

CATEGORY 1 PUBLIC LOTTERY ANCILLARY AGREEMENT

Gambling Regulation Act 2003 (Vic)

Category 1 Public Lottery Ancillary Agreement

Dated 24 October 2007

Parties:

The Honourable Tony Robinson MP

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

AND

Tattersall's Sweeps Pty Ltd

ABN 99 081 925 662

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Agreement dated 24 October 2007

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

AND

TATTERSALL'S SWEEPS PTY LTD ABN 99 081 925 662
of 615 St Kilda Road, Melbourne, Victoria
(The Licensee)

Introduction

- A.** The Minister invited the Licensee to apply for the grant of a Public Lottery Licence and as a result of that application the Minister has granted the application and will issue a Licence to the Licensee under sections 5.3.2 and 5.3.6 of the *Gambling Regulation Act 2003 (Vic)*.
- B.** In order to better facilitate the arrangements between the Minister and the Licensee in relation to certain matters relating to the Conduct of the Authorised Lotteries under the Licence the parties have agreed on certain commercial arrangements which are set out in the terms of this Agreement.

It is agreed

1. Definitions and Interpretation

1.1 Interpretation

- (1) Capitalised words not otherwise defined in this Agreement have the same meaning as in the Act or in the Licence (as applicable, subject to clause 1.3 of this Agreement), except where a contrary intention appears.
- (2) The provisions of the *Interpretation of Legislation Act 1984* shall apply in the interpretation of this Agreement on the basis that it is a subordinate instrument.
- (3) 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.

- (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.
- (5) "Including" and similar expressions are not words of limitation.

1.2 Definitions

- (1) **Act** means the *Gambling Regulation Act 2003* (Vic), as amended from time to time.
- (2) **Agreement Date** means the date specified in Schedule 1 or if no such date is specified means the date of execution of this Agreement.
- (3) **Alternative Arrangement** has the meaning given in clause 11.2(1)(d).
- (4) **Authorisation** includes a consent, approval, licence, permit, registration, resolution, direction, declaration and exemption necessary for the Conduct of the Authorised Lotteries.
- (5) **Claims** has the meaning given in clause 8.4(1).
- (6) **Continuing Lotteries** has the meaning given in clause 5.1 and **Continuing Lottery** has a similar meaning.
- (7) **Cure Period** has the meaning given in clause 11.2(1)(c).
- (8) **Cure Plan** has the meaning given in clause 11.3(2)(a).
- (9) **Failure** has the meaning given in clause 11.2(1).
- (10) **Failure Notice** has the meaning given in clause 11.2(1).
- (11) **Financial Default** means the happening of any of these events in relation to the Licensee:
 - (a) the Licensee becomes, or steps are taken towards making the Licensee, an Externally-Administered Body Corporate (within the meaning given in section 1.3 of the Act); or
 - (b) the Licensee otherwise becomes insolvent, including where:
 - (i) the execution or other process of a court or distress is levied for an amount exceeding \$100,000 upon any of the Licensee's property and is not satisfied, set aside or withdrawn within 15 Business Days of its issue;
 - (ii) the Licensee suspends payment of its debts;
 - (iii) a controller (as defined in section 9 of the *Corporations Act 2001*) is appointed of any of the property of the Licensee or any steps are taken for the appointment of such a person (but not where the steps taken are reversed or abandoned within 10 Business Days);

- (iv) the Licensee is taken to have failed to comply with a statutory demand within the meaning of section 459F of the *Corporations Act 2001*;
 - (v) 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 Minister; or
 - (c) an event happens analogous to an event specified in clauses 1.2(11)(a) and 1.2(11)(b) to which the law of another jurisdiction applies and the event has an effect in that jurisdiction similar to the effect which the event would have had if the law of Australia applied.
- (12) **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.
- (13) **Get Up** means any designs, logos, trade marks (whether registered or not), ticket layouts, ticket formats, graphics, fonts or mascots associated with an Authorised Lottery in the State of Victoria but for the sake of clarity excludes that part of any of the aforementioned that contain the word "Tattersall's" or the portrait and banner device containing "George's Head" and the word "Tattersall's" as shown in Annexure B.
- (14) **Implementation Completion** means the completion of all activities and things required under the Implementation Plan.
- (15) **Implementation Plan** means an implementation plan developed by the Licensee and approved by the Commission pursuant to clause 3.1.
- (16) **Indemnified Parties** has the meaning given in clause 8.4(1).
- (17) **Intellectual Property Rights** means copyright, trade marks, designs, patents, moral rights, confidential information, trade, business or company names, or any rights to the registration of such rights and any applications to register such rights.

- (18) **IP Indemnified Parties** has the meaning given in clause 4.6(1).
- (19) **Key Milestones** means the dates set out in the Implementation Plan which are critical to the implementation of an Authorised Lottery in order to ensure that the Licensee can Conduct the Authorised Lottery as required under clause 3.7.
- (20) **Licensed IP** means all Intellectual Property Rights subsisting in:
- (a) the Lottery Rules; and
 - (b) the Get Up of the Authorised Lotteries;
- and whether subsisting at the Agreement Date or at any time during the Term.
- (21) **Licensing Process** means the process under Division 2 of Part 3 of the Act for the grant of the Licence.
- (22) **Liquidated Damages** means the amount payable by the Licensee to the State in respect of the agreed amount of loss which the State will suffer as a result of a specified event, as set out in Schedule 2.
- (23) **Local Government Area** means a municipal council constituted under the *Local Government Act 1989 (Vic)*.
- (24) **Lottery Asset** means an asset or undertaking of the Licensee that is connected with the Conduct of the Authorised Lotteries including all systems and processes, bank accounts, distribution networks and Bloc Agreements.
- (25) **Lottery Materials** has the meaning given in clause 4.3.
- (26) **Lottery Rules** has the meaning given in section 5.1.2 of the Act.
- (27) **Lottery Systems** means technical systems necessary for the Conduct of the Authorised Lotteries in accordance with the requirements of the Licence and this Agreement.
- (28) **Minister** means the responsible Minister of the Crown for the time being administering Chapter 5 of the Act.
- (29) **New Licensee** has the meaning given in clause 5.1.
- (30) **Notice** has the meaning given in clause 17(1).
- (31) **Performance Standards** means the standards set out in Schedule 3.
- (32) **Report** means a report that the Licensee is required to prepare under clause 7.1 or 7.2.
- (33) **State** means the Crown in Right of the State of Victoria.

- (34) **Step-in Event** means the occurrence of any of the following:
- (a) the Minister receives a recommendation from the Commission under section 5.3.22 of the Act to take disciplinary action against the Licensee, which recommendation must include cancellation or suspension of the Licence;
 - (b) the Minister exercises his or her discretion under clause 11.1, 11.2(2) or 11.5; or
 - (c) the Licensee gives a notice of its intention to surrender the Licence under section 5.3.20 of the Act.
- (35) **Temporary Licensee** means the Temporary Licensee as described under the Act and the Temporary Operator.
- (36) **Temporary Operator** means the person appointed by the Minister as a Temporary Operator under clause 12.
- (37) **Term** means the period for the operation of the Licence as specified in the Licence.
- (38) **Third Party Claim** has the meaning given in clause 4.6(1).
- (39) **Transition In Period** means the period commencing on the Agreement Date and ending on the Licence Commencement Date.
- (40) **Transition Out Period** in respect of each Authorised Lottery means the period:
- (a) commencing on the earlier of:
 - (i) 1 year prior to the expiry of the Licence; or
 - (ii) the date upon which the Authorised Lottery ceases to be an Authorised Lottery 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 Authorised Lottery ceases to be an Authorised Lottery under the Licence provided that a New Licensee is licensed to operate the Authorised Lottery within 6 months of the Transition Out Period commencing under clause 1.2(40)(a)(ii), otherwise 6 months after the date upon which the Authorised Lottery ceases to be an Authorised Lottery under the Licence.

1.3 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, then the documents will be read in the following descending order of precedence:

- (1) the Act;
- (2) the Licence; and
- (3) this Agreement.

1.4 Licence conditions

Each of the conditions of the Licence is deemed to also be a contractual covenant under this Agreement given by the Licensee in favour of the Minister.

2. Term of the Agreement

This Agreement shall commence upon the Agreement Date and shall 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.

3. Development and Implementation

3.1 Development of Implementation Plan

- (1) The Licensee must develop an Implementation Plan which details all the things which the Licensee must arrange or undertake during the Transition In Period for the implementation of the Authorised Lotteries by the Licence Commencement Date, or such other date agreed in the Licence by the Minister.
- (2) In the Implementation Plan the Licensee must demonstrate, to the reasonable satisfaction of the Commission, that the Licensee has (or will have):
 - (a) access to all Intellectual Property Rights, Lottery Systems and information;
 - (b) financial arrangements and resources;
 - (c) staffing and related resources;
 - (d) distribution processes; and
 - (e) an assurance system (which will be monitored by the Commission) regarding the implementation of, and ongoing compliance with, the Responsible Gambling Conditions,that are necessary and appropriate to Conduct the Authorised Lotteries on and from the Licence Commencement Date.
- (3) The Licensee must in the Implementation Plan set out the Key Milestones for:
 - (a) the development and establishment of:
 - (i) Lottery Systems;

- (ii) distribution processes;
 - (iii) financial resources;
 - (iv) staffing and other resources; and
 - (v) an assurance system regarding the implementation of, and ongoing compliance with, the Responsible Gambling Conditions;
- (b) the approval by the Commission of lottery equipment and systems; and
 - (c) the Lottery Rules made, or to be made, and consented to or otherwise not disallowed by the Commission pursuant to section 5.2.5 of the Act.

3.2 Submission of Implementation Plan to the Commission

- (1) The Licensee must as soon as possible, but no later than 1 month after the Agreement Date, submit the detailed Implementation Plan to the Commission for its approval.
- (2) The Licensee must not proceed with the Implementation Plan unless it has been approved by the Commission pursuant to clause 3.3.
- (3) The Licensee must use its best endeavours to ensure that the Implementation Plan is approved by the Commission within 3 months of the Agreement Date (or such later date nominated by the Commission).

3.3 Approval of Implementation Plan

- (1) Upon the receipt of a proposed Implementation Plan, the Commission may:
 - (a) approve the Implementation Plan;
 - (b) require an amendment to the Implementation Plan (including any amendment to the Key Milestones); or
 - (c) reject the Implementation Plan.
- (2) The Commission must notify the Licensee of its decision and, if the Implementation Plan is rejected or required to be amended, reasons for the decision, within 10 Business Days of receiving the Implementation Plan. If the Commission fails to notify the Licensee within 15 Business Days (or longer period as agreed between the Commission and the Licensee), the Commission is deemed to have approved the Implementation Plan.
- (3) If the Commission requires any amendments to or rejects the Implementation 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 not be rejected.

- (4) The Commission and the Licensee must promptly discuss any disputes or differences in relation to the Implementation Plan, and must negotiate in good faith to agree on the Implementation Plan.

3.4 Development in accordance with Implementation Plan

- (1) The Licensee must establish the Authorised Lotteries in accordance with the Implementation Plan.
- (2) The Licensee must meet all Key Milestones specified in the Implementation Plan.
- (3) If the Licensee reasonably suspects that any Key Milestones will not be met, then the Licensee must notify the Commission immediately, detailing:
 - (a) the expected delay;
 - (b) the reasons for the delay; and
 - (c) any proposals to rectify the situation.
- (4) Upon receipt of a notice under clause 3.4(3), the Commission may, in its absolute discretion extend the Key Milestones.
- (5) To avoid 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 11.2.

3.5 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:

- (1) the current progress as assessed in accordance with the Implementation Plan; and
- (2) the nature and amount of work that remains to be completed.

3.6 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.

