

# Wagering and Betting Agreement

*Gambling Regulation Act 2003*  
(Vic)

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The Honourable Michael O'Brien MP, Minister for  
Gaming for and on behalf of the Crown in right of  
the State of Victoria

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Tabcorp Wagering (Vic) Pty Ltd

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# Contents

<b>1</b>	<b>Definitions</b>	<b>1</b>
1.1	Definitions	1
1.2	Interpretation	12
1.3	Unfettered discretion	13
1.4	Licence and Act to Prevail	15
1.5	Licence conditions	15
1.6	Delegation	15
1.7	Review by the Minister and Commission	16
<b>2</b>	<b>Agreement</b>	<b>16</b>
2.1	Commencement	16
2.2	Variation	16
2.3	Conduct of Licensee	16
2.4	Commitment Requirements	17
2.5	Location of Wagering and Betting System	17
2.6	Commission's Technical Standards	17
2.7	Wagering and Betting System	17
2.8	Services Agreement	18
<b>3</b>	<b>Parent Company Guarantee</b>	<b>18</b>
<b>4</b>	<b>Performance Bond</b>	<b>19</b>
4.1	Provision of Performance Bond	19
4.2	Replacement of Performance Bond	20
4.3	Demands under Performance Bond	21
4.4	Repayment by the Minister	21
<b>5</b>	<b>Tax payable</b>	<b>22</b>
5.1	Former Tax Framework and Licence Commencement Tax Framework	22
5.2	Victorian Racing Industry Benefit	22
<b>6</b>	<b>Licensee Representative</b>	<b>24</b>
<b>7</b>	<b>Development and Implementation</b>	<b>24</b>
7.1	Development of Implementation Plan	24
7.2	Submission of Implementation Plan to the Commission	27
7.3	Approval of Implementation Plan	27
7.4	Development in accordance with Implementation Plan	28
7.5	Monthly Report	28
7.6	Certification of Implementation Completion	29
7.7	Readiness to Conduct Authorised Betting Competitions	29
7.8	Licensee's obligation to facilitate transition	29
<b>8</b>	<b>Conduct of Authorised Betting Competitions</b>	<b>30</b>
8.1	Availability of funds	30
8.2	Relationships with Agents and Contractors	30
8.3	Details to be made available to Players	31
8.4	Exclusive Arrangements	32

<b>9</b>	<b>Business rules</b>	<b>32</b>
9.1	Development of Business Rules	32
9.2	Submission of Business Rules to the Commission	33
9.3	Approval of Business Rules	33
<b>10</b>	<b>Banking</b>	<b>34</b>
10.1	Account	34
10.2	Ticket Agents and funds	34
<b>11</b>	<b>Records</b>	<b>34</b>
11.1	Retention of Records	34
11.2	Copy of Records	35
11.3	Inspection of Records	35
11.4	Arrangements	35
11.5	Annual Financial Statements	35
11.6	Additional Financial Statements	35
11.7	Content of Additional Financial Statements	36
11.8	Audit of Licensee	36
11.9	Compliance with accounting standards	37
11.10	Executive declaration	37
11.11	Electronic Provision of Information	37
11.12	Limits on disclosure	37
<b>12</b>	<b>Reporting Requirements</b>	<b>38</b>
12.1	Regular reporting requirements	38
12.2	Non-regular reporting requirements	38
12.3	Content and format of Reports	38
12.4	Confidentiality of Reports	38
12.5	Licence to use information in Reports	38
<b>13</b>	<b>Information and data</b>	<b>39</b>
13.1	Disclosure of Data	39
<b>14</b>	<b>Notification of change in situation</b>	<b>41</b>
<b>15</b>	<b>Transition Out</b>	<b>41</b>
15.1	New Licensees	41
15.2	Transition objectives	41
15.3	Transition Out – Dealings	42
15.4	Transition Out – Compliance	42
15.5	Transition Out – Reciprocal Obligations	42
15.6	Transition Out – Transition Steering Committee	43
15.7	Preparation and approval of Transition Plan	43
15.8	Reimbursement by the State	45
<b>16</b>	<b>Intellectual Property</b>	<b>46</b>
16.1	Existing Intellectual Property Rights	46
16.2	Warranty regarding Intellectual Property Rights	46
16.3	State IP Licence	47
16.4	Intellectual Property Indemnity	49

<b>17</b>	<b>Insurance</b>	<b>49</b>
	17.1 Insurance Generally	49
	17.2 Insurance Requirements	49
	17.3 Acceptable Insurers	50
	17.4 Proof of insurance	50
<b>18</b>	<b>Liability and Indemnities</b>	<b>50</b>
	18.1 Licensee relies on own judgment	50
	18.2 Liability in relation to the Licence	51
	18.3 Exclusion of liability	51
	18.4 Indemnities	51
<b>19</b>	<b>General Warranties</b>	<b>52</b>
	19.1 Licensee's warranties	52
	19.2 Licensee's obligation during Term	53
<b>20</b>	<b>Termination</b>	<b>55</b>
	20.1 Termination	55
<b>21</b>	<b>Force Majeure</b>	<b>55</b>
	21.1 Notice of Force Majeure Event	55
	21.2 Suspension of obligations	57
	21.3 Mitigation and reinstatement	57
	21.4 End of Suspension Period	57
	21.5 Licensee's costs and expenses	57
<b>22</b>	<b>Default</b>	<b>57</b>
	22.1 Financial Default	57
	22.2 Other Default	57
	22.3 Remediating within the Cure Period	58
	22.4 Remediating with Alternative Arrangements	59
	22.5 Failure to remedy	59
	22.6 Ministerial Directions and Disciplinary Actions not affected	59
<b>23</b>	<b>Step-In Right</b>	<b>59</b>
	23.1 Step-In Rights	59
	23.2 Steps	60
	23.3 Intellectual Property and Authorised Betting Competitions equipment	61
	23.4 Operation during step-in	61
	23.5 Licensee to give all assistance	62
	23.6 Attorney	63
	23.7 Cessation of step-in	63
	23.8 Minister and Temporary Operator to act reasonably	63
	23.9 Liability	63
	23.10 Other rights	64
<b>24</b>	<b>Temporary Licensee</b>	<b>64</b>
	24.1 Application	64
	24.2 Powers	64
	24.3 Intellectual Property and Authorised Betting Competition equipment	65

24.4	Warranty	66
24.5	Operation during Temporary Licence	66
24.6	Licensee to give all assistance	66
24.7	Attorney	66
24.8	Liability	67
24.9	Other rights	67
<b>25</b>	<b>Dispute resolution</b>	<b>67</b>
25.1	Dispute resolution – general	67
25.2	Dispute Notice	68
25.3	Negotiation	68
25.4	Mediation	68
25.5	Arbitration	69
25.6	Court Action	70
25.7	Continue to perform obligations	70
25.8	Survival	70
25.9	Other rights	70
<b>26</b>	<b>Goods and Services Tax</b>	<b>71</b>
26.1	Construction	71
26.2	Consideration GST exclusive	71
26.3	Payment of GST	71
26.4	Timing of GST payment	71
26.5	Tax invoice	71
26.6	Adjustment event	71
26.7	Reimbursements	71
26.8	No Merger	72
<b>27</b>	<b>Notices and representatives</b>	<b>72</b>
<b>28</b>	<b>Confidentiality and disclosure</b>	<b>72</b>
28.1	Keep Confidential	72
28.2	Exceptions to confidentiality	73
28.3	Disclosure by the Minister	73
28.4	Public disclosure	74
<b>29</b>	<b>Privacy</b>	<b>75</b>
<b>30</b>	<b>Miscellaneous</b>	<b>75</b>
30.1	Assignment	75
30.2	Transfer of functions	75
30.3	Severability	76
30.4	Waiver	76
30.5	Governing law and jurisdiction	76
30.6	Surviving provisions	76
30.7	Cost of performing obligations	76
30.8	Further assurance	77
30.9	Counterparts	77
30.10	Deemed Breach of Licence	77
30.11	Deemed Breach of Agreement	77
30.12	Compliance with Executed Joint Venture Agreement	77

30.13 Time is of the Essence	78
Schedule 1 – General	80
Schedule 2 – Commitment Requirements	83
1 Disaster Recovery testing	83
2 VRI Commitment	83
Schedule 3 – Parent Company Guarantee	84
Schedule 4 – Transition Arrangements	95
Schedule 5 – Performance Bond	102

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Date 19 DEC 2011

## Parties

The Honourable Michael O'Brien MP, Minister for Gaming for and on behalf of the Crown in right of the State of Victoria of Level 16, 35 Spring Street, Melbourne, Victoria 3000 (The Minister)

Tabcorp Wagering (Vic) Pty Ltd ABN 37 134 587 107 of 5 Bowen Crescent, Melbourne, Victoria 3004 (Licensee)

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## Background

- A The Minister has determined to grant the Licence to the Licensee under section 4.3A.7 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 Betting Competitions under the Licence the Minister enters into this Agreement with the Licensee under section 4.3A.10 of the Act.
  - C The parties have agreed on the commercial arrangements 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

**Act** means the *Gambling Regulation Act 2003 (Vic)*, as amended from time to time.

**Additional Financial Statements** has the meaning given in clause 11.6.

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

**Agreements** means any other agreement entered into between the Minister and the Licensee in accordance with section 4.3A.10 of the Act other than this Agreement.

**Agent** means a person appointed by the Licensee under clause 6.1 of the Licence to assist the Licensee in the Conduct of Authorised Betting Competitions.

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

**Amended Tax Framework** means the Licence Commencement Tax Framework as amended, supplanted, varied or replaced after the Licence Commencement Date.

**Annual Financial Statements** means the financial statements and accounts to be prepared by the Licensee in accordance with section 4.8.3(4) of the Act.

**Applicable Laws** means:

- (a) statutes, regulations, by-laws or other subordinate instruments of a Government Agency;
- (b) the Constitution of the Commonwealth;
- (c) binding requirements and mandatory approvals (including conditions) of a Government Agency which have the force of law; or
- (d) guidelines of a Government Agency which have the force of law.

**Approved Accounts** means the accounts in the name of the Licensee required to be kept and maintained by the Licensee under section 4.8.2 of the Act.

**Australian Accounting Standards** means the accounting standards issued by the Australian Accounting Standards Board, and as amended or reissued from time to time.

**Australian Auditing Standards** means the auditing standards issued by the Australian Auditing and Assurances Standards Board and as amended or reissued from time to time.

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

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

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



**Chairperson** means the chairperson appointed by the Minister to the Transition Steering Committee.

**Claim** includes any and all liabilities, actions, claims, demands, Proceedings, suits, 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 or in equity or under any statute.

**Code of Practice** means any applicable code of practice in accordance with the *Information Privacy Act 2000* (Vic).

**Commission** means the Victorian Commission for Gambling Regulation established under the Act (or any successor body) or a Commissioner.

**Commission's Technical Standards** means the standards of the Commission in relation to the Wagering and Betting System as issued by the Commission from time to time.

**Commitment Requirements** means the minimum requirements set out in Schedule 2.

**Contractor** means a person engaged by the Licensee under clause 6.1 of the Licence to assist the Licensee in the Conduct of Authorised Betting Competitions.

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

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

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

**Data** means the data referred to in clause 13.1(a).

**Default Rate** means a rate equivalent to 2% per annum above the rate, expressed as a yield per cent per annum (rounded upwards to two decimal places) quoted as the average bid rate on the Reuters Monitor System page 'BBSY' (or any page which replaces that page) at about 10.30 am (Sydney Time) on the first day of that period, for Bank Bills having a tenor in months which is closest to the relevant period (or such other bank as the Minister may, after consultation with the Licensee, notify from time to time) during any period in which an amount payable under this Agreement remains unpaid.

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

**Distribution Arrangement** means the distribution arrangements in accordance with which Tickets or other forms of entry in Authorised Betting Competitions can be sold, the nature and general location of Points of Sale including Electronic Distribution Arrangements, and any restrictions on distributing and selling Tickets or other forms of entry in Authorised Betting Competitions, authorised under clause 5.5 of the Licence.

**Electronic Distribution Arrangements** means any method of distributing or selling Tickets or other forms of entry in an Authorised Betting Competition using any guided or unguided communications network on its

own or in combination with any other equipment, including without limitation, through a computer adapted for communicating by any such communications network, a television transceiver that allows the viewer to transmit information, telephony services, mobile telephony services, electronic messaging services or any other guided or unguided electronic or online devices or services.

**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 does not include:

- (a) a charge or lien arising in favour of a Government Agency by operation of statute unless there is default in payment of money secured by that charge or lien;
- (b) any mechanics, workmen's or other like lien arising in the ordinary course of business;
- (c) any retention of title arrangement undertaken in the ordinary course of day-to-day trading; and
- (d) for the avoidance of doubt:
  - (i) 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 under the Corporations Act under which the obligations of that party are unsecured; or
  - (ii) being a guarantor within a debt arrangement in which the ultimate parent entity is also a guarantor and in respect of which guarantee the obligations of the guarantor are unsecured.

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

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

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

- (a) an application (which is not withdrawn or dismissed within 5 Business Days of the making of that application) is made to a court for an order, or an order is made, that the Licensee be wound up;
- (b) an application (which is not withdrawn or dismissed within 5 Business Days of the making of that application) is made to a court for an order appointing a liquidator or provisional liquidator or a liquidator or provisional liquidator is appointed in respect of the Licensee;
- (c) the Licensee resolves to wind itself up, or otherwise dissolve itself, or gives notice of intention to do so (or the Licensee's creditors resolve, or give notice of intention, to wind the Licensee up), except to reconstruct or amalgamate while solvent on terms approved by the Commission, or is otherwise wound up or dissolved;

- (d) the Licensee is or states in writing that it is insolvent or unable to pay its debts when they fall due;
- (e) the Licensee is deemed to be insolvent or unable to pay its debts when they fall due under any applicable 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, without the prior written consent of the Commission to 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 applicable 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.

**First Period** has the meaning given in **clause 25.4(a)**.

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

**Force Majeure Event** means the following events:

- (a) acts of God, including storms, lightning, cyclones, earthquakes, natural disasters, actions of the elements, floods, landslides and mudslides;
- (b) civil riots, rebellions, revolutions, terrorism, civil commotion, insurrections, military and usurped power and war (declared or undeclared); or
- (c) fire or explosion caused by acts of God as referred to in paragraph (a),

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.

**Former Tax Framework** means the wagering tax set out in section 4.6.3(1) of the Act.

**Government Agency** means the State, the Commonwealth of Australia or any government, semi-governmental, judicial, municipal, statutory, public or administrative entity, agency or authority and includes a Minister of the Crown (in any right), a statutory corporation, a State-owned corporation, a self regulatory authority established under statute or a stock exchange (wherever created or located).

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

**Implementation Plan** means the plan to be developed by the Licensee in accordance with **clause 7**.

**Incoming Licensee** means, in respect of a Wagering and Betting Transition, another person granted a Wagering and Betting licence, including a Temporary Licence, by the Minister in accordance with the Act, who will Conduct Authorised Betting Competitions from the Transition Date.

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

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

**Information Privacy Principles** means the Information Privacy Principles set out in Schedule 1 of the *Information Privacy Act 2000* (Vic).

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

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

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

**Issuer** has the meaning given to that term in **clause 4.1(a)(i)**.

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

**Law** means:

- (a) principles of law or equity established by decisions of courts;
- (b) statutes, regulations, by-laws or other subordinate instruments of a Government Agency;
- (c) the Constitution of the Commonwealth;
- (d) binding requirements and mandatory approvals (including conditions) of a Government Agency which have the force of law; and
- (e) guidelines of a Government Agency which have the force of law.

**Licence** means the licence to Conduct Authorised Betting Competitions granted to the Licensee under the Act.

**Licence Commencement Date** means the date the Licence will operate from as set out in clause 2.2 of the Licence.

**Licence Commencement Tax Framework** means the wagering tax set out in section 4.6.3(1A) of the Act as at the Licence Commencement Date.

**Licensed IP** means all Intellectual Property Rights subsisting in:

- (a) the Betting Rules and Betting Exchange Rules; and
- (b) the Ticket Get Up,

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

**Licensee Representative** means the representative of the Licensee appointed in accordance with **clause 6** and as initially detailed in Schedule 1, as replaced from time to time in accordance with **clause 6**.

**Minister** means the responsible Minister of the Crown for the time being administering Chapter 4 of the Act.

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

**New Licensee** means another person granted a Wagering and Betting licence, 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).

