

PUBLIC LOTTERY TRANSITION AGREEMENT

Gambling Regulation Act 2003 (Vic)

Public Lottery Transition Agreement

Dated

Parties:

The Honourable Tony Robinson MP

Minister for Gaming for and on behalf of the Crown in right
of the State of Victoria

AND

Tattersall's Sweeps Pty Ltd

ABN 99 081 925 662

Content

1.	Definitions and Interpretation	4
2.	Objective and obligations	6
3.	Transition Steering Committee	7
4.	Transition.....	8
5.	Compliance with Transition Framework	10
6.	Cost of Transition	10
7.	Dispute resolution.....	11
8.	Termination	13
9.	Miscellaneous.....	13
	Schedule 1 Transition Framework	16
1.	Objectives.....	16
2.	Success criteria and measures	16
3.	Responsibilities of the Licensee	16

Agreement dated

Parties: **The Honourable Tony Robinson MP**, Minister for Gaming for and on behalf of the Crown in right of the State of Victoria of Level 5, 1 Macarthur Street, East Melbourne, 3002
(The Minister)

AND

Tattersall's Sweeps Pty Ltd ABN 99 081 925 662 of 615 St Kilda Road, Melbourne, Victoria
(The Licensee)

Introduction

- A.** The Minister invited the Licensee to apply for the grant of a Public Lottery Licence and as a result of that application the Minister has granted the application and issued a Licence to the Licensee under section 5.3.6 of the *Gambling Regulation Act 2003* (Vic).
- B.** In order to better facilitate the arrangements between the Minister and the Licensee in relation to certain matters relating to the transition of the Authorised Lotteries under the Licence the parties have agreed on certain commercial arrangements which are set out in this Agreement.
- C.** The Transitions contemplated under this Agreement may be invoked in the circumstances set out in the Licence and Ancillary Agreement, and by a Temporary Operator acting as agent of the Licensee.
- D.** The Transitions contemplated under this Agreement relate to transitioning out of the Continuing Lotteries from the Licensee and must be read in conjunction with a generally reciprocal agreement to transition in the Continuing Lotteries to the Incoming Licensee.

It is agreed

1. Definitions and Interpretation

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

1.1 Definitions

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

- (2) **Ancillary Agreement** means the Public Lottery Ancillary Agreement entered into between the Licensee and the Minister on 24 October 2007, including any schedule or annexure to it, and as amended from time to time.
- (3) **Agreement** means this document, including any schedule or annexure to it.
- (4) **Continuing Lottery** means a Public Lottery that will be transitioned from the Licensee to the Incoming Licensee.
- (5) **Distribution Network** means a distribution network used by the Licensee in the Conduct of Public Lotteries, and includes processes and procedure manuals, Points of Sale and related systems, software and hardware.
- (6) **Incoming Licensee** means in respect of a Lottery Transition, the person who will Conduct the Continuing Lottery from the Required Transition Date.
- (7) **Chairperson** means the chairperson of the Transition Steering Committee appointed by the Commission.
- (8) **Information** means a description of any data, file format, related information or material that is necessary to facilitate transfer of any necessary data from the Licensee's approved lottery system to the Incoming Licensee's system.
- (9) **Lottery Transition** means the transition process under which the Conduct of a Continuing Lottery or Continuing Lotteries will be transitioned from the Licensee to an Incoming Licensee.
- (10) **Notice of Direction** has the meaning given in clause 7.2.
- (11) **Project Plan** means the detailed plan prepared by the Incoming Licensee and approved by the TSC that describes how the Transition will be undertaken, including without limitation the Required Transition Date, the responsibilities and obligations of each relevant stakeholder, the implementation schedule, milestones and acceptance procedures.
- (12) **Required Transition Date** means the date upon which the Transition is complete and the Incoming Licensee will take full responsibility for the Conduct of the Continuing Lottery as specified in the Project Plan.
- (13) **Transition** means Lottery Transition.
- (14) **Transition Framework** means the conceptual framework for Transition, as attached as Schedule 1.
- (15) **Transition Plan** refers to the plan produced by the Licensee that describes the things which the Licensee must arrange or undertake during the Transition In Period so as to assist the Incoming Licensee with the Transition, as amended and approved by the Commission under clause 4.6 from time to time.
- (16) **Transition Steering Committee or TSC** means the Transition Steering Committee as described in clause 3 and in the Transition Framework.