3.7 Readiness to conduct the Authorised Lotteries

- (1) Despite the Implementation Plan or any other provisions, the Licensee:
 - (a) must have all the Lottery Systems, processes (including distribution processes), staff, finance and any other things as are necessary or desirable for the Conduct of the Authorised Lotteries established and operating effectively at least 3 months prior to the Licence Commencement Date; and

- (b) must be able to Conduct each Authorised Lottery in accordance with the requirements for that Authorised Lottery (including the Lottery Rules) on and from the Licence Commencement Date (or such other date agreed by the Minister for that Authorised Lottery).
- (2) If the Licensee is unable to Conduct those aspects of an Authorised Lottery as specified in Schedule 2, then the Licensee must pay Liquidated Damages in the amount specified in Schedule 2 to the State in respect of that Authorised Lottery. The Parties agree that the amounts specified in Schedule 2 are a reasonable pre-estimate of the agreed amount of loss that the State will suffer by reason of any such delay.

4. Intellectual Property

4.1 Existing Intellectual Property Rights

- (1) The Licensee acknowledges that the Minister and the State are unable to, and will not, provide any access to the Intellectual Property Rights in relation to the Public Lotteries conducted prior to the Licence Commencement Date.
- (2) It is the Licensee's responsibility to obtain all the Intellectual Property Rights required for the Licensee to Conduct the Authorised Lotteries, including such rights as are necessary to permit the Licensee to grant the licence required under this clause 4 and the rights under clause 12.3.

4.2 Warranty regarding Intellectual Property Rights

The Licensee warrants that it owns or has the right to use all the Intellectual Property Rights required to Conduct the Authorised Lotteries, including but not limited to the Lottery Rules and the names of the Authorised Lotteries.

4.3 Restrictions on use of certain names

The Licensee must not incorporate any Get Ups or names (collectively **Lottery Materials**) in the Authorised Lotteries in the State of Victoria where the Lottery Materials are associated with or similar to the name, business name or trade name of the Licensee, except where:

- (1) the Lottery Materials are, at the Agreement Date, used by the Licensee in relation to the conduct of a lottery the same as the Authorised Lottery (whether in the State of Victoria or not); and
- (2) the Licensee has used the Lottery Materials for that purpose for a continuous period of at least 12 months prior to the Agreement Date.

4.4 Clause not required

4.5 Licences

- (1) Subject to the provisions of this clause 4.5 the Licensee grants to the State a non-exclusive, perpetual and irrevocable licence to sub-licence the Licensed IP to a New Licensee granted a Public Lottery Licence by the Minister for the purposes of clause 5.1 and in accordance with the Act.

- (2) Subject to clause 4.5(3), a sub-licence between the State and a New Licensee shall:
- (a) be limited to the geographical area of Victoria;
 - (b) subject to clause 4.5(8), be in the form and on the terms and conditions contained in the IP Sub-Licence Agreement set out in Schedule 5 (**IP Sub-Licence Agreement**); and
 - (c) notwithstanding the date of execution of the IP Sub-Licence Agreement, not commence earlier than the date on which the New Licensee is able to take Preparatory Action in accordance with clause 5.1 if applicable, or otherwise on the termination or expiration of this Agreement.
- (3) Where a New Licensee's Public Lottery Licence is in respect of one or more but not all of the Authorised Lotteries:
- (a) the IP Sub-Licence Agreement shall only relate to the Licensed IP which relates to the New Licensee's Public Lottery Licence and to the lotteries thereunder nominated by the New Licensee; and
 - (b) the business names referred to in clause 4.5(7) shall only relate to the Licensed IP which relates to the New Licensee's Public Lottery Licence and to the lotteries thereunder nominated by the New Licensee.
- (4) Any Intellectual Property Rights associated with the Conduct of Authorised Lotteries which vest in the Licensee after the Agreement Date and which would otherwise have formed part of the Licensed IP had it existed as at the Agreement Date, will remain vested in the Licensee and shall form part of the Licensed IP for the purposes of this Agreement and the IP Sub-Licence Agreement.
- (5) The parties agree that a royalty shall be payable to the Licensee in respect of any IP Sub-Licence Agreement entered into and that the State may, at any time during the Term, request that the Licensee and the New Licensee or Minister (or such other agent or representative appointed by the Minister for this purpose) meet to negotiate in good faith the royalty to be paid. If those parties are unable to agree on the royalty to be paid at the conclusion of 6 months from the commencement of such negotiations or the expiry or termination of this Agreement, whichever is the earlier, any party may refer the dispute to an independent expert for determination of the royalty to be paid, which will be final and binding on the parties. The parties must use their reasonable endeavours to agree an independent expert having appropriate experience and qualifications with regard to intellectual property transfer and valuation. If the parties are unable to agree an expert within 5 Business Days then either party may request the National President for the time being of the Institute of Chartered Accountants to nominate an expert.
- (6) The Licensee warrants and represents that:
- (a) subject to clause 4.5(6)(c), it has the authority to grant this licence to the State;

- (b) the Product Trade Marks are owned by the Licensee's ultimate parent company Tattersall's Limited ABN 19 108 686 040 (**Tattersall's**);
 - (c) the Bloc Trade Marks are jointly owned by Tattersall's and the other parties to the various Bloc Agreements to which the logos and trademarks relate (**Other Joint Owners**), each of whom have equal right, title and interest in and to the respective Bloc Trade Marks. As such, the consent of the Other Joint Owners may be required for the Licensee to licence the Bloc Trade Marks to the State and for the State to sub-licence same to a New Licensee;
 - (d) it will, immediately upon written request from the Minister to commence royalty negotiations under clause 4.5(5), act in good faith and use its reasonable endeavours to obtain the consent of the Other Joint Owners in order to give full effect to the grant of rights to the State hereunder and to facilitate royalty negotiations having regard to the inclusion or exclusion, as the case may be, of Bloc Trade Marks from the IP Sub-Licence Agreement;
 - (e) that it will do everything necessary to ensure that Tattersall's remains the registered owner (or joint owner as the case may be) of the registered Product Trade Marks and Bloc Trade Marks during the Term of this Agreement and will otherwise use its best endeavours to preserve the value and validity of each of the Product Trade Marks and Bloc Trade Marks; and
 - (f) the Product Trade Marks, Bloc Trade Marks (subject to clause 4.5(6)(c)) and the Collateral comprise all of the Licensed IP.
- (7) The Licensee warrants and represents that Tattersall's is the owner of certain business names registered in Victoria and reflecting the name or names of some or all of the Authorised Lotteries and, if requested to do so in writing by the Minister, the Licensee will procure that Tattersall's will assign or transfer such business names to the New Licensee with whom the Minister has entered into an IP Sub-licence Agreement on the expiration or termination of the Licence. For the sake of clarity, the business name or names "Tattersall's" and "Tatts" are not business names or names taken to be reflecting the name or names of some or all of the Authorised Lotteries and will not be assigned or transferred to the New Licensee.
- (8) After the Agreement Date and prior to or as at the date on which the Minister exercises the grant of rights hereunder:
- (a) material changes or amendments made to the Trade Marks Act 1995 (Cth) and/or such other Commonwealth legislation governing or providing for the use and protection of Intellectual Property Rights, or any other relevant changes to the commonly accepted commercial practices in respect thereof, may affect some of the terms and conditions of the IP Sub-Licence Agreement; and
 - (b) the Bloc Trade Marks may need to be excluded from the IP Sub-Licence Agreement in the circumstances provided for in clause 4.5(6),

and in this regard consequential amendments may be required to the form, terms and/or conditions of the IP Sub-Licence Agreement set out in Schedule 5.

- (9) The Licensee will provide to the Minister, within 3 months of the Agreement Date and thereafter upon request by the Minister made at a 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.
- (10) If a Temporary Licensee (other than a Temporary Operator) is appointed:
 - (a) the licence granted to the State under clause 4.5 shall extend to apply to the sub-licensing of the Licensed IP to that Temporary Licensee as if a reference to a New Licensee in clauses 4.5 and 4.6 and the IP Sub-Licence Agreement was a reference to that Temporary Licensee; and
 - (b) the IP Sub-Licence Agreement for the Temporary Licensee will expire on the termination of that Temporary Licensee's appointment.
- (11) Except as provided for in the circumstances set out in clause 4.5(14), the State acquires no interest in the Licensed IP (including interest in goodwill associated therewith) by virtue of this licence or otherwise.
- (12) The Minister may require that the Licensee take such actions or make application and/or institute such proceedings, as are contemplated in the IP Sub-Licence Agreement if in the reasonable opinion of the Minister, such actions, applications and/or proceedings need to be instituted to protect and preserve any of the State's rights under the licence granted by clause 4.5 or an IP Sub-Licence Agreement. The Licensee must provide the Minister with written notice at least 10 Business Days prior to the Licensee taking any action for breach of an IP Sub-Licence Agreement.
- (13) The Licensee must not dispose of any Product Trade Marks or Bloc Trade Marks except pursuant to this clause and, if in respect of the Bloc Trade Marks, not without the prior consent of the Other Joint Owners.
- (14) If the Licensee wishes to sell any Product Trade Marks or Bloc Trade Marks, it will give the Minister a notice in writing to that effect stating the terms, including the price, on which the Licensee will sell the specified Product Trade Marks or Bloc Trade Marks, with such notice constituting an offer to sell the specified Product Trade Marks or Bloc Trade Marks to the State on the terms stated in the notice (**the Offer**). Within 30 days of receipt of the Offer the Minister may notify the Licensee in writing that it will purchase the relevant Product Trade Marks or Bloc Trade Marks on the terms stated in the Offer and thereafter, the Licensee must sell and the State must purchase the relevant Product Trade Marks or Bloc Trade Marks at the price and upon the terms and conditions specified in the Offer.
- (15) If the Licensee is not required to sell the relevant Product Trade Marks or Bloc Trade Marks to the State, the Licensee may until the date that is 180 days after the date of the Offer sell the relevant Product Trade Marks or Bloc Trade Marks to another 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.

- (16) Prior to the termination, if any, of the licence granted under this clause 4.5, the Licensee may only transfer its ownership in the Product Trade Marks or Bloc Trade Marks to a third party (**the New Owner**) if the New Owner agrees to license the Product Trade Marks or Bloc Trade Marks to the State on the same terms and conditions as contained in this clause 4.5, subject to the State agreeing directly in favour of the New Owner, to continue to observe all of the State's obligations hereunder.
- (17) The Licensee will be entitled to and responsible for the enforcement of its rights and direct dealings with the New Licensee where specified in the IP Sub-Licence Agreement, and where a notice is required to be issued to the New Licensee by the Licensee in respect thereof, the Licensee shall provide a copy of same to the Minister as and when such notice is given.
- (18) The Minister may at any time and for any reason terminate the licence granted under this clause 4.5 and the IP Sub-Licence Agreement in respect of any or all of the Licensed IP simultaneously on notice in writing to the Licensee and the New Licensee.
- (19) Nothing in clause 4.6 applies to the extent that a Third Party Claim (as defined in clause 4.6 arises as a result of the breach of the licence granted under this clause 4.5 or the IP Sub-Licence Agreement by any of the IP Indemnified Parties (as defined in clause 4.6).
- (20) For the purpose of this clause 4.5:
 - (a) **Collateral** means the Lottery Rules and any designs, ticket layouts, ticket formats, graphics, fonts or mascots that are associated with an Authorised Lottery in the State of Victoria but excludes the word "Tattersall's" wherever previously appearing thereon;
 - (b) **Product Trade Marks** means the logos and trade marks that are associated with an Authorised Lottery in the State of Victoria and owned by Tattersall's but excludes that part of those logos and trade marks that contain the word "Tattersall's" or the portrait and banner device containing 'Georges Head' and the word "Tattersall's" as shown in Annexure B; and
 - (c) **Bloc Trade Marks** means the logos and trade marks used in the Conduct of the Authorised Lotteries by the Licensee which are jointly owned by Tattersall's and the other parties to the Bloc Agreements.

