

**Schedule 1    General**

Item 1                    **Agreement Date**    21/02/2022

Item 2                    **Licensee's Representative**

David Attenborough, Managing Director and Chief Executive Officer

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

Keno (VIC) Pty Ltd

Level 21, Tower 2, 727 Collins Street, Melbourne VIC 3008

Andrew.Collins@tabcorp.com.au

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

c/ Executive Director, Gaming and Liquor

Consumer Affairs, Liquor, Gaming and Dispute Services

Department of Justice and Community Safety

Level 29

121 Exhibition Street

Melbourne Vic 3000

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

Item 5                    **State's Representative**

Executive Director, Gaming and Liquor

Consumer Affairs, Liquor, Gaming and Dispute Services

Department of Justice and Community Safety

## Schedule 2 Performance Standards

### 1. Availability of Keno System - Keno Venues

- (a) Where the Licensee is authorised to distribute one or more Approved Keno Games at Keno Venues, the Licensee must ensure in each calendar year (or part thereof) throughout the Term that 99.95% of the time the Keno System is operational and continuously available to all Keno Venues (in which components of the Keno System are installed) during each such Keno Venue's standard operating hours (**Venue Availability Requirement**).
- (b) The Licensee will not be taken to have failed to meet the Venue Availability Requirement to the extent that any non-compliance with the Venue Availability Requirement is due to:
- (i) regularly scheduled downtime for the purpose of maintenance of the Keno System (including Keno System upgrades) and of which the Licensee has given prior notice to Keno Venues;
  - (ii) failures in communication systems that are outside the reasonable control of the Licensee;
  - (iii) any failure of items forming part of the Keno System that are located in Keno Venues (e.g. terminals and peripheral equipment for selling tickets and for validating winning tickets, or visual display units, located in a Keno Venue) (**Venue Items**);
  - (iv) any loss or destruction of Venue Items that is outside the Licensee's reasonable control;
  - (v) the occurrence of a Force Majeure Event; or
  - (vi) malicious damage,
- provided that the Licensee takes all reasonable steps to minimise the impact of any such event on its achievement of the Venue Availability Requirement, including:
- (vii) ensuring that Venue Items undergo regular and appropriate preventative maintenance and that any failure is resolved promptly;
  - (viii) ensuring that lost or destroyed Venue Items are replaced and that the replacement items are made operational as soon as practical; and
  - (ix) implementing reasonable security measures to protect the Keno System.
- (c) The Licensee must provide to the Commission, within 3 Business Days of the end of each calendar month during the Term, a written report detailing:
- (i) whether the Venue Availability Requirement was met during the calendar year to date, and if not, the causes of the failure to achieve the Venue Availability Requirement and the action the Licensee has taken or will take to address those causes; and

- (ii) any events of the types specified in paragraph (b) above that occurred during the calendar year to date, the impact that those events had on the availability of the Keno System and the steps taken or to be taken by the Licensee to minimise the impact of such events.

## 2. Availability of Keno System - Interactive Distribution Methods

- (a) Where the Licensee is authorised to distribute one or more Approved Keno Games via Interactive Distribution Methods, the Licensee must ensure in each calendar year (or part thereof) throughout the Term that 99.95% of the time the Keno System is operational and continuously available to all potential Players via 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 Keno System (including Keno 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 the Keno System undergoes regular and appropriate preventative maintenance and that any failure is resolved promptly; and
  - (vi) implementing reasonable security measures to protect the Keno System.
- (c) The Licensee must provide to the Commission, within 3 Business Days of the end of each calendar month during the Term, a written report detailing:
    - (i) whether the Interactive Distribution Availability Requirement was met during the calendar year to date, and if not, the causes of the failure to achieve the Interactive Distribution Availability Requirement and the action the Licensee has taken or will take to address those causes; and
    - (ii) any events of the types specified in paragraph (b) above that occurred during the calendar year to date, the impact that those events had on the availability of the Keno System and the steps taken or to be taken by the Licensee to minimise the impact of such events.

## Schedule 3 Parent Company Guarantee and Indemnity

### Date

### Parties

**The Honourable Melissa Horne MP, Minister for 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 (**Minister**)

[Guarantor company] (**Guarantor**)

[Licensee] (**Subsidiary**)

### Background

- A) The Minister has determined under sections 6A.3.7 and 6A.3.8 of the Act to grant the application and issue the Licence to the Subsidiary.
- B) The Subsidiary is a wholly owned subsidiary of the Guarantor.
- C) The Minister has entered, or intends to enter, into the Related Agreement with the Subsidiary in relation to the Licence.
- D) The Related Agreement requires the Subsidiary to procure the Guarantor to execute this document.

### Agreed terms

## 1. Definitions and interpretation

### 1.1 Definitions

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

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

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

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

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

**Law** means:

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

**Licence** means the licence to Conduct Approved Keno Games issued to the Licensee under the Act.

**Licensee** means the Subsidiary as the Keno Game licensee.

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

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

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

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

- (a) the Licence;
- (b) the Related Agreement;
- (c) a Linked Jackpot Arrangement Agreement; or
- (d) the conduct of any Approved Keno Game, any other transaction, matter or event contemplated by the Licence or the Related Agreement,

and includes any liabilities or obligations which:

- (e) are liquidated or unliquidated;
- (f) are present, prospective or contingent;
- (g) are in existence before or come into existence before or come into existence on or after the date of this Deed; or
- (h) relate to the payment of money or the performance or omission of any act:

and irrespective of:

- (i) the circumstances in which each liability or obligation comes to be secured by this Deed; or
- (j) the capacity in which the Subsidiary comes to owe such liability or obligation.

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

**Related Agreement** means the agreement entered into between the Minister and the Licensee in accordance with section 6A.3.10 of the Act dated on or about the date of this document.