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

**Outgoing Licensee** means the Licensee in relation to the transition to the Incoming Licensee.

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

**Performance Bond** means the bond for the amount required in **clause 4.1(a)**, or bonds that in aggregate total the amount required in **clause 4.1(a)**, or any bond replacing one or more of those bonds, as provided for in **clause 4**.

**Points of Sale** means a location operated by or on behalf of the Licensee where Tickets or other forms of entry in Authorised Betting Competitions are accepted or sold. If Tickets or other forms of entry to an Authorised Betting Competition are issued, made or sold by the means of an Electronic Distribution Arrangement then the Point of Sale is the point at which the Player is able to purchase the Ticket or other form of entry and includes, without limitation, the website, display or any other interface that is presented to the Player.

**Principal Appointor** has the meaning given in **clause 25.4(c)**.

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

**Project Plan** means, in respect of the Wagering and Betting Transition, the detailed plan approved by the TSC that includes the Required Transition Date, the responsibilities and obligations of the Outgoing Licensee and the Incoming Licensee, the implementation schedule, milestones and acceptance procedures.

**Rating** means, in relation to a person at any time, the rating applicable to that person's long term overall capacity to pay its debts or financial obligations at that time by either Standard & Poor's Australia or Moody's Investor Services but, if both those organisations cease to exist or cease to disclose such rating publicly, the rating given in relation to that debt or those obligations by another person specified by the Minister whose business is or includes the publication of such ratings. If, whether by reason of a change in practice by an organisation mentioned above or because reference is to be made to the ratings given by another organisation as contemplated above, a rating level specified in this Agreement ceases to be used by any relevant organisation, then the specified rating level is to be taken to be a reference to a level used by the relevant organisation which the Minister determines and notifies to the Licensee most closely corresponds to the specified rating level.

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

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

**Relevant Amount** has the meaning given in **clause 4.4(a)(i)**.

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

**Required Rating** has the meaning given to that term in **clause 4.1(a)(i)**.

**Required Transition Date** means the date by which transition is to be complete and the Incoming Licensee will take full responsibility for the Conduct of Authorised Betting Competitions as specified in the Project Plan.

**Second Period** has the meaning given in **clause 25.5(a)**.

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

**State IP Licence** means the licence to use and to sub-licence the Licensed IP that the Licensee grants to the State under **clause 16.3**.

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

- (a) the Minister receives a recommendation from the Commission under section 4.3A.27(3)(b) of the Act to take disciplinary action against the Licensee, which recommendation must include cancellation or suspension of the Licence;
- (b) the Licensee or an executive officer of the Licensee has been charged with an offence entitling the Minister to exercise his or her discretion under section 4.3A.29 of the Act;
- (c) the Minister exercises his or her discretion under **clauses 22.1, 22.2(b) or 22.5**; or
- (d) the Licensee gives a Notice of its intention to surrender the Licence under section 4.3A.24 of the Act.

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

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

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

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

**Tax and Taxes** includes any tax, levy, impost, deduction, charge, rate, compulsory loan, withholding or duty by whatever name called levied, imposed or assessed under any Law in Australia or elsewhere including, 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 4.3A.31 of the Act.

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

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

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

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

**Ticket Agent** means an Agent accredited by the Licensee, in accordance with section 4.2.9 of the Act, to accept wagers on Wagering Events or bets on Approved Betting Competitions.

**Ticket Agent Funds** has the meaning given in **clause 10.2(a)**.

**Ticket Get Up** means any and all:

- (a) Ticket layouts; or
- (b) Ticket formats,

associated with Authorised Betting Competitions 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 any brands or logos (whether or not registered as trade marks) included within a Ticket layout or Ticket format.

**Transition Arrangements** means the framework for the Wagering and Betting Transition set out in Schedule 4.

**Transition Date** means the date on which the Incoming Licensee takes full responsibility for the Conduct of Authorised Betting Competitions.

**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 Licensee ceases to be the Licensee under the Licence; 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 Licensee ceases to be the Licensee under the Licence provided that an Incoming Licensee is licensed to operate Authorised Betting Competitions within 6 months of the Transition Out Period commencing.

**Transition Objectives** means the objectives set out in **clause 15.2**.

**Transition Plan** refers to the plan produced by the Licensee that describes how a proposed Wagering and Betting Transition will be undertaken, as amended and approved by the Commission under **clause 15.7** from time to time.

**Transition Steering Committee** or **TSC** means the Transition Steering Committee as described in the Transition Arrangements.

**Victorian Racing Industry Benefit** means a Victorian Racing Industry Benefit declared by the Minister under **clauses 5.2(a)** or **5.2(b)** and which (subject to the terms of **clause 5.2(d)**) is payable by the Licensee under **clause 5.2(d)**.

**Victorian Racing Industry Offset** means a Victorian Racing Industry Offset declared by the Minister under **clause 5.2(c)**.

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

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

**Wagering and Betting Transition** means the transition process under which the Conduct of Authorised Betting Competitions will be transitioned from the Licensee to an Incoming Licensee.

**Wagering Events** has the meaning given to that term under section 1.3(1) of the Act.

## 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 its consent or approval or must either give its 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);
- (xix) a reference to "suspend" means suspend or otherwise cease to perform; and
- (xx) a provision which is expressed to be "subject to" another provision of this Agreement will apply without limiting the operation of that other provision.

### **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 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 or standards made under the Act;
- (c) the Licence; and
- (d) this Agreement.

#### **1.5 Licence conditions**

The conditions in clauses 4, 5 and 6 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 30.10**.

#### **1.6 Delegation**

- (a) The Minister may delegate any power, function or responsibility that the Minister has under this Agreement.
- (b) Any power, function or responsibility delegated under **clause 1.6(a)** may be:
  - (i) revoked, changed or delegated; and/or
  - (ii) limited or be subject to such conditions,
 as the Minister determines from time to time.
- (c) If the Minister delegates any power, function or responsibility under this Agreement, the Minister must give notice of such delegation to the Licensee (including the identity and address of any person to whom such power, function or responsibility is delegated). The Licensee is entitled to rely upon such notice unless and until given notice by the Minister of revocation of, or change to, that delegation by the Minister.

- (d) Any person to whom a power, function or responsibility is delegated by the Minister has, to the extent of that delegation, full power and authority to act for and on behalf of and to bind the Minister under this Agreement but only to the extent of compliance with the conditions of any lawfully delegated power.
- (e) An act or omission of a person to whom a power, function or responsibility is delegated under this clause 1.6 constitutes, to the extent of that delegation, an act or omission of the Minister for the purposes of this Agreement and is subject to compliance with any conditions of that delegation.

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

Notwithstanding any other provision of this Agreement:

- (a) any review, endorsement or approval of, comment upon or input into, by the Minister, the Commission or their respective advisors of any material, document or other information prepared by or provided by the Licensee under or in connection with this Agreement (including during or part of the process of the development and approval of the Implementation Plan under clause 7), will not relieve the Licensee of its responsibility for such material, document or information or of its obligations or liabilities under this Agreement; and
- (b) a failure by the Minister, the Commission or their respective advisers to notify the Licensee of any defect in or concern associated with any such material, document or information will not relieve the Licensee of its liabilities, or constitute a waiver of any of the Minister's rights, under this Agreement.

## **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 the State (including, for the avoidance of doubt, the Minister and the Commission) associated or in connection with this Agreement.

## 2.4 Commitment Requirements

The Licensee must comply with the Commitment Requirements in Schedule 2 throughout the Term.

## 2.5 Location of Wagering and Betting System

The Licensee must ensure that the Wagering and Betting System is located in Australia unless otherwise approved by the Commission.

## 2.6 Commission's Technical Standards

- (a) On and from the Agreement Date, the Licensee must ensure (and must enter into arrangements and take all reasonable action to enforce such arrangements to procure that its Agents and Contractors ensure) that the Wagering and Betting System in use is approved by the Commission and operates only as approved and in accordance with the Commission's Technical Standards and any other standards, specifications or conditions determined by the Commission from time to time.
- (b) Before making or amending the Commission's Technical Standards and any other standards, specifications or conditions, the Commission may consult the Licensee and may permit the Licensee to make submissions in relation to any proposed Commission's Technical Standards and any other standards, specifications or conditions.
- (c) The Licensee must comply with any Commission's Technical Standards and any other standards, specifications or conditions made or amended by the Commission:
  - (i) if a day is specified in the notice published in the Government Gazette in accordance with section 10.1.5A of the Act, by that specified day; or
  - (ii) if no date is specified in accordance with **clause 2.6(c)(i)**, as determined by the Commission.

## 2.7 Wagering and Betting System

- (a) The Licensee must ensure that at all times during the Term the Wagering and Betting System is operational and continuously available in accordance with the Distribution Arrangements of the type referred to in clause 5.5 of the Licence so that the Wagering and Betting System is operational and available at all times when the Distribution Arrangements are authorised to be available or open to sell Tickets or other forms of entry in, or pay prizes in relation to, Authorised Betting Competitions, in accordance with the Act, the Licence and Law, subject to the constraints of the Commissions' Technical Standards (**Availability Requirement**).
- (b) The Licensee will not be taken to have failed to meet the Availability Requirement to the extent that any non-compliance with **clause 2.7(a)** is due to:

- (i) regularly scheduled downtime for the purpose of maintenance of the Wagering and Betting System;
- (ii) failures in communication systems that are outside the reasonable control of the Licensee;
- (iii) any failure of items forming part of the Wagering and Betting System that are located in venues in accordance with the Distribution Arrangements (e.g. terminals and peripheral equipment for selling Tickets or other forms of entry and for validating winning Tickets or other forms of entry, or visual display units, located in venues in accordance with the Distribution Arrangements) (**Venue Items**), provided that the Licensee takes all reasonable steps to ensure that such items undergo regular and appropriate preventative maintenance and that any failure is resolved promptly;
- (iv) any loss or destruction of Venue Items that is outside the Licensee's reasonable control, provided that the Licensee takes all reasonable steps to ensure that such items are replaced and that the replacement items are made operational as soon as practical;
- (v) the occurrence of a Force Majeure Event; or
- (vi) malicious damage, provided that the Licensee has implemented reasonable security measures to protect the Wagering and Betting System,

provided that (without limiting anything above) the Licensee takes all reasonable steps to minimise the impact of any such event on its achievement of the Availability Requirement.

- (c) The Licensee must advise the Commission of the location of the Wagering and Betting System throughout the Term.
- (d) The Licensee warrants that the Wagering and Betting System is fit for purpose in accordance with the Commission's Technical Standards.

## 2.8 Services Agreement

In accordance with section 4.3A.10AA of the Act, the Minister may direct the Licensee to enter into an agreement or class of agreements (including a services agreement) dealing with matters related to the Licence (including the provision of services) with particular persons or a class of persons.

## 3 Parent Company Guarantee

- (a) On or before the Agreement Date, the Licensee must provide to the Minister an irrevocable guarantee and indemnity in favour of the State in respect of all obligations of the Licensee under the Licence and this Agreement from the Licensee's ultimate parent company in the form



set out in Schedule 3 or otherwise on terms acceptable to the Minister  
**(Parent Company Guarantee)**.

- (b) If the Licensee's ultimate parent company is incorporated outside of Australia, the Licensee must provide to the Minister with the Parent Company Guarantee a legal opinion:
  - (i) from lawyers to the Licensee's ultimate parent company, authorised to practice in the place of incorporation of the Licensee's ultimate parent company:
    - (A) supporting, and in respect of, the Parent Company Guarantee; and
    - (B) stating that the Parent Company Guarantee 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 Performance Bond

### 4.1 Provision of Performance Bond

- (a) On or before the Agreement Date, the Licensee must provide to the Minister an unconditional and irrevocable written undertaking **(Performance Bond)**:
  - (i) issued by an financial organisation (**Issuer**) with a Standard & Poor's credit rating of at least A minus or Moody's A3 **(Required Rating)** and approved by the Minister; and
  - (ii) initially:
    - (A) a single bond for the amount of the Premium Payment plus \$5 million (or such other amount as the Minister may require) or bonds that in aggregate total the Premium Payment plus \$5 million (or such other amount as the Minister may require) and thereafter reduced to \$5 million (or such other amount as the Minister may require) following the payment of the Premium Payment under clause 3 of the Licence; or
    - (B) if the Licensee has paid the Premium Payment under clause 3 of the Licence on or before the Agreement Date, a single bond for \$5 million (or such other amount as the Minister may require) or bonds that in aggregate total \$5 million (or such other amount as the Minister may require),

in favour of the State in the form of **Schedule 5** (or in such form and substance as the Minister may otherwise approve), as security for the performance by the Licensee of its obligations under this Agreement and the Licence.

- (b) The Licensee must:
  - (i) ensure that:
    - (A) if the Licensee provides a single Performance Bond, that Performance Bond; or
    - (B) if the Licensee provides bonds that in aggregate total the amount required under **clause 4.1(a)**, at least a bond for the required amount under **clause 4.1(a)**,  
  
is kept current and enforceable at all times during the Term and until at least 12 months after the cancellation, termination or expiration of the Licence;
  - (ii) ensure that if the Licensee provides a single Performance Bond or bonds that in aggregate total the amount required under **clause 4.1(a)**, the Performance Bond is renewed annually (or where it applies for a given number of years that the period of the bond is extended annually to apply for that same number of years until at least 12 months after the cancellation, termination or expiration of the Licence);
  - (iii) if the State makes a demand on the Performance Bond for an amount less than that referred to in **clause 4.1(a)**, provide a new Performance Bond for that amount when requested by the Minister; and
  - (iv) pay all expenses associated with the provision and maintenance of the Performance Bond.

#### **4.2 Replacement of Performance Bond**

- (a) If at any time during which the Licensee is required to provide a Performance Bond in accordance with **clause 4.1** the:
  - (i) Rating of the Issuer of the Performance Bond falls below the Required Rating; or
  - (ii) such Issuer ceases to have any Rating at all,the Licensee must:
  - (iii) notify the Minister promptly of that circumstance; and
  - (iv) within 20 Business Days after being requested by the Minister to do so, procure the issue to the State of a replacement bond (in the amount and form of the Performance Bond being replaced).

- (b) If under this Agreement, the Performance Bond is to be replaced, the Minister must return the Performance Bond to the Licensee only upon the Licensee providing the State with a replacement bond.

#### 4.3 Demands under Performance Bond

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

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

- (b) The Minister must, as soon as practicable after he or she has made a demand and received payment under the Performance Bond, give a notice to the Licensee, specifying the amount of the demand and the Minister's reason for making the demand.
- (c) If a replacement bond is not provided to the Minister in accordance with **clause 4.2**, the State may make a demand under the Performance Bond for the full amount of the Performance Bond at that time.
- (d) The Minister may make a demand under the Performance Bond irrespective of whether or not the amount demanded and the circumstances relating to the amount:
  - (i) are in dispute; or
  - (ii) have been referred for determination in accordance with **clause 25**.
- (e) In this **clause 4.3** and **clause 4.4**, the term "amount" includes debts, fees, costs (including legal costs on an indemnity basis), indemnities, charges, duties, penalties, Taxes, losses and expenses.

#### 4.4 Repayment by the Minister

- (a) If the Issuer of the Performance Bond makes a payment to the State under the Performance Bond and the Minister does not in fact incur, or the Licensee is not or does not in fact otherwise become liable to pay the Minister, an amount which is equal to or greater than the payment made, then the Minister must pay to the Licensee:
  - (i) the part of that payment made which exceeds the amount which the Minister does in fact incur, or which the Licensee is or does

in fact otherwise become liable to pay to the State (the **Relevant Amount**); and

- (ii) interest at the Default Rate on the Relevant Amount on a daily basis from (and including) the date the Issuer of the Performance Bond met the demand in respect of the Relevant Amount to the date the Relevant Amount is paid to the Licensee compounded on the last Business Day of each month. Such interest must be paid on the date the Relevant Amount is paid to the Licensee.
- (b) The Licensee acknowledges and agrees that:
- (i) the Licensee's sole remedy arising out of or in respect of or in connection with the making of a demand by the Minister under, or the utilisation of the proceeds of, the Performance Bond or the payment by an Issuer to the State under a Bond is the Licensee's entitlement to payment by the Minister in accordance with **clauses 4.4(a)(i) and 4.4(a)(ii)**; and
  - (ii) the Licensee's entitlement to payment by the Minister of the amounts contemplated by **clauses 4.4(a)(i) and 4.4(a)(ii)** constitute an adequate remedy for the Licensee in respect of the occurrence of the circumstances described in **clauses 4.3 and 4.4(a)** (as the case may be).