4.6 Intellectual Property Indemnity

- (1) The Licensee indemnifies and holds harmless the State, the Minister, the Commission and any sub-licensed New Licensee (including a New Licensee under clause 4.5(10)) and each of their respective representatives, officers, employees, contractors or agents (**IP Indemnified Parties**) from and against all losses, damages, costs and expenses arising directly or indirectly, as a result of or in connection with any claim, action or

proceeding by a third party against any of the IP Indemnified Parties alleging that the Licensed IP or the licensing by the Minister of the Licensed IP or the use of the Licensed IP by the New Licensee in accordance with the IP Sub-Licence Agreement constitutes an infringement of the Intellectual Property Rights of that third party (**Third Party Claim**).

- (2) If the Third Party Claim is successful, or if it is agreed that there is an infringement of the Intellectual Property Rights of the relevant person, then 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.
- (3) The State holds the benefit of the indemnity in clause 4.6(1) on trust for each of the IP Indemnified Parties and the Licensee acknowledges that the State may enforce such indemnity on behalf of all or any of the IP Indemnified Parties against the Licensee.

5. Continuity

5.1 New Licensees

The Licensee acknowledges that the Minister may grant to another person (**New Licensee**) a Public Lottery Licence to undertake Preparatory Action in respect of:

- (1) any or all of the Authorised Lotteries commencing on the earlier of 12 months prior to the expiry of the Licence; or
- (2) any Authorised Lottery when that Authorised Lottery ceases to be an Authorised Lottery under the Licence (as the case may be),

(the Authorised Lotteries referred to above are collectively **Continuing Lotteries**).

5.2 Reasonable assistance

The Licensee must, for the Transition Out Period in respect of each Continuing Lottery, comply with the Transition Agreement. If there is no Transition Agreement, then the draft transition agreement as set out in Schedule 4 will apply.

5.3 Unclaimed Prizes

- (1) After the cancellation or expiry of the Licence the Licensee must:
 - (a) retain an amount equal to the sum of all prizes won that have not been claimed by the Players and deal with such prizes in the manner specified in section 5.5.9 of the Act; or
 - (b) pay all prizes to eligible Players in accordance with the Lottery Rules.
- (2) The Minister and the Licensee acknowledge that section 5.5.9 of the Act will apply to any prizes that remain unclaimed 6 months after the cancellation or expiry of the Licence.

6. Performance Standards

The Licensee must comply with the Performance Standards.

7. Reporting Requirements

7.1 Regular reporting requirements

During the Term, the Licensee must provide to the Commission the following Reports within 2 months after the end of each Financial Year in the format, and containing such information, as specified in clause 7.3:

- (1) an annual report, identifying the performance of the Licensee against the Licensee's sales levels stated in the "Sales Table" annexed as Annexure A, for each Financial Year. This report shall 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). This report shall also include a summary of the sales per Authorised Lottery and per Local Government Area. The report will also include forward looking commentary in respect of the 10 year sales levels as per Annexure A for the financial year in which the report is provided;
- (2) an annual report identifying any issues associated with the Authorised Lotteries and their implementation, distribution networks and measures taken by the Licensee to counter any adverse effects for each Financial Year;
- (3) an annual report identifying issues relating to the Responsible Gambling Conditions (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; and
- (4) an annual report identifying the movements in the number of Points of Sale, types and categories of Points of Sale, approved changes to Distribution Approaches, explanations for changes for each Financial Year, and forward looking commentary and explanation of strategies for the Financial Year in which the report was provided.

7.2 Non-regular reporting requirements

Without limiting the reporting requirements in clause 7.1, the Licensee must provide a Report to the Commission (in the format, and containing such information, as specified in clause 7.3) identifying any issues relating to the Responsible Gambling Conditions (including non-compliances):

- (1) within a reasonable time (and in any case, no later than 10 Business Days) upon request from the Commission; or
- (2) immediately if the Licensee becomes aware of any issues relating to the Responsible Gambling Conditions.

7.3 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.

7.4 Confidentiality of Reports

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

8. Liability and Indemnities

8.1 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 the Authorised Lotteries. 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 officers, employees and agents.

8.2 Liability in relation to grant of 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 officers, employees 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.

8.3 Exclusion of liability

- (1) The Licensee acknowledges that it is solely responsible for the Conduct of the Authorised Lotteries and hereby releases the State, the Minister and the Commission (and their respective officers, employees and agents) from any liability to compensate the Licensee or any other party for any damages, costs, expenses or losses incurred or suffered by the Licensee or any other party as a result of or in connection with the Conduct of the Authorised Lotteries, including where the loss, cost or expense is caused by the Licensee following any lawful directions of the Commission or the Minister.
- (2) The Licensee must require and use its reasonable endeavours to procure a similar release of liability in the form and substance satisfactory to the Minister from all Distributors.

8.4 Indemnities

- (1) The Licensee indemnifies the Minister, the Commission, the State (and their respective officers, employees and agents) (**Indemnified Parties**) against any action, claim, suit or demand, including costs or expenses (**Claims**), associated with the Conduct of the Authorised Lotteries, including any Claims from Distributors, Players or other persons, except for any Claims which result directly from the negligence of any of the Indemnified Parties.
- (2) The State holds the benefit of the indemnity in this clause 8.4(1) 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.
- (3) The State will liaise and consult with the Licensee in relation to the proper and appropriate handling of any Claims.

9. General Warranties

9.1 Licensee's warranties

The Licensee warrants, at the date of this Agreement and at the Determination of each Authorised Lottery, that:

- (1) it will be able to demonstrate (to the reasonable satisfaction of the Minister) at all times that it will be able to, pay all prizes (whether claimed or unclaimed) upon Determination of an Authorised Lottery and refund the price of all Authorised Lottery entries in respect of any Authorised Lottery if it is not drawn or Determined;
- (2) 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 and to perform its obligations under this Agreement and comply with the conditions of the Licence;
- (3) 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;
- (4) the execution and delivery of this Agreement and the performance by the Licensee of its obligations do not:
 - (a) conflict with the constitution or by-laws of the Licensee;
 - (b) constitute a violation of or a default under any agreements or arrangements to which the Licensee is a party (in particular, any Bloc Agreements); or
 - (c) contravene any law;
- (5) there are no Encumbrances over any part of the Lottery Assets;

- (6) the Licensee is not the subject of a Financial Default;
- (7) the Licensee has not breached any laws relating to the Conduct of the Authorised Lotteries in other States or Territories;
- (8) the Licensee has not committed any offence relating to the conduct of public lotteries whether in Victoria or elsewhere; and
- (9) all information provided in writing by or on behalf of the Licensee to the Minister and Commission (including the Registration of Interests and Application to Apply for a Public Lottery submitted by the Licensee) was in all material respects true and accurate and not misleading by omission.

10. General Obligations

The Licensee must, at all times:

- (1) comply with all laws applicable to the matters arising under this Agreement, including the Act and Regulations;
- (2) obtain and renew all Authorisations required for the Licensee to:
 - (a) Conduct the Authorised Lotteries; and
 - (b) perform its obligations under this Agreement and the Licence; and
 - (c) carry on business;
- (3) protect the Lottery Assets and, at the Licensee's expense, prosecute or defend all legal proceedings that are necessary or desirable for the protection of the Lottery Assets to the extent appropriate in accordance with prudent business practice;
- (4) ensure that there are no Encumbrances over any part of the Lottery Assets;
- (5) ensure that it is in full compliance with all laws (including laws of other States and Territories) relating to the conduct of the public lotteries; and
- (6) comply with the additional obligations set out in Schedule 6.

11. Default

11.1 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 12.

11.2 Other Defaults

- (1) If the Licensee fails to perform or observe a covenant or obligation in this Agreement (**Failure**), then the Commission may, in addition to any other

remedies it has under the Act, give the Licensee a notice in writing (**Failure Notice**) specifying:

- (a) that such a Failure has occurred;
 - (b) the events or circumstances constituting the Failure;
 - (c) if the Failure is capable of being cured or remedied, a reasonable period (no less than 10 Business Days) in which to cure or remedy the Failure (**Cure Period**); and
 - (d) 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 Arrangement**).
- (2) Despite clause 11.2(1), 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 12. For the purposes of this clause 11.2(2), a Failure is of a serious nature if it materially adversely affects:
- (a) the interest of the public or the Players; or
 - (b) the revenue of the State.
- (3) 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.

11.3 Remedying within the Cure Period

- (1) 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.
- (2) In addition to its obligations under clause 11.3(1), the Licensee must:
 - (a) provide the Commission (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.
 - (b) provide the Commission with regular updates (no less than every 10 Business Days) on the progress of the remedy.

11.4 Remedying 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 Commission with any Alternative Arrangements specified in the Failure Notice.

11.5 Failure to remedy

If the Licensee fails to comply with any one or more of the requirements specified in clause 11.3 or 11.4, then the Minister (after receiving recommendation from the Commission) may:

- (1) proceed under the step in rights under clause 12; or
- (2) exercise any rights in relation to ministerial directions or disciplinary actions provided under the Act.

11.6 Ministerial Directions and Disciplinary Actions not affected

Nothing in this Agreement affects the ability of the Minister to exercise any rights in relation to ministerial directions or disciplinary actions provided under the Act.

12. Step-in rights

12.1 Step-in events

- (1) If a Step-in Event occurs, then the Minister may in his or her absolute discretion, appoint a Temporary Operator as an agent of the Licensee to take the steps permitted under this clause 12.
- (2) The Minister may not exercise his or her discretion under this clause 12.1(1) unless the Minister reasonably considers that the exercise is appropriate action for the Minister to take having regard to the extent of any default, failure, the interest of the public or Players or the risk to the revenue of the State.

12.2 Steps

The Temporary Operator is entitled, as agent of the Licensee, to take any of the following steps under this clause 12 in respect of one or all of the Authorised Lotteries:

- (1) exercising all or any of the powers, and performing all or any of the Licensee's obligations as an agent of the Licensee to the exclusion of the Licensee, 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 the Authorised Lotteries;
- (2) exercising all or any of the powers, rights and licences granted under any relevant Bloc Agreements as an agent of the Licensee to the exclusion of the Licensee;
- (3) operating and managing any account (including the Approved Account) operated by the Licensee for the purpose of establishing or Conducting the Authorised Lotteries as an agent of the Licensee;

- (4) acquiring additional or replacement products or services from any suppliers for the purpose of establishing or Conducting the Authorised Lotteries as agent of the Licensee;
- (5) take such other steps as are, in the reasonable opinion of the Temporary Operator, necessary or desirable to Conduct the Authorised Lotteries in accordance with the Act, the Licence and this Agreement;
- (6) take such steps as are, in the reasonable opinion of the Temporary Operator, necessary or desirable to carry out the obligations of the Licensee under the Transition Agreement; or
- (7) electing to cease exercising any of its rights referred to above.

12.3 Intellectual Property and Public Lottery Equipment

Without limiting clause 4, the Licensee appoints the Temporary Operator as its agent until cessation of step-in under clause 12.8 to exercise its rights to:

- (1) use, reproduce, modify or adapt any or all Intellectual Property Rights associated with the Conduct of the Authorised Lotteries;
- (2) use, reproduce, copy, install any or all software, hardware, facilities, computer systems, servers, equipment, network and infrastructure associated with the Conduct of the Authorised Lotteries;
- (3) enter and occupy all Points of Sale and premises associated with the Conduct of Authorised Lotteries; and
- (4) exercise all other rights necessary to allow the Temporary Operator to Conduct the Authorised Lotteries,

for any purposes associated with or connected to the Conduct of the Authorised Lotteries in the State.

12.4 Operation during step-in

- (1) When exercising its rights under this clause 12 the State will use all reasonable endeavours to have the Temporary Operator use all reasonable endeavours to Conduct the Authorised Lotteries in a manner which is consistent with the requirements of the Act, the Licence and this Agreement.
- (2) The Temporary Operator will receive all revenue, incur all liabilities and pay all expenses associated with or connected to the Conduct of the Authorised Lotteries 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 its appointment under clause 12.1(1) until cessation of step-in under clause 12.8.
- (3) The Licensee must reimburse the State for all costs and expenses incurred by the State in exercising its rights under this clause 12 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.

