, prizes, taxes, duties and commissions payable to Distributors in relation to the Conduct of Authorised Public Lotteries.

8.7 Audit of Licensee

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

8.8 Compliance with accounting standards

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

8.9 Executive declaration

- (a) The Licensee must procure, in respect of each year's Annual Financial Statement and any Additional Financial Statements, a declaration from its chief executive officer and chief financial officer (or equivalent positions), acceptable to the Commission, as to whether, in that person's opinion:
- (i) the accounts and statements comply with the Australian Accounting Standards;
 - (ii) the accounts and statements reflect a true and fair view of the financial position of the Licensee, or the business of the Licensee related to Authorised Public Lotteries (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 8.9(a)** to the Commission together with the Annual Financial Statements or any Additional Financial Statements.

8.10 Electronic Provision of Information

If required by the Commission, the Licensee must provide at its 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 Agreement.

8.11 Limits on disclosure

Nothing in **clause 8, 9 or 10** requires the Licensee to disclose any Record, Report or Data to the Minister, Commission or any person authorised by the Commission to the extent that the disclosure would breach any Law or require a waiver or breach of legal professional privilege. This **clause 8.11** does not limit or affect any rights or entitlements of the Minister or the Commission to require disclosure under the Act.

9 Reporting Requirements

9.1 Regular reporting requirements

During the Term, the Licensee must provide to the Commission, in the format, and containing such information, as specified in **clause 9.3**, an annual Report:

- (a) detailing the Licensee's performance, including its performance against each Performance Standard, and identifying any issues associated with the Authorised Public Lotteries and their operation, distribution networks and measures taken by the Licensee to counter any adverse effects for each Financial Year;
- (b) identifying any issues:
 - (i) associated with the business continuity and viability of the Licensee in Conducting the Authorised Public Lotteries, any projected risks to such continuity or viability and measures taken or to be taken by the Licensee to counter any such risks; or
 - (ii) relating to the Licensee's Responsible Gambling Code of Conduct (including non-compliances) that have arisen for each Financial Year, and measures taken by the Licensee to rectify its effects or non-compliance, and approaches that will be implemented by the Licensee in the next Financial Year; or
 - (iii) arising out of complaints made by Distributors or disputes with Distributors, including the number of complaints made by, and disputes initiated by, Distributors and the resolution of those complaints or disputes, in that Financial Year;

- (c) identifying changes to the number of Distributors engaged by the Licensee for that Financial Year;
- (d) setting out the Licensee's Distribution Approach, including identifying the number and types of Points of Sale for each Financial Year;
- (e) detailing the Licensee's relationship with its Distributors, including details of:
 - (i) the support and services provided to Distributors; and
 - (ii) the number of, and resolution of, complaints about Dedicated Areas; and
- (f) setting out the Licensee's actual sales and financial performance for the Financial Year in which the Report is provided compared against its forecasts (including for that Financial Year and for the relevant three year period of the most recent Marketing Plan), an explanation of any variations, a forward looking commentary for the remaining period of the Licence as compared against the Licensee's original 10 year forecasts and an explanation of any revisions to its strategies and growth initiatives (including marketing strategies and details of technology and product improvements).

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

9.2 Non-regular reporting requirements

Without limiting the reporting requirements in this **clause 9**, the Licensee must provide a Report to the Commission (in the format, and containing such information, as specified in **clause 9.3**) 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 Public Lotteries:

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

9.3 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 65 Business Days (or such later date as approved by the Commission).

9.4 Licence to use information in Reports

- (a) The Licensee grants the Minister a royalty-free, perpetual, irrevocable licence to use (including the right to reproduce, publish, modify and amend) and sub-licence to any New Licensee the right to use in relation to the Conduct of Authorised Public Lotteries (including the right to reproduce, publish, modify and

amend) the information contained in the Reports which is relevant to the Conduct of Authorised Public Lotteries by the New Licensee.

- (b) If the Minister sub-licences to any New Licensee the right to use (including the right to reproduce, publish, modify or amend) information contained in the Reports, the Minister will include in the terms of the sub-licence provisions requiring the New Licensee:
 - (i) to form its own views on the accuracy and completeness of the information contained in the Reports; and
 - (ii) not to bring any Claim against the Licensee in relation to any inaccuracy or incompleteness of the information contained in the Reports.
- (c) The Licensee warrants that it has the right to grant the licence the subject of **clause 9.4(a)** and that the exercise of that licence will not infringe any Intellectual Property Rights or Moral Rights of any third party.

10 Information and data

10.1 Collection and use of Reportable Data

- (a) The Licensee must collect and store in a reportable form complete and accurate data (including aggregated and disaggregated data relating to individual Points of Sale) regarding:
 - (i) how many tickets or entries were sold in Authorised Public Lotteries; and
 - (ii) the break-down of ticket or entry sales by Authorised Public Lottery.
- (b) The Licensee must also collect and store, in a reportable form, any other data the Commission advises by notice in writing. The Licensee must commence collecting and storing such data no later than 28 Business 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 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 10.1(a)** and **10.1(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, Contractors or Distributors 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 **clause 10.1(a)** and **10.1(b)**, the Licensee must cooperate with and provide information relating to the Conduct of Authorised Public Lotteries in its possession, custody or control, or the possession, custody or control of its Agents, Contractors or Distributors, to the Commission, or any person authorised by the Commission in writing, for the purposes of State commissioned research into gambling.
- (g) The Licensee grants the Minister a royalty-free, perpetual and irrevocable licence to use (including the right to reproduce, publish, modify and amend) and sub-licence the right to use (including the right to reproduce, publish, modify and amend) the Reportable Data and the information contained in the reports required under **clause 10.1(d)**.
- (h) The Licensee warrants that it has the right to grant all licences the subject of this **clause 10.1** and that the exercise of the rights licensed under this **clause 10.1** will not infringe any Intellectual Property Rights or Moral Rights of any third party, except to the extent the infringement results directly from modifications or amendments to the relevant Intellectual Property Rights or Moral Rights which were made by the State without the Licensee's knowledge or approval.

10.2 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 and the State in advance if it is required by Law or otherwise intends to report the Data Security Breach to the Office of 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 10.2(b)(ii)**;
 - (iv) provide reasonable assistance to the State if the State seeks to report the Data Security Breach to any of the Privacy and Information Commissioners or notify any affected individuals; and
 - (v) review the Data Security Breach and take action to prevent any further breaches.
- (c) The Licensee must not, and must ensure that its Agents, Contractors and Distributors do not, without the Commission's prior written consent take, disclose or make available the Data or allow the Data to be taken, disclosed or made available outside of Australia.

- (d) To the extent the Data is 'public sector data' within the meaning of the *Privacy and Data Protection Act 2014* (Vic), the Licensee agrees not to do any act or engage in any practice that contravenes a Protective Data Security Standard or would give rise to a 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 the State under or in connection with this Agreement.

11 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 be at least 10 Business Days after the change in situation)by giving written notice to the Licensee.
- (b) The Licensee must (and must enter into arrangements and take all reasonable action to enforce such arrangements to procure that its Agents, Contractors, Distributors 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 Public Lotteries of a kind specified by the Commission, within the relevant time notified by the Commission.

12 Transition

12.1 New Licensees

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

12.2 Lottery Bloc Agreements

If the Licensee is party to a Bloc Agreement and an Incoming Licensee is appointed to operate a Public Lottery that is the subject of that Bloc Agreement, then the Licensee must act in good faith and give all reasonable assistance during the Transition Out Period for transition of that Public Lottery to the Incoming Licensee and to facilitate the inclusion of the Incoming Licensee in that Bloc Agreement for the purpose of Conducting Public Lotteries in Victoria as part of that Bloc Agreement. For the avoidance of doubt, the Licensee must not engage in conduct which has the effect or would have the effect of unreasonably excluding the Incoming Licensee from that Bloc Agreement.

12.3 Transition objectives

- (a) The objectives of this **clause 12** are to:
 - (i) ensure efficient, smooth, seamless and uninterrupted transition of the Continuing Lotteries from one licensee to another;
 - (ii) ensure that an 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 Lottery Transition are satisfied in a timely fashion; and
 - (vi) promote the objectives of the Act.
- (b) The Licensee must undertake in good faith such activities as may reasonably be required of it to assist in the achievement of the objectives, and acknowledges that the intent of the Transition Plan is to give effect to this commitment.
- (c) Nothing in this **clause 12.3** is to be construed or interpreted in such a way so as to require the Licensee to do anything or act in such a way as to be contrary to its rights and obligations under the Licence.

12.4 Transition Out - Dealings

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

- (a) act reasonably in its dealings with, and where applicable, must 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, Contractors and Distributors 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, Distributors and any other person under the Licensee's direction or control ensure and facilitate) the efficient, smooth, seamless and uninterrupted transition of the Continuing Lotteries to the Incoming Licensee;
- (d) act reasonably and in good faith towards the State during the Lottery Transition; and
- (e) if required by the Minister, novate the Agreement, any other Agreements, 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.

12.5 Transition Out - Compliance

- (a) The Licensee must comply with any lawful directions of the State's Representative in relation to the Lottery Transition.

- (b) During the Transition Out Period, the Licensee may process tickets or other forms of entry in Authorised Public Lotteries that were sold by the Licensee or its Distributors prior to the expiry of the Term.

12.6 Transition Out - Complementary Obligations

The State:

- (a) acknowledges that this Agreement places obligations on the Licensee under this **clause 12**; and
- (b) intends to place generally complementary obligations in relation to the Lottery Transition upon an Incoming Licensee.