## 5 Tax payable

### 5.1 Former Tax Framework and Licence Commencement Tax Framework

The Licensee acknowledges that:

- (a) the Former Tax Framework is set out in section 4.6.3(1) of the Act and has a tax rate of 19.11%; and
- (b) the Licence Commencement Tax Framework is set out in section 4.6.3(1A) of the Act and, as at the Agreement Date, has a tax rate of 7.6%; and
- (c) the Licence Commencement Tax Framework may be amended at any time during the Term.

### 5.2 Victorian Racing Industry Benefit

- (a) The Minister declares the difference between:
  - (i) the tax the Licensee would have been required to pay under the Former Tax Framework as acknowledged in **clause 5.1(a)** for each Financial Year of the Licence, if the Former Tax Framework as acknowledged in **clause 5.1(a)** had been applicable to the Licence and the Licensee; and

- (ii) the tax the Licensee is required to pay under the Licence Commencement Tax Framework as acknowledged in **clause 5.1(b)** for each Financial Year of the Licence (or would have been required to pay under the Licence Commencement Tax Framework for each Financial Year if the Licence Commencement Tax Framework as acknowledged in **clause 5.1(b)** had been applicable to the Licence and the Licensee),

to be a Victorian Racing Industry Benefit which (subject to the terms of **clause 5.2(d)**) the Licensee must pay each and every Financial Year of the Licence in accordance with **clause 5.2(d)**.

- (b) If:
  - (i) the Licence Commencement Tax Framework; or
  - (ii) subsequent to the first amendment to the Licence Commencement Tax Framework, the Amended Tax Framework,

is amended at any time after the Licence Commencement Date so that, in respect of any Financial Year during the Term the tax the Licensee is required to pay under the Amended Tax Framework (as applicable immediately following that amendment) for that Financial Year is less than the tax the Licensee would have been required to pay under the Licence Commencement Tax Framework or, if applicable, the Amended Tax Framework (as it stood immediately prior to that amendment), for that Financial Year, the Minister:

- (iii) may by notice in writing to the Licensee declare the amount of the difference in the tax to be a Victorian Racing Industry Benefit which (subject to the terms of **clause 5.2(d)**) the Licensee must pay each and every Financial Year of the Licence in accordance with **clause 5.2(d)**; and
- (iv) will notify the Licensee of any decision to declare or not to declare a Victorian Racing Industry Benefit under this **clause 5.2(b)**.

- (c) If:
  - (i) the Licence Commencement Tax Framework; or
  - (ii) subsequent to the first amendment to the Licence Commencement Tax Framework, the Amended Tax Framework,

is amended at any time after the Licence Commencement Date so that, in respect of any Financial Year during the Term the tax the Licensee is required to pay under the Amended Tax Framework (as applicable immediately following that amendment) for that Financial Year is greater than the tax the Licensee would have been required to pay under the Licence Commencement Tax Framework or, if

applicable, the Amended Tax Framework (as it stood immediately prior to that amendment), for that Financial Year, the Minister:

- (iii) may by notice in writing to the Licensee declare the amount of the difference in the tax to be a Victorian Racing Industry Offset which may be offset each and every Financial Year of the Licence in accordance with **clause 5.2(d)**; and
  - (iv) will notify the Licensee of any decision to declare or not to declare a Victorian Racing Industry Offset under this **clause 5.2(c)**.
- (d) The Licensee must pay:
- (i) the amount declared by the Minister to be a Victorian Racing Industry Benefit under **clause 5.2(a)**; and
  - (ii) the amount(s) declared by the Minister to be a Victorian Racing Industry Benefit under **clause 5.2(b)**,

less any declared Victorian Racing Industry Offset(s) in accordance with the terms of the Executed Joint Venture Agreement.

## 6 Licensee 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 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 Representative is the same as the address for service of Notices on the Licensee under **clause 27(b)**.
- (c) The Licensee may revoke the appointment of the Licensee Representative at any time by giving notice to the Minister provided that it appoints another natural person as an alternative or substitute Licensee Representative by giving notice to the Minister.

## 7 Development and Implementation

### 7.1 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 Betting Competitions 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 Commission, that the Licensee has (or will have by the end of the Transition In Period):
- (i) access to all Intellectual Property Rights, wagering and betting systems and information;
  - (ii) financial arrangements and resources;
  - (iii) developed, in consultation with the Commission, a process for the processing of Tickets purchased from the former Licensee;
  - (iv) staffing and related resources including development of an industrial relations engagement strategy;
  - (v) distribution processes and networks;
  - (vi) developed a plan to ensure the continuity of Authorised Betting Competitions;
  - (vii) developed a strategy for:
    - (A) transition in existing agencies (as appropriate);
    - (B) transition out existing agencies (as appropriate);
    - (C) transition in existing venues (as appropriate); and
    - (D) transition out existing venues (as appropriate).
  - (viii) entered into arrangements with the Victorian Racing Industry Entities, including the Joint Venture Agreement;
  - (ix) entered into arrangements with Sports Controlling Bodies for the use of content;
  - (x) entered into arrangements with media providers that allow content to reach a broad audience;
  - (xi) developed and implemented a marketing campaign;
  - (xii) arrangements with Agents and Contractors;
  - (xiii) developed and implemented stakeholder management and communications plans;
  - (xiv) developed and implemented business support arrangements;
  - (xv) developed and implemented a service strategy;
  - (xvi) 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;
  - (xvii) developed and complied with an implementation budget; and
  - (xviii) plans and milestones to ensure the efficient, smooth, seamless and uninterrupted transition of the Conduct of Authorised Betting Competitions to the Licensee,

that are necessary and appropriate to Conduct Authorised Betting Competitions on and from the Licence Commencement Date.

- (d) The Licensee must in the Implementation Plan set out the Key Milestones for:
  - (i) the transfer, development and/or establishment of:
    - (A) all Intellectual Property Rights, wagering and betting systems and information;
    - (B) financial arrangements and resources;
    - (C) in consultation with the Commission, a process for the processing of Tickets purchased from the Outgoing Licensee;
    - (D) staffing and related resources including development of an industrial relations engagement strategy;
    - (E) distribution processes and networks;
    - (F) a strategy for:
      - (1) transition in existing agencies (as appropriate);
      - (2) transition out existing agencies (as appropriate);
      - (3) transition in existing venues (as appropriate); and
      - (4) transition out existing venues (as appropriate),
    - (G) arrangements with the Victorian Racing Industry Entities, including the Joint Venture Agreement;
    - (H) arrangements with Sports Controlling Bodies for the use of content;
    - (I) arrangements with media providers that allow content to reach a broad audience;
    - (J) a marketing campaign;
    - (K) arrangements with Agents and Contractors;
    - (L) stakeholder management and communication plans;
    - (M) business support arrangements;
    - (N) a service strategy;
    - (O) an assurance system regarding the implementation of, and ongoing compliance with, the Licensee's Responsible Gambling Code of Conduct;
    - (P) an implementation budget; and
    - (Q) plans to ensure the efficient, smooth, seamless and uninterrupted transition of the Conduct of authorised Betting Competitions to the Licensee;
  - (ii) the approval by the Commission of totalisator equipment; and



- (iii) the Betting Rules and Betting Exchange Rules made, or to be made, and consented to or otherwise not disallowed by the Commission, in accordance with sections 4.2.5 and 4.2.4A of the Act.
- (e) The Licensee must comply with the Implementation Plan and any lawful directions of the Commission, and must act in good faith towards the State.
- (f) The Commission will act reasonably in exercising its powers and rights under this **clause 7** and will do all things reasonably necessary to facilitate compliance by the Licensee with this **clause 7**.

## **7.2 Submission of Implementation Plan to the Commission**

- (a) The Licensee must as soon as possible, but no later than 1 month after the Agreement Date (or such later date approved by the Commission), submit the detailed Implementation Plan to the Commission 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 Betting Competitions on and from the Licence Commencement Date. Without prejudice to the obligations on the Licensee under **clause 7.1**, the Licensee must submit any such sub-plans to the Commission for approval in accordance with the timeframe established under the Implementation Plan.
- (c) The Licensee must not proceed with the Implementation Plan unless it has been approved by the Commission under **clause 7.3**.
- (d) The Licensee must use its best endeavours to ensure that the Implementation Plan complies with the requirements of this **clause 7** so that it may be approved by the Commission within 4 months after the Agreement Date (or such later date approved by the Commission).

## **7.3 Approval of Implementation Plan**

- (a) Upon the receipt of a proposed Implementation Plan (or any sub-plans contemplated by the Implementation Plan), the Commission may:
  - (i) approve (with or without conditions) the Implementation Plan (or sub-plan);
  - (ii) require an amendment to the Implementation Plan (including any amendment to the Key Milestones) (or sub-plan); or
  - (iii) reject the Implementation Plan (or sub-plan).
- (b) The Commission must consider and provide any feedback on the proposed Implementation Plan (or any sub-plan) in a timely fashion. In all events, the Commission must notify the Licensee of its decision

and, if the Implementation Plan (or sub-plan) is rejected or required to be amended, reasons for the decision, within 1 month of receiving the Implementation Plan (or sub-plan).

- (c) If the Commission requires any amendments to or rejects the Implementation Plan (or any sub-plan), the Licensee may make a further submission to the Commission within 1 month of the notification as to why the amendment should not be made or the Implementation Plan (or sub-plan) not be rejected.
- (d) The Commission and the Licensee must promptly discuss any disputes or differences in relation to the Implementation Plan (or any sub-plan), and must negotiate in good faith to agree on the Implementation Plan (or sub-plan).
- (e) If the Commission and the Licensee are unable to resolve any disputes or differences in relation to the Implementation Plan (or any sub-plan) so that the Implementation Plan may be approved by the Commission within 6 months after the Agreement Date (or such later date approved by the Commission), then the Implementation Plan will be as determined by the Commission.

#### **7.4 Development in accordance with Implementation Plan**

- (a) The Licensee must establish Authorised Betting Competitions 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 Commission 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 7.4(c)**, the Commission 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 22.2**.

#### **7.5 Monthly Report**

From the date of approval of the Implementation Plan until Implementation Completion, the Licensee must provide the Commission with a monthly report, by such time in any month as agreed with the Commission, 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.

#### **7.6 Certification of Implementation Completion**

Upon Implementation Completion being achieved, the Licensee must promptly provide to the Commission a certificate from its Chief Executive Officer (or equivalent positions), in a form acceptable to the Commission, certifying that Implementation Completion has been achieved.

#### **7.7 Readiness to Conduct Authorised Betting Competitions**

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

- (a) must be able to Conduct each Authorised Betting Competition in accordance with the requirements for that Authorised Betting Competition (including the Betting Rules and Betting Exchange Rules) on and from the Licence Commencement Date (or such other date agreed by the Minister for that Authorised Betting Competition); and
- (b) upon written request by the Minister, must promptly provide the Minister with a written statement from its Chief Executive Officer (or equivalent positions), in a form acceptable to the Minister, demonstrating that it will be able to comply with **clause 7.7(a)**.

#### **7.8 Licensee's obligation to facilitate transition**

- (a) Without prejudice to any other clause of this **clause 7**, the Licensee must:
  - (i) act reasonably in its dealings with, and where applicable, must negotiate in good faith with the former licensee during the Transition In Period;
  - (ii) ensure and facilitate (including by entering into arrangements and taking all reasonable action to enforce such arrangements to procure that its Agents, Contractors and any other person under the Licensee's direction or control ensure and facilitate) the efficient, smooth, seamless and uninterrupted transition of the Conduct of Authorised Betting Competitions to the Licensee; and
  - (iii) 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 Betting Competitions 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 **clause 7**.
- (c) The State must use reasonable endeavours to ensure, if the State deems it necessary to facilitate an efficient, smooth, seamless and

uninterrupted transition of the Conduct of Authorised Betting Competitions to the Licensee, that the former licensee co-operate with and participate in the Licensee taking any action or any undertaking any processes under **clause 7.8(a)(iii)**.

## 8 Conduct of Authorised Betting Competitions

### 8.1 Availability of funds

- (a) On written request from the Commission, the Licensee must demonstrate, to the reasonable satisfaction of the Commission, that the Licensee:
  - (i) is able to pay all prizes or dividends upon determination of Authorised Betting Competitions Conducted by the Licensee under the Licence in accordance with the Betting Rules or Betting Exchange Rules;
  - (ii) is able to refund all Authorised Betting Competition entries in respect of any Authorised Betting Competition Conducted by the Licensee under the Licence that is not drawn or determined; and
  - (iii) has accounted for and retained an amount equal to the sum of all dividends and prizes that have not been claimed by the Players and is able to pay those dividends and prizes that are unclaimed or have not been dealt with in accordance with the *Unclaimed Money Act 2008* (Vic) or in accordance with section 4.6.9 of the Act.
- (b) It is not sufficient for the purposes of this **clause 8.1** for the Licensee to demonstrate that it has available to it a line of credit, loan, mortgage or any other similar facility for the purposes of paying prizes or dividends or refunding any amount.
- (c) The Licensee must not allow and must ensure at all times that there are not any Encumbrances on the whole or any part of the Approved Accounts.

### 8.2 Relationships with Agents and Contractors

- (a) The Licensee must appoint Agents and engage Contractors by way of an agreement that is subject to the laws of Victoria, prior to that proposed Agent or Contractor assisting the Licensee to Conduct Authorised Betting Competitions, or prior to that person selling any Tickets or other forms of entry to Authorised Betting Competitions if the Agent is being authorised as a Ticket Agent.
- (b) The agreement the Licensee enters into with its Agents or Contractors must ensure that the Licensee is able to discharge its obligations under the Act, the Regulations, the Licence or this Agreement and the Licensee must take all reasonable action to enforce such provisions in the agreement.

- (c) The agreement the Licensee enters into with its Agents or Contractors must prohibit the Agent or Contractor (and any agents or subcontractors of that Agent or Contractor) from undertaking or omitting any action, which may amount to a breach of the Act, the Licence, this Agreement or any other Agreements if the Licensee were to undertake or fail to undertake the action.
- (d) Subject to **clause 30.10**, any thing an Agent or Contractor does or fails to do in acting for and on behalf of the Licensee or in assisting the Licensee in the Conduct of Authorised Betting Competitions, which would be a breach of this Agreement if done or failed to be done by the Licensee constitutes a breach of this Agreement by the Licensee.
- (e) Without prejudice to **clause 8.2(b)** or any other clause of this Agreement, the Licensee must:
  - (i) immediately notify its Agents and Contractors if its Licence is amended, suspended or cancelled; and
  - (ii) enter into arrangements and take all reasonable action to enforce such arrangements to procure that its Agents and Contractors ensure that immediately on and from any notification by the Licensee under **clause 8.2(e)(i)**:
    - (A) if the Licence is amended, its Agents and Contractors assist in the Conduct of Authorised Betting Competitions in accordance with the Licence as amended;
    - (B) if the Licence is suspended, its Agents and Contractors cease assisting in the Conduct of Authorised Betting Competitions until 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 and Contractors cease assisting in the Conduct of Authorised Betting Competitions (except to the extent permitted by law).

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

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

are freely available at any Point of Sale at which Tickets or other forms of entry to Authorised Betting Competitions are sold.

## 8.4 Exclusive Arrangements

The Licensee must not:

- (a) enter into contracts, arrangements or understandings with Agents or Contractors, including any Distribution Arrangement with a Ticket Agent; or
- (b) Conduct Authorised Betting Competitions with the assistance of Agents or Contractors,

with the purpose or effect or the likely effect of preventing, restricting or limiting the Agent from acting as an agent or distributor for another licensee under the Act or from acting effectively in that capacity.

# 9 Business rules

## 9.1 Development of Business Rules

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

Conducted by the Licensee by Registered Players.

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

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

- (c) For the avoidance of doubt, the Business Rules are not to be taken to:
  - (i) require the Licensee to place restrictions on Registered Players resident in Victoria from opening accounts with:
    - (A) other wagering and betting providers; or

- (B) other wagering and betting businesses that are operated by the Licensee,

provided that the Licensee does not wilfully divert business from Victoria to such other providers or businesses; or

- (ii) require the Licensee to do anything in breach of laws relating to the Conduct of gambling, or any other laws, in Victoria or any other jurisdiction in Australia and should be consistent with any actual or potential obligations on the Licensee under such laws.