12.5 Licensee to give all assistance

- (1) The Licensee must assist the Temporary Operator in whatever way possible in the exercise of the Temporary Operator's rights under this clause 12 and must require and use its reasonable endeavours 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 12.
- (2) Without limiting clause 12.5(1), the Licensee must allow the Temporary Operator to have access to:
 - (a) any premises occupied by the Licensee or under its control and will require and use its reasonable endeavours to procure that such access is given by all Agents and subcontractors in connection with the provision by the Licensee of all services in support of the Conduct of the Authorised Lotteries;
 - (b) all books, materials, system records (including financial records) reports and intellectual property necessary or appropriate for, or any way related to, the provision of the services in support of the Conduct of the Authorised Lotteries and the State will have the Temporary Operator keep such materials in confidence subject to any disclosure requirements under law imposed on the Minister, the State or the Temporary Operator.

12.6 Suspension of obligations

Upon the Minister appointing a Temporary Operator under this clause 12 to perform the Licensee's obligations under the Licence and the Agreement, the obligations of the Licensee to perform those obligations are suspended at the Minister's discretion to the extent and for such period as is necessary to permit the Temporary Operator to exercise those obligations and to Conduct the Authorised Lotteries.

12.7 Attorney

The Licensee:

- (1) irrevocably appoints the Temporary Operator as its attorney to exercise the rights of the Licensee under the Licence in accordance with this clause 12; and
- (2) agrees to ratify and confirm whatever action the Temporary Operator takes in accordance with this clause 12.

12.8 Cessation of step-in

The Minister will procure that the Temporary Operator ceases exercising the rights under this clause 12 as soon as:

- (1) if the Minister exercised his or her rights due to a suspension of the Licence – the period of suspension has ended;
- (2) the Minister has appointed a new Public Lottery licensee to replace the Licensee and the new licensee is sufficiently established to Conduct the Authorised Lotteries; or
- (3) the Minister otherwise determines that it is appropriate to terminate the exercise of the rights under clause 12, for example, in the situation where the Licensee remedies the Failure to the reasonable satisfaction of the Minister following expiration of the Cure Period.

12.9 Minister and Temporary Operator to act reasonably

In exercising its rights under this clause 12, the Minister must, and will have the Temporary Operator, act at all times reasonably and in good faith having regard to all the circumstances under which they are exercising their rights.

12.10 Liability

- (1) 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 12 except to the extent that the Minister does not act in accordance with clause 12.9.
- (2) 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 12 except to the extent that:
 - (a) the Temporary Operator does not act in accordance with clause 12.9 or breaches any provision of the Licence or Agreement; or
 - (b) the loss incurred by the Licensee results directly from the negligence of Temporary Operator.
- (3) 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 12 but with the consent of the Minister the Licensee can have the opportunity to overcome or mitigate such risk or consequences.
- (4) 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 12 except to the extent that the Licensee does not act in accordance with clause 12.5 or 12.7(2).

12.11 Ability of Licensee to sell

If the Minister appoints a new Public Lottery licensee to replace the Licensee, then the Licensee may, subject to the Minister's consent, transfer or assign any part of Lottery Assets to the new Public Lottery licensee provided that such assignment will not affect the rights of the Temporary Operator under this clause 12.

12.12 Other rights

The exercise by the Minister of his or her rights under this clause 12 does not affect any other rights of the Minister (whether under the Licence, this Agreement or the Act).

13. Clause not required

14. Termination

14.1 Termination

- (1) Subject to clause 14.2, this Agreement will terminate automatically upon the cancellation or termination of the Licence.
- (2) Despite any other provisions to the contrary, the Agreement may be terminated by agreement in writing between the Licensee and the Minister.

14.2 Ongoing Obligations

All clauses that by their nature survive expiration or termination of this Agreement will remain in full force effect, which include, for the avoidance of doubt, clauses 1, 4, 5, 8, 9, 11, 12, 14, 15, and 17.

15. Force Majeure

15.1 Notice of Force Majeure Event

- (1) 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 this Agreement or the Licence, the Licensee must immediately give notice of that matter and all relevant particulars to the Minister and the Commission.
- (2) 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 and the Commission a notice (**FME Claim Notice**) setting out the following:
 - (a) the nature of the event;

- (b) 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;
 - (c) the estimated period during which the Licensee's obligations will be affected by the event;
 - (d) a plan and timetable describing the actions planned to be taken to prevent, overcome, remedy or mitigate the effects of the event; and
 - (e) all other relevant particulars reasonably known to the Licensee.
- (3) 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:
- (a) a Force Majeure Event has occurred;
 - (b) those obligations of the Licensee under the Licence and this Agreement which will be suspended under this clause 15; and
 - (c) the maximum period during which those obligations will be suspended (**Suspension Period**).
- (4) 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:
- (a) an updated plan and timetable describing the action taken and the action proposed by the Licensee to comply with its obligations under this clause 15 which is acceptable to the Minister; and
 - (b) details of any changes to the circumstances set out in the FME Claim Notice; and
 - (c) any other matter relevant to the Force Majeure Event or the Licensee's obligations under the Licence or this Agreement.
- (5) 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 at the Minister's absolute discretion.
- (6) 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 15.1(4)(a).

15.2 Suspension of obligations

The relevant obligations of the Licensee under this Agreement and the Licence will, subject to the Licensee's compliance with clauses 15.1(2), 15.1(4) and 15.1(6)

and clause 15.4, be suspended in accordance with the Suspension Notice during the Suspension Period.

15.3 Mitigation and reinstatement

The Licensee must use its best endeavours (including, without limitation, the expenditure of funds and rescheduling of resources) to overcome, remedy or mitigate the effect of each Force Majeure Event.

15.4 End of Suspension Period

The Suspension Period immediately ceases if:

- (1) the Minister notifies the Licensee that the Minister is of the opinion; or
- (2) the Licensee notifies the Minister,

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

15.5 Licensee's costs and expenses

The State, the Minister and the Commission have no liability to pay or reimburse the Licensee for any costs and expenses incurred by the Licensee as a result of or in connection with a Force Majeure Event including, without limitation, for remedying any disruption to the performance of the Licensee's obligations under this Agreement or the Licence.

16. Disclosure

16.1 Publication of Agreement

The Minister may release or otherwise publish this Agreement 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.

16.2 Decisions of the Minister or the Commission

The Licensee acknowledges that all decisions of the Minister or the Commission relating to the Conduct of Authorised Lotteries by the Licensee may be published and made available to the members of the general public and accordingly authorises the Minister and the Commission to make such publication. Where practicable, the Licensee will be provided with 3 Business Days notice prior to such publication.

17. Notices

- (1) A notice or other communication connected with this Agreement (**Notice**) has no legal effect unless it is in writing.
- (2) The address 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.

- (3) In addition to any other method of service provided by law, the Notice may be:
- (a) sent by prepaid post to; or
 - (b) delivered at;
- the address of the addressee set out in this Agreement or subsequently notified.
- (4) If the Notice is sent or delivered in a manner provided by clause 17(3), it must be treated as given to and received by the party to which it is addressed:
- (a) if sent by post, on the 2nd Business Day (at the address to which it is posted) after posting;
 - (b) if otherwise 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.

18. Assignment

The Licensee must not assign, sublicense, mortgage or otherwise deal with its rights or obligations under this Agreement.

19. Miscellaneous

19.1 Execution of counterparts

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

19.2 Further assurance

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

19.3 Severability

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

19.4 Variation

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

19.5 Waiver

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

19.6 Governing law and jurisdiction

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

19.7 Deemed Breach of Licence

For the purposes of clause 6.2(2) of the Licence, a Failure (other than in respect of clause 8.3(2), 12.5(1) or 12.5(2)) will not be deemed to be a breach of the Licence unless the Licensee has failed to comply with any one or more of the requirements specified in clause 11.3 or 11.4.

Executed as an agreement.

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

[Signed] Robert Bradford

[Signed] Tony Robinson

Signature of Witness

Signature of the Minister

Robert Bradford

Name of Witness
(BLOCK LETTERS)

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

[Signed] Raymond Gunston

Signature of Director

Raymond Gunston

Name of Director
(BLOCK LETTERS)

[Signed] Penelope Grau

Signature of Secretary/~~other Director~~

Penelope Grau

Name of Secretary/~~other Director~~
(BLOCK LETTERS)

Schedule 1 General

Item 1 **Agreement Date**

24 October 2007

Item 2 **Licencee's Address for Service**

Tattersall's Sweeps Pty Ltd

615 St Kilda Road

Melbourne, Victoria, 3004

Attention: Company Secretary

Facsimile: (03) 8517 7752

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

Minister for Gaming

Level 5

1 Macarthur Street

East Melbourne, 3002

Copy to:

Executive Director, Gaming and Racing

Department of Justice

Mr Ross Kennedy

Level 29, 121 Exhibition Street

Melbourne, 3000

Schedule 2 Liquidated Damages

Item 1 **Failure to Conduct aspects of an Authorised Lottery in the State of Victoria**

Aspects to be Conducted	Date for performance	Liquidated Damages amount (\$x per day calculated from the specified date for performance until performance is achieved)
Determination of Saturday Tattslotto	Saturday 5 July 2008	\$5,000 per day from 5 July 2008 until performance is achieved.
Determination of Super 66	Saturday 5 July 2008	\$1,000 per day from 5 July 2008 until performance is achieved.
Determination of Oz Lotto Super 7s	Tuesday 1 July 2008	\$5,000 per day calculated from the specified date for performance until performance is achieved.
Determination of Powerball	Thursday 3 July 2008	\$5,000 per day calculated from the specified date for performance until performance is achieved.
Determination of The Pools	Saturday 5 July 2008	\$1,000 per day calculated from the specified date for performance until performance is achieved.

Schedule 3 Performance Standards (clause 6)

Performance Requirements and Standards can be affected to a material extent by decisions of Governments. As such, to the extent that the Licensee’s ability to achieve a relevant Performance Standard is materially adversely impacted by any change to legislation or regulations made thereunder, that is directed at the public lottery business that the Licensee is licensed to conduct in Victoria, any failure to comply with the relevant Performance Standard will not be treated as a failure to comply, unless the Minister and the Licensee have agreed to amended Performance Standards and the amended Performance Standard is not thereafter complied with.

The process to reach such agreement will comprise the following steps:

1. The Licensee must provide written notice to the Minister identifying the change in legislation and/or regulation that the Licensee believes has or may materially adversely impact the Performance Standards and requesting that the Minister grants temporary relief from the Performance Standard subject to the outcome of the process set out in 2, 3, 4 and 5 below:
2. The Licensee identifies the impact of the change in legislation and/or regulation and advises the Commission.
3. The Licensee and Commission discuss and agree the extent, if any, of the material adverse impact to the Performance Standard.
4. The Minister will determine upon receipt of the Commission’s advice, the extent, if any, of the amendment to the relevant Performance Standard in Annexure A. If so required by the Minister, the amended Performance Standard will become the revised Performance Standard for Annexure A of this Agreement.

If the Minister determines that the change in legislation and/or regulation that the Licensee believes has or may materially adversely impact the Performance Standards, has not or will not materially adversely impact the Licensee’s ability to achieve a relevant Performance Standard, the Performance Standard will not be revised, nor relief granted.

Performance Requirement	Standard		
Financial Performance	The Licensee must maintain sales of Authorised Lotteries at no less than the agreed tolerance levels for the sales levels stated in Annexure A measured on a 3		

Performance Requirement	Standard		
	year rolling basis (as outlined below), with the first measurement point being in year 3.		
Timeliness of Reports	All Reports in accordance with clause 7 to be provided on the due date, as specified in this Agreement.		
Commitment to marketing	The Licensee must demonstrate its commitment to marketing by the provision of a 3 year rolling marketing strategy which, for instance, may include strategies to create awareness of existing products and conformity with Responsible Gaming policy.		
Conduct of Authorised Lotteries	All Authorised Lotteries are Conducted without failure in accordance with the conditions as set out in Annexure A of the Licence.		

