

Keno Agreement

Gambling Regulation Act 2003
(Vic)

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

Tabcorp Investments No.5 Pty Ltd

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Date

Parties

The Honourable Michael O'Brien MP, Minister for Gaming of the Crown in right of the State of Victoria of Level 16, 1 Spring Street, Melbourne, Victoria 3000 (**The Minister**)

Tabcorp Investments No.5 Pty Ltd ABN 72 105 341 366 of Level 11, 5 Bowen Crescent, Melbourne 3004 (**Licensee**)

Background

- A The Minister has determined to grant the Licence to the Licensee under section 6A.3.7 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 Keno Games under the Licence the Minister enters into this Agreement with the Licensee under section 6A.3.10 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

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

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

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

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 agreement entered into between the Minister and the Licensee in accordance with section 6A.3.10 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 Keno Games (for the avoidance of doubt, this also includes a Ticket Agent).

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

Annual Financial Statements means the financial statements and accounts to be prepared by the Licensee under section 6A.5.1 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 Account(s) means an account or accounts in the name of the Licensee at an authorised deposit taking banking institution in Victoria under the *Banking Act 1959* (Cth), for which the Licensee has obtained the written approval of the Commission.

Arrangement means the Keno linked jackpot Arrangement approved by the Minister on 31 October 2014 between the Licensee and ClubKeno Holdings Pty Ltd and Keno (NSW) Pty Ltd that provides for a common jackpot pool in New South Wales and Victoria and a Keno Pooling Agreement.

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 Keno Games.

Availability Requirement has the meaning given in **Schedule 2**.

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 a member of the Commission.

Commission's Technical Standards means the standards of the Commission in relation to the Keno System as issued by the Commission from time to time.

Contractor means a person engaged by the Licensee under clause 6.1 of the Licence to assist the Licensee in the Conduct of Keno Games.

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

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

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

Data means the data referred to in **clause 10.1(a)**.

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

Distribution Arrangements means the class of venues in which tickets can be sold under clause 5.4 of the Licence.

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

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

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

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

- (a) an application (which is not withdrawn or dismissed within 5 Business Days of the making of that application) is made to a court for an order, or an order is made, that the Licensee be wound up;
- (b) an application (which is not withdrawn or dismissed within 5 Business Days of the making of that application) is made to a court for an order

- appointing a liquidator or provisional liquidator or a liquidator or provisional liquidator is appointed in respect of the Licensee;
- (c) the Licensee resolves to wind itself up, or otherwise dissolve itself, or gives notice of intention to do so (or the Licensee's creditors resolve, or give notice of intention, to wind the Licensee up), except to reconstruct or amalgamate while solvent on terms approved by the Commission, or is otherwise wound up or dissolved;
 - (d) the Licensee is or states in writing that it is insolvent or unable to pay its debts when they fall due;
 - (e) the Licensee is deemed to be insolvent or unable to pay its debts when they fall due under any 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;
 - (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 24.4(a)**.

FME Claim Notice has the meaning given in **clause 20.1(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.

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

Get Up means any and all:

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

(h) mascots,

associated with Keno Games 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:

- (a) copyright works and other matter the subject of copyright;
- (b) designs;
- (c) logos;
- (d) trade marks;
- (e) graphics;
- (f) fonts; or
- (g) mascots,

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

- (h) its corporate branding; or
- (i) its activities across a range of products and services,

and which are not associated particularly with Keno Games.

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 5**.

Incoming Licensee means, in respect of a Keno Transition, another person granted a licence to Conduct Keno Games, including a Temporary Licence, by the Minister in accordance with the Act, who will Conduct Keno Games from the Transition Date.

Indemnified Claims has the meaning given in **clause 17.4(a)**.

Indemnified Parties has the meaning given in **clause 17.4(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 15.4(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.

Keno Assets means an asset or undertaking of the Licensee that is connected with the Conduct of Keno Games, including all systems (including a Keno System), accounts, processes, networks and Records.

Keno Game has the same meaning as in section 1.3(1) of the Act.

Keno Pooling Agreement means the Keno Pooling agreement agreed between the Licensee and ClubKeno Holdings Pty Ltd and Keno (NSW) Pty Ltd and any other party, where the Minister has by instrument approved an arrangement between the keno licensee and that party in accordance with section 6A.1.3 of the Act to facilitate the Arrangement.

Keno Rules means the rules made by the Licensee in accordance with section 6A.2.11 of the Act.

Keno System means the system as defined in section 1.3(1) of the Act.

Keno Transition means the transition process under which the Conduct of Keno Games will be transitioned from the Licensee to an Incoming Licensee.

Keno Venues has the meaning given in **Schedule 2**.

Key Milestones means the dates set out in the Implementation Plan which are critical to the implementation of Keno Games in order to ensure that the Licensee can Conduct Keno Games as required under **clause 5.7**.

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 Keno Games 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.

Licensed IP means all Intellectual Property Rights subsisting in:

- (a) the Keno Rules; and
- (b) the 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 4** and as initially detailed in **Schedule 1**, as replaced from time to time in accordance with **clause 4**.

Marketing Plan and Distribution Strategy means the three year marketing plan and distribution strategy previously provided by the Licensee to the State and as initially set out in the Appendix to **Schedule 2** and then as revised annually in accordance with clause 4(b) of **Schedule 2**.

Minister means the responsible Minister of the Crown for the time being administering Chapter 6A of the Act.

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

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

New Owner has the meaning given in **clause 15.3(n)**.

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

Offer has the meaning given in **clause 15.3(l)(i)**.

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)**.

Participants means the participants authorised to conduct and promote club keno games in Victoria under Chapter 6 of the Act.

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

Performance Standards Notice has the meaning given in **clause 2.7(a)**.

Points of Sale means a location operated by or on behalf of the Licensee where tickets or other forms of entry in Keno Games are accepted or sold.

Principal Appointor has the meaning given in **clause 24.4(c)(i)**.

Prizes Fund means the fund the Licensee is required to establish under section 6A.4.1 of the Act.

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

Project Plan means, in respect of the Keno 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, Keno Games, including:

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

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

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 Keno Games as specified in the Project Plan.

Second Period has the meaning given in **clause 24.5(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 15.3**.

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

- (a) the Minister receives a recommendation from the Commission under section 6A.3.27(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 6A.3.29 of the Act;
 - (c) the Minister exercises his or her discretion under **clause 21.1, 21.2(b) or 21.5(a)**; or
 - (d) the Licensee gives a Notice of its intention to surrender the Licence under section 6A.3.24 of the Act.

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

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

Suspension Notice has the meaning given in **clause 20.1(c)**.

Suspension Period has the meaning given in **clause 20.1(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 6A.3.31 of the Act.

Temporary Licensee means a person appointed by the Minister with a Temporary Licence in accordance with section 6A.3.31 of the Act.

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

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 15.4(a)**.

Ticket Agent means an Agent accredited by the Licensee, in accordance with section 6A.2.4 of the Act, to accept from a Player a ticket or other form of entry, or payment for a ticket or other form of entry, in a Keno Game.

Transition Arrangements means the framework for the Keno Transition set out in **Schedule 4**.

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

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 Keno Games within 6 months of the Transition Out Period commencing.

Transition Objectives means the objectives set out in **clause 14.2**.

Transition Plan refers to the plan produced by the Licensee that describes how a proposed Keno Transition will be undertaken, as amended and approved by the Commission under **clause 14.7** from time to time.

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

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

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 or the Minister (as applicable) under this Agreement;
- (c) without limiting any express obligation of the State or the Minister under this Agreement, notwithstanding anything contained or implied in this Agreement to the contrary, the parties expressly acknowledge and agree that each of the State and the Minister is not obliged in performing any of its or his or her duties and obligations under this Agreement to exercise a power, function or duty which is granted to or within the responsibility of a Government Agency in the proper exercise and performance of its legal duties and functions;
- (d) if there is any statement in this Agreement that the State or the Minister will:
 - (i) act "reasonably";
 - (ii) use "reasonable endeavours";

- (iii) take "reasonable steps";
- (iv) provide "reasonable assistance"; or
- (v) otherwise act in a reasonable manner,

in relation to an outcome, it means that the State or the Minister (as applicable) will take steps to bring about the relevant outcome so far as it or he or she is reasonably able to do so, having regard to its or his or her resources and other responsibilities, but:

- (vi) each of the State and the Minister cannot guarantee the relevant outcome and no breach of the Agreement will occur as a consequence of the outcome not occurring; and
- (vii) each of the State and the Minister does not agree to:
 - (A) interfere with or influence the exercise of any statutory power or discretion by any body, including a Government Agency;
 - (B) exercise a power or direction or otherwise act in a manner that promotes the objectives and expected outcomes of this Agreement if the State or the Minister (as applicable) regards that exercise as not in the public interest;
 - (C) change, develop or implement policy or legislation in the future in a manner that is only consistent with the objectives and expected outcomes of this Agreement; or
 - (D) exercise a power or discretion or otherwise act in a manner that the State or the Minister (as applicable) regards as not being in the public interest; and
- (e) any term of this Agreement which does or purports (in whole or part) to bind the State or the Minister to exercise any of its or his or her executive powers or its or his or her functions or powers pursuant to any legislation must be interpreted subject to this **clause 1.3**.