## **9.2 Submission of Business Rules to the Commission**

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

## **9.3 Approval of Business Rules**

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

- (e) The Commission and the Licensee must promptly discuss any disputes or differences in relation to the Business Rules, and must negotiate in good faith to agree on the Business Rules.
- (f) Once approved by the Commission, the Licensee must comply with the Business Rules.

## 10 Banking

### 10.1 Account

- (a) The Licensee must maintain Approved Accounts throughout the Term.
- (b) The Licensee must obtain the prior written approval of the Commission to alter, move or close Approved Accounts.
- (c) The Licensee must ensure that only the Licensee acting through an appropriately authorised officer of the Licensee is permitted to withdraw funds from Approved Accounts.
- (d) The Licensee holds all funds in Approved Accounts which the Licensee is required to pay to or as directed by the State under this Agreement, the Licence and the Act (including any tax payable under Part 6 Division 1 of Chapter 4, any Premium Payment payable under section 4.3A.13 of the Act and any Victorian Racing Industry Benefit) on trust for and on behalf of the State.

### 10.2 Ticket Agents and funds

- (a) The Licensee must require that each Ticket Agent remits to the Approved Account(s) such of the amounts the Ticket Agent receives in respect of each Ticket or other form of entry in an Authorised Betting Competition that enables the Licensee to comply with its obligations under Part 6 Division 1 of Chapter 4 in respect of the payment of taxes (**Ticket Agent Funds**).
- (b) The Licensee must ensure that the Ticket Agent holds the Ticket Agent Funds on trust for and on behalf of the Licensee until the Ticket Agent Funds are remitted in accordance with **clause 10.2(a)** and the Ticket Agent Funds are not used for any other purpose.

## 11 Records

### 11.1 Retention of Records

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



## **11.2 Copy of Records**

- (a) If requested by the Commission in writing, the Licensee must, at 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 11.2(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.

## **11.3 Inspection of Records**

The Licensee must, 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 in respect to the inspection or copying. Without prejudice to the ability of the Commission to impose any costs or charges under the Act, the Licensee must pay its own costs in complying with this clause.

## **11.4 Arrangements**

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

## **11.5 Annual Financial Statements**

The Licensee must provide to the Commission a copy of the audited Annual Financial Statements 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.

## **11.6 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 and accounts for the period specified in the request and covering:
  - (i) the financial operations and position of the business of the Licensee related to Authorised Betting Competitions Conducted by it under the Licence;
  - (ii) the disaggregated financial performance in respect of any individual part or parts of the Conduct of Authorised Betting Competitions under the Licence or the engagement of Agents or Contractors or of Authorised Betting Competitions themselves (such as ticket sales by particular Ticket sellers, particular Authorised Betting Competitions or particular bet types); and

- (iii) if applicable, the financial statements and accounts of the consolidated entity (as defined in the Corporations Act),  
(collectively, the **Additional Financial Statements**)
- (b) The Licensee must provide the Additional Financial Statements by the date specified in the request, or if no time is specified:
  - (i) for Additional Financial Statements that have previously been requested for a different time period, within 10 Business Days of being notified; or
  - (ii) for Additional Financial Statements that have not previously been requested, within 30 Business Days of being notified.
- (c) The Additional Financial Statements must be prepared in accordance with **clauses 11.7, 11.9 and 11.10**.

### **11.7 Content of Additional Financial Statements**

- (a) Any Additional Financial Statements must give a true and fair view of the financial operations and position of the business of the Licensee related to Authorised Betting Competitions Conducted by it under the Licence (as required for the particular financial statement), and in any case the financial statement must include in respect of the transactions and financial position of the operations of the Licensee related to Authorised Betting Competitions:
  - (i) a statement of cash flow for the period of that financial statement;
  - (ii) a statement of financial performance for the period of that financial statement; and
  - (iii) a statement of financial position as at the date of the financial statement.
- (b) For the purposes of **clauses 11.6(a)(ii) and 11.7(a)(ii)**, a statement of financial performance will include sales revenue, prizes, dividends, taxes, duties and commissions payable to Ticket Agents.

### **11.8 Audit of Licensee**

- (a) The Licensee must, as soon as practicable after the end of each Financial Year, cause the Annual Financial Statements of the Licensee in accordance with section 4.8.5 of the Act, and the Records where required in writing by the auditor or the Commission, to be audited.
- (b) In addition to any requirements set out in section 4.8.5 of the Act, the Licensee must:
  - (i) 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

- (ii) take action to obtain the cooperation of any Agent or Contractor of the Licensee or any other person under the Licensee's direction or control to provide the auditor with any information, assistance and explanations necessary for the performance of the duties of the auditor in relation to the audit.

### **11.9 Compliance with accounting standards**

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

### **11.10 Executive declaration**

- (a) The Licensee must procure, in respect of each year's Annual Financial Statement and any Additional Financial Statements, a declaration from its Chief Executive Officer and Chief Financial Officer (or equivalent positions), acceptable to the Commission, as to whether, in that person's opinion:
  - (i) the accounts and statements comply with the Australian Accounting Standards;
  - (ii) the accounts and statements reflect a true and fair view of the financial position of the Licensee, or the business of the Licensee related to Authorised Betting Competitions Conducted by it under the Licence (as the case requires); and
  - (iii) the Licensee has sufficient and effective internal controls to ensure that the person making the declaration would be aware of any material information relating to the production of that Annual Financial Statement or any Additional Financial Statements (as the case requires).
- (b) The Licensee must provide the declarations required under **clause 11.10(a)** to the Commission together with the Annual Financial Statements or any Additional Financial Statements.

### **11.11 Electronic Provision of Information**

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

### **11.12 Limits on disclosure**

Nothing in **clause 11, 12 or 13** 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 Applicable Law or require a waiver or breach of legal

professional privilege. However, this **clause 11.12** does not limit or affect any other rights or entitlements of the Minister or the Commission to require disclosure under the Act.

## **12 Reporting Requirements**

### **12.1 Regular reporting requirements**

During the Term, the Licensee must provide to the Commission an annual Report on the Licensee's performance against each Commitment Requirement. The Report must be in the format, and contain such information, as specified in **clause 12.3** and must be provided to the Commission within 2 months after the end of each Financial Year.

### **12.2 Non-regular reporting requirements**

The Licensee must provide a Report to the Commission (in the format, and containing such information, as specified in **clause 12.3**) identifying any issues relating to the Licensee's Responsible Gambling Code of Conduct (including non-compliances) or any risks to ongoing business continuity and viability:

- (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:
  - (i) the Licensee's Responsible Gambling Code of Conduct; or
  - (ii) any risks to ongoing business continuity or viability.

### **12.3 Content and format of Reports**

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

### **12.4 Confidentiality of Reports**

If disclosure is desired in accordance with Division 6 of Part 1 of Chapter 10 of the Act, the Minister will provide the Licensee, where practicable, with at least 3 Business Days written notice of the disclosure requirement and the reason for the disclosure requirement.

### **12.5 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 (subject to **clause 12.4**), modify and amend) and sub-licence to any New Licensee the right to use in relation to the Conduct of Authorised

Betting Competitions (including the right to reproduce, publish, modify and amend) the information contained in the Reports and that is relevant to the Conduct of Authorised Betting Competitions 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 12.5(a)** and that the exercise of that licence will not infringe any Intellectual Property Rights or Moral Rights of any third party.
- (d) The State will procure that the New Licensee enters into a legally binding agreement with the Licensee pursuant to which the New Licensee will covenant that it will act in accordance with this **clause 12.5** and it will acknowledge and agree to be bound by any provision of this **clause 12.5** for the benefit of the Licensee.

## 13 Information and data

### 13.1 Disclosure of Data

- (a) The Licensee must collect and store in a reportable form on behalf of the Minister complete and accurate data related to the Conduct of Authorised Betting Competitions under the Licence including aggregated data and disaggregated data relating to:
  - (i) the break down of ticket sales for Authorised Betting Competitions by authorised forms of gambling;
  - (ii) the break down of Authorised Betting Competitions ticket sales by bet type;
  - (iii) the break down of ticket sales of Authorised Betting Competitions by authorised events; and
  - (iv) any other data the Commission advises by notice in writing, provided that the Licensee must commence collecting and storing such data in accordance with this **clause 13.1(a)** no later than 28 days after the date of the Commission's notice in writing (or such later date as approved by the Commission).

- (b) During the Term, the Licensee must provide to the Commission a report on the Data, every 6 months after the Licence Commencement Date.
- (c) The Licensee must, at all reasonable times, permit any person authorised in writing by the Commission to inspect and take copies of any Data stored by the Licensee, any of its Agents or Contractors or any other person under the Licensee's direction or control, and must comply with all lawful requests by that person authorised by the Commission in respect to the inspection or copying. Without prejudice to the ability of the Commission to impose any costs or charges under the Act, the Licensee must pay its own costs in complying with this clause.
- (d) The Licensee must ensure that any agreement authorising Ticket Agents requires the Ticket Agent to:
  - (i) collect Data and provide that Data to the Licensee;
  - (ii) permit any person authorised in writing by the Minister to inspect and take copies of any Data from the Agent's venue; and
  - (iii) provide any person authorised in writing by the Minister with access to the Agent's venue for the purposes of Data collection or State commissioned research into gambling.
- (e) In addition to any obligations under **clause 13.1(a)**, the Licensee must cooperate with and provide any information relating to the Conduct of Authorised Betting Competitions under the Licence in its possession custody or control, or the possession custody or control of its Agents or Contractors, to the Commission, or any person authorised by the Commission in writing, for the purposes of State commissioned research into gambling.
- (f) 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 the right to use (including the right to reproduce, publish, modify and amend) the Data (including the Data and information obtained from Ticket Agents under **clause 13.1(d)** and the information contained in the reports required under **clause 13.1(b)**, and the information provided under **clause 13.1(e)**.
- (g) The Licensee warrants that it has or will have from the Licence Commencement Date the right to grant all licences the subject of this **clause 13** and that the exercise of the rights licensed under this **clause 13** will not infringe any Intellectual Property Rights or Moral Rights of any third party.

## 14 Notification of change in situation

- (a) The Commission may specify a kind of 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 and any other person under the Licensee's direction or control) give the Commission written notice of any change in situation associated with or connected to the Licence, the Agreements or the Conduct of Authorised Betting Competitions of a kind specified by the Commission.
- (c) The Licensee must (and must enter into arrangements and take all reasonable action to enforce such arrangements to procure that its Agents, Contractors and any other person under the Licensee's direction or control) give the Commission notice in accordance with **clause 14(b)** within the relevant time which applies to a specific kind of change specified in the notice given by the Commission under **clause 14(a)**, provided that such time is no less than 20 days after the change in situation occurring.

## 15 Transition Out

### 15.1 New Licensees

The Licensee acknowledges that the Minister may grant to a New Licensee a Wagering and Betting Licence to undertake Preparatory Action in respect of the Authorised Betting Competitions prior to the expiry of the Licence.

### 15.2 Transition objectives

- (a) The parties acknowledge that the objectives of this **clause 15** and Schedule 4 are to:
  - (i) ensure efficient, smooth, seamless and uninterrupted transition of the Conduct of Authorised Betting Competitions from one licensee to another;
  - (ii) ensure that 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) reduce the risk of loss of revenue of the Victorian Racing Industry;
  - (vi) ensure that the requirements of the Commission in relation to transition are satisfied in a timely fashion; and
  - (vii) promote the objectives of the Act.

- (b) The Licensee agrees in good faith to undertake such activities as may reasonably be required of it to assist in the achievement of the objectives, and acknowledges that the intent of the Implementation Plan and Transition Arrangements is to give effect to this commitment.
- (c) Nothing in this clause 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.

### **15.3 Transition Out – Dealings**

The Licensee must:

- (a) act reasonably in its dealings with, and where applicable, must negotiate in good faith with an Incoming Licensee;
- (b) enter into arrangements and take all reasonable action to enforce such arrangements to procure that its Agents and Contractors act reasonably and in good faith towards any Incoming Licensee;
- (c) use best endeavours to ensure and facilitate (including by entering into arrangements and taking all reasonable action to enforce such arrangements to procure that its Agents, Contractors and any other person under the Licensee's direction or control use best endeavours to ensure and facilitate) the efficient, smooth, seamless and uninterrupted transition of the Conduct of Authorised Betting Competitions to an Incoming Licensee;
- (d) act reasonably and in good faith towards the State during the Wagering and Betting Transition; and
- (e) if required by the Minister, novate the 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.

### **15.4 Transition Out – Compliance**

The Licensee must comply with:

- (a) the Transition Arrangements set out in Schedule 4;
- (b) any lawful directions of the Commission; and
- (c) relevant and lawful decisions and determinations of the TSC, in relation to the Wagering and Betting Transition.

### **15.5 Transition Out – Reciprocal Obligations**

The State:

- (a) acknowledges that this Agreement places obligations on the Licensee under this **clause 15**; and



- (b) intends to place generally reciprocal obligations in relation to the Wagering and Betting Transition upon an Incoming Licensee.

#### **15.6 Transition Out – Transition Steering Committee**

- (a) As soon as it is reasonably practicable after the grant of a Wagering and Betting licence to an Incoming Licensee (and in any case, no later than 1 month after that date), the parties must establish a TSC in accordance with the Transition Arrangements.
- (b) All decisions and determinations of a TSC are, to the extent they properly relate to the Wagering and Betting Transition, binding on the Licensee.
- (c) Each of the obligations and requirements imposed by the TSC on the Licensee are deemed to be a contractual covenant under this Agreement given by the Licensee in favour of the State.
- (d) The Licensee acknowledges and agrees that:
  - (i) if the TSC is unable to reach a decision due to a deadlock, then the Chairperson will resolve the deadlock unless:
    - (A) the Chairperson determines with reference to the Transition Objectives that the Chairperson is unable to resolve the deadlock; or
    - (B) by unanimous vote, the TSC determines that it is not appropriate for the Chairperson to resolve the deadlock; and
  - (ii) if a determination is made under **clause 15.6(d)(i)(A) or (B)**, then the deadlock will be resolved by following the dispute resolution process under **clause 25**.

#### **15.7 Preparation and approval of Transition Plan**

- (a) The Licensee must develop a proposed Transition Plan and submit it to the Commission within 6 months after the Licence Commencement Date (or such longer period as agreed to by the Commission).
- (b) The proposed Transition Plan prepared by the Licensee must:
  - (i) comply with any requirements set out in the Transition Arrangements;
  - (ii) include an asset register, including intellectual property and a certified equipment index related to the Conduct of Authorised Betting Competitions;
  - (iii) include details of all material agreements and arrangements with any Agent or Contractor in relation to the Conduct of Authorised Betting Competitions (and details of such other agreements and arrangements with any Agent or Contractor in relation to the Conduct of Authorised Betting Competitions as required by the Commission);

- (iv) include such information and address such issues as required by the Commission; and
  - (v) be in a form required by the Commission.
- (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 the wagering and betting systems to Conduct Authorised Betting Competitions 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 the 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 Commission, 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 Commission does not constitute a representation by the Commission that it has approved the equipment index.

- (d) Unless otherwise directed by the Commission, the Licensee must update and resubmit its Transition Plan to the Commission for approval every 12 months (or otherwise as frequently as specified by the Commission). The updated Transition Plan must take into account any changes to the circumstances, including changes to Authorised Betting Competitions, the Conduct of Authorised Betting Competitions, or assets.
- (e) The Commission will consider the proposed or updated Transition Plan and approve or reject it. If the Commission rejects the proposed or updated Transition Plan, in any respect, the Licensee must meet with the Commission 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 Transition Plan complies with the requirements of this **clause 15.7** so that it may be approved by the Commission within 2

months after the date the Licensee is required to submit the proposed Transition Plan or the date the Licensee is required to update the Transition Plan (as applicable).