12.7 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 proposed 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 Public Lotteries;
 - (ii) include the Information relating to the Continuing Lotteries;
 - (iii) include the names, brands and Lottery Rules of the Continuing Lotteries;
 - (iv) include details of all material agreements and arrangements with any Agent, Contractor or Distributor in relation to the Conduct of Authorised Public Lotteries (and details of such other agreements and arrangements with any Agent, Contractor or Distributor in relation to the Conduct of Authorised Public Lotteries as required by the State's Representative);
 - (v) include a list and contact details of current Agents, Contractors and Distributors;
 - (vi) include a list of Bloc Agreements and contact details for each party to each Bloc Agreement;
 - (vii) apply to all Authorised Public Lotteries as though all of the Authorised Public Lotteries were Continuing Lotteries, in the absence of a direction by the State's Representative;
 - (viii) include such information and address such issues as required by the State's Representative; and
 - (ix) be in a form required by the State's Representative.
- (c) The equipment index required as part of the asset register must include sufficient information to permit the Commission to monitor the specific equipment used by the Licensee in relation to all Lottery Systems to Conduct Authorised Public Lotteries from time to time, including:
 - (i) the specific nature of the equipment;
 - (ii) the name of the manufacturer;

- (iii) the year of manufacture;
- (iv) a description of the model;
- (v) the serial number or other identifying mark of the equipment;
- (vi) the 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,

and 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 Transition Plan. For the avoidance of doubt, 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.

- (d) Unless otherwise directed by the State's Representative, the Licensee must update and resubmit its Transition Plan to the State's Representative for approval every 2 years (or otherwise as frequently as specified by the State's Representative). The updated Transition Plan must take into account any changes to the circumstances, including changes to Authorised Public Lotteries, the Conduct of Authorised Public Lotteries, or assets.
- (e) 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.
- (f) The Licensee must use its best endeavours to ensure that the proposed or updated Transition Plan complies with the requirements of this **clause 12.7** so that it may be approved by the State's Representative within 40 Business Days after the date the Licensee is required to submit the proposed or updated Transition Plan.
- (g) The Licensee must comply with the most recently approved Transition Plan with respect to the Lottery Transition.
- (h) 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 Lottery Transition any Transition Plan.
- (i) The Licensee warrants that it has the right to grant the licence the subject of **clause 12.7(h)** and that the exercise of that licence will not infringe any Intellectual Property Rights or Moral Rights of any third party.

12.8 Reimbursement by the State

- (a) Subject to **clauses 12.8(b)** and **(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 Lottery Transition activities (and not merely any activities relating to the Conduct of Authorised Public Lotteries 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 24.2**.
- (c) The State is not obliged to reimburse the Licensee for any expenses incurred in respect of an activity covered by **clause 12.8(a)** that is required as a direct or indirect consequence of breach or possible breach of the Licence or this Agreement by the Licensee or its Agents, Contractors or Distributors.
- (d) The State will reimburse the Licensee for out of pocket expenses specified in **clause 12.8(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 Lottery Transition to be completed,
- provided the State has received evidence reasonably satisfactory to the State that the Licensee has incurred the expenses.

12.9 Unclaimed Prizes

- (a) After the cancellation or expiry of the Licence, the Licensee must:
- (i) retain an amount equal to the sum of all prizes won that have not been claimed by the Players and deal with such prizes in the manner specified in section 5.5.9 of the Act; or
 - (ii) pay all prizes to eligible Players in accordance with the Lottery Rules.
- (b) The Minister and the Licensee acknowledge that section 5.5.9 of the Act will apply to any prizes that remain unclaimed for 6 months after the cancellation or expiry of the Licence.

13 Player

- (a) The Licensee must at all times act reasonably and in good faith in its dealings with Players.
- (b) Without limiting **clause 13(a)**, the Licensee must ensure that any fee it imposes upon a Player to establish, use or maintain an account in connection with that Player purchasing a ticket or entry into an Authorised Public Lottery or accessing a related product or service is reasonable (including in relation to the cost incurred by the Licensee in providing that account, product or service).

14 Intellectual Property

14.1 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 Public Lotteries.
- (b) It is the Licensee's responsibility to obtain all the Intellectual Property Rights required for the Licensee to Conduct Authorised Public Lotteries, including such rights as are necessary to permit the Licensee to grant the State IP Licence.

14.2 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 Public Lotteries, 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 Public Lotteries, including but not limited to the Licensed IP and the names of the Authorised Public Lotteries.
- (b) The Licensee warrants that in Conducting Authorised Public Lotteries, it will not infringe any Intellectual Property Rights or Moral Rights.

14.3 Restrictions on use of certain names

The Licensee must not incorporate any Get Up or names (collectively **Lottery Materials**) in the Authorised Public Lotteries in the State of Victoria where the Lottery Materials are associated with or similar to the name, business name or trade name of the Licensee, except where:

- (a) the Lottery Materials are, at the Agreement Date, used by the Licensee in relation to the conduct of a public lottery the same as the Authorised Public Lottery (whether in the State of Victoria or not); and
- (b) the Licensee has used the Lottery Materials for that purpose for a continuous period of at least 12 months prior to the Agreement Date.

14.4 State IP Licence

- (a) Subject to the provisions of this **clause 14.4**, the Licensee grants to the State a non-exclusive, royalty-free, perpetual and irrevocable licence to:
 - (i) use (including the right to reproduce, publish, modify and amend); and

- (ii) sub-licence the right to use (including the right to reproduce, publish, modify and amend),
the Licensed IP in relation to Public Lotteries, including in relation to Conducting Authorised Public Lotteries (**State IP Licence**).
- (b) Under the State IP Licence, the State may only sub-licence rights in relation to the Licensed IP to any one or more New Licensees, and any such sub-licence shall:
 - (i) be limited to the geographical area of Victoria, except that any New Licensee may be permitted by the sub-licence to use the Licensed IP in advertising and promotional materials outside Victoria where:
 - (A) those advertising and promotional materials primarily target members of the public in Victoria; or
 - (B) that New Licensee is authorised under the laws of another jurisdiction to conduct that Public Lottery in that jurisdiction;
 - (ii) notwithstanding the date of execution of the relevant IP Sub-Licence Agreement, not commence earlier than the date on which the New Licensee is able to take Preparatory Action or otherwise on the surrender, cancellation or expiration of the Licence;
 - (iii) if the State considers appropriate, include provisions allowing a New Licensee to permit third parties to use the Licensed IP for the New Licensee's business purposes relating to the Conduct of Public Lotteries; and
 - (iv) otherwise be on the terms the State considers appropriate.
- (c) For the avoidance of doubt:
 - (i) if there are multiple New Licensees at any time, the State may sub-licence the Licensed IP to each of them;
 - (ii) where a New Licensee ceases to hold a Public Lottery Licence, the State may sub-licence the Licensed IP to any subsequent New Licensee; and
 - (iii) a New Licensee will only be sub-licensed Licensed IP that relates to the New Licensee's Public Lottery Licence and the specific lotteries licensed under it.
- (d) Any Intellectual Property Rights associated with the Conduct of Authorised Public Lotteries which vest in the Licensee or are licensed to the Licensee after the Agreement Date and which would otherwise have formed part of the Licensed IP had they existed as at the Agreement Date, shall form part of the Licensed IP for the purposes of this Agreement and the State IP Licence.
- (e) The Licensee warrants and represents that, on and from the Licence Commencement Date:
 - (i) it has the authority to grant the State IP Licence, including (subject only to **clause 14.4(e)(iii)**) all necessary consents from any other person with any right, title or interest in or to the Licensed IP;

- (ii) the Product Trade Marks are owned by the Licensee or the Licensee's ultimate parent company;
 - (iii) the Bloc Trade Marks are :
 - (A) jointly owned by the Licensee or the Licensee's ultimate parent company and the other parties to the various Bloc Agreements to which the logos and trade marks relate (**Other Joint Owners**), each of whom have equal right, title and interest in and to the respective Bloc Trade Marks; or
 - (B) are solely owned by the Licensee or the Licensee's ultimate parent company but governed by the terms of the various Bloc Agreements as agreed with the other parties to the Bloc Agreements to which the logos and trade marks relate (**Other Bloc Parties**),

and as such the consent of the Other Joint Owners or the Other Bloc Parties may be required for the Licensee to licence the Bloc Trade Marks to the State and for the State to sub-licence the same to a New Licensee in accordance with **clause 14.4(a)**;
 - (iv) it will act in good faith and will do everything necessary to obtain the consent of the Other Joint Owners or Other Bloc Parties in order to give full effect to the grant of rights to the State hereunder and, where applicable, to facilitate royalty negotiations having regard to the inclusion or exclusion, as the case may be, of Bloc Trade Marks in or from the State IP Licence;
 - (v) it will do everything necessary to ensure that the Licensee or the Licensee's ultimate parent company remains the owner (or joint owner as the case may be) of the registered and unregistered Product Trade Marks and Bloc Trade Marks during the Term of this Agreement and will otherwise use its best endeavours to preserve the value and validity of each of the Product Trade Marks and Bloc Trade Marks;
 - (vi) the Product Trade Marks, Bloc Trade Marks (subject to **clause 14.4(e)(iii)**) and the Get Up and Lottery Rules comprise all of the Licensed IP; and
 - (vii) the Licensed IP, the use or sub-licensing by the State of the Licensed IP in accordance with this Agreement and the use of the Licensed IP by any New Licensee in accordance with an IP Sub-Licence Agreement will not infringe any Intellectual Property Rights or Moral Rights of any third party (except to the extent the infringement results directly from modifications or amendments to the relevant Intellectual Property Rights or Moral Rights which were made by the State without the Licensee's knowledge or approval).
- (f) The Licensee warrants and represents that Licensee's ultimate parent company is the owner of certain business names registered in Victoria reflecting the name or names of some or all of the Authorised Public Lotteries and, if requested to do so in writing by the Minister, the Licensee will procure that Licensee's ultimate parent company will assign or transfer such business names to a New Licensee with whom the Minister has entered into an IP Sub-Licence Agreement on the

surrender, cancellation or expiration of the Licence. For completeness, the business name or names Tatts, Tattersall's and the Lott are not business names or names taken to be reflecting the name or names of some or all of the Authorised Public Lotteries and will not be assigned or transferred to a New Licensee.