1.4 Licence and Act to Prevail

In the interpretation of this Agreement, to the extent that there is any inconsistency between the provisions of this Agreement and the provisions of the Licence or the Act and any Regulations, then the following descending order of precedence will apply:

- (a) the Act and any Regulations;
- (b) any direction given 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 29.10**.

2 Agreement

2.1 Commencement

This Agreement commences on the Agreement Date and will continue for the Term and such further period as is necessary for the Licensee to comply with and discharge all of its obligations under this Agreement.

2.2 Form of Agreement

This Agreement will be executed with the Marketing Plan and Distribution Strategy as contemplated by clause 4 of **Schedule 2**, as previously provided by the Licensee to the State, being annexed as the Appendix to **Schedule 2**.

2.3 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.

2.4 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.

2.5 Performance Standards

The Licensee must comply with the Performance Standards in **Schedule 2** throughout the Term.

2.6 Keno System

- (a) For the avoidance of doubt, without limiting **clause 2.5**, 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 Keno System in use is approved by the Commission and operates only as approved and in accordance with the Commission's Technical Standards and any other standards, specifications or conditions determined by the Commission from time to time.
- (b) The Licensee must advise the Commission of the location of the Keno System throughout the Term.

- (c) The Licensee warrants that the Keno System is fit for purpose in accordance with the Commission's Technical Standards.
- (d) The Licensee must, before the end of each 5 year period commencing on the anniversary of the Licence Commencement Date (or such other period as approved by the Commission), undertake a review of the compliance of the Keno System (including all, software, hardware, communications links and infrastructure) with current industry standards and best practices and submit to the Commission a report on the comparison review which provides details of any proposed changes to, or development of, the Keno System required to bring the Keno System into line with current industry standards and best practices, including a plan for the execution of the proposed changes to or development of the Keno System. The Commission may provide comments on the report to the Licensee and the Licensee must consider and respond to any such comments. The Commission and the Licensee must promptly discuss any disputes or differences in relation to the report and must negotiate in good faith any amendment to the report or the plan for the execution of the proposed changes to or development of the Keno System.

2.7 Amended, replaced or supplemented Performance Standards

- (a) The Minister may give the Licensee a notice in writing specifying that the Minister intends to amend, replace or supplement the Performance Standards (**Performance Standards Notice**).
- (b) Within 10 Business Days after receiving a Performance Standards Notice, the Licensee may make representations to the Minister as to:
 - (i) the Licensee's recommendation as to the necessity for and the terms of any amended, replaced or supplemented Performance Standards; and
 - (ii) (if the Licensee considers it appropriate) why the Minister should not exercise his or her discretion under **clause 2.7(d)**.
- (c) The Minister, by written notice to the Licensee, may revoke a Performance Standards Notice.
- (d) If:
 - (i) the Licensee fails to make representations to the Minister within 10 Business Days after receiving a Performance Standards Notice; or
 - (ii) the Minister, after taking into account any representations by the Licensee, reasonably considers that the exercise of his or her discretion to amend, replace or supplement the Performance Standards is appropriate action for the Minister to take having regard to the public interest,

then the Minister may, no less than 10 Business Days after the date of the Performance Standards Notice, amend, replace or supplement

the Performance Standards, provided that the Licensee will not be obliged to meet any amended, replaced or supplemented Performance Standards until the date that is 30 Business Days after the date of the Performance Standards Notice (or such later date as is specified by the Minister in the notice).

- (e) The Minister and the Licensee may expressly agree in writing as to any matters in relation to the interpretation of, and reporting under **clause 9.1** on, the Performance Standards.

2.8 Services Agreement

In accordance with section 6A.3.10A 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 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 26(b)**.
- (c) The Licensee may revoke the authority or 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.

5 Development and Implementation

5.1 Development of Implementation Plan

- (a) The Licensee must develop an Implementation Plan, which details the action the Licensee must arrange or undertake during the Transition In Period for the implementation of Keno Games 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, Keno Systems and information;
 - (ii) financial arrangements and resources;
 - (iii) staffing and related resources;
 - (iv) distribution processes and networks;
 - (v) arrangements with Agents and Contractors;
 - (vi) developed and implemented stakeholder management and communications plans;
 - (vii) developed and implemented business support arrangements;
 - (viii) developed and implemented a service strategy;
 - (ix) 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;
 - (x) developed and complied with an implementation budget; and

- (xi) plans and milestones to ensure the efficient, smooth, seamless and uninterrupted transition of the Conduct of Keno Games to the Licensee,
- that are necessary and appropriate to Conduct Keno Games on and from the Licence Commencement Date.
- (d) The Licensee must in the Implementation Plan set out the Key Milestones for:
 - (i) the development and establishment of:
 - (A) all Intellectual Property Rights, Keno Systems and information;
 - (B) financial arrangements and resources;
 - (C) staffing and related resources;
 - (D) distribution processes and networks;
 - (E) arrangements with Agents and Contractors;
 - (F) stakeholder management and communications plans;
 - (G) business support arrangements;
 - (H) a service strategy;
 - (I) a monitoring and assurance system regarding the implementation of, and ongoing compliance with, the Licensee's Responsible Gambling Code of Conduct;
 - (J) an implementation budget; and
 - (K) plans to ensure the efficient, smooth, seamless and uninterrupted transition of the Conduct of Keno Games to the Licensee;
 - (ii) the approval by the Commission of a Keno System; and
 - (iii) the Keno Rules made, or to be made, and consented to or otherwise not disallowed by the Commission, in accordance with section 6A.2.11 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 5** and will do all things reasonably necessary to facilitate compliance by the Licensee with this **clause 5**.

5.2 Submission of Implementation Plan to the Commission

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

- (b) 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 Keno Games on and from the Licence Commencement Date. Without prejudice to the obligations on the Licensee under **clause 5.1**, 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 5.3**.
- (d) The Licensee must use its best endeavours to ensure that the Implementation Plan complies with the requirements of this **clause 5** so that it may be approved by the Commission within 4 months after the Agreement Date (or such later date approved by the Commission).

5.3 Approval of Implementation Plan

- (a) Upon the receipt of a proposed Implementation Plan (or any sub-plans contemplated by the Implementation Plan), the Commission may:
 - (i) approve the Implementation Plan (or sub-plan);
 - (ii) require an amendment to the Implementation Plan (including any amendment to the Key Milestones) (or sub-plan); or
 - (iii) reject the Implementation Plan (or sub-plan).
- (b) The Commission 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 5 Business Days of the notification as to why the amendment should not be made or the Implementation Plan (or sub-plan) not be rejected.
- (d) The Commission and the Licensee must promptly discuss any disputes or differences in relation to the Implementation Plan (or any sub-plan), and must negotiate in good faith to agree on the Implementation Plan (or sub-plan).
- (e) If the Commission and the Licensee are unable to resolve any disputes or differences in relation to the Implementation Plan (or any sub-plan) so that the Implementation Plan may be approved by the Commission within 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.

5.4 Development in accordance with Implementation Plan

- (a) The Licensee must establish Keno Games 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 5.4(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 21.2**.

5.5 Monthly Report

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

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

5.6 Certification of Implementation Completion

Upon Implementation Completion being achieved, the Licensee must promptly provide to the 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.

5.7 Readiness to Conduct Keno Games

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

- (a) must have all the Keno Systems, processes (including distribution processes), staff, finance and any other things as are necessary for the Conduct of Keno Games established and, to the extent authorised under the Licence, operating effectively, at least 3 months prior to the

Licence Commencement Date (or such later date as approved by the Commission); and

- (b) must be able to Conduct each Keno Game in accordance with the requirements for that Keno Game (including the Keno Rules) on and from the Licence Commencement Date (or such other date agreed by the Minister for that Keno Game).

5.8 Licensee's obligation to facilitate transition

- (a) Without prejudice to any other clause of this **clause 5**, the Licensee must:
 - (i) act reasonably in its dealings with, and where applicable, must negotiate in good faith with the Participants 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 Keno Games 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 Keno Games 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 5**.
- (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 Keno Games to the Licensee, that the Participants co-operate with and participate in the Licensee taking any action or any undertaking any processes under **clause 5.8(a)(iii)**.

6 Conduct of Keno Games

6.1 Availability of funds

- (a) On written request from the Commission, the Licensee must demonstrate, to the reasonable satisfaction of the Commission, that:
 - (i) not less than the prescribed percentage under the Act (which as at Agreement Date is 75% under section 6A.4.1 of the Act) of the total amount received by the Licensee for all Keno Games is paid by the Licensee to the Prizes Fund; and

- (ii) the Licensee:
 - (A) is able to pay all prizes upon determination of a Keno Game;
 - (B) is able to refund all Keno Game entries in respect of any Keno Game that is not drawn or determined; and
 - (C) has accounted for and retained an amount equal to the sum of all prizes won that have not been claimed by the Players and is able to pay all prizes won that might be subsequently claimed and otherwise deal with such unclaimed prizes in accordance with the Act and the *Unclaimed Money Act 2008 (Vic)* as applicable.
- (b) The Licensee must not allow and must ensure that there are not any Encumbrances on the whole or any part of the Prizes Fund.
- (c) For the avoidance of doubt, the Licensee holds all funds in the Prizes Fund on trust for the benefit of the persons who from time to time are entitled to payment in accordance with section 6A.4.1 of the Act.