- (g) Once approved, the Licensee must comply with the Transition Plan with respect to the Wagering and Betting 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 New Licensee the right to use (including the right to reproduce, publish, modify and amend), in connection with the Wagering and Betting Transition any Transition Plan (other than information included in the Transition Plan as required by the Commission under **clause 15.7(b)(iv)** which requires third party consent to be included in the Transition Plan and the Licensee is unable to obtain that third party consent in accordance with **clause 15.7(i)**) and any Project Plan (insofar as the Licensee holds any Intellectual Property Rights in relation to the Project Plan as a result of the Licensee's participation in creating the Project Plan).
- (i) Where the Commission requires third party information to be included in the Transition Plan in accordance with **clause 15.7(b)(iv)**, the Licensee must take reasonable steps to obtain any necessary third party consent to include that information in the Transition Plan. Where the Licensee is unable to obtain the third party consent, the Licensee must notify the Commission.
- (j) The Licensee warrants that it has the right to grant the licence the subject of **clause 15.7(h)** and that the exercise of that licence will not infringe:
  - (i) in relation to any Transition Plan: any Intellectual Property Rights or Moral Rights of any third party; or
  - (ii) in relation to any Project Plan: any Intellectual Property Rights of any third party or (insofar as the Licensee or its employees, Agents or Contractors created, or provided content for, the Project Plan) any Moral Rights of any third party.

## **15.8 Reimbursement by the State**

- (a) Subject to **clauses 15.8(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 set out in and consistent with the Project Plan and approved by the Minister in writing;
  - (ii) relate directly to carrying out the Wagering and Betting Transition activities (and not merely any activities relating to the Conduct of Authorised Betting Competitions by the Licensee); and

- (iii) are substantiated by written documents (including, for example, in the form of time sheets or invoices) in a form approved by the Commission.
- (b) The State will not reimburse the Licensee for any costs or expenses incurred by the Licensee in respect of:
  - (i) attending and participating at the TSC;
  - (ii) preparing, updating, finalising and obtaining approval of Transition Plans;
  - (iii) preparing and finalising the Project Plan; and
  - (iv) participating in the dispute resolution process in **clause 25**.
- (c) The State is not obliged to reimburse the Licensee for any expenses incurred in respect of an activity covered by **clause 15.8(a)** that is required as a direct or indirect consequence of a default committed or threatened by the Licensee under the Licence or this Agreement.
- (d) The State will reimburse the Licensee for out of pocket expenses specified in **clause 15.8(a)** 30 Business Days after the later of:
  - (i) the end of the Transition Out Period; or
  - (ii) the date on which the Commission considers the Wagering and Betting Transition to be completed,

or at such other times as may be agreed by the State, following receipt of evidence reasonably satisfactory to the State that the Licensee has incurred the expenses.

## 16 Intellectual Property

### 16.1 Existing Intellectual Property Rights

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

### 16.2 Warranty regarding Intellectual Property Rights

- (a) The Licensee warrants that it owns or has the right to use all the Intellectual Property Rights used by it (or its employees, Agents or Contractors) to Conduct Authorised Betting Competitions, including but not limited to the Licensed IP.

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

### 16.3 State IP Licence

- (a) Subject to the provisions of this clause, the Licensee grants to the State a royalty-free, perpetual and irrevocable licence to:
  - (i) use (including the right to reproduce, publish, modify or amend); and
  - (ii) sub-licence the right to use (including the right to reproduce, publish, modify or amend),the Licensed IP in relation to Authorised Betting Competitions (or any similar or replacement games), including in relation to Conducting Authorised Betting Competitions
- (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 use in relation to Conducting Authorised Betting Competitions;
  - (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 cancellation, termination or expiration of this Agreement;
  - (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 Authorised Betting Competitions; and
  - (iv) otherwise be on the terms the State considers appropriate.
- (c) For the avoidance of doubt:
  - (i) if, following legislative changes, there are multiple New Licensees at any time, the State may sub-licence the Licensed IP to each of them, on the condition that any New Licensee other than the Temporary Licensee does not (except to the extent that the New Licensee is undertaking Preparatory Action) use the Licensed IP during the term of the Licensee's Licence;
  - (ii) where a New Licensee ceases to hold the right to Conduct Authorised Betting Competitions, the State may sub-licence the Licensed IP to any subsequent New Licensee.
- (d) Any Intellectual Property Rights associated with the Conduct of Authorised Betting Competitions 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:
  - (i) it has the authority to grant the State IP Licence, including all necessary consents from any other person with any right, title or interest in the Licensed IP; and
  - (ii) 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.
- (f) 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.
- (g) 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.
- (h) The Minister may require that the Licensee take such actions, including making such applications, executing such documents and instituting or defending such proceedings, as are required in the reasonable opinion of the Minister to protect and preserve any of the State's rights under the State IP Licence or any New Licensee's rights under an IP Sub-Licence Agreement. If the Licensee is not in breach of **clause 16.3(e)**, and the indemnity in **clause 16.4(a)** does not apply, the State will pay the reasonable costs of the Licensee taking such action as approved by the Minister in writing (provided that the Licensee notifies such costs to the Minister a reasonable period before incurring them). If the Licensee fails to take any action under this **clause 16.3(h)** within a reasonable period, without limiting any other right or remedy of the State, the State may take such action in the name of the Licensee.
- (i) Without limiting **clause 16.3(h)**, 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; and
  - (ii) 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.
- (j) 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 16.3**, subject to the State agreeing directly in favour of the New Owner, to continue to observe all of the State's obligations hereunder.

#### **16.4 Intellectual Property Indemnity**

- (a) The Licensee indemnifies and holds harmless the State, the Minister, the Commission, any New Licensee who enters into an IP Sub-Licence Agreement and each of their respective representatives, members, officers, employees, contractors or agents (**IP Indemnified Parties**) from and against all losses, damages, costs, liabilities and expenses arising directly or indirectly, as a result of, associated or in connection with any Claim by a third party against any of the IP Indemnified Parties alleging that the Licensed IP or the use or sub-licensing by the State of the Licensed IP or the use of the Licensed IP by any New Licensee in accordance with an IP Sub-Licence Agreement constitutes an infringement of the Intellectual Property Rights or Moral Rights of that third party (**Third Party Claim**).
- (b) The State holds the benefit of the indemnity in **clause 16.4(a)** 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.
- (c) 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.

## **17 Insurance**

### **17.1 Insurance Generally**

The Licensee must take out and maintain:

- (a) the insurances that a prudent person would obtain and maintain in order to Conduct activities substantially similar to the Authorised Betting Competitions; and
- (b) the insurances for such amount and with such insurers as required by the Minister from time to time,

including as a minimum the insurances specified in **clause 17.2**.

### **17.2 Insurance Requirements**

This clause has been redacted

### **17.3 Acceptable Insurers**

All insurances which the Licensee is required to effect under this Agreement must be effected with an insurer with a Rating no less than a Standard & Poor's A-, Moody's A3 or equivalent.

### **17.4 Proof of insurance**

- (a) Upon notice from the Minister, the Licensee must provide evidence to the Minister of the insurances effected and maintained by the Licensee.
- (b) Notwithstanding **clause 17.4(a)**, the Licensee must provide, or cause to provide, to the Minister a certified copy of each certificate of currency, renewal certificate and endorsement slip, within 10 Business Days of the inception date or renewal date of any insurance policy or the issuing of any endorsement to any insurance policy, and such certificates of currency, renewal certificates and endorsement slips must either be issued on the insurers' or insurance broker's letterhead, or bear the insurers' stamp and authorised signature.

## **18 Liability and Indemnities**

### **18.1 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 Authorised Betting Competitions. The Licensee has not relied on any conduct, statements, warranties or representations made to the Licensee or to any other person by or on behalf of the State, the Minister or the Commission or any of their respective representatives, members, officers, employees, contractors and agents.

## **18.2 Liability in relation to the Licence**

Except as expressly provided to the contrary, 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 grant of the Licence or the Licence being suspended, cancelled or surrendered.

## **18.3 Exclusion of liability**

- (a) The Licensee hereby releases the State, the Minister and the Commission (and any of their respective representatives, members, officers, employees, contractors and agents) (**Indemnified Parties**) from and against any Claim arising directly or indirectly, to compensate the Licensee or any other person for any losses, damages, costs, liabilities or expenses incurred or suffered by the Licensee or any other person as a result of, associated or in connection with the Conduct of Authorised Betting Competitions (including the Licence being suspended, cancelled or surrendered), including where the loss, damage, cost, liability or expense is caused by the Licensee following any lawful directions of the Minister or the Commission except to the extent that any Claim results directly from the negligence of any Indemnified Parties.
- (b) The Licensee must require, and use its best endeavours to procure, a similar release of liability, in the form and substance satisfactory to the Minister, from all its Agents and Contractors.

## **18.4 Indemnities**

- (a) The Licensee indemnifies the State, the Minister and the Commission (and each of their respective representatives, members, officers, employees, contractors and agents) (**Indemnified Parties**) from and against any Claim, including costs or expenses (**Indemnified Claims**), arising directly or indirectly, as a result of, associated or in connection with the Conduct of Authorised Betting Competitions by the Licensee under the Licence (including, for the avoidance of doubt, the Licence being suspended, cancelled or surrendered), including any Claims from Agents, Contractors, Players or other persons, except for any Claims which result directly from the negligence of any of the Indemnified Parties.

- (b) The State holds the benefit of the indemnity in **clause 18.4(a)** on trust for each of the Indemnified Parties and the 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.

## 19 General Warranties

### 19.1 Licensee's warranties

The Licensee warrants, at the Agreement Date and on each day until the Agreement terminates, that:

- (a) it will be able to demonstrate (to the reasonable satisfaction of the Commission) at all times that it will be able to pay all dividends (whether claimed or unclaimed) upon determination of an Authorised Betting Competition Conducted by it under the Licence in accordance with the Betting Rules or Betting Exchange Rules and refund the price of all Authorised Betting Competition entries in respect of any Authorised Betting Competition Conducted by it under the Licence in accordance with the Betting Rules or Betting Exchange Rules if it is not drawn or determined;
- (b) it is duly incorporated and is validly existing under the laws of its jurisdiction of incorporation, with full power and authority to enter into this 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 Authorised Betting Competition Assets, other than where the Minister has given consent in writing to such Encumbrances;
- (f) the Licensee is not the subject of a Financial Default;

- (g) the Licensee has declared (within the timeframe contemplated in **clause 19.2(k)**) and will continue to declare (within the timeframe contemplated in **clause 19.2(k)**) to the Commission any breach by it of any laws relating to the Conduct of gambling in Victoria or elsewhere (including providing all material particulars);
- (h) the Licensee has declared (within the timeframe contemplated in **clause 19.2(l)**) and will continue to declare (within the timeframe contemplated in **clause 19.2(l)**) to the Commission any offences it has committed relating to the Conduct of Authorised Betting Competitions whether in Victoria or elsewhere (including providing all material particulars);
- (i) the Licensee:
  - (i) is ISO 9000 and ISO 27000 certified; or
  - (ii) is able to demonstrate to the reasonable satisfaction of the Commission that it is capable to an equivalent or higher level; or
  - (iii) is able to demonstrate that it has undertaken reasonable steps to become ISO 9000 and ISO 27000 certified or equivalent; or
  - (iv) is able to pass an independent audit of all areas required by the Commission showing procedures, training and record keeping, and has adopted the Information and Communication Technology (ICT) Service Management Framework as a standard or is able to demonstrate to the reasonable satisfaction of the Commission that it has adopted a generally equivalent framework as a standard or has undertaken reasonable steps to adopt the Information and Communication Technology (ICT) Service Management Framework as a standard or adopt a generally equivalent framework as a standard; and
- (j) all information provided in writing by or on behalf of the Licensee to the Minister and 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 as of the date it was provided.

## **19.2 Licensee's obligation during Term**

The Licensee must at all times during the Term ensure:

- (a) it is able to demonstrate (to the reasonable satisfaction of the Commission) that it will be able to pay all dividends (whether claimed or unclaimed) upon determination of an Authorised Betting Competition Conducted by it under the Licence in accordance with the Betting Rules or Betting Exchange Rules and refund the price of all Authorised Betting Competition entries in respect of any Authorised Betting Competition Conducted by it under the Licence in accordance

- with the Betting Rules or Betting Exchange Rules if it is not drawn or determined;
- (b) it is duly incorporated and is validly existing under the laws of its jurisdiction of incorporation, with full power and authority to comply with the conditions of the Licence, perform its obligations under this Agreement and perform its obligations under any other Agreements;
  - (c) this Agreement remains 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 performance by the Licensee of its obligations do not:
    - (i) conflict with the constitution or by-laws of the Licensee;
    - (ii) constitute a violation of or a default under any agreements or arrangements to which the Licensee is a party; or
    - (iii) contravene any law;
  - (e) there are no Encumbrances over any part of the Authorised Betting Competition Assets, other than where the Minister has given consent in writing to such Encumbrance;
  - (f) it protects the Authorised Betting Competition Assets and, at the Licensee's expense, prosecutes or defends all legal proceedings that are necessary for the protection of the Authorised Betting Competition Assets to the extent appropriate in accordance with prudent business practices;
  - (g) the Licensee is not the subject of a Financial Default;
  - (h) it complies with all laws applicable to the matters arising under this Agreement, including the Act and Regulations;
  - (i) it obtains and renews all Authorisations required for the Licensee to:
    - (i) Conduct the Authorised Betting Competitions;
    - (ii) perform its obligations under the Licence, this Agreement and any other Agreements; and
    - (iii) carry on business;
  - (j) it ensures that it is in full compliance with all laws (including laws of other States and Territories) relating to the Conduct of gambling, including Authorised Betting Competitions, in Victoria or elsewhere;
  - (k) the Licensee declares to the Commission any breach it has committed of any laws relating to the Conduct of gambling in Victoria or elsewhere (including providing all material particulars), as soon as practicable (and in all events no later than 2 Business Days) after the Licensee becomes aware of that breach;
  - (l) the Licensee declares to the Commission any offences it has committed relating to the Conduct of Authorised Betting Competitions

whether in Victoria or elsewhere (including providing all material particulars), as soon as practicable (and in all events no later than 2 Business Days) after the Licensee becomes aware of that offence;

- (m) the Licensee:
  - (i) is ISO 9000 and ISO 27000 certified;
  - (ii) is able to demonstrate to the reasonable satisfaction of the Commission that it is capable of an equivalent or higher level;
  - (iii) is able to demonstrate that it has undertaken reasonable steps to become ISO 9000 and ISO 27000 certified or have a equivalent; or
  - (iv) is able to pass an independent audit of all areas required by the Commission showing procedures, training and record keeping, and has adopted the Information and Communication Technology (ICT) Service Management Framework as a standard or is able to demonstrate to the reasonable satisfaction of the Commission that it has adopted a generally equivalent framework as a standard or has undertaken reasonable steps to adopt the Information and Communication Technology (ICT) Service Management Framework as a standard or adopt a generally equivalent framework as a standard; and
- (n) all information provided in writing by or on behalf of the Licensee to the Minister and Commission (including the registration of interest and application to apply for the Licence submitted by the Licensee) is in all material respects true and accurate and not misleading by omission.

## 20 Termination

### 20.1 Termination

- (a) This Agreement will terminate upon the cancellation, surrender of the Licence in accordance with the Act, termination or expiration of the Licence 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.

## 21 Force Majeure

### 21.1 Notice of Force Majeure Event

- (a) If the Licensee becomes aware of any matter likely to constitute a Force Majeure Event that may prevent or delay the Licensee in performing any of its obligations under the Licence or this 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) subject to the Licence and the Act, those obligations of the Licensee under this Agreement which will be suspended to the extent permitted by law under this **clause 21.1**; and
  - (iii) the maximum period during which those obligations will be suspended (**Suspension Period**).
- (d) The Licensee must on request by the Minister and otherwise at reasonable intervals throughout the Suspension Period, including whenever the circumstances set out in the FME Claim Notice change, give to the Minister:
  - (i) an updated plan and timetable describing the action taken and the action proposed by the Licensee to comply with its obligations under this **clause 21** which is acceptable to the Minister;
  - (ii) details of any changes to the circumstances set out in the FME Claim Notice; and
  - (iii) details of any other matter relevant to the Force Majeure Event or the Licensee's obligations under the Licence or this Agreement.
- (e) The Licensee may at any time, request an extension to the Suspension Period by notice to the Minister. The notice must specify

the reason why the Licensee makes that request, the extension requested and any other information relevant to the assessment of the request. The Minister may accept or reject the request in whole or in part at the Minister's absolute discretion.

- (f) The Licensee must at all times, to the reasonable satisfaction of the Minister, comply with and diligently pursue all actions under the then current plan and timetable provided to the Minister under the FME Claim Notice and as updated by **clause 21.1(d)(i)**.

