

Gambling Regulation Act 2003

Deed of Variation of Keno Agreement

Dated:

Parties:

Jane Garrett MP

Minister for Consumer Affairs, Gaming and Liquor
Regulation for and on behalf of the Crown in right of the
State of Victoria

AND

Tabcorp Investments No. 5 Pty Ltd

Contents

1.	Definitions and Interpretation	2
2.	Variation of Agreement	3
3.	Miscellaneous	4
4.	Disclosure	5

Deed dated

Parties: **Jane Garrett MP**

Minister for Consumer Affairs, Gaming and Liquor Regulation for and on behalf of the Crown in right of the State of Victoria (**the Minister**)

AND

Tabcorp Investments No.5 Pty Ltd (**the Licensee**)

Introduction

- A.** The Minister determined to grant a Licence to the Licensee under section 6A.3.7 of the *Gambling Regulation Act 2003* (the Act) authorising the Licensee to conduct Keno Games in the State of Victoria.
- B.** The Minister and the Licensee entered into a Keno Agreement (the Agreement) under section 6A.3.10 of the Act dated 25 March 2011 in relation to certain matters relating to the Conduct of Keno Games under the Licence.
- C.** On 31 October 2014, the Minister approved a Keno linked jackpot Arrangement 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 (the Keno linked jackpot Arrangement). The Minister's approval was in accordance with section 6A.1.3 of the Act and is subject to a number of conditions being satisfied.
- D.** In accordance with clause 2.3 of the Agreement, the parties agree to amend the terms of the Agreement as set out in this Deed to facilitate the approved Keno linked jackpot Arrangement.

It is agreed

1. Definitions and Interpretation

1.1 Interpretation

- (1) Capitalised words not otherwise defined in this Deed have the same meaning as in the Agreement or in the Act or in the Licence (as applicable, subject to clause 1.3 of the Agreement), except where a contrary intention appears.
- (2) The provisions of the *Interpretation of Legislation Act 1984* shall apply in the interpretation of this Deed on the basis that it is a subordinate instrument.

- (3) A provision of this Deed must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of the Deed or the inclusion of the provision in the Deed.
- (4) 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.

1.2 Definitions

Agreement means the Keno Agreement entered into between the Licensee and the Minister on 25 March 2011.

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.

2. Assurances

- 2.1 The Licensee agrees to procure from its ultimate parent company, Tabcorp Holdings Ltd ACN 063 780 709 of Level 12, 5 Bowen Crescent Melbourne, a validly executed Deed of Variation of Parent Guarantee in the form set out in Attachment 1 to this Deed on or before the date this Deed is executed.
- 2.2 By executing the Deed of Variation of Parent Guarantee, the parent company acknowledges that the Parent Company Guarantee includes all the Licensee's obligations under this Deed and the Arrangement.

3. Effective Date

This Deed takes effect once it is duly executed, and the parties are bound by the Keno Agreement as varied by this Deed, on and from the Effective Date.

4. Variation of Agreement

The Parties have agreed to vary the Agreement, effective from the date of this Deed by:

- (a) Amending clause 1.1 to **insert** -

after the definition of 'Approved Account(s)'

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.

After the definition of 'Keno Game' insert -

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.

(b) For clause 8.6(a) **substitute-**

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.

(c) Amending clause 10.1(a) to **insert** after (iv) –

(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.

(d) For clause 14 (3)(e) substitute –

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.

- (e) Amending clause 18.1 to **insert** after (j) –
 - (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
- (f) Amending clause 18.2 to insert after (n) –
 - (o) it will comply with the conditions of and perform its obligations in accordance with the Arrangement and the Keno Pooling Agreement.
- (g) For clause 18.2(i)(ii) substitute –
 - (ii) perform its obligations under the Licence, this Agreement, the Arrangement including the Keno Pooling Agreement and any other Agreements; and
- (h) For clause 21.2(a) **substitute** –
 - (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) For clause 22.4(a)(i) **substitute** –

the Act, the Licence, this Agreement, the Arrangement or any other Agreements; and
 - (j) Amending Schedule 4 clause 2.2 to delete “and” after (f) and insert after (g) –

and
 - (h) novate the Arrangement and the Keno Pooling Agreement as directed by the Minister.

5. Miscellaneous

5.1 Execution of counterparts

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

5.2 Further assurance

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

5.3 Severability

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

5.4 Governing law and jurisdiction

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

6. Disclosure

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

Executed as a Deed.

Executed by the Minister for Consumer Affairs, Gaming and Liquor Regulation, Jane Garrett MP, for and on behalf of the Crown in the right of the State of Victoria

Signature of Witness

Signature of the Minister

Name of Witness
(BLOCK LETTERS)

Executed by Tabcorp Investments No. 5 in accordance with section 127 of the *Corporations Act* by or in the presence of:

Signature of Director

Signature of Secretary/other Director

Name of Director
(BLOCK LETTERS)

Name of Secretary/other Director
(BLOCK LETTERS)