6.2 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 venue in which tickets or other forms of entry to Keno Games are sold.

6.3 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 Keno Games, or prior to that person selling any tickets or other forms of entry to Keno Games 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 29.10(b)**, 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 Keno Games 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 6.3(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 6.3(e)(i)**,
 - (A) if the Licence is amended, its Agents and Contractors assist in the Conduct of Authorised Keno Games in accordance with the Licence as amended;
 - (B) if the Licence is suspended, its Agents and Contractors cease assisting in the Conduct of Authorised Keno Games 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 Keno Games (except to the extent permitted by Law).

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

7 Banking

7.1 Account

- (a) The Licensee must maintain Approved Account(s) throughout the Term.
- (b) The Licensee must use Approved Account(s) for all transactions in connection with the Conduct of Keno Games, including any transactions required under or in relation to the Act, Licence or Agreements (including in relation to the Prizes Fund, any amount payable under Part 4 of Chapter 6A and any Premium Payment payable under section 6A.3.13 of the Act).
- (c) The Licensee must obtain the prior written approval of the Commission to alter, move or close Approved Account(s).
- (d) The Licensee must ensure that only the Licensee acting through an appropriately authorised officer of the Licensee is permitted to withdraw funds from Approved Account(s).
- (e) The Licensee holds all funds in Approved Account(s) which the Licensee is required to pay to the State under the Act, Licence or Agreements (including any amount payable under Part 4 of Chapter 6A and any Premium Payment payable under section 6A.3.13 of the Act), on trust for and on behalf of the State.
- (f) If the Licensee is required to pay to the State an amount under the Act, Licence or Agreements (including any amount payable under Part 4 of Chapter 6A and any Premium Payment payable under section 6A.3.13 of the Act) as and when:
 - (A) such amount becomes due and payable under the Act, Licence or Agreements; or
 - (B) the Commission reasonably believes that the Licensee will not be able to pay to the State that amount as and when it becomes due and payable,

the State may access the funds held on trust for and on behalf of the State under **clause 7.1(e)** to the extent necessary to meet that amount.

7.2 Account Statements

- (a) The Licensee authorises the Account Manager to provide the Commission with a statement of the Approved Account(s) and such other particulars relating to the Approved Account(s) as may be required by the Commission.
- (b) Upon written request from the Commission, the Licensee must promptly provide the Commission with a letter addressed to the Account Manager confirming the rights of the Commission under this clause.

- (c) The Licensee must pay the reasonable costs of the Account Manager providing the Commission with statements and particulars relating to the Approved Account(s).

7.3 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 a Keno Game as will enable the Licensee to comply with its obligations under sections 6A.4.1 and 6A.4.2 of the Act (**Funds**).
- (b) The Licensee must ensure that the Ticket Agent holds the Funds on trust for and on behalf of the Licensee until the Funds are remitted in accordance with **clause 7.3(a)** and the Funds are not used for any other purpose.

8 Records

8.1 Retention of Records

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

8.2 Copy of Records

- (a) If requested by the Commission in writing, the Licensee must, at the cost of the Licensee, provide the Commission with a copy of any of the Records or any specified parts thereof.
- (b) Where the Commission requests a copy of Records in accordance with **clause 8.2(a)**, the Licensee must, if requested by the Commission, provide certification by an appropriately authorised officer of the Licensee that the copy is a true copy of the Records.

8.3 Inspection of Records

The Licensee must, at 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.

8.4 Preparation of Annual Financial Statements

- (a) The Licensee must, as soon as practicable after the end of each Financial Year, prepare the audited Annual Financial Statements so

as to comply with **clause 8.6**, section 6A.5.1 of the Act and any other written requirements of the Commission.

- (b) The Licensee must provide to the Commission a copy of the 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.

8.5 Additional Financial Statements

- (a) In addition to the audited Annual Financial Statements, the Licensee must, upon written request from the Commission, and at the cost of the Licensee, provide the Commission with financial statements for the period specified in the request and covering:
 - (i) the financial operations and position of the business of the Licensee related to Keno Games;
 - (ii) the disaggregated financial performance in respect of any individual part or parts of the Conduct of Keno Games or the engagement of Agents or Contractors or of Keno Games themselves (such as ticket sales by particular ticket sellers, particular Keno Games or particular bet types); and
 - (iii) if applicable, the financial statements of the consolidated entity (as defined in the Corporations Act),
(collectively, the **Additional Financial Statements**)
- (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 8.6, 8.8 and 8.9**.

8.6 Content of Financial Statements

- (a) The Annual Financial Statements and any Additional Financial Statements must give a true and fair view of the financial operations and position of the business of the Licensee related to Keno Games (including Keno games under the Licence conducted in accordance with the Arrangement 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 Keno games:
 - (i) a statement of cash flow for the period of that financial statement;

- (ii) a statement of financial performance for the period of that financial statement; and
 - (iii) a statement of financial position as at the date of the financial statement.
- (b) For the purposes of **clauses 8.5(a)(ii)** and **8.6(a)(ii)**, a statement of financial performance will include sales revenue, prizes, taxes, duties and commissions payable to Ticket Agents.

8.7 Audit of Licensee

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

8.8 Compliance with accounting standards

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

8.9 Executive declaration

- (a) The Licensee must procure, in respect of each year's Annual Financial Statement and any Additional Financial Statements, a declaration from its Chief Executive Officer and Chief Financial Officer (or equivalent positions), acceptable to the Commission, as to whether, in that person's opinion:

- (i) the accounts and statements comply with the Australian Accounting Standards;
 - (ii) the accounts and statements reflect a true and fair view of the financial position of the Licensee, or the business of the Licensee related to Keno Games (as the case requires); and
 - (iii) the Licensee has sufficient and effective internal controls to ensure that the person making the declaration would be aware of any material information relating to the production of that Annual Financial Statement or any Additional Financial Statements (as the case requires).
- (b) The Licensee must provide the declarations required under **clause 8.9(a)** to the Commission together with the Annual Financial Statements or any Additional Financial Statements.

8.10 Electronic Provision of Information

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

8.11 Limits on disclosure

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

9 Reporting Requirements

9.1 Regular reporting requirements

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

- (a) identifying the Licensee's actual sales against the Licensee's marketing projections for each Financial Year. The report must set out in respect of those figures an analysis of the actuals, variations, explanations and mitigation actions being taken by the Licensee (including amendments to its marketing strategies);
- (b) detailing the Licensee's performance, including its performance against each Performance Standard, and identifying any issues associated with the Keno Games and their operation, distribution

networks and measures taken by the Licensee to counter any adverse effects for each Financial Year;

- (c) identifying any issues:
 - (i) associated with the business continuity and viability of the Licensee in Conducting the Keno Games, any projected risks to such continuity or viability and measures taken or to be taken by the Licensee to counter any such risks; and
 - (ii) relating to the Licensee's Responsible Gambling Code of Conduct (including non-compliances) that have arisen for each Financial Year, and measures taken by the Licensee to rectify its effects or non-compliance, and approaches that will be implemented by the Licensee in the next Financial Year;
- (d) identifying the movements in the number of Points of Sale and types and categories of Points of Sale for each Financial Year; and
- (e) setting out the Licensee's sales and financial forecasts, forward looking commentary and explanation of strategies and growth initiatives (including marketing strategies and details of technology and product improvements), for the Financial Year in which the report is provided and the two Financial Years thereafter.

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

9.2 Non-regular reporting requirements

Without limiting the reporting requirements in this **clause 9**, the Licensee must provide a Report to the Commission (in the format, and containing such information, as specified in **clause 9.3**) identifying any issues relating to the Licensee's Responsible Gambling Code of Conduct (including non-compliances) and 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 the Licensee's Responsible Gambling Code of Conduct and any risks to ongoing business continuity or viability.

9.3 Content and format of Reports

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

9.4 Licence to use information in Reports

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

10 Information and data

10.1 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 Keno Games including aggregated data and disaggregated data relating to individual venues, relating to:
 - (i) how many tickets were sold in Keno Games;
 - (ii) the break down of ticket sale by bet type;
 - (iii) the break down of ticket sale by game;
 - (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 10.1(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); and
 - (v) in relation to keno pooled games under the Arrangement, data relating to those games in both Victoria and New South Wales and any other jurisdiction(s) where the Minister has by instrument approved an arrangement between the keno

licensee and the licensee in that jurisdiction in accordance with section 6A.1.3 of the Act, including prizes paid or payable in relation to those games, how many tickets were sold, and any other data the Commission advises by notice in writing.

- (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; and
 - (ii) provide any person with reasonable access to the Ticket Agent's venue (including permitting the inspection and copying of Data) for the purposes of State commissioned research into gambling.
- (e) In addition to any obligations under **clause 10.1(a)**, the Licensee must cooperate with and provide information 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 10.1(d)**) and the information contained in the reports required under **clause 10.1(a)(v)**.
- (g) The Licensee warrants that it has the right to grant all licences the subject of this **clause 10** and that the exercise of the rights licensed under this **clause 10** will not infringe any Intellectual Property Rights or Moral Rights of any third party.