## **21.2 Suspension of obligations**

The relevant obligations of the Licensee under this Agreement will, subject to the Licensee's compliance with **clauses 21.1(b), 21.1(d), 21.1(f), 21.3 and 21.4**, be suspended in accordance with the Suspension Notice during the Suspension Period.

## **21.3 Mitigation and reinstatement**

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

## **21.4 End of Suspension Period**

The Suspension Period immediately ceases if:

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

that the effect of the Force Majeure Event has been overcome or remedied.

## **21.5 Licensee's costs and expenses**

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

# **22 Default**

## **22.1 Financial Default**

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

## **22.2 Other Default**

- (a) If the Licensee fails to perform or observe a covenant or obligation in this Agreement (including for the avoidance of doubt, as a

consequence of **clause 8.2(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 (no less than 10 Business Days) from the date of receipt by the Licensee of the Failure Notice in which to cure or remedy the Failure (**Cure Period**); and
  - (iv) if the Failure is not capable of being cured or remedied, any reasonable requirements to redress the prejudice, loss or harm arising from the failure (including compensation to the State) (**Alternative Arrangements**).
- (b) Despite **clause 22.2(a)**, if in the Minister's sole opinion, the Failure is of a serious nature, then the Minister may treat the Failure as a Step-In Event and immediately proceed in accordance with **clause 23**. For the purposes of this **clause 22.2(b)**, a Failure is of a serious nature if it materially adversely affects, or is capable of materially adversely affecting:
- (i) the interest of the public or the Players;
  - (ii) the revenue of the State; or
  - (iii) the revenue of the Victorian Racing Industry.
- (c) The Licensee may at any time, request an extension to the Cure Period by notice to the Minister. The notice must specify the reason why the Licensee is not able to cure or remedy the Failure within the existing Cure Period, the additional time required and any other information relevant to the assessment of the request. The Minister may accept or reject the request at his or her absolute discretion.

### **22.3 Remediating within the Cure Period**

- (a) Upon receipt of a Failure Notice, if the Failure is capable of being cured or remedied, the Licensee must cure or remedy the Failure within the Cure Period.
- (b) In addition to its obligations under **clause 22.3(a)**, the Licensee must:
  - (i) provide the Minister (no later than 5 Business Days after the Licensee's receipt of a Failure Notice) with a written plan which specifies how the Failure occurred and how the Licensee intends to remedy the Failure (**Cure Plan**). The Cure Plan must be one which, if followed, could reasonably be expected to remedy the Failure within the Cure Period;
  - (ii) remedy the Failure in accordance with the Cure Plan and comply with any reasonable directions of the Minister in relation to the Cure Plan; and



- (iii) provide the Minister with regular updates (no less frequently than every 10 Business Days) on the progress of the remedy under the Cure Plan.

## **22.4 Remediating with Alternative Arrangements**

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

## **22.5 Failure to remedy**

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

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

## **22.6 Ministerial Directions and Disciplinary Actions not affected**

- (a) Nothing in this 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.

# **23 Step-In Right**

## **23.1 Step-In Rights**

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

- (c) The Licensee acknowledges and agrees that if the Minister gives a Step-In Notice to the Licensee under **clause 23.1(a)**, the Minister will:
  - (i) provide a copy of any Step-In Notice given to the Licensee under **clause 23.1(a)** to the Victorian Racing Industry Entities; and
  - (ii) consult with and take into consideration any representations by the Victorian Racing Industry Entities to the Minister as to:
    - (A) whether the Minister should exercise his or her discretion under **clause 23.1(e)**; and
    - (B) the identity of the Temporary Operator.
- (d) The Minister, by written notice to the Licensee, may revoke a Step-In Notice.
- (e) If:
  - (i) the Licensee fails to make representations to the Minister within 5 Business Days after receiving a Step-In Notice; or
  - (ii) the Minister, after taking into account any representations by the Licensee, reasonably considers that the exercise of his or her discretion is appropriate action for the Minister to take having regard to the extent of any Failure, the interest of the public or Players, the risk to the revenue of the State or the risk to the revenue of the Victorian Racing Industry,

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 a Temporary Operator nominated by the Minister as an agent of the Licensee to take the steps permitted under this **clause 23**.

## 23.2 Steps

The Temporary Operator is entitled, as agent of the Licensee, to take any of the following steps under this **clause 23** in respect of the Conduct of Authorised Betting Competitions, provided such steps are reasonable and necessarily taken to Conduct Authorised Betting Competitions in a manner consistent with the requirements of the Act, the Licence, this Agreement or any other Agreements:

- (a) assist in exercising all or any of the Licensee's powers, and assist in performing all or any of the Licensee's obligations, including exercising all of the Licensee's rights with respect to any of its Agents, Contractors and all other persons under the Licensee's direction or control, for the purposes of assisting in establishing or Conducting Authorised Betting Competitions as an Agent of the Licensee (but 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 Accounts) operated by the Licensee for the purpose of assisting in establishing or Conducting Authorised Betting Competitions as an Agent of the Licensee;
- (c) acquiring additional or replacement products or services from any suppliers for the purpose of assisting in establishing or Conducting Authorised Betting Competitions as agent of the Licensee;
- (d) taking such other steps as are, in the reasonable opinion of the Temporary Operator, necessary to assist in Conducting Authorised Betting Competitions 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 Operator, necessary to carry out the obligations of the Licensee under the Transition Plan; and
- (f) electing to cease exercising any of its rights referred to above.

### **23.3 Intellectual Property and Authorised Betting Competitions equipment**

The Licensee appoints the Temporary Operator as its agent until cessation of step-in under **clause 23.7** to exercise any rights the Licensee has to:

- (a) use, reproduce, modify or adapt any or all Intellectual Property Rights associated with the Conduct of Authorised Betting Competitions;
- (b) use, reproduce, copy or install any or all software, hardware, facilities, computer systems, servers, equipment, network and infrastructure associated with the Conduct of Authorised Betting Competitions;
- (c) enter and occupy all Points of Sale and premises associated with the Conduct of Authorised Betting Competitions;
- (d) exercise all other rights necessary to allow the Temporary Operator to Conduct Authorised Betting Competitions, for any purposes associated with or connected to the Conduct of Authorised Betting Competitions in the State; and
- (e) permit third parties (being contractors of the Temporary Operator) to do any of (a) to (d) above for any purposes associated with or connected to the Conduct of Authorised Betting Competitions in the State.

### **23.4 Operation during step-in**

- (a) When exercising its rights under this **clause 23** the State will use all reasonable endeavours to procure that the Temporary Operator assists, and will enter into arrangements with the Temporary Operator which provide to the effect that the Temporary Operator must assist, in Conducting Authorised Betting Competitions 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 or Contractors.
- (b) The Temporary Operator will receive all revenue, incur all liabilities (provided such liabilities are reasonable and necessarily incurred to Conduct Authorised Betting Competitions in a manner consistent with the requirements of the Act, the Licence, this Agreement or any other Agreements) and pay all expenses associated with or connected to the Conduct of Authorised Betting Competitions as agent of the Licensee so that the Licensee will either be entitled to any surplus or be required to bear any loss which occurs from the time of the Temporary Operator's appointment under **clause 23.1(a)** until cessation of step-in under **clause 23.7**.
- (c) The Licensee must reimburse the State for all costs and expenses incurred by the State in exercising its rights under this **clause 23** including any fees or other amounts paid by the State to the Temporary 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 Temporary Operator as agent of the Licensee must pay to the State the amount specified in that notice within 5 Business Days after receipt of that notice.

### **23.5 Licensee to give all assistance**

- (a) The Licensee must assist the Temporary Operator in whatever way possible in the exercise of the Temporary Operator's rights under this **clause 23** 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 and all other persons under the Licensee's direction or control do everything necessary or appropriate to cooperate with the Temporary Operator in the exercise of the rights granted in this **clause 23**. For the avoidance of doubt, the Licensee must provide the Minister with a list of each Agent or Contractor engaged by the Licensee from time to time and upon request by the Minister, must procure that any or all Agents or Contractors enter into a tripartite deed with the Minister and the Temporary Operator.
- (b) Without limiting **clause 23.5(a)**, the Licensee must allow the Temporary 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 and all other persons under the Licensee's

direction or control in connection with the provision by the Licensee of all services in support of the Conduct of Authorised Betting Competitions;

- (ii) all Records and the State will have the Temporary Operator keep such materials in confidence subject to any disclosure requirements or rights under law applicable to the Minister, the State or the Temporary Operator.

### **23.6 Attorney**

The Licensee:

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

### **23.7 Cessation of step-in**

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

- (a) immediately upon the Licence being suspended or cancelled or its surrender takes effect under section 4.3A.24 of the Act; or
- (b) as soon as the Minister determines that it is appropriate to terminate the exercise of the rights under **clause 23** (including, for example, in the situation where the Licensee remedies the Failure to the reasonable satisfaction of the Minister following expiration of the Cure Period).

### **23.8 Minister and Temporary Operator to act reasonably**

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

### **23.9 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 Temporary Operator and the exercise by the Temporary Operator of the rights under this **clause 23** except to the extent that the Minister does not act in accordance with **clause 23.8**.
- (b) The Licensee acknowledges and agrees that the Temporary Operator will not be liable to the Licensee for any losses incurred by the Licensee resulting from the appointment of the Temporary Operator and the exercise by the Temporary Operator of the rights under this **clause 23** except to the extent that the Temporary Operator does not

act in accordance with **clause 23.8** or breaches any provision of the Licence or Agreement or where any losses incurred by the Licensee results directly from the negligence of the Temporary Operator.

- (c) The Licensee acknowledges and agrees that the Minister and the State and the Temporary Operator are not obliged to overcome or mitigate any risk or consequences in respect of which the Minister or the Temporary Operator exercises its rights under this **clause 23** but with the consent of the Minister the Licensee can have the opportunity to overcome or mitigate such risk or consequences.
- (d) 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 Operator and the exercise by the Temporary Operator of the rights under this **clause 23** except to the extent that the Licensee does not act in accordance with **clause 23.5 or 23.6(b)**.
- (e) The State will procure that the Temporary Operator enters into a legally binding agreement with the Licensee pursuant to which the Temporary Operator will covenant that it will act in accordance with this **clause 23** and it will acknowledge and agree to be bound by any provision of this **clause 23** for the benefit of the Licensee.

#### **23.10 Other rights**

The exercise by the Minister of his or her rights under this **clause 23** does not affect any other rights or entitlements of the Minister or the Commission (whether under the Act, the Licence, this Agreement or any other Agreement).

## **24 Temporary Licensee**

### **24.1 Application**

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

- (a) subject to the terms and conditions of the Temporary Licence;
- (b) to the extent permitted by law; and
- (c) without prejudice to **clauses 8.2 or 16.3** or any other clause of this Agreement,

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

### **24.2 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 24** in respect of the Conduct of Authorised Betting Competitions:

- (a) exercise all or any of the Licensee's powers, and perform all or any of the Licensee's obligations, including exercising all of the Licensee's

rights with respect to any of its Agents, Contractors and all other persons under the Licensee's direction or control, for the purposes of establishing or Conducting Authorised Betting Competitions as Temporary Licensee;

- (b) operating and managing any account (including the Approved Account(s)) operated by the Licensee for the purpose of establishing or Conducting Authorised Betting Competitions as Temporary Licensee;
- (c) acquiring additional or replacement products or services from any suppliers for the purpose of establishing or Conducting Authorised Betting Competitions as Temporary Licensee;
- (d) taking such other steps as are, in the reasonable opinion of the Temporary Licensee, necessary to Conduct Authorised Betting Competitions in accordance with the Act, the Temporary 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.

### **24.3 Intellectual Property and Authorised Betting Competition equipment**

The Licensee authorises the Temporary Licensee until the Temporary Licence (including any extension of a Temporary Licence) is cancelled to exercise any rights the Licensee has to:

- (a) use, reproduce, modify or adapt any or all Intellectual Property Rights associated with the Conduct of Authorised Betting Competitions;
- (b) use, reproduce, copy or install any or all software, hardware, facilities, computer systems, servers, equipment, network and infrastructure associated with the Conduct of Authorised Betting Competitions;
- (c) enter and occupy all Points of Sale and premises associated with the Conduct of Authorised Betting Competitions;
- (d) exercise all other rights necessary to allow the Temporary Licensee to Conduct Authorised Betting Competitions, for any purposes associated with or connected to the Conduct of Authorised Betting Competitions in the State; and
- (e) permit third parties (being contractors of the Temporary Licensee) to do any of (a) to (d) above for any purposes associated with or connected to the Conduct of Authorised Betting Competitions in the State.

#### **24.4 Warranty**

The Licensee warrants that it has or will obtain all necessary third party consents required for the Licensee to grant the authority to the Temporary Licensee required under **clause 24.3**.

#### **24.5 Operation during Temporary Licence**

The Licensee must reimburse the State for all costs and expenses incurred by the State in exercising its rights under this **clause 24** including any fees or other amounts paid by the State to the Temporary Licensee and the Minister may from time to time provide to the Licensee a written notice detailing the amount of those costs and expenses required to be reimbursed by the Licensee and the Licensee must pay to the State the amount specified in that notice within 5 Business Days after receipt of that notice.

#### **24.6 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 this **clause 24** 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 and all other persons under the Licensee's direction or control do everything necessary or appropriate to cooperate with the Temporary Licensee in the exercise of the rights granted in this **clause 24**.
- (b) Without limiting **clause 24.6(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 and all other persons under the Licensee's direction or control, in connection with the provision by the Licensee of all services in support of the Conduct of Authorised Betting Competitions;
  - (ii) all Records and the State will have the Temporary Licensee keep such materials in confidence subject to any disclosure requirements or rights under law applicable to the Minister, the State or the Temporary Licensee.

#### **24.7 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 which relate to the Conduct of Authorised Betting Competitions; and



- (b) agrees to ratify and confirm whatever action the Temporary Licensee takes in accordance with this **clause 24**.

## **24.8 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 24**.
- (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 24** except to the extent that the Temporary Licensee breaches any provision of this **clause 24**, other than where the losses incurred by the Licensee result from the negligence of the Temporary Licensee.
- (c) The Licensee will not be liable to the Minister or the State for any losses incurred by the State resulting from the appointment of the Temporary Licensee and the exercise by the Temporary Licensee of the rights under this **clause 24** except to the extent that the Licensee does not act in accordance with **clauses 24.6** or **24.7(b)**.
- (d) The State will procure that the Temporary Licensee enters into a legally binding agreement with the Licensee pursuant to which the Temporary Licensee will covenant that it will act in accordance with this **clause 24** and it will acknowledge and agree to be bound by any provision of this **clause 24** for the benefit of the Licensee.

## **24.9 Other rights**

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

# **25 Dispute resolution**

## **25.1 Dispute resolution – general**

- (a) This **clause 25** applies to any dispute under or in relation to this Agreement which arises after the termination of the Agreement or as contemplated by **clause 15.6**, including, for the avoidance of doubt, any dispute under or in relation to any indemnity given under or clause of this Agreement which survive the termination of this Agreement under **clause 30.6**.

- (b) The parties must use all reasonable endeavours to resolve any dispute to which this **clause 25** applies.
- (c) In relation to a dispute arising under or in relation to **clause 15.6**, the parties must use all reasonable endeavours to resolve the dispute having regard to the Transition Objectives.

## **25.2 Dispute Notice**

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

## **25.3 Negotiation**

- (a) The parties agree that the Minister and the Licensee must meet within 5 Business Days of the date on which a Dispute Notice is served.
- (b) The Minister 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 and the Licensee must be reduced to writing and signed by or on behalf of each party in order to be contractually binding on the parties.
- (d) Purported resolutions which do not comply with the requirements in **clause 25.3(c)** will not be contractually binding on the parties.

## **25.4 Mediation**

- (a) If the dispute remains unresolved after the expiration of the period for negotiation by the Minister and the Licensee, being 10 Business Days after the date on which the Dispute Notice is received (or such later date as the parties may agree) (First Period), the dispute is, by this clause, referred to mediation.
- (b) The mediation will be conducted in Victoria. The Institute of Arbitrators and Mediators Australia Mediation and Conciliation Rules (as amended from time to time) and as amended by this clause, apply to the mediation, except where they conflict with this clause.