- (g) After the Agreement Date and prior to or as at the date on which the Minister exercises the grant of rights:
- (i) material changes or amendments made to the *Trade Marks Act 1995* (Cth) and/or such other Commonwealth legislation governing or providing for the use and protection of Intellectual Property Rights, or any other relevant changes to the commonly accepted commercial practices in respect thereof, may affect some of the terms and conditions of the State IP Licence; and
 - (ii) the Bloc Trade Marks may need to be excluded from the State IP Licence if the consent of the Other Joint Owners (for jointly owned Bloc Trade Marks) or Other Bloc Parties (for solely owned Bloc Trade Marks) is not obtained, as provided for in **clause 14.4(e)(iii)**,

and in this regard consequential amendments may be required to the form, terms and/or conditions of the State IP Licence.

- (h) The Licensee will provide to the Minister, within 3 months after the Agreement Date and thereafter promptly upon request by the Minister made at any time when the State is intending to enter into an IP Sub-Licence Agreement, a list identifying all of the Licensed IP subsisting at the relevant time.
- (i) Except as provided for in the circumstances set out in **clause 14.4(n)(ii)**, and except for the rights expressly granted by this Agreement, the State acquires no interest in the Licensed IP (including interest in goodwill associated therewith) by virtue of this Agreement.
- (j) The Minister may require that the Licensee take such actions, including making such applications, executing such documents and instituting or defending such proceedings, as are required in the reasonable opinion of the Minister to protect and preserve any of the State's rights under the State IP Licence or any New Licensee's rights under an IP Sub-Licence Agreement. If the Licensee is not in breach of **clause 14.4(e)**, and the indemnity in **clause 14.5(a)** does not apply, the State will pay the reasonable costs of the Licensee taking such action as approved by the Minister in writing (provided that the Licensee notifies such costs to the Minister a reasonable period before incurring them). If the Licensee fails to take any action under this **clause 14.4(j)** within a reasonable period, without limiting any other right or remedy of the State, the State may take such action in the name of the Licensee.
- (k) Without limiting **clause 14.4(j)**, the Licensee must:
- (i) promptly notify the Minister in writing of any actual or suspected infringement of any of the Licensed IP, or any challenge to the rights of the Licensee, the State or any New Licensee in respect of the Licensed IP, that comes to the Licensee's attention;

- (ii) take all reasonable steps to maintain registration in Australia of those elements of the Get Up that are registered at the Agreement Date and to obtain and maintain registration in Australia of those elements of the Get Up that are the subject of applications for registration at the Agreement Date, become the subject of applications for registration during the Term or comprise trade marks that are used extensively in connection with Authorised Public Lotteries during the Term. The State will pay the reasonable costs of the Licensee taking such steps as are taken following the Term under this **clause 14.4(k)(ii)**, as approved by the Minister in writing, provided that the Licensee notifies such costs to the Minister a reasonable period before incurring them, except that the State may elect not to pay such costs in which case the Licensee is not required to take the relevant steps. This **clause 14.4(k)(ii)** does not require the Licensee to pursue any application for registration that it reasonably considers is unlikely to achieve registration or renew any registration for trade marks that are no longer used;
 - (iii) promptly notify the Minister in writing of any change to the registration status of any element of the Get Up;
 - (iv) keep the Minister reasonably informed in writing of all claims or proceedings involving any actual or suspected infringement of any of the Licensed IP, or any challenge to the rights of the Licensee in respect of the Licensed IP;
 - (v) take all reasonable steps to maintain in effect any licence under which the Licensee has obtained rights in relation to the Licensed IP. If the Licensee is unable to maintain such a licence, it must notify the Minister in writing, giving as much notice as is practical that the relevant licensed rights may not or cannot be maintained. In that event, once the relevant licensed rights cease to be licensed to the Licensee, those rights will be deemed excluded from the definition of "Licensed IP". Following the Term, the State will pay the reasonable costs of the Licensee maintaining a licence under this **clause 14.4(k)(v)**, as approved by the Minister in writing, provided that the Licensee notifies such costs to the Minister a reasonable period before incurring them, except that the State may elect not to pay such costs in which case the Licensee is not required to maintain the relevant licence; and
 - (vi) fully co-operate with the State and any New Licensee in registering their respective licence interests, if required by the State or a New Licensee.
- (l) The State must use reasonable endeavours to notify the Licensee promptly in writing of any infringement of any of the Licensed IP, or any challenge to the rights of the Licensee or the State or any New Licensee in respect of the Licensed IP, that comes to the Minister's attention.
- (m) The Licensee must not dispose of any Product Trade Marks or Bloc Trade Marks except pursuant to this **clause 14.4** and, if in respect of the Bloc Trade Marks, not without the prior written consent of the Other Joint Owners or Other Bloc Parties, as applicable.

- (n) If the Licensee wishes to sell any Licensed IP (including any Product Trade Marks or Bloc Trade Marks):
 - (i) the Licensee must give the Minister a notice in writing to that effect stating the terms, including the price, on which the Licensee will sell the specified Licensed IP with such notice constituting an offer to sell to the State on the terms stated in the notice (**the Offer**); and
 - (ii) within 30 days of receipt of the Offer the Minister may notify the Licensee in writing that the State will purchase the relevant Licensed IP on the terms stated in the Offer and thereafter, the Licensee must sell and the State must purchase the relevant Licensed IP at the price and upon the terms and conditions specified in the Offer.
- (o) If the Licensee is not required to sell the relevant Licensed IP (including any Product Trade Marks or Bloc Trade Marks) to the State, the Licensee may until the date that is 180 days after the date of the Offer sell the relevant Licensed IP to a third party for a price that is no less than the price offered to the State and otherwise on terms no more favourable to the purchaser than the terms offered to the State.
- (p) The Licensee may only transfer its ownership in the Licensed IP to a third party (**the New Owner**) if the New Owner agrees to license the Licensed IP to the State on the same terms and conditions as contained in this **clause 14.4**, subject to the State agreeing directly in favour of the New Owner, to continue to observe all of the State's obligations hereunder.
- (q) The State is not required to, nor will be responsible for, the enforcement of any rights specified in the IP Sub-Licence Agreement for the benefit of the Licensee, and where a notice is required to be issued to a New Licensee by the Licensee in respect thereof, the Licensee shall provide a copy of the same to the Minister as and when notice is given.
- (r) The Minister may at any time and for any reason terminate the licence granted under this **clause 14.4** and the IP Sub-Licence Agreement in respect of any or all of the Licensed IP simultaneously on notice in writing to the Licensee and the New Licensee.

14.5 Intellectual Property Indemnity

- (a) The Licensee indemnifies and holds harmless the State, the Minister, the Commission, any New Licensee who enters into an IP Sub-Licence Agreement and each of their respective representatives, members, officers, employees, contractors or agents (**IP Indemnified Parties**) from and against all losses, damages, costs, liabilities and expenses arising directly or indirectly, as a result of, associated or in connection with any Claim by a third party against any of the IP Indemnified Parties alleging that the Licensed IP or the use or sublicensing by the State of the Licensed IP or the use of the Licensed IP by any New Licensee in accordance with an IP Sub-Licence Agreement constitutes an infringement of the Intellectual Property Rights or Moral Rights of that third party (**Third Party Claim**), provided that this indemnity will not apply to the extent that the Third Party Claim results directly from the State's or any New Licensee's modification

or amendment of Licensed IP which were made by the State or the New Licensee without the Licensee's knowledge or approval.

- (b) If any Third Party Claim is successful, or if it is agreed by the Licensee that there is an infringement of the Intellectual Property Rights of the relevant third party, then without limiting the rights or remedies of any of the IP Indemnified Parties, the Licensee must at no cost to any of the IP Indemnified Parties, render the relevant activity non-infringing by procuring the right or consent to exercise the relevant Intellectual Property Rights.
- (c) The State holds the benefit of the indemnity on trust for each of the IP Indemnified Parties and the State may enforce such indemnity on behalf of all or any of the IP Indemnified Parties against the Licensee.
- (d) At the State's discretion, the State will provide reasonable assistance at the Licensee's cost, and will take reasonable steps to procure the other IP Indemnified Parties to provide reasonable assistance at the Licensee's cost, in relation to the Licensee's handling of any Third Party Claim.
- (e) Nothing in **clause 14.5** applies to the extent that a Third Party Claim arises as a result of the breach of the licence granted under **clause 14.4** or the IP Sub-Licence Agreement by any of the IP Indemnified Parties.

15 Insurance

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

16 Liability and Indemnities

16.1 Licensee relies on own judgment

Except as expressly provided to the contrary, the Licensee acknowledges that it enters into this Agreement and the Licence in reliance on its own judgment and following review of the viability of the Authorised Public Lotteries. 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.

16.2 Liability in relation to the Licence

Except as expressly provided to the contrary, the Licensee acknowledges that 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.

16.3 Exclusion of liability

- (a) The Licensee acknowledges that it is solely responsible for the Conduct of Authorised Public Lotteries and hereby 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 Public Lotteries (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, Contractors and Distributors.