Measurement of Financial Performance Performance Requirement

$$\text{Performance Standard Test} = \text{PST } n^{3\dots 10} = \text{ASP } n^{3\dots 10} - \text{PS } n^{3\dots 10}$$

$$\text{Actual Sales Performance (ASP)} n^{3\dots 10} = (\text{AS } n + \text{AS } n^{-1} + \text{AS } n^{-2})/3$$

$$\text{Performance Standard Test Tolerance Level (PS)} n^{3\dots 10} = (\text{STL } n + \text{STL } n^{-1} + \text{STL } n^{-2})/3$$

Assessment

If PST is greater than or equal to zero = Pass

If PST is less than zero = Failure

The Agreed Tolerance level is characterised as follows:

Actual Sales (AS) = Sales performance of Authorised Lotteries including Distributor Commissions as reported to the Commission under section 7.1(1)

Sales Tolerance Level (STL)– This is the Tolerance Level that is applied to each of the 10 year sales levels outlined in Annexure A, and is calculated as follows

$$\text{STL} = \text{Sales}^n * (1-\text{TL})$$

Tolerance Level (TL) – This is the Tolerance Factor that is applied to the 10 years sales levels outlined in Annexure A, and is set at 15.0%.

Review Period – The review period is for a period of 2 months from the date of the Commission receiving a report from the Licensee in accordance with clause 7.1(1) for the financial year ending 2014.

Rebased Sales Levels (RSL) will be those Sales Levels as agreed between the Commission and the Licensee to apply for the remaining period until the end of the Licence period (year 7 and beyond). If the Commission and the Licensee cannot agree rebased sales levels for the remainder of the Licence period, they will, by default, be rebased to as follows

$$\text{For Year 7} = (\text{RSL}^7) = \text{PS}^6 * (1+g^7)$$

$$\text{For year 8 and beyond} = \text{RSL}^n = \text{RSL}^{n-1} * (1+g^n)$$

n = year within the 10 year licence period (Financial year 30 June 2009 to be year 1)

g = the growth rate derived from the Sales Levels in Annexure A as at Agreement Date, by taking the period sales divided the prior period sales less 1.

Review process for the Tolerance levels and performance Standards

1. The Commission and the Licensee undertake a review of the Tolerance mechanism in light of past performance and future expectations including all the factors that make up the Tolerance Level and Financial Performance Performance Standard to the end of Year 6.
2. The Commission and the Licensee must use all reasonable endeavours to agree to reset all the factors that make up the Tolerance Level and Financial Performance Performance Standard only if at the end of the 6th year the Financial Performance Standard test for the 6th year is failed (PST⁶). The parties must use all reasonable endeavours to reset the Tolerance Level and Sales Levels per Annexure A for the remaining period of the Licence in light of past performance and future expectations.
3. The process to review and, if required by (2) above, reach agreement will comprise the following steps:
 - a. The Licensee will prepare an analysis of the prior periods' sales performance and identify any matters that have contributed to actual sales outcomes, and, if applicable, the Financial Performance Standard failure (the Failure), and provide it to the Commission.
 - b. The Licensee and Commission discuss and agree the extent, if any, of the revision of all or any of the parameters of the Financial Performance Standard Measure, including but not limited to the Tolerance Level and the Rebased Sales Levels.

- c. If the Parties are required to reset the Tolerance Level and Financial Performance Standards as a result of clause 2 above, and agreement cannot be reached, then the existing Tolerance Level will remain in force, but will be applied to the Rebased Sales Levels in accordance with (d) below, and will be treated as an agreed position for the purposes of seeking the Minister's determination under (e) below.
- d. Rebased Sales levels for year 7 and beyond will be calculated from the Rebased Sales Level (PS⁶) and will be escalated by the previous growth rates derived from Annexure A for the remainder of the Licence (that is the original growth rates in years 7-10).
- e. The Minister will determine upon receipt of the Commission's advice in relation to any agreed position, the extent, if any, of the amendment to the Tolerance Levels and Financial Performance Standard. If so required by the Minister:
 - i. the amended Financial Performance Standard will become the revised Performance Standard for the remaining period of the Licence for Schedule 3 of this Agreement; and/or
 - ii. the amended Sales Levels will become the revised Sales Levels for the remaining periods of the Licence and will be amended into Annexure A of this Agreement.

Schedule 4

Draft Transition Agreement

CATEGORY 1 PUBLIC LOTTERY TRANSITION AGREEMENT

Gambling Regulation Act 2003 (Vic)

Public Lottery Transition Agreement

Dated

Parties:

The Honourable Tony Robinson MP

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

AND

Tattersall's Sweeps Pty Ltd

ABN 99 081 925 662

Agreement dated

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

AND

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

Introduction

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

It is agreed

1. Definitions and Interpretation

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

1.1 Definitions

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

- (2) **Ancillary Agreement** means the Public Lottery Ancillary Agreement entered into between the Licensee and the Minister on [date], including any schedule or annexure to it, and as amended from time to time.
- (3) **Agreement** means this document, including any schedule or annexure to it.
- (4) **Continuing Lottery** means a Public Lottery that will be transitioned from the Licensee to the Incoming Licensee.
- (5) **Incoming Licensee** means in respect of a Lottery Transition, the person who will Conduct the Continuing Lottery from the Required Transition Date.
- (6) **Independent Chairperson** means the independent chairperson of the Transition Steering Committee appointed by the Commission.
- (7) **Lottery Transition** means the transition process under which the Conduct of a Continuing Lottery will be transitioned from an Outgoing Licensee to an Incoming Licensee.
- (8) **Notice of Direction** has the meaning given in clause 7.2.
- (9) **Outgoing Licensee** means in respect of a Lottery Transition, the person who will cease to Conduct the Continuing Lottery from the Required Transition Date.
- (10) **Required Transition Date** means the date upon which a particular Transition is complete and the Incoming Licensee will take full responsibility for the Conduct of the Continuing Lottery as specified in the Project Plan.
- (11) **Transition** means Lottery Transition.
- (12) **Transition Framework** means the conceptual framework for Transition, as attached as Schedule 1.
- (13) **Transition Plan** refers to the plan produced by the Licensee that describes how a proposed Transition will be undertaken, as amended and approved by the Commission under clause 4.5 from time to time.
- (14) **Project Plan** means, in respect of a particular Transition, the detailed plan approved by the TSC that describes how a particular Transition will be undertaken, including without limitation the Required Transition Date, the responsibilities and obligations of each relevant stakeholder, the implementation schedule, milestones and acceptance procedures.
- (15) **Transition Steering Committee** or **TSC** means the Transition Steering Committee as described in the Transition Framework.

1.2 Precedence between documents

In the interpretation of this Agreement, to the extent that there is any inconsistency between the provisions of this Agreement and the provisions of the Transition Framework, the Licence, the Ancillary Agreement or the Act, then the documents will be read in the following descending order of precedence:

- (1) the Act;

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

2. Objective and obligations

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

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

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

2.3 The State:

- (1) acknowledges that this Agreement places obligations on the Licensee relating to its performance under this Agreement; and
- (2) commits to place generally reciprocal obligations in the Transition Agreement entered into with an Incoming Licensee.

2.4 The Licensee agrees in good faith to undertake such activities as may reasonably be required of it to assist in the achievement of the objectives set out in clause 2.1, and acknowledges that the intent of this Agreement is to give as full effect to this commitment as is presently practicable.

3. Transition Steering Committee

3.1 Establishment of Transition Steering Committee

- (1) As soon as it is reasonably practicable after an Incoming Licensee to a Transition is identified (and in any case, no more than 1 month after that date), the parties must establish a TSC for that Transition in accordance with the Transition Framework.

- (2) Each Transition will be managed and overseen by a TSC, which is responsible for planning, organising, implementation and monitoring of all the activities relating to the Transition (including approval of the Project Plan).

3.2 Compliance with the decisions of the Transition Steering Committee

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

3.3 Deadlock of the Transition Steering Committee

- (1) The Licensee acknowledges and agrees that if a TSC is unable to reach a decision due to a deadlock, then the Independent Chairperson will resolve the deadlock unless:
 - (a) the Independent Chairperson determines with reference to clauses 2.1 and 2.2 that he is unable to resolve the deadlock; or
 - (b) by unanimous vote, the TSC determines that it is not appropriate for the Independent Chairperson to resolve the deadlock.
- (2) If a determination is made under 3.3(1)(a) or 3.3(1)(b), the deadlock will be resolved by following the dispute resolution process of clause 7.

3.4 Composition and quorum of the Transition Steering Committee

- (1) A TSC must have a minimum of 6 members, being:
 - (a) the Independent Chairperson;
 - (b) a representative nominated by the Minister;
 - (c) a representative nominated by the Commission;
 - (d) a representative nominated by the Department of Treasury and Finance;
 - (e) a representative nominated by the Incoming Licensee; and
 - (f) a representative nominated by the Outgoing Licensee.
- (2) The representatives from the Outgoing Licensee and the Incoming Licensee will be an executive officer having the ability to bind their respective entities.
- (3) Representatives of the TSC must appoint alternate members capable of acting as their delegates

- (4) The TSC representative and alternate member for a party to the Transition may both attend a TSC meeting, subject to the representative and alternate member:
 - (a) having the entitlement to just one vote between them at the meeting;
 - (b) counting as one TSC member for the purpose of determining the quorum for the meeting.
- (5) The quorum of each TSC is 4 members, subject to the requirement that the quorum must include the Independent Chairperson and representatives of both the Incoming Licensee and the Outgoing Licensee (or their respective alternate members).
- (6) A TSC may by resolution increase its quorum but may not alter the requirement that the Independent Chairperson, and representatives of the Incoming Licensee and Outgoing Licensee (or their respective alternate members) must be included in the quorum.
- (7) A TSC may invite additional parties at its sole discretion to provide advice on any specific issues relating to a Transition.

3.5 Operation of the Transition Steering Committee

Subject to the Transition Framework and this Agreement:

- (1) a TSC may meet together for the despatch of business and adjourn and otherwise regulate their meetings as it sees fit;
- (2) a TSC may not meet unless each member of the TSC has been given at least 24 hours notice of the meeting or has otherwise consented to a shorter notice period;
- (3) a TSC will meet in Melbourne in the State of Victoria.
- (4) all decisions and resolutions passed by the TSC must be:
 - (a) in writing; and
 - (b) subject to clause 3.3, passed by a unanimous vote cast by members of the TSC present and entitled to vote on the resolution; and
- (5) it is intended that the TSC will meet on a weekly basis, with the date, time and location of the next meeting to be determined at each meeting.

3.6 Dissolution of the Transition Steering Committee

- (1) A TSC may only be dissolved by passing a unanimous resolution to that effect.
- (2) The Licensee and the State must use all reasonable endeavours to dissolve a TSC after the Transition for which that TSC is responsible has been successfully completed.

4. Transition

4.1 General

- (1) The Licensee must take such steps as are reasonably necessary (including using all reasonable endeavours to procure its Agents and sub-contractors) to facilitate the orderly, uninterrupted and seamless Transition of Continuing Lotteries to an Incoming Licensee from the Required Transition Date.
- (2) The Licensee must comply with any reasonable directions of the Minister and must act in good faith towards the State and reasonably to other stakeholders.

4.2 Continuing Lotteries

The scope of work relating to the Continuing Lotteries which are the subject of each particular Transition is to be determined by the TSC.

4.3 Preparation of Transition Plan

- (1) The Licensee must develop a proposed Transition Plan for the transitioning of the Continuing Lotteries as requested by the Commission from time to time. The Licensee must submit a draft Transition Plan to the Commission within the time period specified in the request.
- (2) The draft Transition Plan prepared by the Licensee must:
 - (a) comply with the requirements set out in the Transition Framework;
 - (b) include such information and address such issues as required by the Commission; and
 - (c) be in a form required by the Commission.