1.2 Precedence between documents

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 Transition Framework, the Licence, the Ancillary Agreement or the Act, then the documents will be read in the following descending order of precedence:

- (1) the Act;
- (2) the Licence;
- (3) the Ancillary Agreement;
- (4) this Agreement; and
- (5) the Transition Framework.

2. Objective and obligations

2.1 The parties acknowledge that the objectives of this Agreement are:

- (1) to ensure efficient, smooth, seamless and uninterrupted transition of the Continuing Lotteries from one Public Lottery licensee to another;
- (2) to ensure that the Incoming Licensee is able to transition into the Continuing Lotteries effectively and efficiently;
- (3) to protect the interest of the public and Players;
- (4) to reduce the risk of loss of revenue of the State;
- (5) to ensure that the requirements of the Commission in relation to the Incoming Licensee are satisfied in a timely fashion;
- (6) to promote the objectives of the Act; and
- (7) to protect the legitimate commercial interests of the Licensee.

2.2 Nothing in this Agreement 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 its Public Lottery Licence or Ancillary Agreement.

2.3 The State:

- (1) acknowledges that this Agreement places obligations on the Licensee relating to its performance under this Agreement; and
- (2) commits to place obligations on an Incoming Licensee as may reasonably be required of it to assist in the achievement of the objectives set out in clause 2.1.

2.4 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 set out in clause 2.1.

3. Transition Steering Committee

3.1 Establishment of Transition Steering Committee

- (1) As soon as it is reasonably practicable after an Incoming Licensee is appointed (and in any case, no more than 1 month after that date), the parties must establish a TSC in accordance with the Transition Framework.
- (2) The Transition will be managed and overseen by the TSC, which is responsible for planning, organising, implementation and monitoring of all the activities relating to the Transition including approval of the Project Plan.
- (3) The Licensee will co-operate with the TSC and will implement all practical steps to effect its decision subject to objective 2.1(7) and the State paying the Licensee's reasonable costs and expenses in accordance with clause 6.

3.2 Compliance with the decisions of the Transition Steering Committee

- (1) All decisions and determinations of a TSC are, to the extent they properly relate to the Transition, binding on the Licensee.
- (2) Each of the obligations and requirements imposed by the TSC on the Licensee is deemed to also be a contractual covenant under this agreement given by the Licensee in favour of the State.

3.3 Deadlock of the Transition Steering Committee

- (1) The Licensee acknowledges and agrees that if a 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 clauses 2.1 and 2.2 that he 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.
- (2) If a determination is made under 3.3(1)(a) or 3.3(1)(b), the deadlock will be resolved by following the dispute resolution process of clause 7.

3.4 Composition and quorum of the Transition Steering Committee

- (1) A TSC must have a minimum of 3 members, being:
 - (a) the Chairperson nominated by the Commission;
 - (b) a representative nominated by the Incoming Licensee; and
 - (c) a representative nominated by the Licensee.
- (2) The representatives from the Licensee and the Incoming Licensee will have the ability to bind their respective entities.
- (3) Representatives of the TSC must appoint alternate members capable of acting as their delegates.

- (4) 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:
 - (a) having the entitlement to just one vote between them at the meeting;
 - (b) counting as one TSC member for the purpose of determining the quorum for the meeting.
- (5) The quorum of each TSC is 3 members, being the Chairperson and representatives of both the Incoming Licensee and the Licensee (or their respective alternate members). The Chairperson shall have a casting vote.
- (6) A TSC may invite additional parties at its sole discretion to provide advice on any specific issues relating to the Transition.

3.5 Operation of the Transition Steering Committee

Subject to the Transition Framework and this Agreement:

- (1) a TSC may meet together for the despatch of business and adjourn and otherwise regulate its meetings as it sees fit;
- (2) a 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;
- (3) a TSC will meet in Melbourne in the State of Victoria;
- (4) all decisions and resolutions passed by the TSC must be in writing;
- (5) 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.