16.4 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 Public Lotteries (including, for the avoidance of doubt, the Licence being suspended, cancelled or surrendered), including any Claims from Agents, Contractors, Distributors, Players or other persons, except for any Claims which result directly from the negligence of any of the Indemnified Parties.
- (b) The State holds the benefit of the indemnity in **clause 16.4(a)** on trust for each of the Indemnified Parties and the Licensee acknowledges that 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.

17 General warranties and obligations

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

- (a) it will be able to demonstrate (to the reasonable satisfaction of the Commission) that it will be able to pay all prizes (whether claimed or unclaimed) upon determination of an Authorised Public Lottery and refund the price of all Authorised Public Lottery entries in respect of any Authorised Public Lottery 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 Agreement, comply with the conditions of the Licence, perform its obligations under this Agreement and perform its obligations under any other Agreements;

- (c) this 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 Agreement;
- (d) the execution and delivery of this 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 Lottery Assets;
- (f) it protects the Lottery Assets and, at the Licensee's expense, prosecutes or defends all legal proceedings that are necessary for the protection of the Lottery 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 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 24 hours) 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 Public Lotteries;
 - (ii) perform its obligations under the Licence, this Agreement and 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 registration 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 all obligations with respect to the Parent Guarantee and Indemnity.

18 Termination

- (a) This 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 Agreement.

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

19 Force Majeure

19.1 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 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 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 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 19**, 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 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 19.1(d)(i)**.

19.2 Suspension of obligations

The relevant obligations of the Licensee under this Agreement will, subject to the Licensee's compliance with **clauses 19.1(b), 19.1(d), 19.1(f) and 19.3**, be suspended in accordance with the Suspension Notice during the Suspension Period.

19.3 Mitigation and reinstatement

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

19.4 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.

19.5 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 Agreement or the Licence.

20 Adverse Event

20.1 What is an Adverse Event

- (a) Subject to **clause 20.1(b)**, an **Adverse Event** occurs if, at any time during the 40-year period beginning on the Extension Date (**Adverse Event Period**), the State (whether through an act of the executive or of Parliament), takes any action or series of actions that has the effect of:
 - (i) changing the rate, base or structure of tax payable to the State for the Conduct of Authorised Public Lotteries such that the amount of tax paid in

- a Financial Year as a proportion of Player Loss exceeds the proportion in the Financial Year ending prior to the Extension Date; or
- (ii) imposing a new tax, duty, levy or similarly described payment obligation on the Licensee (in its capacity as a person authorised to Conduct Public Lotteries) or a Related ACD (in its capacity as an Agent, Contractor or Distributor of the Licensee).
- (b) An Adverse Event will not occur for the purposes of **clause 20.1(a)** if:
- (i) the Licensee consents to the action or series of actions;
 - (ii) the duty, tax, levy or other impost is a form of Victorian state taxation that is:
 - (A) of a general nature broadly applied in the State of Victoria; or
 - (B) imposed across substantially all products and segments throughout the Victorian gambling industry and that does not apply disproportionately and more heavily to Authorised Public Lotteries (by reference to Player Loss as a proportion of total revenue from all types of licensed or legally authorised gambling products in Victoria that are subject to the duty, tax, levy or other impost); or
 - (iii) the Treasurer determines a supervision charge is payable by the Licensee that reflects the reasonable costs and expenses incurred by the Commission in performing its functions under the Act in respect of Authorised Public Lotteries.
- (c) In this clause:
- Player Loss** means the total amount paid by all Players to enter an Authorised Public Lottery less –
- (A) the sum of all prizes payable from that total amount (other than prizes payable from a jackpot prize pool) and any refunds made to Players from that total amount; and
 - (B) the sum of amounts determined under the Lottery Rules for the Authorised Public Lottery for payment in respect of that total amount to a jackpot prize pool.
- Related ACD** means a Related Body Corporate of the Licensee that the Licensee appoints as an Agent, Contractor or Distributor to assist in the Conduct of or accept an entry in Authorised Public Lotteries.

20.2 Entitlement to Refund Amount

- (a) If an Adverse Event occurs, the Licensee will be entitled to compensation from the State (**Refund Amount**) equal to the loss incurred or reasonably likely to be incurred by the Licensee over the remainder of the Adverse Event Period that is directly caused by the Adverse Event (**Loss**).
- (b) The Licensee will have no entitlement to a Refund Amount unless:
 - (i) it gives a Negotiation Notice to the Minister in accordance with **clause 20.6**; and

- (ii) the Loss caused by the Adverse Event exceeds the Minimum Loss Amount per Adverse Event.
- (c) In this **clause 20.2 'Minimum Loss Amount'** means:
- (i) from the Extension Date to 30 June 2027, \$5,000,000; and
 - (ii) on 1 July 2027 and on and from each anniversary of that date (**Adjustment Date**) the amount determined in accordance with the following formula:

$$M = A/B \times C$$

where -

M = the Minimum Loss Amount in respect of the year commencing on the relevant Adjustment Date

A = the CPI number published for the quarter ending immediately before the Adjustment Date

B = the CPI number published for the quarter ending immediately before the previous Adjustment Date or, where there is no previous Adjustment Date, the quarter ending immediately before the Extension Date

C = the Minimum Loss Amount for the year immediately preceding the relevant Adjustment Date

CPI number = the Consumer Price Index (All Groups for Melbourne) published by the Australian Bureau of Statistics (or any other index published in substitution for this index).

20.3 Mitigation

The Licensee must take all reasonable steps to mitigate any loss in relation to an Adverse Event and the corresponding liability for that loss and its inclusion in the calculation of a Refund Amount is reduced or extinguished (as the case may be) to the extent of any failure to take all reasonable steps to mitigate. However, the Licensee's obligations under this clause 20.3 do not require it to take any steps to mitigate loss in addition to those which have been taken into account in agreeing the Refund Amount under clause 20.6 or determining the Refund Amount under clause 20.7.

20.4 Cap on Refund Amount

- (a) The State's total liability under this **clause 20** will not exceed the quantum of the Premium Payment for the Extended Term, as specified in clause 3(c) of the Licence (**Refund Amount Cap**).
- (b) In respect of all Adverse Events the total amount payable by the State under this **clause 20** will not exceed (and the State is not liable for any amount exceeding) the Refund Amount Cap, regardless of the number or types of Adverse Events that occur.
- (c) If the amount paid with respect to one or more Adverse Events equals the Refund Amount Cap, no further amount is payable to the Licensee with respect to any other Adverse Event that occurs.

20.5 Sole remedy

The Licensee agrees that any Refund Amount payable under this **clause 20** is the entire remedy for the occurrence of the Adverse Events which may occur and it will not seek any other remedy against the State in connection with the Adverse Events.

20.6 Action on occurrence of an Adverse Event

- (a) If an Adverse Event occurs the Licensee may, within 365 days following the event, give a notice to the Minister (**Negotiation Notice**). The Negotiation Notice must set out in reasonable detail:
- (i) the Adverse Event to which the Negotiation Notice relates;
 - (ii) the steps the Licensee has undertaken in accordance with clause 20.3 to mitigate the impact of the Adverse Event;
 - (iii) if payment of the Refund Amount were to be made as a single payment, the amount claimed by the Licensee as determined in accordance with **clause 20.6(b) (Single Refund Amount)**, including sufficient detail to demonstrate how this amount was calculated;
 - (iv) if payment of the Refund Amount were to be made in periodic amounts, an estimate of the periodic instalments to be claimed by the Licensee for all Loss incurred or reasonably likely to be incurred by the Licensee for the remainder of the Adverse Event Period directly caused by the Adverse Event, as well as the dates on which payment of each instalment amount will fall due reflecting when the Loss directly caused by the Adverse Event is reasonably expected to be, or will be, incurred (**Periodic Payment Schedule**) and the basis on which the Licensee's Losses have been estimated and also how they will be calculated (**Method**).
- (b) A Single Refund Amount in respect of the Adverse Event will be calculated as the present value (discounted at the Discount Rate) of all Loss incurred or reasonably likely to be incurred by the Licensee for the remainder of the Adverse Event Period directly caused by the Adverse Event, calculated as at the date on which the Adverse Event takes effect as if mitigation had occurred.
- (c) In this clause:
- BBR** means the rate at or about 12.00pm (Victorian time) on the date on which the Adverse Event takes effect, as quoted on the "Bloomberg Screen ICAP" screen (or an equivalent screen as reasonably agreed between the parties), for the 5 year AUD swap rate (or if unavailable, on an alternative source from a reputable information broker of financial services information); and
- Discount Rate** means BBR plus a margin of 4.00%.
- (d) Within 2 months of receipt of a Negotiation Notice, the Licensee and the Minister must commence negotiations in good faith to agree the Single Refund Amount, or the Method and the Periodic Payment Schedule (each a **Refund Component**).
- (e) At any time during the negotiations under **clause 20.6(d)**, the Minister may request from the Licensee such further details in relation to, or clarification of, information provided in the Negotiation Notice or the methodology used to

determine a Refund Component, as the Minister requires to assist the Minister in understanding the Licensee's calculation of the amounts set out in the Negotiation Notice, and the Licensee must promptly comply with such a request.