11 Directions

11.1 Directions to provide information etc

- (a) The Minister may give a written direction to the Licensee requiring the Licensee to provide to the Minister any information or document, or any class of information or document, that is in the possession or under the control of the Licensee and that:
 - (i) relates to any arrangement or agreement between the Licensee and one or more parties in Victoria or in any other State or Territory or another country relating to the operation of Keno Games under the Licence; or
 - (ii) in the opinion of the Minister relates to the operation of Keno Games under the Licence and is considered by the Minister to be relevant to any licensing process for the grant of a Keno Licence, including:
 - (A) a call or proposed call for registrations of interest in a Keno Licence; or
 - (B) an invitation or proposed invitation to apply for a Keno Licence; or
 - (C) an application or proposed application for a Keno Licence.
- (b) The Licensee must comply with a direction under **clause 11.1(a)**.
- (c) The Minister may, subject to any conditions that the Minister thinks fit, disclose any information acquired by the Minister in response to a direction under **clause 11.1(a)** to the Commission and to either or both of the following:
 - (i) persons who register an interest in the grant of a Keno Licence in accordance with section 6A.3.3 of the Act;
 - (ii) persons who apply for a Keno Licence in accordance with section 6A.3.5 of the Act.
- (d) No compensation is payable by the State in respect of anything done in accordance with this clause.

11.2 Directions to licensees

- (a) The Commission may give a lawful written direction to the Licensee relating to the Conduct, supervision or control of the Keno Game to be conducted under the Licence and the Licensee must comply with the direction as soon as it takes effect.
- (b) The direction takes effect when it is given to the Licensee or at the later time specified in it.

- (c) The power conferred by this clause includes a power to give a direction to a Licensee to adopt, vary, cease or refrain from any practice in respect of the Conduct of the Keno Game.
- (d) A direction under this clause must not be inconsistent with the Act, the Regulations, the Licence or this Agreement.

12 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 Keno Games 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 12(b)** within the relevant time which applies to a specific kind of change specified in the notice given by the Commission under **clause 12(a)**, provided that such time is no less than 20 days after the change in situation occurring.

13 Review of Licence

- (a) On written request from the Minister, the Licensee must make itself its Agents or Contractors and any other person under the Licensee's direction or control, and its Records available to the Minister, and render all assistance and information the Minister considers necessary, for the purposes of the Minister conducting a review of the Conduct of Keno Games and the Licence.
- (b) The written notices from the Minister will specify the periods during which the review will occur, and will name those persons whom the Minister authorises to conduct the review and to whom the Licensee is required to provide information and assistance. The Minister may authorise those persons to exercise the power of delegation.
- (c) The Minister may undertake a review of the Conduct of Keno Games and the Licence at any time during the Term.

14 Transition

14.1 New Licensees

The Licensee acknowledges that the Minister may grant to a New Licensee a licence to Conduct Keno Games to undertake Preparatory Action in respect of the Keno Games prior to the expiry of the Licence.

14.2 Transition objectives

- (a) The parties acknowledge that the objectives of this **clause 14** and **Schedule 4** are to:
 - (i) ensure efficient, smooth, seamless and uninterrupted transition of the Conduct of Keno Games from one licensee to another;
 - (ii) ensure that an Incoming Licensee is able to transition in to its licence effectively and efficiently;
 - (iii) protect the interest of the public and Players;
 - (iv) reduce the risk of loss of revenue of the State;
 - (v) ensure that the requirements of the Commission in relation to transition are satisfied in a timely fashion; and
 - (vi) promote the objectives of the Act.
- (b) The Licensee must undertake in good faith such activities as may reasonably be required of it to assist in the achievement of the objectives, and acknowledges that the intent of the 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.

14.3 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 ensure that its Agents and Contractors act reasonably and in good faith towards any Incoming Licensee;
- (c) 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 Keno Games to an Incoming Licensee;

- (d) act reasonably and in good faith towards the State during the Keno Transition; and
- (e) if required by the Minister, transfer or assign any part of the Keno assets or novate the Agreement, the Arrangement, the Keno Pooling Agreement, any other Agreements, agreements or contracts to which it is a party to the Incoming Licensee execute such documents as are required by the Minister to give effect to such novation.

14.4 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 Keno Transition.

14.5 Transition Out - Reciprocal Obligations

The State:

- (a) acknowledges that this Agreement places obligations on the Licensee under this **clause 14**; and
- (b) intends to place generally reciprocal obligations in relation to the Keno Transition upon an Incoming Licensee.

14.6 Transition Out - Transition Steering Committee

- (a) As soon as it is reasonably practicable after the grant of a licence to Conduct Keno Games 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 Keno 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 14.6(d)(i)(A)** or **(B)**, then the deadlock will be resolved by following the dispute resolution process under **clause 24.2**.

14.7 Preparation and approval of Transition Plan

- (a) The Licensee must develop a proposed Transition Plan and submit it to the Commission within 6 months of 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 Keno Games;
 - (iii) include details of all material agreements and arrangements with any Agent or Contractor in relation to the Conduct of Keno Games (and details of such other agreements and arrangements with any Agent or Contractor in relation to the Conduct of Keno Games 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 all Keno Systems to Conduct Keno Games 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 location of the equipment; and
 - (vii) 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 Keno Games, the Conduct of Keno Games, 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 14.7** 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 Keno 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 Keno Transition any Transition Plan 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) The Licensee warrants that it has the right to grant the licence the subject of **clause 14.7(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.

14.8 Reimbursement by the State

- (a) Subject to **clauses 14.8(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 expressly provided for in the Project Plan and approved by the Minister in writing;

- (ii) relate directly to carrying out the Keno Transition activities (and not merely any activities relating to the Conduct of Keno Games 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 24.2**.
- (c) The State is not obliged to reimburse the Licensee for any expenses incurred in respect of an activity covered by **clause 14.8(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 14.8(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 Keno Transition to be completed,
 following receipt of evidence reasonably satisfactory to the State that the Licensee has incurred the expenses.

15 Intellectual Property

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

15.2 Warranty regarding Intellectual Property Rights

- (a) For the avoidance of doubt, the Licensee acknowledges that it does not have and will not have any Intellectual Property Rights in the name "keno" or in the Keno Game as described in paragraph (a) of the definition of "keno game" in section 1.3(1) of the Act.

- (b) The Licensee warrants that subject to **clause 15.2(a)**, it owns or has the right to use all the Intellectual Property Rights used by it (or its employees, Agents or Contractors) to Conduct Keno Games, including but not limited to the Licensed IP.
- (c) The Licensee warrants that in Conducting Keno Games, it will not infringe any Intellectual Property Rights or Moral Rights.

15.3 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 Keno Games (or any similar or replacement games), including in relation to Conducting Keno Games.
- (b) Under the State IP Licence, the State may only sub-licence rights in relation to the Licensed IP to any one or more New Licensees, and any such sub-licence shall:
 - (i) be limited to the geographical area of Victoria (except that any New Licensee may be permitted by the sub-licence to use the Licensed IP in advertising and promotional materials outside Victoria, where those advertising and promotional materials primarily target members of the public in Victoria or in close geographic proximity to Victoria);
 - (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 Keno Games; and
 - (iv) otherwise be on the terms the State considers appropriate.
- (c) For the avoidance of doubt:
 - (i) if there are multiple New Licensees at any time, the State may sub-licence the Licensed IP to each of them;
 - (ii) where a New Licensee ceases to hold the right to Conduct Keno Games, the State may sub-licence the Licensed IP to any subsequent New Licensee.

- (d) Any Intellectual Property Rights associated with the Conduct of Keno Games 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 State must only use the Licensed IP, and must take reasonable steps to ensure that any New Licensee only uses the Licensed IP, in connection with goods and services of high quality.
- (f) 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.
- (g) 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.
- (h) Except as provided for in the circumstances set out in **clause 15.3(l)(ii)**, and except for the rights expressly granted by this Agreement, the State acquires no interest in the Licensed IP (including interest in goodwill associated therewith) by virtue of this Agreement.
- (i) 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 15.3(f)**, and the indemnity in **clause 15.4(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 15.3(i)** 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.
- (j) Without limiting **clause 15.3(i)**, the Licensee must:

- (i) promptly notify the Minister in writing of any actual or suspected infringement of any of the Licensed IP, or any challenge to the rights of the Licensee, the State or any New Licensee in respect of the Licensed IP, that comes to the Licensee's attention;
- (ii) take all reasonable steps to maintain registration in Australia of those elements of the Get Up that are registered at the Agreement Date and to obtain and maintain registration in Australia of those elements of the Get Up that are the subject of applications for registration at the Agreement Date, become the subject of applications for registration during the Term or comprise trade marks that are used extensively in connection with Keno Games during the Term. The State will pay the reasonable costs of the Licensee taking such steps as are taken following the Term under this **clause 15.3(j)(ii)**, as approved by the Minister in writing, provided that the Licensee notifies such costs to the Minister a reasonable period before incurring them, except that the State may elect not to pay such costs in which case the Licensee is not required to take the relevant steps. This **clause 15.3(j)(ii)** does not require the Licensee to pursue any application for registration that it reasonably considers is unlikely to achieve registration;
- (iii) promptly notify the Minister in writing of any change to the registration status of any element of the Get Up;
- (iv) keep the Minister reasonably informed in writing of all claims or proceedings involving any actual or suspected infringement of any of the Licensed IP, or any challenge to the rights of the Licensee in respect of the Licensed IP;
- (v) take all reasonable steps to maintain in effect any licence under which the Licensee has obtained rights in relation to the Licensed IP. If the Licensee is unable to maintain such a licence, it must notify the Minister in writing, giving as much notice as is practical that the relevant licensed rights may not or cannot be maintained. In that event, once the relevant licensed rights cease to be licensed to the Licensee, those rights will be deemed excluded from the definition of "Licensed IP". Following the Term, the State will pay the reasonable costs of the Licensee maintaining a licence under this **clause 15.3(j)(v)**, as approved by the Minister in writing, provided that the Licensee notifies such costs to the Minister a reasonable period before incurring them, except that the State may elect not to pay such costs in which case the Licensee is not required to maintain the relevant licence; and
- (vi) fully co-operate with the State and any New Licensee in registering their respective licence interests, if required by the State or a New Licensee.