4.4 Regular updates of Transition Plan

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

4.5 Approval of draft and updated Transition Plan

- (1) The Commission will consider the draft or updated Transition Plan and approve or reject it. If the Commission rejects the draft plan in any respect the Licensee must meet the Commission and negotiate in good faith in an endeavour to settle the plan. The plan once accepted or finalised will constitute the Transition Plan.
- (2) The Licensee must use its best endeavours to ensure that the proposed Transition Plan is approved by the Commission within 2 months after the date the Commission requested the Licensee to prepare the Transition

Plan or the date the Licensee is required to update the Transition Plan (as applicable).

5. Compliance with Transition Framework and Project Plan

5.1 Compliance with Transition Framework

The Licensee must comply with the Transition Framework.

5.2 Compliance with the Project Plan

The Licensee must comply with the Project Plan with respect to each Transition.

5.3 Consequences of non compliance

[#To be negotiated between the Commission and the Licensee as the part of the negotiation of this Agreement (and as agreed by the Minister), depending on the nature of the activities contained in the Transition Framework.]

6. Cost of Transition

6.1 Reimbursement by the State

Subject to clauses 6.2 and 6.3, the State will reimburse the Licensee for any out of pocket expenses incurred by the Licensee, to the extent that such out of pocket expenses:

- (1) are expressly provided for in the Project Plan or otherwise approved by the Minister or the Commission in writing;
- (2) relate directly to carrying out the Transition activities (and beyond any activities relating to the Conduct of the Authorised Lotteries); and
- (3) are substantiated by written documents (such as in the form of time sheets or invoices).

6.2 Specific exclusions

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

- (1) attending and participating at the TSC;
- (2) preparing, updating and finalising the Transition Plans; or
- (3) preparing and finalising the Project Plan.

6.3 Other exclusion of Transition

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

6.4 Payment of reimbursement

The State will reimburse the Licensee for out of pocket expenses specified in clause 6.1 for each Transition within 20 Business Days after the TSC responsible for that Transition has been dissolved.

7. Dispute resolution

7.1 Good faith to resolve

- (1) If a dispute arises in connection with a Transition, the parties to the dispute (**Disputing Parties**) must use all reasonable endeavours to resolve the dispute having regard to the objectives of this Agreement.
- (2) If the dispute remains unresolved after 5 Business Days after the dispute arose, then any party to the dispute may require the dispute to be resolved under this clause 7.
- (3) Any dispute in respect of the project management and work group structure established by the TSC pursuant to clause 5.1(2)(d) of the Transition Framework that is still unresolved after applying 7.1(2) must be referred to the TSC for resolution.

7.2 Disputes between the parties to the Transition

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

the Chair of the Victorian Chapter of the Institute of Arbitrators and Mediators Australia (**Principal Appointor**) or the Principal Appointor's nominee, acting on the request of any party to the dispute.
- (3) If involved in the dispute, the Licensee must pay a share of the mediator's remuneration in proportion to the number of parties in the dispute. The Licensee must pay its own costs of the mediation.
- (4) If the dispute is not resolved within 28 days after the appointment of the mediator (**Second Period**), the dispute is by this clause referred to

arbitration. The arbitration must be conducted in Victoria by a single arbitrator.

- (5) If the Disputing Parties have not agreed upon the arbitrator within 7 days after the Second Period, the arbitrator is the person appointed by the Principal Appointor or the Principal Appointor's nominee, acting on the request of any party to the dispute.
- (6) The arbitrator must not be a present or former member, officer, employee or agent of a party to the dispute or a person who has acted as a mediator or advised any party in connection with the dispute.
- (7) The arbitration must be conducted in accordance with the *Commercial Arbitration Act* 1984 (Vic) except that:
 - (a) the arbitrator must have regard to the objectives of this Agreement (as stated in clause 2);
 - (b) the arbitrator must only accept evidence which would be accepted in a court of law;
 - (c) a party to the dispute may be represented by a qualified legal practitioner or other representative;
 - (d) the arbitrator must include in the arbitration award the findings on material questions of law and of fact, including references to the evidence on which the findings of fact were based; and
 - (e) the 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.
- (8) After accepting the appointment and during the arbitration the arbitrator may:
 - (a) require the parties to the dispute to lodge security or further security towards the arbitrator's fees and expenses; and
 - (b) apply any security towards those fees and expenses;but the arbitrator may not direct a party to the dispute to provide security for the costs of the arbitration to be incurred by any other party.
- (9) Subject only to:
 - (a) the requirement that the parties first endeavour to resolve the dispute by mediation in accordance with this clause 7.2; and
 - (b) clause 7.2(10);this clause 7.2 is intended to be an agreement by the Licensee in writing to refer present or future disputes between the Disputing Parties to arbitration.
- (10) Despite anything in this clause 7.2, the Disputing Parties may commence court proceedings in relation to any dispute or claim arising under or in

connection with this Agreement where the Licensee seeks urgent interlocutory relief.

- (11) Despite the submission of a dispute to mediation or the reference of a dispute to arbitration under this clause 7.2, the Licensee must continue to perform its obligations under this Agreement (and the Licence and Ancillary Agreement). In the award, the arbitrator may make any appropriate adjustment for the performance of obligations under this Agreement since the Notice of Direction was given.
- (12) Subject to clause 7.2(10), the Licensee must not commence or maintain a court action or proceeding upon a dispute in connection with this Agreement until the dispute has been submitted to mediation, referred to arbitration and determined under this clause 7.2.
- (13) This clause 7 continues in force even where the Agreement has been fully performed, terminated or rescinded or where the parties or any of them have been discharged from the obligation to further perform the Agreement for any reason.
- (14) This clause 7 applies even where the Agreement is otherwise void or voidable.

8. Liability

[#The State's position on liability will depend on the final liability provisions in the Licence and Ancillary Agreement. Subject to the outcome of negotiations, it is intended that the liability provisions in those documents will be sufficient to address Transition activities.]

9. Termination

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

10. Miscellaneous

10.1 Execution of counterparts

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

10.2 Further assurance

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

10.3 Severability

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

10.4 Variation

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

10.5 Waiver

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

10.6 Governing law and jurisdiction

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

Executed as an agreement

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

Signature of Witness

Signature of the Minister

Name of Witness
(BLOCK LETTERS)

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

Signature of Director

Signature of Secretary/other Director

Name of Director
(BLOCK LETTERS)

Name of Secretary/other Director
(BLOCK LETTERS)

Schedule 1

Transition Framework

1. Objectives

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

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

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

2. Success criteria and measures

2.1 Success criteria

The Outgoing Licensee and the Incoming Licensee are expected to manage the 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. The success criteria for each Transition will be determined by the TSC having regard to the Objectives and may include (without limitation):

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

2.2 Measurement of success criteria

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

3. Responsibilities of the Outgoing Licensee

3.1 General responsibilities

Without limitation, the Outgoing Licensee is responsible for

- (1) preparing the Transition Plans, and Project Plans in accordance with clause 4.1, this Transition Framework and the Agreement;
- (2) participating in planning and workshop sessions;
- (3) providing information and assistance in the planning process or to the Incoming Licensee; and
- (4) providing appropriate resources and personnel for the purposes of Transition related activities.

3.2 Responsibilities during Transition

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

- (1) assist the Minister to sub-licence IP to the Incoming Licensee, as defined in the Transition Plan;
- (2) provide any historical data and information necessary for the Continuing Lotteries that must be transitioned to the Incoming Licensee, as defined in the Transition Plan;
- (3) undertake the orderly removal of the Licensee's equipment from the Points of Sale, in accordance with the Transition Plan;
- (4) handle prizes and payments to Players (including unclaimed prizes); and
- (5) maintain and provide access to records relating to the Transition.

4. Project Plan

4.1 Preparation of Project Plan

- (1) The Outgoing Licensee and Incoming Licensee must (in consultation with the TSC) develop and prepare a draft Project Plan for a Transition as requested by the TSC.
- (2) The Outgoing Licensee and Incoming Licensee must submit the draft Project Plan to the TSC within the timeframe specified by the TSC. To avoid doubt, the Outgoing Licensee and Incoming Licensee may submit the draft Project Plan jointly.
- (3) 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 Outgoing 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.

- (4) The Outgoing Licensee and the Incoming Licensee must (jointly and severally) use their best endeavours to ensure that the proposed Project Plan is approved by the TSC within 20 Business Days after the date the TSC requested the preparation of the Project Plan.
- (5) 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 **General content of the Project Plan**

In general the Project Plan must

- (1) comply with requirements of the Agreement and this Transition Framework;
- (2) specify the cost of the Transition activities;
- (3) be consistent with the Transition Plan;
- (4) have regard to any transition plans prepared by the Incoming Licensee and the Outgoing Licensee;
- (5) include such other information and items as required by the TSC; and
- (6) be in a form as required by the TSC.

4.3 **Specific issues to be addressed by the Project Plan**

The Project Plan should address each of the following issues:

- (1) **Project methodology and schedules**
 - (a) The project methodology used to manage the Transition.
 - (b) The schedule, milestones and the project plan for the Transition activities and required resources.
 - (c) The Required Transition Date for each Transition the subject of that Project Plan.
- (2) **Communication**

The approach to be taken to ensure all relevant stakeholders are kept informed of project progress, changes, issues and risks. The description is to identify target audiences, process and tools.
- (3) **Meetings**

The key meetings associated with the coordination and control of Transition. As a minimum, the representative of the Outgoing Licensee and the representative of the Incoming Licensee should meet with the representatives of the State on a regular basis. The agenda of the meeting should include:

- (a) the provision of a highlight report indicating the progress made in Transition against that forecast in the Project Plan;
- (b) review of risks and issues and
- (c) change management.

(4) **Reporting**

The type and number of reports required to control Transition. As a minimum the Outgoing Licensee and Incoming Licensee should produce a “Change Management Report” and a “Highlight Report” on a weekly basis. The “Highlight Report” should report on the satisfaction of deliverables against forecast schedule (as specified in the Project Plan). The “Change Management Report” should report on any agreed changes to the scope, cost or timetable of Transition.

(5) **Change Management**

The change management process in relation to how the Outgoing Licensee and Incoming Licensee will manage changes to the scope, cost or timetable of Transition. The description should identify both process and tools.

As a minimum, a written record of all changes to the approved Project Plan is to be maintained. This record is to include the nature of the change, its date and the source of authorisation.

(6) **Issue Management**

How the Outgoing Licensee and Incoming Licensee will manage issues impacting Transition. The description should identify both process and tools via an “Issue Register”. The Issue Register must be made available to the TSC upon request.

(7) **Risk Management**

The process employed by the Outgoing Licensee and Incoming Licensee to manage Transition risk, including both process and tools (**Risk Register**). As a preliminary step, the Outgoing 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.

Thereafter, the Outgoing Licensee and Incoming Licensee will regularly reassess technical, operational and commercial risks to the success of Transition, up-date the Risk Register and make the information available to the TSC at the designated weekly meeting.

(8) **Audit schedule**

The audit process and schedules to provide the TSC with assurance that the Transition activities are conducted in accordance with this Transition Framework and the Agreement.

(9) **Quality Management**

The quality management program, including both processes and tools that will be adopted by the Outgoing Licensee and Incoming Licensee as a means of ensuring the various aspects of Transition are appropriately documented and discharged.

(10) **Insurance**

The insurance policies that the Outgoing Licensee or Incoming Licensee must take out and maintain to insure against any liability arising in connection with the Transition activities.

5. Management of the Transition

The Transition will adhere to the management structure indicated below.

5.1 Transition Steering Committee

- (1) The TSC will be responsible for managing and overseeing the implementation of the Transition.
- (2) Without limiting the Agreement, the TSC may:
 - (a) at its absolute discretion, determine the responsibilities and obligations of each relevant stakeholder to the Transition, including any specific activities and tasks;
 - (b) determine the scope of the work relating to the Transition of the Continuing Lotteries that are the subject of the Transition;
 - (c) impose specific requirements in the Project Plan and require the Incoming Licensee and Outgoing Licensee to amend the Project Plan to take into account those specific requirements;
 - (d) establish the project management and work group structure under which the Transition will operate;
 - (e) issue directions or recommendations to the Incoming Licensee, the Outgoing Licensee, or any of the work groups it establishes under clause 5.1(2)(d) above;
 - (f) determine protocols and procedures to deal with management of the Transition and relationship between the relevant stakeholders; and
 - (g) facilitate resolution of disputes between stakeholders.