- (c) If the parties have not agreed upon the mediator and the mediator's remuneration within 7 days after the First Period, the mediator is the person appointed by and the remuneration of the mediator is the amount or rate determined by:
  - (i) the Chair of the Victorian Chapter of the Institute of Arbitrators and Mediators Australia (Principal Appointor), or
  - (ii) the Principal Appointor's nominee.
- (d) The Licensee must pay half the mediator's remuneration. The Licensee must pay its own costs of the mediation.

## 25.5 Arbitration

- (a) If the dispute is not resolved within 30 days after the appointment of the mediator (Second Period), the dispute is, by this clause, referred to arbitration. The arbitration must be conducted in Victoria by a single arbitrator.
- (b) If the parties have not agreed upon the arbitrator within 7 days after the Second Period, the arbitrator is the person appointed by the Principal Appointor or the Principal Appointor's nominee, except that the arbitrator must not be:
  - (i) a present or former member, officer, employee or agent of a party to the dispute; or
  - (ii) a person who has acted as a mediator or advised any party in connection with the dispute.
- (c) The arbitration must be conducted in accordance with the *Commercial Arbitration Act 1984* (Vic) except that:
  - (i) if the dispute arises under or in relation to **clause 15**, the arbitrator must have regard to the Transition Objectives;
  - (ii) the arbitrator must only accept evidence which would be accepted in a court of law;
  - (iii) a party to the dispute may be represented by a qualified legal practitioner or other representative;
  - (iv) the arbitrator must include in the arbitration award the findings on material questions of law and of fact, including references to the evidence on which the findings of fact were based; and
  - (v) the Licensee and the State consents to an appeal to the Supreme Court of Victoria on any question of law arising in the course of the arbitration or out of an arbitration award.
- (d) The arbitrator, after accepting the appointment and during the arbitration, may:
  - (i) require the parties to lodge security or further security towards the arbitrator's fees and expenses; and
  - (ii) apply any security towards those fees and expenses,

but the arbitrator may not direct the parties to provide security for the costs of the arbitration to be incurred by any other party to the dispute.

- (e) Subject only to the requirement that the parties first endeavour to resolve the dispute by mediation in accordance with **clause 25.4** this clause is intended to be an agreement by the Licensee in writing to refer present or future disputes between the parties to arbitration.

## **25.6 Court Action**

- (a) The Licensee must not commence or maintain a court action or proceeding upon a dispute in connection with this Agreement until the dispute has been submitted to mediation, referred to arbitration and determined under this **clause 25**.
- (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 Licensee seeks urgent interlocutory relief.

## **25.7 Continue to perform obligations**

- (a) Despite the submission of a dispute to mediation or the reference of a dispute to arbitration under this clause, the Licensee must continue to perform its obligations under the Act, Licence, this Agreement and any other Agreements.
- (b) In the arbitrator's award, the arbitrator may make any appropriate adjustment for the performance of obligations under this Agreement from the date the dispute was referred to mediation in accordance with **clause 25.4(a)**.

## **25.8 Survival**

- (a) This **clause 25** continues in force even where this Agreement has been fully performed, terminated or rescinded or where the parties or any of them have been discharged from the obligation to further perform this Agreement for any reason.
- (b) This **clause 25** applies even where this Agreement is otherwise void or voidable.

## **25.9 Other rights**

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

## 26 Goods and Services Tax

### 26.1 Construction

In this clause 26:

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

### 26.2 Consideration GST exclusive

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

### 26.3 Payment of GST

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

### 26.4 Timing of GST payment

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

### 26.5 Tax invoice

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

### 26.6 Adjustment event

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

### 26.7 Reimbursements

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

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

### **26.8 No Merger**

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

## **27 Notices and representatives**

- (a) A notice or other communication connected with this Agreement (Notice) has no legal effect unless it is in writing.
- (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 prepaid post to; or
  - (ii) 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 27(c)**, it must be treated as given to and received by the party to which it is addressed:
  - (i) if sent by post, on the second Business Day (at the address to which it is posted) after posting;
  - (ii) if delivered before 5pm on a Business Day at the place of delivery, upon delivery, and otherwise on the next Business Day at the place of delivery.

The Parties representatives for the purposes of the Agreement are set out in Schedule 1.

## **28 Confidentiality and disclosure**

### **28.1 Keep Confidential**

Subject to **clauses 28.2, 28.3 and 28.4**, the Licensee must keep the contents of this Agreement and all documents and information made available by the Minister or the Commission to the Licensee 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.

## **28.2 Exceptions to confidentiality**

**Clause 28.1** will not apply in the following circumstances:

- (a) any disclosure required by Law or legally binding approval;
- (b) in respect of information already in the public domain (other than as a result of breach of this **clause 28**);
- (c) any disclosure required by any applicable stock exchange listing rules;
- (d) disclosure to solicitors, barristers or other professional advisers under a duty of confidentiality;
- (e) disclosure to a banker or other financial institution relevant to a party, to the extent required for the purpose of raising funds or maintaining compliance with credit arrangements, if the banker or financial institution first gives a binding covenant to the Minister to maintain confidentiality of the information, in form and substance satisfactory to the Minister;
- (f) disclosure by the Licensee in a disclosure document required in connection with any capital or debt raising or any other document to be prepared in connection with the issue of equity, debt or other securities in the Licensee or any related body corporate of the Licensee;
- (g) disclosure by the Licensee to the ultimate parent company or parent company of the Licensee or the directors, officers or employees of the ultimate parent company or parent company of the Licensee;
- (h) disclosure by the Licensee to the Licensee's insurer or insurance brokers or the insurers or insurance brokers of a related body corporate of the Licensee;
- (i) disclosure by the Licensee to an Agent, Contractor or Associate, for that Agent, Contractor or Associate to perform obligations under the Act, the Licence, this Agreement or any other Agreement, if the Agent, Contractor or Associate first gives a binding covenant to the Minister to maintain confidentiality of the information, in form and substance satisfactory to the Minister;
- (j) disclosure which is required to be made by the Minister to enable the Minister to comply with its statutory reporting obligations, or reporting obligations to a Government Agency; or
- (k) any disclosure to the State.

## **28.3 Disclosure by the Minister**

The Minister may publish or disclose (on the internet or otherwise):

- (a) the terms and conditions of the Licence, this Agreement or any other Agreements; and
- (b) any documents, information or decisions of the Minister or Commission arising under, out of or in connection with the Licence, this Agreement or any other Agreements, or relating to the performance of the Licence, this Agreement or any other Agreements,

except to the extent that any documents or information described in this **clause 28.3** have or has been identified by the Licensee and agreed by the Minister, as being confidential to the Licensee, and the disclosure of such documents or information is not otherwise within the scope of **clause 28.4**.

#### **28.4 Public disclosure**

- (a) The Licensee acknowledges and agrees that disclosure by the State, the Minister, the Commission or any Government Agency 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) to satisfy the disclosure requirements of the Victorian Auditor General, or to satisfy the requirements of Parliamentary accountability; or
  - (v) in the case of the Minister, to fulfil his or her duties of office.
- (b) If disclosure is required pursuant to sections 10.1.31, 10.1.32 or 10.1.33 of the Act, the Minister or the Commission will provide the Licensee, where practicable, with at least 3 Business Days written notice of the disclosure requirement and the reason for the disclosure requirement.
- (c) The Licensee must, at its own cost and expense, use its best endeavours to assist the State, a Minister, the Commission or a Government Agency in meeting its obligations under this **clause 28.4**.
- (d) 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 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:
    - (A) other than where such disclosure, announcement or statement is required under **clauses 28.2(a), 28.2(c), 28.2(j) or 28.2(k)**;



- (B) if such disclosure, announcement or statements relates to information covered by **clause 28.2(b)** or the disclosure of which is permitted by **clauses 28.2(d) to 28.2(k)**, such consent will not be unreasonably withheld;
- (ii) must, where practicable having regard to the circumstances which give rise to the need for such public disclosure, announcement or statement, use its best endeavours to agree with the Minister the wording and timing of all public disclosures, announcements and statements (including media releases) by it or its Agents 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, other than where any disclosure, announcement or statement is required under **clauses 28.2(a), 28.2(c), 28.2(g) or 28.2(h)** obtain the Minister's approval of the disclosure, announcement or statement (including media releases) before distributing such disclosure, announcements or statement; and
- (iv) as soon as practicable, must give to the Minister a copy of any disclosure, announcement or statement (including media release) agreed to or approved by the Minister under this **clause 28.4**.

## 29 Privacy

The Licensee acknowledges that it will 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 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.

## 30 Miscellaneous

### 30.1 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.

### 30.2 Transfer of functions

If a Government Agency referred to in this Agreement:

- (a) 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
- (b) ceases to exist, this Agreement is deemed to refer to that entity which serves substantially the same purpose or object as the former entity.

### **30.3 Severability**

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

### **30.4 Waiver**

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

### **30.5 Governing law and jurisdiction**

The law of Victoria governs this Agreement. The parties submit to the nonexclusive jurisdiction of the courts of Victoria and of the Commonwealth of Australia.

### **30.6 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, 11.1, 11.2, 11.3, 11.4, 13.1, 15, 16, 18, 19, 20, 21, 22, 23 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 25** survive frustration, rescission, suspension, termination or expiration of this Agreement.

### **30.7 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.

### **30.8 Further assurance**

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

### **30.9 Counterparts**

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

### **30.10 Deemed Breach of Licence**

- (a) For the purposes of **clause 5.2(b)** of the Licence, a Failure (other than in respect of **clauses 1.5, 18.3(b), 23.5(a), 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 **clause 22.3 or 22.4**.
- (b) For the avoidance of doubt, for the purposes of **clause 8.2(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 22.3 or 22.4**.

### **30.11 Deemed Breach of Agreement**

- (a) Without limitation to the Minister's powers under the Act, the Licence or the Agreements, the Licensee acknowledges and agrees that the Minister may, by written notice to the Licensee, amend this Agreement:
  - (i) to incorporate or adapt any provisions in the Executed Joint Venture Agreement for the purposes of deeming defaults of those provisions to be defaults under this Agreement provided that, in the Minister's opinion, the effect of the amended clauses is substantially similar to the effect of the ITA Cross-Default Provisions; and
  - (ii) to ensure that **clause 5.2(d)** of this Agreement, in the Minister's opinion, appropriately applies to the Executed Joint Venture Agreement
- (b) The Parties acknowledge and agree that the amended clauses set out in the Minister's notice pursuant to **clause 30.11(a)** will be deemed to be annexed to this Agreement as Schedule 6 as at the Licence Commencement Date.

### **30.12 Compliance with Executed Joint Venture Agreement**

- (a) The Executed Joint Venture Agreement may not authorise, require or prohibit anything to be done which is inconsistent with the Act and any Regulations, the Licence or the Agreements.
- (b) Nothing may be done or omitted to be done under or in accordance with the Executed Joint Venture Agreement if it is inconsistent with the Act and any Regulations, the Licence or the Agreements.

**30.13 Time is of the Essence**

Time is of the essence of this agreement.

Executed as an agreement

Executed by the Minister for Gaming,  
the Honourable Michael O'Brien MP, for and on behalf  
of the Crown in the right of the State of Victoria



Signature of Witness



Signature of the Minister

DANICA OGILVIE

Name of Witness

(BLOCK LETTERS)

Executed by Tabcorp Wagering (Vic)  
Pty Ltd ACN 134 587 107 in  
accordance with section 127 of the  
Corporations Act 2001



Signature of Company  
Secretary/Director

KWILLCOCK

Name of Company Secretary/Director  
(BLOCK LETTERS)



Signature of Director

DRH ATTENBOROUGH

Name of Director (BLOCK LETTERS)

# Schedule 1

## General

**Item 1            Agreement Date**

**19 DEC 2011**

**Item 2            Parties' Representatives**

Licensee:    David Attenborough, Director

Minister:    Ross Kennedy, Executive Director, Gaming and  
Racing

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

Tabcorp Wagering (Vic) Pty Ltd  
5 Bowen Crescent  
Melbourne, Victoria 3004

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

Minister for Gaming  
Level 16  
1 Spring Street  
Melbourne, 3000

**Item 5                      Preparatory Action**

The Preparatory Action which the Licensee must include in the Implementation Plan includes, but is not limited to, the following:

- 1            developing, testing and establishing systems for the operation of Authorised Betting Competitions;
- 2            developing operating procedures and manuals for systems and equipment for the operation of Authorised Betting Competitions and provision of these to outlets;
- 3            developing Betting Rules and other rules for Authorised Betting Competitions and provision of rules to outlets;
- 4            preparing to undertake all services in respect of the operation of Authorised Betting Competitions, including:
  - (a)    arranging for the publication of results by an appropriate means;
  - (b)    managing all prize money reserves;
  - (c)    managing unclaimed prize moneys;
  - (d)    arranging for payments to the State, including the payment of all taxes, duties and other amounts payable to the Treasurer; and
  - (e)    arranging any other services reasonably necessary for the Conduct of Authorised Betting Competitions;
- 5            training staff in accordance with developed operating procedures and manuals and the Licensee's Responsible Gambling Code of Conduct;
- 6            establishing data lines for supply or receiving of signals for Authorised Betting Competitions and establishing communication data lines to outlets;
- 7            developing telephone help desk facilities in relation to the Conduct of Authorised Betting Competitions;
- 8            developing promotions and advertising of Authorised Betting Competitions;
- 9            establishing required bank accounts;
- 10          installing equipment at outlets;
- 11          developing intellectual property;
- 12          developing and distributing to outlets of all necessary consumables (including, without limitation, entry coupons, printer paper, roles and printer ribbons) for the operation of systems and equipment for the operation of, and the sale of Tickets or other forms of entry in, Authorised Betting Competitions;
- 13          obtaining all necessary approvals (including, without limitation, approval of initial systems and equipment for the operation of Authorised Betting Competitions);

- 14 developing appropriate regulatory and compliance processes and procedures;
- 15 appoint Agents and engage Contractors who will assist in the Conduct of Authorised Betting Competitions (including Ticket Agents);
- 16 developing implementation plans and arrangements with the Victorian Racing Industry, including in relation to the Joint Venture Agreement; and
- 17 any other Preparatory Action specified in the Implementation Plan to be developed by the Licensee in accordance with the Agreement.



# Schedule 2

## Commitment Requirements

### 1 Disaster Recovery testing

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

### 2 VRI Commitment

This clause has been redacted.

## Schedule 3

### Parent Company Guarantee

Date

## Parties

Tabcorp Holdings Limited ACN 063 780 709 (Parent)

The Honourable Michael O'Brien MP, Minister for Gaming of the Crown in right of the State of Victoria of Level 16, 35 Spring Street, Melbourne, Victoria 3000 (The Minister)

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## Background

- A The Licensee is a wholly owned subsidiary of the Parent.
  - B The Minister has entered, or intends to enter, into the Agreement with the Licensee in relation to the Licence.
  - C The Agreement requires the Licensee to procure the Parent 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 Agreement the same meaning as in the Agreement, except where a contrary intention appears.

**Agreement** means the related agreement entered into between the Minister and the Licensee in accordance with section 4.3A.10 of the Act dated on or about the date of this document, as amended from time to time.

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

**Licensee** means Tabcorp Wagering (Vic) Pty Ltd.

**Licensee's Obligations** has the meaning given to it in clause 2(a).

**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.

**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.

## 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 Parent 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 Parent to do so;
- (xvi) where in this document the Minister may (or it is otherwise contemplated that the Minister can) give its consent or approval or must either give its consent or approval or do something else, the Minister has an absolute and unfettered discretion as to whether he or she or it gives that consent or approval and the Minister has no obligation to the Licensee or Parent 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);
- (xviii) a reference to "suspended" means suspended or otherwise cease to be performed; and
- (xix) a provision which is expressed to be "subject to" another provision of this document will apply without limiting the operation of that other provision.

## 2 Guarantee

- (a) The Parent unconditionally and irrevocably guarantees to the State the due and punctual performance by the Licensee of all of the Licensee's obligations under, arising out of, or in connection with, the Licence or the Agreement (**Licensee's Obligations**).
- (b) Without limiting the Parent's obligations and liabilities under this document, if the Licensee does not comply with the Licensee's Obligations on time and in accordance with the Licence or the Agreement, then the Parent will, and will procure that the Licensee will perform, or provide assistance in performing, the Licensee's Obligations, to the extent requested by the Minister.
- (c) A demand may be made under this document whether or not the Minister has made a demand or otherwise exercised or exhausted its rights or entitlements against the Licensee.