- (k) The State must use reasonable endeavours to notify the Licensee promptly in writing of any infringement of any of the Licensed IP, or any challenge to the rights of the Licensee or the State or any New Licensee in respect of the Licensed IP, that comes to the Minister's attention.
- (l) If the Licensee wishes to sell any Licensed IP:
 - (i) the Licensee must give the Minister a notice in writing to that effect stating the terms, including the price, on which the Licensee will sell the specified Licensed IP, with such notice constituting an offer to sell to the State on the terms stated in the notice (the **Offer**); and
 - (ii) within 30 days of receipt of the Offer the Minister may notify the Licensee in writing that the State will purchase the relevant Licensed IP on the terms stated in the Offer and thereafter, the Licensee must sell and the State must purchase the relevant Licensed IP at the price and upon the terms and conditions specified in the Offer.
- (m) If the Licensee is not required to sell the relevant Licensed IP to the State, the Licensee may until the date that is 180 days after the date of the Offer sell the relevant Licensed IP to a third party for a price that is no less than the price offered to the State and otherwise on terms no more favourable to the purchaser than the terms offered to the State.
- (n) 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 15.3**, subject to the State agreeing directly in favour of the New Owner, to continue to observe all of the State's obligations hereunder.

15.4 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) If any Third Party Claim is successful, or if it is agreed by the Licensee that there is an infringement of the Intellectual Property

Rights of the relevant third party, then without limiting the rights or remedies of any of the IP Indemnified Parties, the Licensee must at no cost to any of the IP Indemnified Parties, render the relevant activity non-infringing by procuring the right or consent to exercise the relevant Intellectual Property Rights.

- (c) The State holds the benefit of the indemnity in **clause 15.4(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.
- (d) At the State's discretion, the State will provide reasonable assistance at the Licensee's cost, and will take reasonable steps to procure the other IP Indemnified Parties to provide reasonable assistance at the Licensee's cost, in relation to the Licensee's handling of any Third Party Claim.

16 Insurance

16.1 Insurance Generally

- (a) The Licensee must take out and maintain:
 - (i) the insurances that a prudent person would obtain and maintain in order to Conduct activities substantially similar to the Keno Games; and
 - (ii) 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 16.2**.

16.2 Insurance Requirements

- (a) The Licensee must take out and maintain insurance policies which covers:
 - (i) an amount of no less than \$10 million on an occurrence basis for public liability; and
 - (ii) an amount of no less than \$5 million per claim and in the annual aggregate for professional indemnity.
- (b) The Licensee must ensure that it takes out and maintains insurance policies in accordance with **clause 16.1(a)** for the Term and for at least 12 months after the cancellation, termination or expiration of the Licence.

16.3 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- or equivalent.

16.4 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 16.4(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.

17 Liability and Indemnities

17.1 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 Keno Games. 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.

17.2 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.

17.3 Exclusion of liability

- (a) The Licensee acknowledges that it is solely responsible for the Conduct of Keno Games and hereby releases the State, the Minister and the Commission (and any of their respective representatives, members, officers, employees, contractors and agents) from and against any Claim, arising directly or indirectly, to compensate the Licensee or any other person for any losses, damages, costs, liabilities or expenses incurred or suffered by the Licensee or any other person as a result of, associated or in connection with the Conduct of Keno Games (including the Licence being suspended, cancelled or surrendered), including where the loss, damage, cost, liability or expense is caused by the Licensee following any lawful directions of the Minister or the Commission.

- (b) The Licensee must require, and use its best endeavours to procure, a similar release of liability, in the form and substance satisfactory to the Minister, from all its Agents and Contractors.

17.4 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 Keno Games (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 17.4(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.

18 General Warranties

18.1 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 prizes (whether claimed or unclaimed) upon determination of a Keno Game and refund the price of all Keno Game entries in respect of any Keno Game 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 Keno Assets;
 - (f) the Licensee is not the subject of a Financial Default;
 - (g) the Licensee has declared and will continue to declare to the Commission any breach of any laws relating to the Conduct of gambling in Victoria or elsewhere (including providing all material particulars);
 - (h) the Licensee has declared and will continue to declare any offences to the Commission it has committed relating to the Conduct of Keno Games whether in Victoria or elsewhere (including providing all material particulars);
 - (i) the Licensee:
 - (i) is ISO 9000 and ISO 2700 certified or is able to demonstrate to the reasonable satisfaction of the Commission that it has a generally equivalent certification or has undertaken reasonable steps to become ISO 9000 and ISO 2700 certified or have a generally equivalent certification; and
 - (ii) has adopted the Information Technology Infrastructure Library (ITIL) 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 Technology Infrastructure Library (ITIL) framework as a standard or adopt a generally equivalent framework as a standard;
 - (j) all information provided in writing by or on behalf of the Licensee to the Minister and the Commission (including the registration of interest and application to apply for the Licence submitted by the Licensee) was in all material respects true and accurate and not misleading by omission; and
 - (k) it will comply with the conditions of and perform its obligations in accordance with the Keno linked jackpot Arrangement and the Keno Pooling Agreement.

18.2 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 prizes (whether claimed or unclaimed) upon determination of a Keno Game and refund the price

- of all Keno Game entries in respect of any Keno Game 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 Keno Assets;
 - (f) it protects the Keno Assets and, at the Licensee's expense, prosecutes or defends all legal proceedings that are necessary for the protection of the Keno Assets to the extent appropriate in accordance with prudent business practice;
 - (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 Keno Games;
 - (ii) perform its obligations under the Licence, this Agreement, the Arrangement including the Keno Pooling 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 Keno Games, 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 24 hours) 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 Keno Games whether in Victoria or elsewhere (including providing all material particulars), as soon as

practicable (and in all events no later than 24 hours) after the Licensee becomes aware of that offence;

- (m) the Licensee:
 - (i) is ISO 9000 and ISO 2700 certified or is able to demonstrate to the reasonable satisfaction of the Commission that it has a generally equivalent certification or has undertaken reasonable steps to become ISO 9000 and ISO 2700 certified or have a generally equivalent certification; and
 - (ii) has adopted the Information Technology Infrastructure Library (ITIL) 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 Technology Infrastructure Library (ITIL) framework as a standard or adopt a generally equivalent framework as a standard;
- (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; and
- (o) it will comply with the conditions of and perform its obligations in accordance with the Arrangement and the Keno Pooling Agreement.

19 Termination

19.1 Termination

- (a) This Agreement will terminate upon the cancellation, 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.

20 Force Majeure

20.1 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 20**; 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 20** 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 20.1(d)(i)**.

20.2 Suspension of obligations

The relevant obligations of the Licensee under this Agreement will, subject to the Licensee's compliance with **clauses 20.1(b), 20.1(d), 20.1(f), 20.3** and **20.4**, be suspended in accordance with the Suspension Notice during the Suspension Period.

20.3 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.

20.4 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.

20.5 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.

21 Default

21.1 Financial Default

If a Financial Default occurs in respect of the Licensee, then the Minister may, in addition to any other remedies he or she has under the Act, treat the Financial Default as a Step-In Event and immediately proceed in accordance with **clause 22**.

21.2 Other Default

- (a) If the Licensee fails to perform or observe a covenant or obligation in this Agreement (including, for the avoidance of doubt, as a consequence of **clause 6.3(d)** (**Failure**) or the Arrangement, 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 the Failure Notice in which to cure or remedy the Failure (**Cure Period**); and
 - (iv) if the Failure is not capable of being cured or remedied, any reasonable requirements to redress the prejudice, loss or harm arising from the failure (including compensation to the State) (**Alternative Arrangements**).
- (b) Despite **clause 21.2(a)**, if in the Minister's sole opinion, the Failure is of a serious nature, then the Minister may treat the Failure as a Step-In Event and immediately proceed in accordance with **clause 22**. For the purposes of this **clause 21.2(b)**, a Failure is of a serious nature if it materially adversely affects, or is capable of materially adversely affecting:
- (i) the interest of the public or the Players; or
 - (ii) the revenue of the State.
- (c) The Licensee may at any time, request an extension to the Cure Period by notice to the Minister. The notice must specify the reason why the Licensee is not able to cure or remedy the Failure within the existing Cure Period, the additional time required and any other information relevant to the assessment of the request. The Minister may accept or reject the request at his or her absolute discretion.