3.6 Dissolution of the Transition Steering Committee

- (1) The TSC will be dissolved:
 - (a) by passing a unanimous resolution to that effect; or
 - (b) immediately upon the expiration of the Transition Out Period

4. Transition

4.1 General

- (1) The Licensee must take such steps as are reasonably necessary (including using all reasonable endeavours insofar as it is able to procure its Agents and sub-contractors to co-operate with the Incoming Licensee) to implement the Transition Plan.
- (2) During the Transition the Licensee must comply with any reasonable directions of the Minister and must act in good faith towards the State and the Commission and reasonably to other stakeholders including the Incoming Licensee.

- (3) The Licensee does not have to do anything under this Agreement which puts it in breach of the Licence, the Ancillary Agreement or the Act.

4.2 Continuing Lotteries

The scope of work relating to the Continuing Lotteries is to be determined by the TSC and specified in the Project Plan.

4.3 Preparation of Transition Plan

- (1) The Licensee must develop a proposed Transition Plan for the transitioning of the Continuing Lotteries as requested by the Commission from time to time.
- (2) The Licensee must submit a draft Transition Plan to the Commission within the time period specified in the request (such time period not to be less than 60 days).
- (3) The draft Transition Plan prepared by the Licensee must, insofar as is possible given that an Incoming Licensee may not have been appointed at the time of submission of the Transition Plan,
 - (a) comply with the requirements set out in the Transition Framework;
 - (b) include such information and address such issues as required by the Commission; and
 - (c) be in a form required by the Commission;
 - (d) include any infrastructure that the Licensee may seek to make available for acquisition by the Incoming Licensee; and
 - (e) include a list and contact details of current Agents;
 - (f) include a list of the Licensed IP;
 - (g) include a list of the Bloc Agreements and contact details of the parties to each Bloc Agreement;
 - (h) apply to all Authorised Lotteries as though all of the Authorised Lotteries were Continuing Lotteries, in the absence of a direction by the Commission otherwise;
 - (i) include the Information relating to the Continuing Lotteries,
 - (j) the names, brands, rules of the Continuing Lotteries; and
 - (k) include the insurance policies that the Licensee will take out and maintain to insure any liability arising in connection with the Transition activities.

4.4 The parties acknowledge that the Licensee is not obliged to provide or share its:

- (1) Intellectual Property Rights (other than its Licensed IP);
- (2) infrastructure and related maintenance services; or

(3) Distribution Network,

with an Incoming Licensee unless otherwise agreed with the Incoming Licensee.

4.5 Regular updates of Transition Plan

Unless otherwise directed by the Commission, the Licensee must update and resubmit its Transition Plan to the Commission for approval every 12 months (or at such intervals as specified by the Commission). The updated Transition Plan must take into account any changes to the circumstances, including without limitation changes to the Authorised Lotteries.

4.6 Approval of draft and updated Transition Plan

The Commission will consider the draft or updated Transition Plan and approve or reject it. If the Commission rejects the draft plan in any respect the Licensee must meet the Commission and negotiate in good faith in an endeavour to settle the plan. The plan once accepted or finalised will constitute the Transition Plan.

5. Compliance with Transition Framework

5.1 Compliance with Transition Framework

The Licensee must comply with the Transition Framework.

5.2 Compliance with the Project Plan

Subject to clauses 2.1 and 2.2, the Licensee will comply with the obligations it has agreed to as set out in the Project Plan.

5.3 Consequences of non compliance

The Licensee acknowledges that, without in any way compromising its right to seek damages or any other form of relief in the event of a breach of this Agreement, the State may seek and obtain an ex parte interlocutory or final injunction to prohibit or restrain the Licensee from any breach or threatened breach of this Agreement or to compel specific performance by the Licensee of its obligations under this Agreement.

6. Cost of Transition

6.1 Reimbursement by the State

Subject to clauses 6.2 and 6.3, the State will reimburse the Licensee for any costs and expenses (including employee labour at the Licensee's standard rate which shall not exceed the rates that would otherwise be charged to by the Licensee) incurred by the Licensee, to the extent that such costs and expenses:

- (1) are expressly provided for in the Project Plan or otherwise approved by the Minister or the Commission in writing; or
- (2) relate directly to carrying out the Transition activities (and beyond any activities relating to the Conduct of the Authorised Lotteries); and

- (3) are substantiated by written documents (such as in the form of time sheets or invoices).