## 3 Liability

Subject to **clause 7**, the liabilities of the Parent under this document are not affected by any act, omission, matter or thing which might, but for this document, otherwise affect them at law or in equity including:

- (a) the granting by the Minister to the Licensee of, or agreeing to grant, time, waiver, indulgence or concession or the making of any composition or compromise with the Licensee;
- (b) the Minister forbearing to enforce or neglecting to exercise any right or remedy against the Licensee;
- (c) any laches, acquiescence or other act, neglect, default, omission (excluding fraud by the Minister), duress, unconscionable conduct or mistake by the Minister, the Licensee or any other person;
- (d) any variation, novation or alteration to or substitution of any of the Licensee's Obligations or the Licence or the Agreement made either with or without the knowledge of the Parent;
- (e) the total, partial or conditional release or discharge of any of the Licensee's Obligations or any security held for the performance of the Licensee's Obligations;
- (f) the transfer, assignment or novation by any of the Minister or the Licensee of all or any of its rights or obligations under the Licence or the Agreement to which it is a party;
- (g) the occurrence before, or at any time after, the date of this document of any Financial Default in relation to the Licensee or the Parent; or
- (h) the occurrence of any Failure applicable to the Licensee.

## 4 Indemnity

As a separate and distinct indemnity but subject to **clause 7**, the Parent irrevocably and unconditionally agrees to indemnify the State, and at all times keep the State indemnified, against any Loss suffered or incurred by the State arising out of or in any way in connection with:

- (a) any failure by the Licensee to observe or perform any of the Licensee's Obligations; or
- (b) 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.

## 5 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 Parent to the rights to which it would have been entitled under this document as if the payment or transfer has not occurred.

## 6 The Parent's rights are suspended

- (a) Subject to **clause 6(c)**, as long as any obligation is required, or may be required, to be complied with in connection with this document, the Parent may not, without the Minister's consent:
  - (i) 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 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;
  - (iii) claim an amount from the Licensee, or another guarantor, under a right of indemnity; or
  - (iv) 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 6** continues after this document ends.
- (c) The Parent 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.

## 7 Limitation

Notwithstanding any other provision of this document, the aggregate liability of the Parent to the State under this document and otherwise at law is no greater than the liability of the Licensee to the State under the Licence or the Agreement and the Parent has the benefit of all limitations on and exclusions of liability expressed for the benefit of the Licensee in the Licence or the Agreement (assuming, for the purposes of ascertaining the level of said liability at the time, that the Licence and the Agreement are valid, binding and enforceable in accordance with its terms).

## 8 General warranties

The Parent represents and warrants to the State that:

- (a) it has full corporate power to enter into and give effect to this document and to complete the transactions contemplated by this document;
- (b) it has taken all necessary action to authorise the execution, delivery and performance of this document;
- (c) at the date of this document, the execution, delivery and performance of this document by it does not contravene any contractual, legal or other obligations that apply to it; and
- (d) on execution of this document, its obligations under this document will be valid, binding and enforceable.

## 9 Notices

Any communication under or in connection with this document:

- (a) must be in writing;
- (b) must be addressed as shown below:

**Parent**

Address: 5 Bowen Crescent, Melbourne, Victoria 3004  
Fax number: (03) 9868 2726  
For the attention of: Chief Executive Officer

**Minister:**

Address: Level 16, 35 Spring Street,  
Melbourne, Victoria 3000  
Fax number: (03) 8684 1977  
For the attention of: Ross Kennedy,  
Executive Director, Gaming and Racing



- (or as otherwise notified by that party to the other party from time to time);
- (c) must be signed by the party making the communication or (on its behalf by the lawyer for, or by any attorney, director, secretary, or authorised agent of, that party);
  - (d) must be delivered or posted by prepaid post to the address, or sent by fax to the number, of the addressee, in accordance with this clause; and
  - (e) will be deemed to be received by the addressee:
    - (i) **(in the case of prepaid post)** on the third Business Day after the date of posting to an address within Australia, and on the fifth Business Day after the date of posting to an address outside Australia;
    - (ii) **(in the case of fax)** at the local time (in the place of receipt of that fax) which then equates to the time at which that fax is sent as shown on the transmission report which is produced by the machine from which that fax is sent and which confirms transmission of that fax in its entirety, unless that local time is not a Business Day, or is after 5.00pm on a Business Day, in which case that communication will be deemed to be received at 9.00am on the next Business Day; and
    - (iii) **(in the case of delivery by hand)** on delivery at the address of the addressee as provided in this clause, unless that delivery is made on a non Business Day, or after 5.00pm on a Business Day, in which case that communication will be deemed to be received at 9.00am on the next Business Day.

## 10 Miscellaneous

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

- (a) The Parent 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 10.1(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 Parent, 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 10.1(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.

## **10.2 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 Parent 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 Parent 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.
- (c) Money paid to the State by the Parent must be applied first against payment of Costs under **clause 10.2(b)** then against other obligations under this document in any way the Minister considers appropriate.

## **10.3 Payments**

The Parent 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.

## **10.4 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.

## **10.5 Indemnities**

- (a) Subject to **clause 7**, 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.

#### **10.6 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.

#### **10.7 Variation**

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

#### **10.8 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.

#### **10.9 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.

**Executed as a deed**

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

.....  
Company Secretary/Director

.....  
Director

.....  
Name of Company Secretary/Director  
(print)

.....  
Name of Director (print)

Executed by the Honourable Michael O'Brien MP,  
Minister for Gaming of the Crown in the right of the State of Victoria

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Signature of the Minister

\_\_\_\_\_  
Name of Witness  
(BLOCK LETTERS)

# Schedule 4

## Transition Arrangements

### 1 Success criteria and measures

#### 1.1 Success criteria

- (a) The Licensee and the Incoming Licensee will manage the Wagering and Betting Transition as smoothly as possible, so as to maintain the interest of Players and reduce any risk of loss of revenue payable to the State.
- (b) The Transition Steering Committee will determine the success criteria for the Wagering and Betting Transition having regard to the Transition Objectives and may include:
  - (i) Cost - Expenditure for the Wagering and Betting Transition is within budgetary estimates;
  - (ii) Business Continuity - The Wagering and Betting Transition process involves minimal interruption to the Conduct of Authorised Betting Competitions; and
  - (iii) Schedule - The Wagering and Betting Transition is completed within specified timelines.

#### 1.2 Measurement of success criteria

The TSC will specify the measurements and required standards for the success criteria.

### 2 Responsibilities of the Outgoing Licensee

#### 2.1 General responsibilities

Without limitation, the Licensee is responsible for:

- (a) preparing the Transition Plans and cooperating with the Incoming Licensee to jointly prepare Project Plans;
- (b) participating in planning and workshop sessions;
- (c) providing information and assistance in the planning process or to the Incoming Licensee; and
- (d) providing appropriate resources and personnel for the purposes of Wagering and Betting Transition related activities.

## **2.2 Responsibilities during Wagering and Betting Transition**

Without limiting the foregoing, the Licensee may be required to, as part of the Wagering and Betting Transition:

- (a) assist the Minister to sub-licence intellectual property to the Incoming Licensee;
- (b) novate any agreement or arrangement with any Agent or Contractor in relation to the Conduct of Authorised Betting Competitions as directed by the Minister;
- (c) provide any historical data and information necessary for the Conduct of Authorised Betting Competitions that must be transitioned to the Incoming Licensee;
- (d) comply with the Project Plan,
- (e) if required by the Project Plan, undertake the orderly removal of the Licensee's equipment and Ticket Get Up from the Points of Sale;
- (f) handle prizes, dividends and payments to Players (including unclaimed prizes and dividends); and
- (g) maintain and provide access to records relating to the Wagering and Betting Transition.

## **3 Management of the Wagering and Betting Transition**

The Wagering and Betting Transition will adhere to the management structure indicated below.

### **3.1 Transition Steering Committee**

- (a) The TSC will be responsible for managing and overseeing the implementation of the Wagering and Betting Transition.
- (b) Without limiting the Agreement, the TSC may:
  - (i) determine the responsibilities and obligations of the Outgoing Licensee and the Incoming Licensee (and their Agents and Contractors) to the Wagering and Betting Transition, including any specific activities and tasks;
  - (ii) determine the scope of the work relating to the Wagering and Betting Transition;
  - (iii) impose specific requirements in the Project Plan and require the Incoming Licensee and Licensee to amend the Project Plan to take into account those specific requirements;
  - (iv) establish the project management and work group structure under which the Wagering and Betting Transition will operate;

- (v) issue directions or recommendations to the Incoming Licensee, the Licensee, or any of the work groups it establishes;
- (vi) determine protocols and procedures to deal with management of the Wagering and Betting Transition and relationship between the Outgoing Licensee and the Incoming Licensee (and their Agents and Contractors); and
- (vii) facilitate resolution of disputes between the Outgoing Licensee and the Incoming Licensee (and their Agents and Contractors).

### **3.2 Composition and quorum of the Transition Steering Committee**

- (a) The TSC must have a minimum of 7 members, being:
  - (i) a Chairperson appointed by the Minister;
  - (ii) a representative nominated by the Minister;
  - (iii) a representative nominated by the Commission;
  - (iv) a representative nominated by the Department of Treasury and Finance;
  - (v) a representative of VicRacing;
  - (vi) a representative nominated by the Incoming Licensee; and
  - (vii) a representative nominated by the Outgoing Licensee.
- (b) The representatives from the Outgoing Licensee, the Incoming Licensee and VicRacing will be executive officers having the ability to bind their respective entities.
- (c) Representatives of the TSC must appoint alternate members capable of acting as their delegates.
- (d) The TSC representative and alternate member for a party to the Transition may both attend a TSC meeting, subject to the representative and alternate member:
  - (i) having the entitlement to just one vote between them at the meeting;
  - (ii) counting as one TSC member for the purpose of determining the quorum for the meeting.
- (e) The quorum of each TSC is 5 members, subject to the requirement that the quorum must include the Chairperson and representatives of both the Incoming Licensee and the Outgoing Licensee (or their respective alternate members).
- (f) A TSC may by resolution increase its quorum but may not alter the requirement that the Chairperson, and representatives of the Incoming Licensee and the Outgoing Licensee (or their respective alternate members) must be included in the quorum.

- (g) A TSC may invite additional parties at its sole discretion to provide advice on any specific issues relating to the Wagering and Betting Transition.

### **3.3 Operation of the Transition Steering Committee**

- (a) Subject to the Agreement and these Transition Arrangements:
  - (i) the TSC may meet for the despatch of business and adjourn and otherwise regulate its meetings as it sees fit;
  - (ii) the TSC may not meet unless each member of the TSC has been given at least 24 hours notice of the meeting or has otherwise consented to a shorter notice period;
  - (iii) the TSC will meet in Melbourne in the State of Victoria;
  - (iv) all decisions and resolutions passed by the TSC must be:
    - (A) in writing; and
    - (B) passed by a unanimous vote cast by members of the TSC present and entitled to vote on the resolution; and
- (b) it is intended that the TSC will meet on a weekly basis, with the date, time and location of the next meeting to be determined at each meeting.

### **3.4 Dissolution of the Transition Steering Committee**

A TSC may only be dissolved by passing a unanimous resolution to that effect after the Wagering and Betting Transition has been successfully completed.

## **4 Project Plan**

### **4.1 Preparation of Project Plan**

- (a) On request by the TSC, the Licensee and Incoming Licensee must (in consultation with the TSC) develop and prepare a draft Project Plan for the Wagering and Betting Transition.
- (b) The Licensee and Incoming Licensee must submit the draft Project Plan to the TSC within the timeframe specified by the TSC. For the avoidance of doubt, the Licensee and Incoming Licensee may submit the draft Project Plan jointly.
- (c) The TSC will review the draft Project Plan and may approve or reject the draft Project Plan. If the TSC rejects the draft plan in any respect, the Licensee and the Incoming Licensee must negotiate in good faith with the TSC in an endeavour to settle the plan. The plan once accepted or finalised will constitute the Project Plan.
- (d) The Outgoing Licensee and the Incoming Licensee must (jointly and severally) use their best endeavours to ensure that the proposed



Project Plan is approved by the TSC within 60 Business Days after the date the TSC requested the preparation of the Project Plan.

- (e) It is intended that no variations will occur in respect of an approved Project Plan – neither in transition costs, transition times or transition activities. If variations are required, then the variations must be approved by the TSC.

## **4.2 Content of the Project Plan**

- (a) In general the Project Plan must:
  - (i) comply with requirements of the Agreement and these Transition Arrangements;
  - (ii) specify the cost of the Wagering and Betting Transition activities;
  - (iii) be consistent with the Transition Plan;
  - (iv) have regard to any transition plans prepared by the Incoming Licensee;
  - (v) include such other information and items as required by the TSC; and
  - (vi) be in a form as required by the TSC.
- (b) The Project Plan should address each of the following issues:
  - (i) the project methodology used to manage the Wagering and Betting Transition;
  - (ii) the schedule, milestones and the project plan for the Wagering and Betting Transition activities and required resources;
  - (iii) the Required Transition Date;
  - (iv) the approach to be taken to ensure that the Outgoing Licensee, Incoming Licensee and the State are kept informed of project progress, changes, issues and risks;
  - (v) the key meetings associated with the coordination and control of the Wagering and Betting Transition; and
  - (vi) the regular meetings of the Licensee, the Incoming Licensee and the State, to discuss, among other things:
    - (A) the provision of a highlight report indicating the progress made in Wagering and Betting Transition against that forecast in the Project Plan;
    - (B) review of risks and issues; and
    - (C) change management.
- (c) The Project Plan should require the Licensee and Incoming Licensee to produce a change management report and a highlight report on a weekly basis.

- (i) The highlight report should report on the satisfaction of deliverables against the forecast schedule (as specified in the Project Plan).
  - (ii) The change management report should report on any approved changes to the scope, cost or timetable of Wagering and Betting Transition.
- (d) The Project Plan should include a change management process in relation to how the Licensee and Incoming Licensee will manage changes to the scope, cost or timetable of Wagering and Betting Transition. The description should identify both process and tools. The Project Plan must record all changes to the approved Project Plan including the nature of the change, the date and the source of authorisation.
- (e) The Project Plan should require the Licensee and Incoming Licensee to keep an issue register to manage issues impacting the Wagering and Betting Transition. The Project Plan should identify both the process and tools of management that will be used with the issue register. The issue register must be kept up-to-date and must be made available to the TSC upon request.
- (f) The Project Plan should require the Licensee and Incoming Licensee to keep a risk register. The Project Plan should include the process that the Licensee and Incoming Licensee will employ to manage transition risk, including both process and tools to inform the risk register:
- (i) as a preliminary step, the Licensee and Incoming Licensee must also document within the Project Plan those risks that exist from the outset of Transition and how they propose to manage these risks; and
  - (ii) thereafter, the Licensee and Incoming Licensee will regularly reassess technical, operational and commercial risks to the success of Wagering and Betting Transition, up-date the risk register and make the information available to the TSC at the designated weekly meeting.
- (g) The Project Plan must clearly define the audit process and schedules to provide the TSC with assurance that the Wagering and Betting Transition activities are conducted in accordance with these Transition Arrangements and the Agreement.
- (h) The Project Plan should include a quality management program, including both processes and tools that will be adopted by the Licensee and Incoming Licensee as a means of ensuring the various aspects of the Wagering and Betting Transition are appropriately documented and discharged.
- (i) The Project Plan should identify any insurance policies that the Licensee or Incoming Licensee must take out and maintain to insure

against any liability arising in connection with the Wagering and Betting Transition.

## 5 Relationship with Agents, Contractors and Commission

### 5.1 Agents and subcontractors of the Outgoing Licensee and the Incoming Licensee

- (a) The Licensee and Incoming Licensee must enter into arrangements and take all reasonable action to enforce such arrangements to ensure that their respective Agents and subcontractors are able to comply with the obligations under the Agreement and the Transition Arrangements.
- (b) If the Incoming Licensee or its Agents or subcontractors wishes to make direct contact with an existing Agent or subcontractor of the Licensee, then the Incoming Licensee must approach the Licensee in writing before any such contact is made to enable the necessary protocols to be determined.

### 5.2 The Commission

The TSC is expected to consider the prospective timing and nature of any inspection to be undertaken by the Commission under the Act in the context of the Wagering and Betting Transition.



[*Note: insert execution clause.*]