21.3 Remediating within the Cure Period

- (a) Upon receipt of a Failure Notice, if the Failure is capable of being cured or remedied, the Licensee must cure or remedy the Failure within the Cure Period.
- (b) In addition to its obligations under **clause 21.3(a)**, the Licensee must:
 - (i) provide the Minister (no later than 5 Business Days after receipt of a Failure Notice) with a written plan which specifies how the Failure occurred and how the Licensee intends to remedy the Failure (**Cure Plan**). The Cure Plan must be one which, if followed, could reasonably be expected to remedy the Failure within the Cure Period;
 - (ii) remedy the Failure in accordance with the Cure Plan and comply with any reasonable directions of the Minister in relation to the Cure Plan; and

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

21.4 Remediating with Alternative Arrangements

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

21.5 Failure to remedy

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

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

21.6 Ministerial Directions and Disciplinary Actions not affected

- (a) Nothing in this Agreement affects the ability of the Minister or the Commission to exercise any rights in relation to directions or disciplinary actions provided under the Act.
- (b) For the avoidance of doubt, any Failure or a breach of any provision of this Agreement constitutes a contravention of the whole Agreement.

22 Step-In Right

22.1 Step-In Rights

- (a) If a Step-In Event occurs, then the Minister may, in addition to any other remedies he or she has under the Act but provided that the Licence has not been cancelled, suspended or surrendered, give the Licensee a notice in writing (**Step-In Notice**) specifying that:
 - (i) such a Step-In Event has occurred; and
 - (ii) the Minister proposes to exercise his or her discretion under **clause 22.1(d)** no less than 10 Business Days after the date of the Step-In Notice.
- (b) Within 5 Business Days after receiving a Step-In Notice, the Licensee may make representations to the Minister as to:
 - (i) the Licensee's recommendation as to the Temporary Operator; and
 - (ii) why the Minister should not exercise his or her discretion under **clause 22.1(d)**.

- (c) The Minister, by written notice to the Licensee, may revoke a Step-In Notice.
- (d) If:
 - (i) the Licensee fails to make representations to the Minister within 5 Business Days after receiving a Step-In Notice; or
 - (ii) the Minister, after taking into account any representations by the Licensee, reasonably considers that the exercise of his or her discretion is appropriate action for the Minister to take having regard to the extent of any Failure, the interest of the public or Players or the risk to the revenue of the State,then the Minister may, no less than 10 Business Days after the date of the Step-In Notice, require the Licensee to, and the Licensee must, appoint a Temporary Operator nominated by the Minister as an agent of the Licensee to take the steps permitted under this **clause 22**.

22.2 Steps

The Temporary Operator is entitled, as agent of the Licensee, to take any of the following steps under this **clause 22** in respect of the Conduct of Keno Games:

- (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 Keno Games as an Agent of the Licensee (but for the avoidance of doubt this does not affect any function or obligation of the Licensee under a gaming Act, the gaming regulations, the Licence, this Agreement or any other Agreements);
- (b) operating and managing any account (including the Approved Account(s)) operated by the Licensee for the purpose of assisting in establishing or Conducting Keno Games 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 Keno Games as an Agent of the Licensee;
- (d) taking such other steps as are, in the reasonable opinion of the Temporary Operator, necessary to assist in Conducting Keno Games 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.

22.3 Intellectual Property and Keno Game equipment

The Licensee appoints the Temporary Operator as its agent until cessation of step-in under **clause 22.7** 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 Keno Games;
- (b) use, reproduce, copy or install any or all software, hardware, facilities, computer systems, servers, equipment, network and infrastructure associated with the Conduct of Keno Games;
- (c) enter and occupy all Points of Sale and premises associated with the Conduct of Keno Game;
- (d) exercise all other rights necessary to allow the Temporary Operator to Conduct Keno Games, for any purposes associated with or connected to the Conduct of Keno Games 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 Keno Games in the State.

22.4 Operation during step-in

- (a) When exercising its rights under this **clause 22** the State will use all reasonable endeavours to, and the Temporary Operator must, assist in Conducting Keno Games in a manner which is consistent with the requirements of:
 - (i) the Act, the Licence, this Agreement, the Arrangement 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 and pay all expenses associated with or connected to the Conduct of Keno Games 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 22.1** until cessation of step-in under **clause 22.7**.
- (c) The Licensee must reimburse the State for all costs and expenses incurred by the State in exercising its rights under this **clause 22** including any fees or other amounts paid by the State to the 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.

22.5 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 22** and must require and use its best endeavours to enter into arrangements and take all reasonable action to enforce such arrangements to ensure that the Licensee's Agents, Contractors 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 22**. 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 22.5(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 Keno Games;
 - (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.

22.6 Attorney

The Licensee:

- (a) irrevocably appoints the Temporary Operator as its attorney to assist in exercising all or any of the Licensee's powers, and assist in performing all or any of the Licensee's obligations, in accordance with this **clause 22**; and
- (b) agrees to ratify and confirm whatever action the Temporary Operator takes in accordance with this **clause 22**.

22.7 Cessation of step-in

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

- (a) immediately upon the Licence being suspended or cancelled or its surrender takes effect under section 6A.3.24 of the Act ; or

- (b) as soon as the Minister determines that it is appropriate to terminate the exercise of the rights under **clause 22** (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).

22.8 Minister and Temporary Operator to act reasonably

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

22.9 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 22** except to the extent that the Minister does not act in accordance with **clause 22.8**.
- (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 22** except to the extent that the Temporary Operator does not act in accordance with **clause 22.8** or breaches any provision of the Licence or Agreement.
- (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 22** 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 22** except to the extent that the Licensee does not act in accordance with **clause 22.5** or **22.6(b)**.

22.10 Other rights

The exercise by the Minister of his or her rights under this **clause 22** does not affect any other rights or entitlements of the Minister or the Commission (whether under the Act, the Licence, this Agreement or any other Agreement).

23 Temporary Licensee

23.1 Application

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

- (a) subject to the terms and conditions of the Temporary Licence;
- (b) to the extent permitted by Law; and
- (c) without prejudice to **clauses 6.3** or **14.3** or any other clause of this Agreement,

the terms of this **clause 23** apply.

23.2 Powers

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

- (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 Keno Games 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 Keno Games as Temporary Licensee;
- (c) acquiring additional or replacement products or services from any suppliers for the purpose of establishing or Conducting Keno Games as Temporary Licensee;
- (d) taking such other steps as are, in the reasonable opinion of the Temporary Licensee, necessary to Conduct Keno Games in accordance with the Act, the Licence, this Agreement and any other Agreements;
- (e) taking such steps as are, in the reasonable opinion of the Temporary Licensee, necessary to carry out the obligations of the Licensee under the Transition Plan; and
- (f) electing to cease exercising any of its rights referred to above.

23.3 Intellectual Property and Keno Game equipment

The Licensee appoints the Temporary Licensee as its agent 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 Keno Games;

- (b) use, reproduce, copy or install any or all software, hardware, facilities, computer systems, servers, equipment, network and infrastructure associated with the Conduct of Keno Games;
- (c) enter and occupy all Points of Sale and premises associated with the Conduct of Keno Game;
- (d) exercise all other rights necessary to allow the Temporary Licensee to Conduct Keno Games, for any purposes associated with or connected to the Conduct of Keno Games 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 Keno Games in the State.

23.4 Operation during Temporary Licence

The Licensee must reimburse the State for all costs and expenses incurred by the State in exercising its rights under this **clause 23** including any fees or other amounts paid by the State to the Temporary Licensee and the Minister may from time to time provide to the Licensee a written notice detailing the amount of those costs and expenses required to be reimbursed by the Licensee and the Licensee must pay to the State the amount specified in that notice within 5 Business Days after receipt of that notice.

23.5 Licensee to give all assistance

- (a) The Licensee must assist the Temporary Licensee in whatever way possible in the exercise of the Temporary Licensee's rights under 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 Licensee in the exercise of the rights granted in this **clause 23**.
- (b) Without limiting **clause 23.5(a)**, the Licensee must allow the Temporary Licensee to have access to:
 - (i) any premises occupied by the Licensee or under its control and will require and use its best endeavours to enter into arrangements and take all reasonable action to enforce such arrangements to procure that such access is given by all Agents, Contractors 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 Keno Games; and
 - (ii) all Records and the State will have the Temporary Licensee keep such materials in confidence subject to any disclosure requirements or rights under Law applicable to the Minister, the State or the Temporary Licensee.

23.6 Attorney

The Licensee:

- (a) irrevocably appoints the Temporary Licensee as its attorney to exercise all or any of the Licensee's powers, and perform all or any of the Licensee's obligations under this Agreement or any other Agreements, agreements or contracts to which it is a party; and
- (b) agrees to ratify and confirm whatever action the Temporary Licensee takes in accordance with this **clause 23**.