6.2 Specific exclusions

The State will not reimburse the Licensee for any costs and expenses incurred by the Licensee in respect of:

- (1) attending and participating at the TSC;
- (2) preparing, updating and finalising the Transition Plans; or
- (3) its role in assisting the Incoming Licensee with the preparation of the Project Plan.

6.3 Other exclusion of Transition

The State is not obliged to reimburse the Licensee for any expenses incurred in respect of a Transition that is required as a direct or indirect consequence of a default committed by the Licensee under the Licence or the Ancillary Agreement.

6.4 Payment of reimbursement

The State will reimburse the Licensee for costs and expenses specified in clause 6.1 within 20 Business Days from receipt of the Licensee's invoice.

7. Dispute resolution

7.1 Good faith to resolve

- (1) If a dispute arises in connection with this Agreement, the parties to the dispute (**Disputing Parties**) must use all reasonable endeavours to resolve the dispute having regard to the objectives of this Agreement.
- (2) If the dispute remains unresolved after 5 Business Days after the dispute arose, then any party to the dispute may require the dispute to be resolved under this clause 7.
- (3) Any dispute in respect of the project management and work group structure established by the TSC that is still unresolved after applying 7.1(2) must be referred to the TSC for resolution.

7.2 Disputes between the parties to the Transition

- (1) If any dispute between the Disputing Parties is not resolved after applying clause 7.1, then the Chairperson may give notice to the Disputing Parties (**Notice of Direction**) directing the Disputing Parties to submit the dispute to mediation, in which case the Disputing Parties must submit the dispute to mediation in accordance with this clause 7.2. The mediation will be conducted in Victoria. The Institute of Arbitrators and Mediators Australia Mediation and Conciliation Rules (as amended from time to time) as amended by this clause 7 apply to the mediation, except where they conflict with this clause 7.
- (2) If the Disputing Parties have not agreed upon the mediator and the mediator's remuneration within 7 days after the Notice of Direction is given:

- (a) the mediator is the person appointed by; and
 - (b) the remuneration of the mediator is the amount or rate determined by;
the Chair of the Victorian Chapter of the Institute of Arbitrators and Mediators Australia (**Principal Appointor**) or the Principal Appointor's nominee, acting on the request of any party to the dispute.
- (3) If involved in the dispute, the Licensee must pay a share of the mediator's remuneration in proportion to the number of parties in the dispute. The Licensee must pay its own costs of the mediation.
 - (4) If the dispute is not resolved within 28 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.
 - (5) If the Disputing 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, acting on the request of any party to the dispute.
 - (6) The arbitrator must not be a present or former member, officer, employee or agent of a party to the dispute or a person who has acted as a mediator or advised any party in connection with the dispute.
 - (7) The arbitration must be conducted in accordance with the *Commercial Arbitration Act 1984 (Vic)* except that:
 - (a) the arbitrator must have regard to the objectives of this Agreement (as stated in clause 2);
 - (b) the arbitrator must only accept evidence which would be accepted in a court of law;
 - (c) a party to the dispute may be represented by a qualified legal practitioner or other representative;
 - (d) 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
 - (e) the parties to the dispute consent 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.
 - (8) After accepting the appointment and during the arbitration the arbitrator may:
 - (a) require the parties to the dispute to lodge security or further security towards the arbitrator's fees and expenses; and
 - (b) apply any security towards those fees and expenses;but the arbitrator may not direct a party to the dispute to provide security for the costs of the arbitration to be incurred by any other party.
 - (9) Subject only to:

- (a) the requirement that the parties first endeavour to resolve the dispute by mediation in accordance with this clause 7.2; and
- (b) clause 7.2(10);

this clause 7.2 is intended to be an agreement by the Licensee in writing to refer present or future disputes between the Disputing Parties to arbitration.

- (10) Despite anything in this clause 7.2, the Disputing 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.
- (11) Despite the submission of a dispute to mediation or the reference of a dispute to arbitration under this clause 7.2, the Licensee must continue to perform its obligations under this Agreement (and the Licence and Ancillary Agreement). In the award, the arbitrator may make any appropriate adjustment for the performance of obligations under this Agreement since the Notice of Direction was given.
- (12) Subject to clause 7.2(10), 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 7.2.
- (13) This clause 7 continues in force even where the 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 the Agreement for any reason.
- (14) This clause 7 applies even where the Agreement is otherwise void or voidable.