6. Relationship between the stakeholders

6.1 Agents and sub-contractors of the Outgoing Licensee and the Incoming Licensee

- (1) The Outgoing Licensee and Incoming Licensee must require and use reasonable endeavours to ensure that their respective Agents, Distributors and sub-contractors are able to comply with the obligations under the Agreement and this Transition Framework.
- (2) If the Incoming Licensee or its Agents or sub-contractors wishes to make direct contact with an existing Agent or sub-contractor of the Outgoing Licensee, then the Incoming Licensee must approach the Outgoing Licensee in writing before any such contact is made to enable the necessary protocols to be determined.

6.2 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 Transition.

Schedule 5

IP Sub-Licence Agreement

IP SUB-LICENCE AGREEMENT

Gambling Regulation Act 2003 (Vic)

IP Sub-Licence Agreement

Dated

Parties:

The Honourable Tony Robinson MP

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

AND

[New Licensee]

[]

IP Sub-Licence Agreement made at _____ **on**
20 _____

Parties

The Honourable Tony Robinson MP, Minister for Gaming for and on behalf of the Crown in right of the State of Victoria, (**the Minister**)

and

[New Licensee] (Licensee)

Recitals

- A. The Minister has granted the Licensee a public lottery licence (**Lottery Licence**) for its conduct of Public Lotteries (**Conduct of Public Lotteries**) in Victoria in accordance with the provisions of the Gambling Regulation Act 2003 (**the Act**).
- B. The State has been granted a licence by Tattersall's Sweeps Pty Ltd (**Tattersall's**) to sub-licence the Licensed IP to the Licensee for the purposes of the Licensee's Conduct of Public Lotteries.
- C. This Licence Agreement sets out the terms and conditions of the sub-licensed use of the Licensed IP by the Licensee.

It is agreed

1. Definitions and interpretation

1.1 Interpretation

1.2 Capitalised words not otherwise defined in this Licence Agreement have the same meaning as in the Act (subject to clause 1.7 of this Licence Agreement), except where a contrary intention appears.

1.3 The provisions of the *Interpretation of Legislation Act* 1984 shall apply in the interpretation of this Licence Agreement on the basis that it is a subordinate instrument.

1.4 A provision of this Licence Agreement must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of the Licence Agreement or the inclusion of the provision in the Licence Agreement.

1.5 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.

1.6 "Including" and similar expressions are not words of limitation.

1.7 Definitions

In this Licence Agreement including the recitals and schedules, unless the context requires otherwise, the following expressions have the meaning assigned to them:

Agreement Date	the date of execution of this Licence Agreement.
Bloc Trade Marks	the logos and trade marks comprising in part the Licensed IP and set out in Annexure A.
Business Day	a day that is not a Saturday, Sunday or public holiday in Victoria.
Collateral	collectively, the designs, ticket layouts, ticket formats, graphics, fonts or mascots and Lottery Rules comprising in part the Licensed IP and set out in Annexure B.
Effective Date	the date on which the Licensee's Lottery Licence commences.
Infringement	any infringement of intellectual property rights subsisting in the Licensed IP or passing off of the Licensed IP or contravention of the <i>Trade Practices Act 1974</i> (Cth) or any state fair trading act based on similar grounds.
Intellectual Property Rights	means the right, title and interest of a party in respect of copyright, trade marks, designs, patents, moral rights, confidential information, trade, business or company names, and includes any rights to the registration and application to register such rights.
Licence Agreement	this Licensed IP sub-licence agreement.
Licensed IP	the Product Trade Marks and Collateral the subject of this Licence Agreement.
Product Trade Marks	collectively, Tattersall's Trade Marks and the Bloc Trade Marks referred to in clauses 3 and 4, being the logos and trade marks (whether registered or not) associated with the Public Lotteries conducted by Tattersall's.
Tattersall's	Tattersall's Sweeps Pty Ltd ACN 081 925 662.
Tattersall's Limited	means Tattersall's Limited, ACN 108 686 040, the ultimate parent company of Tattersall's.
Tattersall's Trade Marks	the logos and trade marks comprising in part the Licensed IP and set out in Annexure C.

third party a party other than the Minister, the Licensee, Tattersall's, Tattersall's Limited and a joint owner referred to in clause 5.

2. Grant of Licence

2.1 Grant

The State grants to the Licensee a non exclusive licence to use the Licensed IP in relation to its Conduct of Public Lotteries in the State of Victoria on the terms and conditions contained herein.

2.2 Effective Date

Notwithstanding the Agreement Date, this Licence Agreement shall not commence earlier than the date on which the Licensee is able to take Preparatory Action in accordance with the Act.

2.3 Term

Subject to clause 8, this Licence Agreement shall continue in effect until such time that the Licensee's Lottery Licence expires, terminates or is cancelled, or such earlier date on which all of the Intellectual Property Rights subsisting in all of the Licensed IP ceases to subsist.

2.4 Royalty

The Licensee shall pay a royalty of **[TO BE DETERMINED]**

2.5 Costs

The Licensee must pay to Tattersall's all amounts incurred by Tattersall's for reasonable legal, registration and renewal fees in respect of the registration and renewal of the Product Trade Marks, and such other costs incurred in accordance with clause 5.4.

3. Licensed IP

3.1 The Licensed IP is the Product Trade Marks and Collateral current as at the Agreement Date and annexed hereto.

4. Ownership of Licensed IP

4.1 Licensed IP

- (a) Tattersall's has warranted and represented to the State that Tattersall's has the right to grant a licence in respect of the Licensed IP.
- (b) The Licensee acquires no interest in:
 - (i) the Product Trade Marks (including interest in goodwill associated with them); or
 - (ii) the Collateral, except as provided for in clause 5.6(b),

by virtue of this Licence Agreement or otherwise.

5. Licensee's Obligations

5.1 No Unauthorised Use

The Licensee must not use or be involved in any use of the Licensed IP except to the extent expressly provided for in this Licence Agreement.

5.2 Licensee not to Sub-Licence

Except to the extent required to assist the Licensee in its Conduct of Public Lotteries, the Licensee must not sub-licence the Licensed IP to any third party. The Licensee shall procure that all persons using and/or reproducing the Licensed IP in the course of assisting the Licensee with its Conduct of Public Lotteries, observe and comply with all of the Licensee's obligations hereunder for the use, maintenance and preservation of the Licensed IP.

5.3 Product Trade Marks

The Licensee:

- (a) undertakes to not take any action which would or might:
 - (i) invalidate or put in dispute the ownership (registered or otherwise) of the Product Trade Marks;
 - (ii) invalidate any registration of the Product Trade Marks;
 - (iii) support an application to remove any Product Trade Mark as a registered trade mark;
 - (iv) support an application to remove a registered owner as a registered owner of any Product Trade Mark;
 - (v) require a disclaimer of a monopoly in any Product Trade Mark or part thereof,and must not assist any other person directly or indirectly in any of the above acts;
- (b) must not use any trade mark or logo or name which is similar to or substantially similar to or so nearly resembles any of the Product Trade Marks as are likely to cause deception or confusion among the public;
- (c) must use the Product Trade Marks in their entirety without additions or variations;
- (d) must use its best endeavours to preserve the value and validity of the Product Trade Marks;
- (e) must not use, or assist any third party to use, the Product Trade Marks in combination with any other trade mark, name or any

other getup so as to create a new trade mark or in a manner which may be confusing;

- (f) must not, anywhere in the world, use or register or be involved in the use or registration of any Product Trade Marks or any part thereof as a trade mark; and
- (g) indemnifies and will keep indemnified the State, Tattersall's, Tattersall's Limited and where applicable, the joint owners of a Bloc Trade Mark, against any loss, cost, expense or damage arising out of in connection with a breach of clause 5.3 .

5.4 Licensee's Breach

- (a) Without limiting any remedies available to Tattersall's for any breach by the Licensee of clause 5, the Licensee must immediately cease any activity in contravention of the relevant clause and, if requested by Tattersall's, shall assign any mark used or registered in such contravention and otherwise act in accordance with Tattersall's requirements to rectify such contravention.
- (b) On written notice from Tattersall's to the Licensee, the Licensee must pay to Tattersall's all costs and expenses of any opposition, cancellation or related legal proceedings, including reasonable legal fees, incurred by Tattersall's in connection with any such contravention of clause 5 by the Licensee.
- (c) This clause 5.4 will survive termination of this Licence Agreement for any reason.

5.5 Execution of documents in support of Tattersall's title

The Licensee will, promptly at the request of Tattersall's:

- (a) execute and provide any consents, authorisations or other documents reasonably required to secure or perfect Tattersall's (and/or any joint owners') rights, title and interest in the Product Trade Marks; and
- (b) obtain all necessary approvals and execute all necessary documents required to exercise the rights granted to it under this Licence Agreement.

5.6 Collateral

- (a) Alterations

Unless necessary for compliance with the Act in the Conduct of Public Lotteries and subject to clause (b) below, the Licensee must ensure that no alterations are made to the content and text of the Collateral (**the Works**) except to the extent that such alterations are in the form of minor revisions and/or adjustments.

(b) New Works

Tattersall's has acknowledged that in the course of the sub-licensed use of the Collateral, the Works may change or be required to be changed to such a degree that the content and text are no longer derivatives of the Works, but rather they constitute original works in which the Licensee may be entitled to claim the subsistence and vesting of Intellectual Property Rights (**the New Works**). In such an event, the Licensee agrees that the grant of rights in respect of the Collateral under the terms of this Licence Agreement will no longer be required, and on and from the commencement of use of the New Works by the Licensee in the Conduct of Public Lotteries, the Collateral will be deemed to be severed from the Licensed IP and the granting of rights in respect of the Collateral will be terminated.

(c) No Claims

If the grant of rights in the Collateral terminates in accordance with clause (b) above, the Licensee agrees that neither Tattersall's nor the Licensee shall have any claim to Intellectual Property Rights or interests in the Works or New Works of the other party, and each party shall have and retain the benefit of exclusive ownership and Intellectual Property Rights in their respective Works or New Works, as the case may be.

6. Infringement proceedings

6.1 Notice of infringement

(a) If the Licensee:

- (i) becomes aware of or receives notice of any Infringement or threatened Infringement of any of the Licensed IP or any common law passing off by reason of imitations of get up or otherwise; or
- (ii) becomes aware that any third party alleges or claims that any of the Product Trade Marks are liable to cause deception or confusion to the public,

the Licensee agrees to promptly notify Tattersall's and the Minister in writing and provide all reasonable particulars and information therein.

6.2 Institution of proceedings

If, upon receiving such information, Tattersall's commences proceedings in relation to any such claims or infringements, the Licensee will assist with respect to any such proceedings provided that any such proceedings will be under the control and at the expense of Tattersall's.

7. Indemnity

7.1 Tattersall's has warranted to the Minister that:

- (a) it will indemnify and hold harmless the State, the Minister, the Commission and the Licensee and their representatives, officers, employees, contractors or agents (**IP Indemnified Parties**) from and against all losses, damages, costs and expenses arising directly or indirectly, as a result of or in connection with any claim, action or proceeding by a third party against any of the IP Indemnified Parties alleging that the use of the Licensed IP by the Licensee in accordance with this Licence Agreement constitutes an infringement of the Intellectual Property Rights of that third party (Third Party Claim); and
- (b) if a Third Party Claim is successful, or if it is agreed that there is an infringement of the Intellectual Property Rights in the Licensed IP of the relevant person, Tattersall's will 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 in the Licensed IP.

7.2 The State holds the benefit of the indemnity in clause 7.1 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 Tattersall's.