**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) 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 Subsidiary 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 Subsidiary 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 Subsidiary or Guarantor to do so;
- (xvii) a reference to "termination" in relation to a document means terminate, rescind, repudiate, release, cancel, avoid, accept termination, rescission, repudiation, cancellation of, or otherwise bring to an end, that document (other than through full and proper performance under that document in accordance with its terms); and
- (xviii) a reference to "suspended" means suspended or otherwise cease to be performed.

## 2. Guarantee

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

## 3. Indemnity

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

any Loss suffered or incurred by the Indemnified Parties arising out of or in any way in connection with:

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

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

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

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

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

- (B) any claim for contribution against the Guarantor;
- (ix) **(Disclaimer)**: a disclaimer of any contract or property (including the Licence and the Related Agreement) made by a liquidator of the Subsidiary or the Guarantor;
- (x) **(Event of Insolvency)**: the occurrence before, on or at any time after the date of this Deed, of any dissolution of or external administration procedures of the Subsidiary under Chapter 5 of the Corporations Act or any other Law in relation to the Guarantor or the Subsidiary; 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, Related Agreement, a Linked Jackpot Arrangement 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 Subsidiary or any other person has a right of set-off or counterclaim against the State;
  - (ii) exercise any right to contribution or subrogation which it might otherwise be entitled to claim and enforce against the Subsidiary until all the Obligations have been satisfied;
  - (iii) exercise any legal right to claim to be entitled to the benefit of another guarantee, indemnity, mortgage, charge or other encumbrance given in connection with the Licence, the Related Agreement or a Linked Jackpot Arrangement Agreement or any other amount payable under this document;
  - (iv) claim an amount from the Subsidiary, or another guarantor, under a right of indemnity; or
  - (v) claim an amount in the liquidation, administration or insolvency of the Subsidiary or of another guarantor of any of the Subsidiary's Obligations.

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

## **9. Representations and warranties**

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

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

- (a) this Deed constitutes a valid and legally binding obligation on it in accordance with its terms;
- (b) the execution, delivery and performance of this Deed by it does not breach any Law, or any document or agreement to which it is a party or which is binding on it or any of its assets;
- (c) it is not in default in the payment of any material sum or in the satisfaction of any material obligation in respect of any 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 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 **clause 11(f)** below. Any party may amend their address for service by giving notice to the other parties.
- (c) In addition to any other method of service provided by Law, the notice may be:
  - (i) sent by email to;
  - (ii) sent by prepaid post to; or
  - (iii) delivered at,the address of the addressee set out in this Deed or subsequently notified.
- (d) If the notice is sent or delivered in a manner provided by **clause 11(c)**, it must be treated as given to and received by the party to which it is addressed:
  - (i) if sent by post, on the sixth business day (in the place of receipt) after posting (if posted to an address in the same country), or the tenth business day (in the place of receipt) after posting (if posted to an address in another country);
  - (ii) if delivered in person or by courier, upon delivery; or
  - (iii) if delivered by email, the earlier of:
    - (A) the time the sender receives an automated message from the intended recipient's information system confirming delivery of the email; and
    - (B) three hours after the time the email is sent (as recorded on the device from which the sender sent the email) unless the sender receives, within that three hour period, an automated message that the email has not been delivered.

- (e) If any notice or document is delivered or deemed to be delivered:
- (i) after 5.00 pm in the place of receipt; or
  - (ii) on a day which is a Saturday, Sunday or public holiday in the place of receipt,

it is taken as having been delivered at 9.00 am on the next day which is not a Saturday, Sunday or public holiday in that place.

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

The Guarantor

Address: [Guarantor]

[Address]

Email address: [#]

For the attention of: [#]

The Subsidiary

Address: [Subsidiary]

[Address]

Email address: [#]

For the attention of: [#]

The Minister

Address: Level 29, 121 Exhibition Street

Melbourne, Victoria 3000

Email address: [#]

For the attention of: Executive Director, Gaming and Liquor

## 12. Miscellaneous

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

- (a) The Guarantor must not create any Security Interest, or allow any Security Interest to subsist, over this 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 Related Agreement.
- (d) The parties must promptly, and no later than 10 Business Days from notice being delivered in accordance with **clause 12.1(c)**, execute a deed in a form reasonably satisfactory to the Minister (at no additional Cost to the State) giving effect to the notified assignment or novation.

## 12.2 Costs

- (a) Except as otherwise set out in this document, each party must pay its own Costs 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 or Cost incurred by the State, then any such payment will be reduced by the amount of any input tax credit to which the State is entitled for that loss or Cost.

## 12.3 Payments

The Guarantor agrees to make payments under this 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 Subsidiary's Obligations;

- (iii) is separate and independent from the other obligations of the parties; and
  - (iv) survives termination, completion or expiration of the Licence or Related Agreement, in respect of any accrued rights of the State.
- (b) It is not necessary for a party to incur expense or to make any payment before claiming under a guarantee or enforcing a right of indemnity conferred by this 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 Related Agreement.



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

Executed by )  
)  
[Guarantor] in accordance with section )  
127 of the Corporations Act 2001 (Cth):

.....  
Signature of Director

.....  
Signature of Secretary / other Director

.....  
Name of Director

.....  
Name of Secretary / other Director

Executed by )  
)  
[Subsidiary] in accordance with )  
section 127 of the Corporations Act )  
2001 (Cth):

.....  
Signature of Director

.....  
Signature of Secretary / other Director

.....  
Name of Director

.....  
Name of Secretary / other Director

Signed, sealed and delivered by Hon )  
Melissa Horne MP, Minister for )  
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

.....  
Signature of the Minister

.....  
Name of Witness (print)