8. Termination

- 8.1 The Minister may also terminate this Agreement at any time by notice to the Licensee if the Minister considers that this Agreement is no longer necessary but no later than the end of the Transition Out Period.
- 8.2 Termination of this Agreement does not affect the operation of clause 7.

9. Miscellaneous

9.1 Execution of counterparts

This Agreement may be executed in any number of counterparts. Each counterpart is an original but the counterparts together are one and the same agreement.

9.2 Further assurance

Each party must promptly at its own cost do all things (including executing and if necessary delivering all documents) necessary or desirable to give full effect to this Agreement.

9.3 Severability

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

9.4 Variation

An amendment or variation to this Agreement is not effective unless it is in writing and signed by the parties.

9.5 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.

9.6 Time

The Licensee acknowledges that the Lottery Transition may be conducted under time pressure and agrees to act expeditiously in the discharge of its obligations under this Agreement.

9.7 Governing law and jurisdiction

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

Executed as an agreement

Executed by the Minister for Gaming, the Honourable Tony Robinson MP, for and on behalf of the Crown in the right of the State of Victoria

Signature of Witness

Signature of the Minister

Name of Witness
(BLOCK LETTERS)

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

Signature of Director

Signature of Secretary/other Director

Name of Director
(BLOCK LETTERS)

Name of Secretary/other Director
(BLOCK LETTERS)

Schedule 1

Transition Framework

1. Objectives

1.1 The primary objectives (**Objectives**) of the Transition are:

- (1) to ensure efficient, smooth, seamless and uninterrupted transition of the Continuing Lotteries from one Public Lottery licensee to another;
- (2) to ensure that a new Public Lottery licensee is able to transition into the Continuing Lotteries effectively and efficiently;
- (3) to protect the interest of the public and Players;
- (4) to reduce the risk of loss of revenue of the State;
- (5) to ensure that the requirements of the Commission in relation to the Incoming Licensee are satisfied in a timely fashion; and
- (6) to promote the objectives of the Act.

1.2 Nothing in these Objectives is to be construed or interpreted in such a way as to require the Licensee to do anything or act in such a way as to be contrary to its rights and obligations under its Public Lottery Licence or Ancillary Agreement.

2. Success criteria and measures

2.1 Success criteria

The Licensee will provide such assistance as is required to the Incoming Licensee (in accordance with the requirements it has agreed to in the Project Plan) to achieve the Objectives and to give effect to this clause. The success criteria for the Transition will be determined by the TSC having regard to the Objectives and may include (without limitation):

- (1) Cost - Expenditure for the Transition is within budgetary estimates;
- (2) Business Continuity - The Transition process involves minimal interruption to the Conduct of the Authorised Lotteries affected by the Transition; and
- (3) Schedule - The Transition is effected within specified timelines.

3. Responsibilities of the Licensee

3.1 General responsibilities

Without limitation, the Licensee is responsible for

- (1) preparing the Transition Plans;

- (2) participating in planning and workshop sessions;
- (3) providing information and assistance in the planning process or to the Incoming Licensee for the purposes of the preparation of the Project Plan;
- (4) providing appropriate resources and personnel for the purposes of Transition related activities;
- (5) providing Information that maybe reasonably required by the Commission or the Incoming Licensee to enable the Project Plan to be prepared; and
- (6) providing information that may be reasonably required by the State or the Incoming Licensee to enable Transition Plan to be prepared.

3.2 Responsibilities during Transition

Without limiting the foregoing, the Licensee may be required to, as part of a Transition:

- (1) assist the Minister to sub-licence IP to the Incoming Licensee in accordance with the terms of the Licence;
- (2) provide any historical data and Information necessary for the Continuing Lotteries that must be transitioned to the Incoming Licensee, as defined in the Transition Plan, including without limitation a list of current Agents and contact details and details of names, brands and rules of the Continuing Lotteries;
- (3) undertake the orderly removal of the Licensee's equipment from the Points of Sale, in accordance with the Transition Plan;
- (4) handle prizes and payments to Players (including unclaimed prizes); and
- (5) maintain and provide access to records relating to the Transition.