23.7 Liability

- (a) The Licensee acknowledges and agrees that the Minister and the State will not be liable to the Licensee for any losses incurred by the Licensee resulting from the appointment of a Temporary Licensee and the exercise by the Temporary Licensee of the rights under this **clause 23**.
- (b) The Licensee acknowledges and agrees that the Temporary Licensee will not be liable to the Licensee for any losses incurred by the Licensee resulting from the appointment of the Temporary Licensee and the exercise by the Temporary Licensee of the rights under this **clause 23** except to the extent that the Temporary Licensee breaches any provision of this **clause 23**.
- (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 23** except to the extent that the Licensee does not act in accordance with **clause 23.5** or **23.6(b)**.

23.8 Other rights

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

24 Dispute resolution

24.1 Dispute resolution – general

- (a) This **clause 24** applies to any dispute under or in relation to this Agreement which arises after the termination of the Agreement or as contemplated by **clause 14.6**, 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 29.6**.
- (b) The parties must use all reasonable endeavours to resolve any dispute to which this **clause 24** applies.

- (c) In relation to a dispute arising under or in relation to **clause 14.6**, the parties must use all reasonable endeavours to resolve the dispute having regard to the Transition Objectives.

24.2 Dispute Notice

- (a) If a dispute arises between the parties to which this **clause 24** applies and a party wishes to have a dispute resolved or determined, that party must issue a Dispute Notice to the other party which must include:
 - (i) a statement that it is a notice under this **clause 24.2**;
 - (ii) the basis for the claim;
 - (iii) the facts relied upon in support of the claim in sufficient detail to permit verification or assessment of the claim;
 - (iv) details of all amounts claimed and how those amounts have been calculated or claimed; and
 - (v) details of any other relief sought**(Dispute Notice)**.

24.3 Negotiation

- (a) The parties agree that the Minister 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 24.3(c)** will not be contractually binding on the parties.

24.4 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.

24.5 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 14**, 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 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 24.4** this clause is intended to be an agreement by the Licensee in writing to refer present or future disputes between the parties to arbitration.

24.6 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 24**.
- (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.

24.7 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 24.4(a)**.

24.8 Survival

- (a) This **clause 24** 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 24** applies even where this Agreement is otherwise void or voidable.

24.9 Other rights

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

25 Goods and Services Tax

25.1 Construction

In this **clause 25**:

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

25.2 Consideration GST exclusive

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

25.3 Payment of GST

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

25.4 Timing of GST payment

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

25.5 Tax invoice

The Supplier must deliver a tax invoice or an adjustment note to the recipient before the Supplier is entitled to payment of an amount under **clause 25.3**. The recipient can withhold payment of the amount until the Supplier provides a tax invoice or an adjustment note, as appropriate.

25.6 Adjustment event

If an adjustment event arises in respect of a taxable supply made by a Supplier under this Agreement, the amount payable by the recipient under **clause 25.3** will be recalculated to reflect the adjustment event and a payment will be made by the recipient to the Supplier or by the Supplier to the recipient as the case requires.

25.7 Reimbursements

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

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

25.8 No Merger

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

26 Notices 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 26(c)**, it must be treated as given to and received by the party to which it is addressed:
 - (i) if sent by post, on the 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.
- (e) The parties' representatives for the purposes of the Agreement are set out in **Schedule 1**.

27 Confidentiality and disclosure

27.1 Keep Confidential

Subject to **clauses 27.2, 27.3** and **27.4**, the Licensee must keep the contents of this Agreement and all documents and information made available to it under, or in connection with, or in the course of the performance of, the Licence, this Agreement or any other Agreements,

confidential and must not disclose the same to any other person without the prior written consent of the Minister.

27.2 Exceptions to confidentiality

Clause 27.1 will not apply in the following circumstances:

- (a) any disclosure required by Law or legally binding approval;
- (b) in respect of information already in the public domain (other than as a result of breach of this **clause 27**);
- (c) any disclosure required by any applicable stock exchange listing rules;
- (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 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;
- (g) 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
- (h) any disclosure to the State.

27.3 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 27.3** 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 27.4**.

27.4 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) The Licensee must, at its own cost and expense, use its best endeavours to assist the State, a Minister, the Commission or a Government Agency in meeting its obligations under this **clause 27.4**.
- (c) The Licensee:
 - (i) must not (and must enter into arrangements and take all reasonable action to enforce such arrangements to ensure that its Agents, Contractors 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 27.2(a), 27.2(c), 27.2(g) or 27.2(h)**; and
 - (B) if such disclosure, announcement or statement relates to information covered by **clause 27.2(b)** or the disclosure of which is permitted by **clauses 27.2(d) to 27.2(f)**, such consent will not be unreasonably withheld;
 - (ii) must use its best endeavours to agree with the Minister the wording and timing of all public disclosures, announcements and statements by it or its Agents or Associates relating to the Licence or this Agreement or the Minister's or the Commission's involvement in the Licence or this Agreement before the relevant disclosure, announcement or statement is made;
 - (iii) must give the Minister a draft of any proposed disclosure, announcement or statement (including media releases) relating to the Licence or this Agreement or the Minister's or the Commission's involvement in the Licence or this Agreement and must obtain the Minister's approval of the disclosure, announcement or statement (including media releases) before distributing such disclosure, announcements or statement; and

- (iv) as soon as practicable, must give to the Minister a copy of any disclosure, announcement or statement (including media release) agreed to or approved by the Minister under this **clause 27.4**.

28 Privacy

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.

29 Miscellaneous

29.1 Assignment

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

29.2 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.

29.3 Severability

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

29.4 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.

29.5 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.

29.6 Surviving provisions

- (a) An indemnity given under this Agreement survives the frustration, rescission, suspension, termination or expiration of this Agreement.
- (b) All clauses that by their nature survive expiration or termination of this Agreement will remain in full force, which include, for the avoidance of doubt, **clauses 1.2, 8.1, 8.2, 8.3, 10.1, 14, 15, 17, 18, 19, 20, 21, 22 and 26.**
- (c) Any rights or obligations accrued prior to the frustration, rescission, suspension, termination or expiration of this Agreement or as a result of a Failure survive the frustration, rescission, suspension, termination or expiration of this Agreement.
- (d) The dispute resolution procedures in **clause 24.2.** survive frustration, rescission, suspension, termination or expiration of this Agreement.

29.7 Cost of performing obligations

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

29.8 Further assurance

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

29.9 Counterparts

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

29.10 Deemed Breach of Licence

- (a) For the purposes of clause 5.2(b) of the Licence, a Failure (other than in respect of **clauses 1.5, 17.3(b), 22.5(a) and 22.5(b)**) will not be deemed to be a breach of the Licence unless the Licensee has failed to comply with any one or more of the requirements specified in **clauses 21.3 or 21.4.**
- (b) For the avoidance of doubt, for the purposes of **clause 6.3(d)**, such a deemed breach will not be deemed to be a breach of the Agreement unless the Licensee has failed to comply with any one or more of the requirements specified in **clauses 21.3 or 21.4.**

29.11 Time is of the Essence

Time is of the essence of this Agreement.

Executed as an agreement

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)

Executed by Tabcorp Investments No.5
Pty Ltd ACN 105 341 366

Signature of Company
Secretary/Director

Signature of Director

Name of Company Secretary/Director
(BLOCK LETTERS)

Name of Director (BLOCK LETTERS)

Schedule 1

General

Item 1 Agreement Date

Item 2 Parties Representatives

Licensee: Mr Mohan Jesudason

Minister: Ross Kennedy
Executive Director, Gaming and Racing

Item 3 Licensee's Address for Service

Tabcorp Investments No.5 Pty Ltd

Level 11

5 Bowen Crescent

Melbourne, 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 a Keno System;
- 2 developing operating procedures and manuals for operation of a Keno System and Keno Game equipment and provision of these to outlets;
- 3 developing rules for Keno Games and provision of rules to outlets;
- 4 preparing to undertake all services in respect of the operation of Keno Games, including:
 - (a) conducting all draws;
 - (b) arranging for the publication of results by an appropriate means, including arranging for the publication of the results for prior draws;
 - (c) managing all prize money reserves;
 - (d) managing unclaimed prize moneys;
 - (e) arranging for payments to the State, including the payment of all taxes, duties and other amounts payable to the Treasurer; and
 - (f) arranging any other services reasonably necessary for the Conduct of Keno Games;
- 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 Keno Games and establishing communication data lines to outlets;
- 7 developing telephone help desk facilities in relation to the Conduct of Keno Games;
- 8 developing promotions and advertising of Keno Games;
- 9 establishing required bank accounts;
- 10 installing Keno Game 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 Keno Game equipment and sale of tickets in Keno Games;
- 13 obtaining all necessary approvals (including, without limitation, approval of initial Keno Games and a Keno System);
- 14 developing appropriate regulatory and compliance processes and procedures;

- 15 appointing Agents and engaging Contractors who will assist in the Conduct of Keno Games (including Ticket Agents); and
- 16 any other Preparatory Action specified in the Implementation Plan to be developed by the Licensee in accordance with the Agreement.