20.7 Expert determination

- (a) If the Licensee and the Minister cannot or do not agree on a Refund Component of a particular Adverse Event within 6 months of receipt of the Negotiation Notice, either party may by notice (**Determination Notice**) require the Refund Components to be determined by three reputable expert valuers (each an **Independent Expert**).
- (b) Within 15 Business Days of the Determination Notice, each party must nominate one Independent Expert, and the two nominated Independent Experts will agree to appoint a third Independent Expert who will act as a chair of the panel of the Independent Experts.
- (c) If a party has not nominated an Independent Expert within 15 Business Days of the Determination Notice, the other party may request that the President of the Law Institute of Victoria appoints an Independent Expert instead, and that appointment is final and binding on the parties.
- (d) If the two Independent Experts are unable to agree a third Independent Expert within 30 days of the date on which the second Independent Expert was appointed, either party may request the President of the Law Institute of Victoria to appoint the third Independent Expert, and that appointment is final and binding on the parties.
- (e) In the alternative, the parties may agree that a determination under this **clause 20.7** will be made by one Independent Expert, the identity of whom is agreed by the parties.
- (f) The Licensee and the Minister must instruct the Independent Expert(s) to determine the Refund Components within 120 Business Days having regard to:
 - (i) this provisions of this **clause 20**;
 - (ii) any written submissions made to the Independent Expert(s) by the Minister and the Licensee; and
 - (iii) the Independent Expert(s) assessment of:
 - (A) the Loss incurred or reasonably likely to be incurred by the Licensee directly caused by the Adverse Event; and
 - (B) when the Loss directly caused by the Adverse Event is reasonably expected to be incurred.
- (g) The Licensee and the Minister must promptly provide any information reasonably requested by the Independent Expert(s) and may make submissions to the Independent Expert(s) including as to the calculation or timing of Loss incurred or reasonably likely to be incurred by the Licensee directly caused by the Adverse Event and the Independent Expert(s) may seek their own advice on the determination.
- (h) An Independent Expert acts as an expert not as an arbitrator and if:

- (i) there is a panel of Independent Experts, they will confer and endeavour to agree a determination;
 - (ii) there is a panel of Independent Experts and they are unable to agree a determination under **clause 20.7(h)(i)**, each Independent Expert will provide their own findings and the average of their findings is deemed to be the relevant determination; or
 - (iii) there is one Independent Expert, they will provide their determination, and subject to **clause 20.9**, that determination is final and binding on the parties in the absence of manifest error on the face of the determination.
- (i) A determination must contain a statement of reasons in such form as the Independent Expert(s) consider reasonably appropriate, having regard to the amount claimed and the complexity of the matter to be determined under the Determination Notice.
 - (j) The costs of the Independent Expert(s) must be borne equally by the Minister and the Licensee.
 - (k) For the avoidance of doubt, the dispute resolution procedures outlined in this **clause 20.7** only apply for the determination of the quantum of the Single Refund Amount, the Method and the Periodic Payment Schedule, and any other dispute under this **clause 20** (including a dispute regarding whether an Adverse Event has occurred) is subject to the dispute resolution procedure set out in **clause 24**.
 - (l) Nothing in this **clause 20.7** will prevent a party from instituting proceedings to seek urgent injunctive, interlocutory or declaratory relief in respect of a dispute as to the Refund Amount.

20.8 Payment of Refund Amount

- (a) Subject to **clause 20.8(b)** and any agreement reached under **clause 20.8(c)**, and following the Refund Components being agreed by the parties under **clause 20.6** or determined under **clause 20.7**, the Minister will pay the Licensee (at the election of the Minister) either:
 - (i) the Single Refund Amount, payable within 20 Business Days of the date on which the amount is agreed under **clause 20.6** or determined under **clause 20.7**; or
 - (ii) at the times specified in the Periodic Payment Schedule, the Loss incurred by the Licensee during the relevant payment period as notified by the Licensee, providing that the Loss is calculated pursuant to the Method.
- (b) No amount will be paid by the Minister:
 - (i) in excess of the Refund Amount Cap; and
 - (ii) once the cumulative total of amounts paid by the Minister under this **clause 20** reaches the Refund Amount Cap.
- (c) The Licensee and the Minister may negotiate in good faith to agree other ways, apart from payment under **clause 20.8(a)**, by which the Licensee may receive value of benefits equivalent or approximate to the value of the Refund Amount

including, for example, reduction in general duty rates or effective extension of the Term (to the extent permitted by Law).

20.9 True-up

- (a) In respect of each Adverse Event for which a Single Refund Amount has been agreed or determined under **clauses 20.6 or 20.7**, either party may give a notice to the other party (**True-Up Review Notice**) once at any time between 24 months and 7 years after the agreement or determination.
- (b) Prior to issuing a True-Up Review Notice, the Minister may request that the Licensee provide all information the Minister reasonably requires to determine whether to issue a True-Up Review Notice, and the Licensee must promptly (and in any event, within 15 Business Days) comply with that request.
- (c) The True-Up Notice must set out the extent to which the party that issued the notice contends that Loss which was in fact directly caused by the Adverse Event and suffered by the Licensee was different to the amount agreed or determined, and the basis for the contention.
- (d) Within 20 Business Days of receipt of a True-Up Review Notice, the Licensee and the Minister must negotiate in good faith to agree the amount of the true-up that will be paid by one party to the other to reflect the Loss that was in fact directly caused by the Adverse Event (**True-Up Amount**). A True-Up Amount will only be payable if the amount exceeds the Minimum Loss Amount.
- (e) If the Licensee and the Minister cannot or do not agree on a True-Up Amount within 60 Business Days of receipt of the True-Up Review Notice, either party may by notice (**True-Up Determination Notice**) require a True-Up Amount to be determined by Independent Experts in the same manner and by the same procedure as set out in **clause 20.7** (with appropriate adjustment for the type of claim, type of notices and the terminology of this clause). The parties must provide the Independent Experts with all information that they reasonably require, on a confidential basis.
- (f) A True-Up Amount that is agreed under **clause 20.9(d)** or determined under **clause 20.9(e)** must be paid to the relevant party within 20 Business Days of the date on which the True-Up Amount is agreed under **clause 20.9(d)** or determined under **clause 20.9(e)**.

21 Default

21.1 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 22**.

21.2 Other Default

- (a) If the Licensee fails to comply with this Agreement (including, for the avoidance of doubt, as a consequence of **clause 6.3(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 21.2(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 22**. For the purposes of this **clause 21.2(b)**, a Failure is of a serious nature if it materially adversely affects, or is capable of materially adversely affecting:
- (i) the interest of the public or the Players; or
 - (ii) the revenue of the State.
- (c) The Licensee may, at any time, request an extension to the Cure Period by notice to the Minister. The notice must specify the reason why the Licensee is not able to cure or remedy the Failure within the existing Cure Period, the additional time required and any other information relevant to the assessment of the request. The Minister may accept or reject the request at his or her absolute discretion.

21.3 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 21.3(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.

21.4 Remediating with Alternative Arrangements

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

21.5 Failure to remedy

If the Licensee fails to comply with any one or more of the requirements specified in **clause 21.3** or **21.4**, then the Minister may:

- (a) proceed in accordance with **clause 22**; or
- (b) exercise any rights in relation to ministerial directions or (after receiving a recommendation from the Commission) disciplinary actions provided under the Act.

21.6 Ministerial Directions and Disciplinary Actions not affected

- (a) Nothing in this 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) For the avoidance of doubt, any Failure or a breach of any provision of this Agreement constitutes a contravention of the whole Agreement.

22 Step-In Right

22.1 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 22.1(d)** no less than 10 Business Days after the date of the Step-In Notice.
- (b) Within 5 Business Days after receiving a Step-In Notice, the Licensee may make representations to the Minister as to:
 - (i) the Licensee's recommendation as to the Assistant Operator; and
 - (ii) why the Minister should not exercise his or her discretion under **clause 22.1(d)**.
- (c) The Minister, by written notice to the Licensee, may revoke a Step-In Notice.
- (d) If:
 - (i) the Licensee fails to make representations to the Minister within 5 Business Days after receiving a Step-In Notice; or
 - (ii) the Minister, after taking into account any representations by the Licensee, reasonably considers that the exercise of his or her discretion is appropriate action for the Minister to take having regard to the extent of any Failure, the interest of the public or Players or the risk to the revenue of the State,

then the Minister may, no less than 10 Business Days after the date of the Step-In Notice, require the Licensee to, and the Licensee must, appoint an Assistant Operator nominated by the Minister as an agent of the Licensee to take the steps permitted under this **clause 22**.

22.2 Steps

The Assistant Operator is entitled, as agent of the Licensee, to take any of the following steps under this **clause 22** in respect of the Conduct of Authorised Public Lotteries:

- (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, Distributors and all other persons under the Licensee's direction or control, for the purposes of assisting in establishing or Conducting Authorised Public Lotteries as an Agent of the Licensee (but for the avoidance of doubt this does not affect any function or obligation of the Licensee under a gaming Act, the gaming regulations, the Licence, this Agreement or any other Agreements);
- (b) operating and managing any account (including the Approved Account(s) whether that Approved Account(s) is in the name of the Licensee or a Related Body Corporate of the Licensee) operated by or for the benefit of the Licensee for the purpose of assisting in establishing or Conducting Authorised Public Lotteries 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 Public Lotteries 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 Public Lotteries in accordance with the Act, the Licence, this 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.

22.3 Intellectual Property and Public Lottery equipment

The Licensee appoints the Assistant Operator as its agent until cessation of step-in under **clause 22.8** 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 Public Lotteries;
- (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 Public Lotteries;
- (c) enter and occupy all retail outlets and premises associated with the Conduct of Authorised Public Lotteries;
- (d) exercise all other rights necessary to allow the Assistant Operator to Conduct Authorised Public Lotteries, for any purposes associated with or connected to the Conduct of Authorised Public Lotteries in Victoria; and

- (e) permit third parties (being contractors of the Assistant Operator) to do any of (a) to (d) above for any purposes associated with or connected to the Conduct of Authorised Public Lotteries in Victoria.

22.4 Operation during step-in

- (a) When exercising its rights under this **clause 22** the State will use all reasonable endeavours to, and the Assistant Operator must, assist in Conducting Authorised Public Lotteries in a manner which is consistent with the requirements of:
 - (i) the Act, the Licence, this Agreement or 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, Contractors or Distributors.
- (b) The Assistant Operator will receive all revenue, incur all liabilities and pay all expenses associated with or connected to the Conduct of Authorised Public Lotteries 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 22.1** until cessation of step-in under **clause 22.8**.
- (c) The Licensee must reimburse the State for all costs and expenses incurred by the State in exercising its rights under this **clause 22**, 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.

22.5 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 22** and must require and use its best endeavours to enter into arrangements and take all reasonable action to enforce such arrangements to ensure that the Licensee's Agents, Contractors, Distributors 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 22**.
- (b) Without limiting **clause 22.5(a)**, the Licensee must allow the Assistant Operator to have access to:
 - (i) any premises occupied by the Licensee or under its control and will require and use its best endeavours to enter into arrangements and take all reasonable action to enforce such arrangements to procure that such access is given by all Agents, Contractors, Distributors 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 Public Lotteries; 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).

22.6 Suspension of obligations

Upon the Minister appointing an Assistant Operator under this **clause 22** to perform the Licensee's obligations under the Licence and this 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 Public Lotteries (and despite anything to the contrary in **clause 22.2(a)**).

22.7 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 21**; and
- (b) agrees to ratify and confirm whatever action the Assistant Operator takes in accordance with this **clause 22**.

22.8 Cessation of step-in

The Minister will procure that the Assistant Operator ceases exercising the rights under this **clause 22** as soon as:

- (a) the Minister has appointed an Incoming Licensee to replace the Licensee and the Incoming Licensee is sufficiently established to Conduct the Authorised Public Lotteries; or
- (b) the Minister otherwise determines that it is appropriate to terminate the exercise of the rights under this **clause 22**, 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.

22.9 Minister and Assistant Operator to act reasonably

In exercising its rights under this **clause 22**, 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.

22.10 Liability

- (a) The Licensee acknowledges and 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 22** except to the extent that the Minister does not act in accordance with **clause 22.9**.
- (b) The Licensee acknowledges and 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 22** except to the extent that the Assistant Operator does not act in accordance with **clause 22.9** or breaches any provision of the Licence or Agreement.

- (c) The Licensee acknowledges and 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 22** 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 22.4**, 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 22** except to the extent that the Licensee does not act in accordance with **clause 22.5** or **22.7(a)**.
- (e) The Licensee acknowledges that if the Minister appoints an Incoming Licensee to replace the Licensee, then the Licensee may, with the Minister's consent, transfer or assign any part of Lottery Assets to the Incoming Licensee provided that such assignment will not affect the rights of the Assistant Operator under this **clause 22**.

22.11 Other rights

- (a) The exercise by the Minister of his or her rights under this **clause 22** does not affect any other rights or entitlements of the Minister or the Commission (whether under the Act, the Licence, this Agreement or any other Agreement).
- (b) As reflected in the definition of Step-In Event, the Minister under this 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.

23 Temporary Licensee

23.1 Application

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

- (a) subject to the terms and conditions of the Temporary Licence;
- (b) to the extent permitted by Law; and
- (c) without prejudice to **clauses 6.3** or **12.4** or any other clause of this Agreement, the terms of this **clause 23** apply.

23.2 Powers

Subject to the terms and conditions of the Temporary Licence, the Licensee acknowledges and agrees that the Temporary Licensee is entitled to take any of the following steps under this **clause 23** in respect of the Conduct of Authorised Public Lotteries:

- (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, Distributors and all other persons under the Licensee's direction or control, for the purposes of establishing or Conducting Authorised Public Lotteries as Temporary Licensee;

- (b) operating and managing any account (including the Approved Account(s) whether that Approved Account(s) is in the name of the Licensee or a Related Body Corporate of the Licensee) operated by or for the benefit of the Licensee for the purpose of establishing or Conducting Authorised Public Lotteries as Temporary Licensee;
- (c) acquiring additional or replacement products or services from any suppliers for the purpose of establishing or Conducting Authorised Public Lotteries as Temporary Licensee;
- (d) taking such other steps as are, in the reasonable opinion of the Temporary Licensee, necessary to Conduct Authorised Public Lotteries in accordance with the Act, the Licence, this 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.

23.3 Intellectual Property and Public Lottery equipment

The Licensee appoints the Temporary Licensee as its agent until the Temporary Licence (including any extension of a 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 Public Lotteries;
- (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 Public Lotteries;
- (c) enter and occupy all retail outlets and premises associated with the Conduct of Authorised Public Lotteries;
- (d) exercise all other rights necessary to allow the Temporary Licensee to Conduct Authorised Public Lotteries, for any purposes associated with or connected to the Conduct of Authorised Public Lotteries 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 Public Lotteries in the State.

23.4 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.

23.5 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 23** and under the Temporary Licence issued under the Act, and must require and use its best endeavours to enter into arrangements and take all reasonable action to enforce such arrangements to ensure that the Licensee's Agents, Contractors, Distributors 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 23**.
- (b) Without limiting **clause 23.5(a)**, the Licensee must allow the Temporary Licensee to have access to:
 - (i) any premises occupied by the Licensee or under its control and will require and use its best endeavours to enter into arrangements and take all reasonable action to enforce such arrangements to procure that such access is given by all Agents, Contractors, Distributors 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 Public Lotteries; 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).

23.6 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 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 23**.

23.7 Liability

- (a) The Licensee acknowledges and 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 23**.
- (b) The Licensee acknowledges and 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 22** except to the extent that the Temporary Licensee breaches any provision of this **clause 22**. The State will seek to negotiate an agreement with the Temporary Licensee to give effect to this.
- (c) 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

Temporary Licensee and the exercise by the Temporary Licensee of the rights under this **clause 23** except to the extent that the Licensee does not act in accordance with **clause 23.5** or **23.6(b)**.

23.8 Other rights

The exercise by the Temporary Licensee of its rights under this **clause 23** does not affect any other rights or entitlements of the Temporary Licensee (whether under the Act, the Temporary Licence, the Licence, this Agreement or any other Agreement).

24 Dispute resolution

24.1 Dispute resolution - general

- (a) This **clause 24** applies to:
 - (i) any dispute under or in relation to **clause 20** (except to the extent **clauses 20.7** or **20.9(e)** apply); and
 - (ii) any dispute under or in relation to this Agreement which arises after the termination of the Agreement, including, for the avoidance of doubt, any dispute under or in relation to any indemnity given under any clause of this Agreement which survive the termination of this Agreement under **clause 29.6**.
- (b) The parties must use all reasonable endeavours to resolve any dispute to which this **clause 24** applies.

24.2 Dispute Notice

- (a) If a dispute arises between the parties to which this **clause 24** applies and a party wishes to have a dispute resolved or determined, that party must issue a Dispute Notice to the other party which must include:
 - (i) a statement that it is a notice under this **clause 24.2**;
 - (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).

24.3 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 24.3(c)** will not be contractually binding on the parties.

24.4 Court Action

- (a) The State and the Licensee must not commence or maintain a court action or proceeding upon a dispute in connection with this Agreement until the State and the Licensee have first taken part in a negotiation in accordance with **clause 24.3**.
- (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 Agreement where the State or the Licensee seeks urgent interlocutory relief.

24.5 Other rights

The exercise by the Minister of his or her rights under this **clause 24** does not affect any other rights or entitlements of the Minister or the Commission (whether under the Act, the Licence, this Agreement or any other Agreement).

25 Goods and Services Tax

25.1 Construction

In this **clause 25**:

- (a) words and expressions which are not defined in this 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.

25.2 Consideration GST exclusive

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

25.3 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 Agreement, the recipient will pay to the Supplier an amount equal to the GST payable on the supply.

25.4 Timing of GST payment

The recipient will pay the amount referred to in **clause 25.3** in addition to and at the same time that the consideration for the supply is to be provided under this Agreement.

25.5 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 25.3**. The recipient can withhold payment of the amount until the Supplier provides a tax invoice or an adjustment note, as appropriate.

25.6 Adjustment event

If an adjustment event arises in respect of a taxable supply made by a Supplier under this Agreement, the amount payable by the recipient under **clause 25.3** 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.

25.7 Reimbursements

Where a party is required under this 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.

25.8 No Merger

This **clause 25** does not merge in the completion or termination of this Agreement or on the transfer of the property supplied under this Agreement.

26 Notices

- (a) A notice or other communication connected with this Agreement (**Notice**) has no legal effect unless it is in writing, signed by the Minister or State's Representative or the Licensee's Representative and delivered in accordance with this **clause 26**.
- (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 Agreement or subsequently notified.
- (d) If the Notice is sent or delivered in a manner provided by **clause 26(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 5.00pm in the place of receipt; or
 - (ii) on a day which is a Saturday, Sunday or a public holiday in the place of receipt,

it is taken as having been delivered at 9am on the next day which is not a Saturday, Sunday or public holiday in that place.

27 Confidentiality and disclosure

27.1 Keep Confidential

Subject to **clauses 27.2, 27.3 and 27.4**, the Licensee must keep the contents of this 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 Agreement or any other Agreements, confidential and must not disclose the same to any other person without the prior written consent of the Minister.