Preparatory Action	Specified Date
Description of required action	Date action must be completed (or started) by
[to be inserted from approved Implementation Plan]	[to be inserted from approved Implementation Plan]

Schedule 2

Performance Standards

1 Availability of Keno System

- (a) The Licensee must ensure that at all times during the Term the Keno System is operational and continuously available to all venues of the type referred to in clause 5.4(b) of the Licence in which components of the Keno System are installed (the **Keno Venues**) so that the Keno System is operational and available at all times when the Keno Venues are authorised to be open and sell tickets or other forms of entry in, or pay prizes in relation to, Keno Games, in accordance with the Act, the Licence and their pub licence or full or restricted club licence (**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 **paragraph (a)** above is due to:
 - (i) regularly scheduled downtime for the purpose of maintenance of the Keno System;
 - (ii) failures in communication systems that are outside the reasonable control of the Licensee;
 - (iii) any failure of items forming part of the Keno System that are located in Keno Venues (e.g. terminals and peripheral equipment for selling tickets and for validating winning tickets, or visual display units, located in a Keno Venue) (**Venue Items**), 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 Keno 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 provide to the Commission, within 3 Business Days of the end of each calendar month (or part calendar month) during the Term, a written report detailing:
 - (i) whether the Availability Requirement was met during that month, and if not, the causes of the failure to achieve the Availability Requirement and the action the Licensee has taken or will take to address those causes; and
 - (ii) any events of the types specified in **paragraph (b)** above that occurred during that month, the impact that those events had on the availability of the Keno System and the steps taken or to be taken by the Licensee to minimise the impact of such events.

2 Requirements for Keno System

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:

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

3 Compliance of Keno System with Commission's requirements

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 at all times during the Term the Keno 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.

4 Commitment to Keno

- (a) The Licensee must diligently pursue the three year Marketing Plan and Distribution Strategy:
 - (i) as initially set out in the Appendix to this Schedule; and
 - (ii) as revised annually in accordance with **paragraph (b)**,
in order to facilitate a commercially viable and growing Keno Games business, including undertaking all necessary investment (including in new technology).
- (b) The Licensee must:
 - (i) review and revise the Marketing Plan and Distribution Strategy set out in the Appendix to this Schedule annually by the anniversary of the Agreement Date to cover the following three years of the Term or, if less than three years remain in the Term, the years remaining in the Term; and
 - (ii) provide to the Commission the revised Marketing Plan and Distribution Strategy in the format required by the Commission within 2 months after each anniversary of the Agreement Date.

Appendix – Marketing Plan and Distribution Strategy

Schedule 3

Parent Company Guarantee

Date

Parties

Tabcorp Holdings Ltd ACN 063 780 709 of Level 12, 5 Bowen Crescent, Melbourne 3004 (**Parent**)

The Honourable Michael O'Brien MP, Minister for Gaming of the Crown in right of the State of Victoria of Level 16, 1 Spring Street, Melbourne, Victoria 3000 (**The Minister**)

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.

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

Agreement means the related agreement entered into between the Minister and the Licensee in accordance with section 6A.3.10 of the Act dated on or about the date of this document, as amended from time to time.

Arrangement means the Keno Linked Jackpot Arrangement approved by the Minister on 31 October 2014 between the Licensee and ClubKeno Holdings Pty Ltd and Keno (NSW) Pty Ltd that provides for a common

jackpot pool in New South Wales and Victoria and includes the Keno Linked Jackpot Agreement.

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

Licence means the licence to Conduct Keno Games granted to the Licensee under the Act.

Licensee means Tabcorp Investments No.5 Pty Ltd ACN 105 341 366.

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.

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

1.2 Interpretation

- (a) A provision of this document must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of the document or the inclusion of the provision in the document.
- (b) If an act falls to be done on a day which is not a Business Day, it must (except where an act is expressly required to be performed on a day that is not a Business Day) be done instead on or before the next Business Day.
- (c) In this document headings and background are for convenience only and do not affect interpretation. Except to the extent that the context otherwise requires or except as expressly stated otherwise:
 - (i) references to parties, clauses or paragraphs in this document are references to parties, clauses and paragraphs of and to this document;
 - (ii) references to any document or agreement (including this document) include reference to such document or agreement as amended, novated, replaced or supplemented from time to time;
 - (iii) references to any statute or regulation or to any provision of any statute or regulation include any modification or re-enactment of, or any provision substituted for, and (in the case of a statute)

all statutory and subordinate instruments issued under, such statute or regulation or such provision;

- (iv) words in the singular include the plural and vice versa;
- (v) words denoting individuals or persons includes a corporation, partnership, joint venture, unincorporated association and a government or statutory body or authority;
- (vi) words denoting any gender includes all genders;
- (vii) references to any party or person include that party's or person's successor or permitted assigns;
- (viii) "writing" and cognate expressions include all means of reproducing words in tangible and permanently visible form;
- (ix) where any word or phrase is defined its other grammatical forms have corresponding meanings;
- (x) to the extent used in this document all accounting terms used in this document will have the meaning given to those terms under, and all calculations and determinations as to financial matters will be made in accordance with, accounting principles and practices generally accepted in Australia from time to time and consistently applied;
- (xi) "dollars" is a reference to the lawful currency of Australia;
- (xii) the terms "including" and "include" mean "including" or "include" (as applicable) without limitation;
- (xiii) where an obligation or liability is imposed on the Licensee or 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 his or her consent or approval or must either give his or her consent or approval or do something else, the Minister has an absolute and unfettered discretion as to whether he or she gives that consent or

approval and the Minister has no obligation to the Licensee or 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, the Agreement or the Arrangement (**Licensee’s Obligations**).
- (b) Without limiting the Parent’s obligations and liabilities under this document and the Arrangement, 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 his or her 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 or the Arrangement 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 or the Arrangement 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

- (a) 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:
 - (i) any failure by the Licensee to observe or perform any of the Licensee's Obligations; or
 - (ii) any obligation the Licensee would otherwise have under the Licence or Agreement or Arrangement being found to be void, voidable or unenforceable as a consequence of any act, error, omission or breach of any of the Licence or the Agreement or the Arrangement by the Licensee.
- (b) For the avoidance of doubt, 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 the Licensee's obligation (or any failure by the Licensee to observe or perform the obligation) to pay the Premium Payment as specified in the Licence for the intended duration of the Licence, regardless of the cancellation, suspension or surrender of the Licence at any time.

5 Void or voidable transactions

If a claim that a payment or transfer to the State under the Licence, Agreement or Arrangement 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 the Arrangement 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

- (a) Subject to **clause 7(b)**, 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 or the Arrangement 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 and Arrangement are valid, binding and enforceable in accordance with its terms).
- (b) For the avoidance of doubt, for the purposes of **clause 4(b)** the limitations on and exclusions of liability expressed for the benefit of

the Licensee in the Licence or the Agreement or the Arrangement do not include any limitation on or exclusion of liability arising out of or in any way in connection with the Licensee's obligation (or any failure by the Licensee to observe or perform the obligation) to pay the Premium Payment as specified in the Licence for the intended duration of the Licence, regardless of the cancellation, suspension or surrender of the Licence at any time.

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: Tabcorp Holdings Limited
Level 12, 5 Bowen Crescent,
Melbourne, Victoria 3004

Fax number: (03) 9868 2933

For the attention of: Ms Kerry Willcock

Minister:

Address: Level 16, 1 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

**Signed by Tabcorp Holdings Ltd)
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 Keno 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 Keno Transition having regard to the Transition Objectives and may include:
 - (i) Cost - Expenditure for the Keno Transition is within budgetary estimates;
 - (ii) Business Continuity - The Keno Transition process involves minimal interruption to the Conduct of Keno Games; and
 - (iii) Schedule - The Keno 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 Keno Transition related activities.

2.2 Responsibilities during Keno Transition

Without limiting the foregoing, the Licensee may be required to, as part of the Keno 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 Keno Games as directed by the Minister;
- (c) provide any historical data and information necessary for the Conduct of Keno Games 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 Get Up from the Points of Sale;
- (f) handle prizes and payments to Players (including unclaimed prizes);
- (g) maintain and provide access to records relating to the Keno Transition; and
- (h) novate the Arrangement and the Keno Pooling Agreement as directed by the Minister.

3 Management of the Keno Transition

The Keno 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 Keno 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) in relation to the Keno Transition, including any specific activities and tasks;
 - (ii) determine the scope of the work relating to the Keno 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; and
 - (iv) establish the project management and work group structure under which the Keno Transition will operate.

3.2 Composition and quorum of the Transition Steering Committee

- (a) The TSC must have a minimum of 5 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 Incoming Licensee; and
 - (v) a representative nominated by the Outgoing Licensee.
- (b) The representatives from the Outgoing Licensee and the Incoming Licensee will be an executive officer 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; and
 - (ii) counting as one TSC member for the purpose of determining the quorum for the meeting.
- (e) The quorum of each TSC is 3 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 Keno 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;

- (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 Keno 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 Keno 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 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 20 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 Keno 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 Keno Transition;
 - (ii) the schedule, milestones and the project plan for the Keno 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 Keno 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 Keno 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 Keno 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 Keno 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 Keno 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 Keno 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 Keno 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 Keno 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 Keno Transition.

5 Relationship with Agents, Contractors and Commission

5.1 Agents and Contractors 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 Contractors are able to comply with the obligations under the Agreement and the Transition Arrangements.
- (b) If the Incoming Licensee or its Agents or Contractors wishes to make direct contact with an existing Agent or Contractor 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 Keno Transition.