27.2 Exceptions to confidentiality

Clause 27.1 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 27**);
- (c) any disclosure required by any applicable stock exchange listing rules relevant to the Licensee or its ultimate parent company;
- (d) disclosure by the Licensee to its ultimate parent company or related bodies corporate or the directors, officers or employees of the ultimate parent company or related bodies corporate, involved in the Conduct of Authorised Public Lotteries;
- (e) disclosure to solicitors, barristers or other professional advisers under a duty of confidentiality;
- (f) 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;

- (g) disclosure by the Licensee to an Agent, Contractor, Distributor or Associate, for that Agent, Contractor, Distributor or Associate to perform obligations under the Act, the Licence, this Agreement or any other Agreement, if the Agent, Contractor, Distributor or Associate first gives a binding covenant to the Minister to maintain confidentiality of the information, in form and substance satisfactory to the Minister;
- (h) 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
- (i) any disclosure to the State.

27.3 Publication of Agreement

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

27.4 Decisions of the Minister or the Commission

The Licensee acknowledges that all decisions of the Minister or the Commission relating to the Conduct of Authorised Public Lotteries by the Licensee may be published and made available to members of the general public and accordingly authorises the Minister and the Commission to make such publication.

27.5 Public disclosure

- (a) The Licensee acknowledges and 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; in the case of the Minister, to fulfil his or her duties of office; or
 - (vi) 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 27.5**.
- (c) The Licensee:

- (i) must not (and must enter into arrangements and take all reasonable action to enforce such arrangements to ensure that its Agents, Contractors, Distributors and Associates do not) make any public disclosures, announcements or statements in relation to the Licence or this Agreement or the Minister's or the Commission's involvement in the Licence or this 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 27.2(a) or 27.2(c)**;
- (ii) must use its best endeavours to agree with the Minister the wording and timing of all public disclosures, announcements and statements by it or its Agents, Contractors, Distributors or Associates relating to the Licence or this Agreement or the Minister's or the Commission's involvement in the Licence or this Agreement before the relevant disclosure, announcement or statement is made;
- (iii) must give the Minister a draft of any proposed disclosure, announcement or statement (including media releases) relating to the Licence or this Agreement or the Minister's or the Commission's involvement in the Licence or this Agreement and must obtain the Minister's approval of the disclosure, announcement or statement (including media releases) before distributing such disclosure, announcements or statement; and
- (iv) as soon as practicable, must give to the Minister a copy of any disclosure, announcement or statement (including media release) agreed to or approved by the Minister under this **clause 27.4**.

28 Privacy

- (a) The Licensee must comply with its obligations (and ensure that its employees, Agents, Contractors or Distributors 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 Agreement or the Licence.
- (b) If this 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 28(a)**) to be bound by the Information Privacy Principles and any applicable Code of Practice with respect to any act done or practice engaged in by the Licensee for the purpose of, or under or in connection with, this 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 Miscellaneous

29.1 Assignment

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

29.2 Severability

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

29.3 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.

29.4 State's Representative

The Minister has appointed the person named, or the person holding the position nominated in Schedule 1 (General), as the representative of the State for the purposes of this 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 shall have the capacity to:

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

29.5 Governing Law and jurisdiction

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

29.6 Surviving provisions

- (a) An indemnity given under this Agreement survives the frustration, rescission, suspension, termination or expiration of this Agreement.
- (b) All clauses that by their nature survive expiration or termination of this Agreement will remain in full force, which include, for the avoidance of doubt, **clauses 1.2, 8.1, 8.2, 8.3, 10, 12, 14, 16, 17, 18, 19, 20, 21, 22, 24, 26 and 27**.
- (c) Any rights or obligations accrued prior to the frustration, rescission, suspension, termination or expiration of this Agreement or as a result of a Failure survive the frustration, rescission, suspension, termination or expiration of this Agreement.
- (d) The dispute resolution procedures in **clause 24** continue in force even where this Agreement has been fully performed, survive frustration, rescission, suspension, termination or expiration of this Agreement and this clause applies even where this Agreement is otherwise void or voidable.

29.7 Cost of performing obligations

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

29.8 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 Agreement and the rights and obligations of the parties to them.

29.9 Counterparts

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

29.10 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, 16.3(b), 22.5(a), 22.5(b), 23.5(a) and 23.5(b)**) 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 21.3 or 21.4**.
- (b) For the avoidance of doubt, for the purposes of **clause 6.3(d)**, such a deemed breach will not be deemed to be a breach of the Agreement unless the Licensee has failed to comply with any one or more of the requirements specified in **clauses 21.3 or 21.4**.

29.11 Time is of the Essence

Time is of the essence of this Agreement

Execution

Executed as a deed.

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

.....

.....
Witness

.....
Name of Witness (print)

Signed sealed and delivered)
By **Tattersall's Sweeps Pty Ltd** in the)
presence of:)

.....

.....
Witness

.....
Name of Witness (print)

Schedule 1 - General

- Item 1 Agreement Date 1 June 2017
- Item 2 Licensee's Representative
 Callum Mulvihill
 Chief Operating Officer – Lotteries
- Item 3 Licensee's Address for Service
 Tattersall's Sweeps Pty Ltd
 Level 8, 180 Ann Street
 Brisbane, Qld 4000
 Email: legal@thelotterycorporation.com
- Item 4 Minister's Address for Service
 Minister for Casino, Gaming and Liquor Regulation
 8 Nicholson Street
 East Melbourne VIC 3002

 Copy to:

 Executive Director, Gaming and Liquor
 Department of Justice and Community Safety
 Level 24, 121 Exhibition Street
 Melbourne VIC 3000
 Email: gamingandliquor@justice.vic.gov.au
- Item 5 State's Representative
 Executive Director, Gaming and Liquor
 Department of Justice and Community Safety
 Level 24, 121 Exhibition Street
 Melbourne VIC 3000
 Email: gamingandliquor@justice.vic.gov.au

Schedule 2 - Liquidated Damages

1 Calculation of Liquidated Damages

- (a) The Licensee must pay Liquidated Damages from the relevant date (either the Licence Commencement Date or such other date agreed by the Minister for that Authorised Public Lottery and specified in the Licence) until (and including) the date on which the Licensee is able to Conduct an Authorised Public Lottery in accordance with **clause 5.7(a)(ii) (relevant period)**.
- (b) The Liquidated Damages payable by the Licensee to the State are to be calculated based on the State's estimate of the daily tax revenue it would collect under section 5.4.3 of the *Gambling Regulation Act 2003 (Vic)* for that Authorised Public Lottery for the relevant period (**Estimated Daily Tax Revenue**) calculated as follows:
 - (i) if the Estimated Daily Tax Revenue for that Authorised Public Lottery is \$50,000 (or less) per day, the Estimated Daily Tax Revenue for each day;
 - (ii) if the Estimated Daily Tax Revenue for that Authorised Public Lottery is between \$50,001 and \$500,000 (inclusive), \$50,000 per day; or
 - (iii) if the Estimated Daily Tax Revenue for that Authorised Public Lottery is greater than \$500,000, \$50,000 plus 25% of every dollar over the \$500,000 threshold per day.
- (c) The Liquidated Damages are due and payable 30 days after the issue of a notice by the State setting out the amount of Liquidated Damages claimed to be payable by the Licensee to the State.

Schedule 3 - Performance Standards

1 Availability of Lottery System – Lottery Outlets

- (a) The Licensee must ensure in each calendar year (or part thereof) throughout the Term that 99.95% of the time the Lottery System is operational and continuously available to all Distributor outlets (in which components of the Lottery System are installed) (the **Lottery Outlets**) during each such Distributor's standard operating hours (**Lottery Outlet Availability Requirement**)
- (b) The Licensee will not be taken to have failed to meet the Lottery Outlet Availability Requirement to the extent that any non-compliance is due to:
- (i) regularly scheduled downtime for the purpose of maintenance of the Lottery System (including Lottery System upgrades) and of which the Licensee has given prior notice to Distributors;
 - (ii) failures in communication systems that are outside the reasonable control of the Licensee;
 - (iii) any failure of items forming part of the Lottery System that are located in Lottery Outlets (e.g. terminals and peripheral equipment for selling tickets and for validating winning tickets, or visual display units, located in a Lottery Outlets) (**Outlet Items**);
 - (iv) any loss or destruction of Outlet Items that is outside the Licensee's reasonable control;
 - (v) the occurrence of a Force Majeure Event; or
 - (vi) malicious damage,
- provided that the Licensee takes all reasonable steps to minimise the impact of any such event on its achievement of the Lottery Outlet Availability Requirement, including:
- (vii) ensuring that Outlet Items undergo appropriate maintenance and that any failure is resolved promptly;
 - (viii) ensuring that lost or destroyed Outlet Items are replaced and that the replacement items are made operational as soon as practicable; and
 - (ix) implementing reasonable security measures to protect the Lottery 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 Lottery Outlet Availability Requirement was met during that calendar year to date, and if not, the causes of the failure to

- achieve the Lottery Outlet 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 that calendar year to date, the impact that those events had on the availability of the Lottery System and the steps taken or to be taken by the Licensee to minimise the impact of such events.

2 Availability of Lottery 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 Lottery System is operational and continuously available to all potential Players via the Licensee's Interactive Distribution Methods (**Interactive Distribution Availability Requirement**).
- (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 maintenance of the Lottery System (including Lottery System upgrades);
 - (ii) failures in communication systems that are outside the reasonable control of the Licensee;
 - (iii) the occurrence of a Force Majeure Event; or
 - (iv) malicious damage,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 Lottery System undergoes regular and appropriate preventative maintenance and that any failure is resolved promptly; and
 - (vi) implementing reasonable security measures to protect the Lottery 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 that 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 that calendar year to date, the impact that those

events had on the availability of the Lottery System and the steps taken or to be taken by the Licensee to minimise the impact of such events

3 Requirements for Lottery System

The Licensee must ensure (and must enter into arrangements and take all reasonable action to enforce such arrangements to procure that its Agents, Contractors and Distributors ensure) that:

- (a) all communication systems forming part of, or used in association or connection with, the Lottery System are:
 - (i) reputable, robust and fit for purpose; and
 - (ii) available to all Points of Sale; and
- (b) the Lottery System is capable of monitoring whether all terminals and peripheral equipment for selling tickets and for validating winning tickets and visual display units, are functioning and functioning in accordance with the Commission's Technical Standards and any other standards, specifications or conditions determined by the Commission from time to time.

4 Compliance of Lottery System with Commission's requirements

The Licensee must ensure that at all times during the Term the Lottery 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. The Licensee must also enter into arrangements and take all reasonable action to enforce such arrangements to procure that its Agents, Contractors comply with, to the extent applicable to them, the Commission's Technical Standards and any other standards, specifications or conditions determined by the Commission from time to time.

5 Commitment to Authorised Public Lotteries

- (a) The Licensee must diligently pursue the Marketing Plan:
 - (i) as initially set out in Schedule AP of the Licensee's response to the invitation to Apply for a Public Lottery Licence under the Act; and
 - (ii) as revised annually in accordance with paragraph (b),
in order to facilitate a commercially viable and growing Public Lottery business, including undertaking all necessary investment (including in new technology).
- (b) The Licensee must:
 - (i) review and revise the Marketing Plan set out in Schedule AP of the Licensee's response to the invitation to Apply for a Public Lottery

Licence under the Act annually by the anniversary of the Agreement Date to cover the following three years of the Term or, if less than three years remain in the Term, the years remaining in the Term; and

- (ii) provide to the Commission the revised Marketing Plan in the format required by the Commission within 2 months after each anniversary of the Agreement Date.

Schedule 4 - Parent Guarantee and Indemnity

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

Tatts Group Limited

Tattersall's Sweeps Pty Ltd

Parent Guarantee and Indemnity

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Parent Guarantee and Indemnity

Date

Parties

The Honourable Marlene Kairouz MP, Minister for Consumer Affairs, 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 (The Minister)

Tatts Group Limited ABN 19 108 686 040 of Level 1, 411 Collins Street, Melbourne, Victoria, 3000 (The Guarantor)

Tattersall's Sweeps Pty Ltd ABN 99 081 925 662 of Level 1, 411 Collins Street, Melbourne, Victoria, 3000 (The Subsidiary)

Background

- (A) The Minister has invited the Guarantor to apply for the Licence under section 5.3.2A of the Act and the Guarantor has submitted an application to the Minister.
 - (B) The Subsidiary is a wholly owned subsidiary of the Guarantor.
 - (C) The Guarantor applies to the Commission pursuant to section 5.3.6(1A) of the Act for the Commission to approve that the Subsidiary be issued the Public Lottery Licence by the Minister pursuant to section 5.3.6(1)(b) of the Act.
 - (D) Section 5.3.6(1A) of the Act requires that for the Commission to approve the Guarantor's request the Guarantor must provide to the State and to the Subsidiary an irrevocable guarantee and indemnity in the form approved by the Treasurer in respect of the obligations of the Subsidiary.
 - (E) The Treasurer requires that the guarantee and indemnity be in the form as set out in this Deed.
 - (F) If the Minister determines to grant the application to the Guarantor, the Guarantor agrees to provide the guarantee and indemnity to the State and to the Subsidiary on the terms set out in this Deed.
-

Agreed terms

1 Definitions and interpretation

1.1 Definitions

Words not otherwise-defined in this document 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 Agreement the same meaning as in the Agreement, except where a contrary intention appears.

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

Agreement means the agreement entered into between the Minister and the Licensee in accordance with section 5.3.7A of the Act dated on or about the date of this document.

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 the licence to Conduct Authorised Public Lotteries issued to the Licensee under the Act.

Licensee means the Subsidiary as the public lottery licensee.

Loss includes:

- (a) any cost, expense, loss, damage or liability that is present, fixed or unascertained, actual or contingent; and
- (b) without limiting paragraph (a) and only to the extent not prohibited by Law, any fine or penalty.

Obligations means all of the obligations and resultant liabilities of the Licensee to the State or to any other person including (without limitation) any obligations and resultant liabilities arising under or by reason of:

- (a) the Licence;
- (b) the Agreement; or
- (c) the conduct of any Authorised Public Lottery, any other transaction, matter or event contemplated by the Licence or the 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 Licensee comes to owe such liability or obligation.

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

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 document 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 document, 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 document are references to parties, clauses and paragraphs of and to this document;
 - (ii) references to any document or agreement (including this document) 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) words denoting individuals or persons includes a corporation, 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 document all accounting terms used in this document 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 Licensee or Guarantor under this document, that obligation or liability is not to be limited or affected by an obligation or liability imposed in another provision of this document unless otherwise expressly stated;
- (xiv) where a right or remedy is conferred on the Minister under this document, 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 Licensee or Guarantor to do so;
- (xvi) where in this document 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 Licensee 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 Licensee.
- (b) If the Licensee 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 Licensee in the same manner as the Licensee 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 Licensee to perform any of the Licensee's Obligations; or
 - (ii) an obligation the Licensee would otherwise have under the Licence or 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 the Agreement by the Licensee.
- (c) For the avoidance of doubt, 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 the Licensee's obligation (or any failure by the Licensee 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 Licensee and the Guarantor or between the State and the Guarantor or between the State and the Licensee 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 Licensee 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 Agreement from the Licensee 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 thereafter, without any further action being required by any party, this Deed will terminate.

5 Nature and preservation of liability

- (a) Subject to clause 4(d), the liability of the Guarantor under this Deed is absolute and is not subject to the performance or 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 or the Licence or the Agreement;
 - (ii) the execution of this Deed or the Licence or the Agreement being invalid or irregular in any way;
 - (iii) this Deed or the Licence or the 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 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 Licensee;
 - (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 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 Licensee from its obligations under the Licence or 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 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 and the Agreement) made by a liquidator of the Licensee 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 Licensee under Chapter 5 of the Corporations Act or any other Law in relation to the Guarantor or the Licensee; and

- (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, Agreement or this document 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 document 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 document, the Guarantor may not, without the Minister's consent:
 - (i) avoid by any defence or reduce its liability under this document by claiming that it, the Licensee 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 the Agreement or any other amount payable under this document;
 - (iv) claim an amount from the Licensee, or another guarantor, under a right of indemnity; or
 - (v) claim an amount in the liquidation, administration or insolvency of the Licensee or of another guarantor of any of the Licensee's Obligations.
- (b) This **clause 8** continues after this document ends.
- (c) The Guarantor may receive payment from, or enforce a claim against, the Licensee, or another guarantor, to the extent that such payment or enforcement does not prejudice the rights of the State under this document.

9 Representations and warranties

9.1 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 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 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 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, without limitation, 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, no litigation, arbitration, mediation, conciliation, criminal or administrative proceedings are taking place, pending or, to the knowledge of the Guarantor or any of its officers, 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 whilst 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 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 the table 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 prepaid post to; or
 - (ii) 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 third business day (at the address to which it is posted) after posting;
 - (ii) if delivered before 5.00pm on a business day at the place of delivery, upon delivery, and otherwise on the next business day at the place of delivery.

(e)

The Guarantor

Address: Tatts Group Limited
87 Ipswich Road
Woolloongabba, Qld, 4102

Email address:

For the attention of:

The Subsidiary

Address: Tattersall's Sweeps Pty Ltd
Level 1, 411 Collins Street
Melbourne, Victoria, 3000

Email address:

For the attention of:

The Minister

Address: Level 26, 121 Exhibition Street
Melbourne, Victoria, 3000

For the attention of: Executive Director, Liquor, Gaming and Racing

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 document, 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 document 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 document 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 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 or expense to the State) giving effect to the notified assignment or novation.

12.2 Costs

- (a) Except as otherwise set out in this document, each party must pay its own Costs and expenses in relation to preparing, negotiating and executing this document and any document related to this document.
- (b) The Guarantor agrees to pay or reimburse the State on demand for:
 - (i) the State's Costs in enforcing this document 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 document or a payment or receipt or other transaction contemplated by it. If any payment to the State by the Guarantor under this document is a reimbursement or indemnification, calculated by reference to a loss, Cost or expense 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, Cost or expense.

12.3 Payments

The Guarantor agrees to make payments under this document:

- (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 document 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 document:
 - (i) is a continuing obligation despite any intervening payment, settlement or other thing;
 - (ii) extends to all of the Licensee'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 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 document.

12.6 Severability

Each provision of this document 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 document in the relevant jurisdiction, but the rest of this document 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 document will be of any force or effect unless it is in writing and signed by the Guarantor and the Minister.

12.8 Counterparts

This Deed 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, and all of which together constitute one and the same instrument.

12.9 Waivers

- (a) A waiver of any right, power or remedy under this document 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 document does not amount to a waiver.

12.10 Dispute Resolution

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

Execution

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

Executed by **The Honourable**)
Marlene Kairouz MP, Minister for)
Consumer Affairs, Gaming and Liquor)
Regulation for and on behalf of the
Crown in Right of the State of Victoria

.....
Witness

.....
Signature of the Minister

.....
Name of Witness (print)

Executed by **Tatts Group Limited**)
ABN 19 108 686 040 in accordance)
with section 127 of the Corporations Act)
by or in the presence of:

.....
Signature of Director

.....
Signature of Secretary / other Director

.....
Name of Director

.....
Name of Secretary / other Director

Executed by **Tattersall's Sweeps Pty**)
Ltd ABN 99 081 925 662 in accordance)
with section 127 of the Corporations Act)
by or in the presence of:

.....
Signature of Director

.....
Signature of Secretary / other Director

.....
Name of Director

.....
Name of Secretary / other Director