7.3 Nothing in clause 7 applies to the extent that a Third Party Claim arises as a result of the breach of the Licence Agreement by any of the IP Indemnified Parties.

8. Termination

8.1 State may Terminate

The State reserves the right to terminate this Licence Agreement at any time and for any reason on written notice from the State to the Licensee and to Tattersall's.

8.2 Tattersall's may give notice of apprehended breach of this Licence Agreement

If Tattersall's apprehends that the Licensee has breached a material provision of this Licence Agreement, Tattersall's may give a written notice to the Licensee specifying the breach with sufficient particularity to enable the Licensee to identify the nature and circumstances of the breach (**Apprehended Breach Notice**).

8.3 Procedure following an Apprehended Breach Notice

Within five Business Days after an Apprehended Breach Notice is given to the Licensee pursuant to clause 8.1, the Licensee must meet with a representative of Tattersall's to discuss the apprehended breach

specified in the Apprehended Breach Notice and endeavour in good faith to agree whether there has been a breach of a material provision of this Licence Agreement and, if so, to agree a remedy for the breach.

8.4 Termination after failure to reach agreement - breach incapable of remedy

If agreement has not been reached as contemplated by clause 8.3 within ten Business Days after the Apprehended Breach Notice is given to the Licensee pursuant to clause 8.1 and the breach identified in the Apprehended Breach Notice is incapable of remedy to the reasonable satisfaction of Tattersall's, Tattersall's may terminate this Licence Agreement insofar as it relates to the specific Product Trade Mark or Collateral the subject of the breach, immediately by written notice to the Licensee and the Minister if the breach identified in the Apprehended Breach Notice:

- (a) has been committed on more than one occasion each of which was the subject of an Apprehended Breach Default Notice; or
- (b) is a breach of an essential term.

The Product Trade Mark or Collateral identified in the notice of termination shall thereafter be deemed severed from the Licensed IP for purposes of this Licence Agreement.

8.5 Termination after failure to reach agreement - breach capable of remedy

If agreement has not been reached as contemplated by clause 8.3 within ten Business Days after the Apprehended Breach Notice is given to the Licensee pursuant to clause 8.1 and the breach identified in the Apprehended Breach Notice is capable of remedy to the reasonable satisfaction of Tattersall's, Tattersall's may give a further notice (**Default Notice**) to the Licensee which will:

- (a) require the breach to be remedied;
- (b) specify what is to be done to remedy the breach; and
- (c) state a reasonable time by which the breach must be remedied. Where the breach is a failure to pay money 2 Business Days is deemed to be a reasonable time.

If the reasonable time specified in the Default Notice has expired and the Default Notice has not been complied with, Tattersall's may terminate this Licence Agreement, insofar as it relates to the specific Product Trade Mark or Collateral the subject of the breach, immediately by written notice to the Licensee and the Minister. The Product Trade Mark or Collateral identified in the notice of termination shall thereafter be deemed severed from the Licensed IP for purposes of this Licence Agreement.

8.6 Termination for continued non use of a Product Trade Mark

The Licensee acknowledges that the right, title and interest in a Product Trade Mark may be in jeopardy if a Product Trade Mark is not continually in use for a period of three (3) years. If the Licensee does not continually use a Product Trade Mark for a period of two (2) years, Tattersall's may issue a notice in writing to the Licensee requiring it to commence using the Product Trade Mark within three (3) months from the date of the notice. If the Licensee fails to commence and continue use of the Product Trade Mark, or otherwise advises Tattersall's of its intention not to commence and continue such use, Tattersall's may on written notice to the Licensee and the Minister terminate this Licence Agreement insofar as it relates to the Product Trade Mark specified in the notice and the Product Trade Mark identified therein shall thereafter be deemed severed from the Licensed IP for purposes of this Licence Agreement.

8.7 Tattersall's may obtain an injunction

Without limiting any other rights Tattersall's may have under this Licence Agreement, if the Licensee uses any Licensed IP in breach of this Licence Agreement, it may cause irreparable harm to Tattersall's and that Tattersall's remedy in damages may be inadequate, and in such circumstances, Tattersall's reserves its right to seek injunctive relief.

8.8 Licensee to act in accordance with Tattersall's directions

Upon termination of this Licence Agreement for any reason, the Licensee must act in accordance with Tattersall's directions regarding the orderly cessation of the Licensee's use of the Licensed IP, including the removal and delivery up or destruction of all representations of the Licensed IP. The Licensee appoints Tattersall's as the Licensee's agent to give effect to such directions if the Licensee fails to do so promptly after Tattersall's request.

8.9 Tattersall's and the Minister not liable

In no event shall the State or Tattersall's, or any of their respective officers, directors, employees, agents, independent contractors, representatives, or affiliates be liable (whether in contract tort or otherwise) for any loss of profits or loss of goodwill or for any special, punitive, incidental, consequential or similar damages arising out of or relating to any performance or non-performance of this Licence Agreement or any other matter relating to the Licensed IP.

8.10 Goods and Services Tax

If GST becomes payable on any supply under this Licence Agreement:

- (a) any amount payable or consideration to be provided to the supplier (**Supplier**) under this Licence Agreement for that supply is exclusive of GST (**Agreed Amount**); and

- (b) an additional amount will be payable by the party providing consideration for that supply (**Recipient**), equal to the amount of GST payable on that supply as calculated in accordance with the GST law and payable at the same time and in the same manner as the consideration; and
- (c) the Supplier will provide a tax invoice (or equivalent documentation which complies with the GST law) to the Recipient in respect of that supply, no later than the time at which the amount for that supply is to be paid under this Licence Agreement.

9. Miscellaneous

9.1 Minister may institute proceedings

Notwithstanding anything contained herein, the Minister shall be entitled to make applications and otherwise institute such proceedings, or require that Tattersall's make application and/or institute such proceedings, as are contemplated in this Licence Agreement if in the reasonable opinion of the Minister, such applications and proceedings need to be instituted to protect and preserve any of the State's rights under this Licence Agreement.

9.2 Further acts

Each party will promptly do and perform all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that party) required by law or reasonably requested by any other party to give effect to this Licence Agreement.

9.3 Notices

9.4 A notice or other communication connected with this Licence Agreement (**Notice**) has no legal effect unless it is in writing.

9.5 The addresses of the Licensee, Tattersall's and the Minister for service of Notices as at the Agreement Date are as detailed below. A party (including Tattersall's) may amend their address for service by giving Notice to the other parties.

Licensee

To:

Address:

Fax:

Attention:

Minister

To:

Address:

Fax:

Attention:

Tattersall's

To: Tattersall's Sweeps Pty Ltd

Address: 615 St Kilda Road, Melbourne, Victoria 3004

Fax: 03 8517 7752

Attention: Company Secretary

9.6 In addition to any other method of service provided by law, the Notice may be:

- (a) sent by prepaid post to; or
- (b) delivered at;

the address of the addressee set out in this Licence Agreement or subsequently notified.

9.7 If the Notice is sent or delivered in a manner provided by clause 9.6, it must be treated as given to and received by the party to which it is addressed:

- (a) if sent by post, on the 2nd Business Day (at the address to which it is posted) after posting;
- (b) if otherwise 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.

9.8 Assignment and Variation

- (a) The Licensee may not assign this Licence Agreement or any benefit, rights or obligations of the Licensee under this Licence Agreement to any third party.
- (b) If there is a change to the ownership of the Licensed IP or any of it during the term of this Licence Agreement, the Minister may require that the relevant provisions of this Licence Agreement be amended to the extent required to reflect any such change in ownership where applicable and the Licensee shall consent to any such amendment and do all things required (including executing and delivering documents) to give effect to same.

9.9 Expenses

Except as otherwise provided in this Licence Agreement, each party will pay its own costs and expenses in connection with the negotiation, preparation, execution, and performance of this Licence Agreement.

9.10 Execution of counterparts

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

9.11 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 Licence Agreement.

9.12 Severability

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

9.13 Variation

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

9.14 Waiver

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

9.15 Governing law and jurisdiction

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

Executed as an agreement.

Executed by
in accordance with section 127 of the
Corporations Act by or in the presence of:

Signature of Director

Name of Director

Signature of Secretary/other
Director

Name of Secretary/other Director in
full

Executed by
In the presence of:

Witness

ANNEXURE A – BLOC TRADE MARKS

ANNEXURE B – COLLATERAL

ANNEXURE C – TATTERSALL’S TRADE MARKS

Schedule 6

Additional obligations

Item 1 **Parent Company Guarantee**

The Licensee must provide an irrevocable guarantee and indemnity in the form attached in favour of the State in respect of all obligations of the Licensee under the Licence and the Agreement from the Licensee's ultimate parent company.

Parent Guarantee and Indemnity

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

(The Minister)

and

Treasurer for and on behalf of the Crown in right of the State of Victoria

(The Treasurer)

and

Tattersall's Limited

(The Guarantor)

and

Tattersall's Sweeps Pty Ltd

(The Subsidiary)

Unconditional Parent Guarantee and Indemnity

Deed dated

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

AND

John Lenders MLC as Treasurer for and on behalf of the Crown in right of the State of Victoria of Level 1, 2 Treasury Place, East Melbourne (**The Treasurer**)

AND

Tattersall's Limited ABN 19 108 686 040 of 615 St Kilda Road, Melbourne, Victoria, 3004 (**The Guarantor**)

AND

Tattersall's Sweeps Pty Ltd ABN 99081 925 662 of 615 St Kilda Road, Melbourne, Victoria, 3004 (**The Subsidiary**)

Introduction

- A.** The Minister invited the Guarantor to apply for the grant of a Public Lottery Licence under s 5.3.2A of the Act and the Guarantor has submitted an application to the Minister.
- B.** The Licence and the Ancillary Agreement set out the proposed terms for the operation of the public lotteries to be conducted as a result of the grant of the Guarantor's application.
- C.** The Guarantor applied to the Commission pursuant to s 5.3.6 (1A) of the Act for the Commission to approve that the Subsidiary be issued the Public Lottery Licence by the Minister pursuant to s 5.3.6(1)(b) of the Act.
- D.** Section 5.3.6 (1A) of the Act requires that for the Commission to approve the Guarantor's request the Guarantor must provide to the State and to the Subsidiary an irrevocable guarantee and indemnity in the form approved by the Treasurer in respect of the obligations of the Subsidiary.
- E.** The Treasurer requires that the guarantee and indemnity be in the form as set out in this Deed.

- F. If the Minister determines to grant the application to the Guarantor, the Guarantor agrees to provide the guarantee and indemnity to the State and to the Subsidiary on the terms set out in this Deed.

It is agreed

1. Definitions and Interpretation

1.1 Definitions

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

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

Ancillary Agreement means the document titled Public Lottery Ancillary Agreement proposed to be entered into between the Licensee and the Minister, if the Minister grants the application for the Licence, and includes any further agreement contemplated by it.

Business Day means any day that is not a Saturday or Sunday or a day that is declared as a public holiday under the *Public Holidays Act 1993* (Vic).

Commission means the Victorian Commission for Gambling Regulation as constituted under the Act

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

Law means:

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

Licence means the Public Lottery Licence proposed to be granted by the Minister under the Act, if the application for the Licence is granted to the Licensee.

Licensee means the Subsidiary as the Public Lottery Licensee.

Obligations means all of the obligations and resultant liabilities of the Licensee to the State or to any other person including (without limitation) any obligations and resultant liabilities arising under or by reason of:

- (a) the Licence;
- (b) the Ancillary Agreement; or
- (c) the conduct of any public lottery any other transaction, matter or event contemplated by the Licence or the Ancillary Agreement,

and includes any liabilities or obligations which:

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

and irrespective of:

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

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

State means any or all of the Crown in right of the State of Victoria, the Minister, the Treasurer or the Commission.

1.2 Interpretation

- (1) Reference to:
 - (a) one gender includes the others;
 - (b) the singular includes the plural and the plural includes the singular;
 - (c) a person includes a body corporate;
 - (d) a party includes the party's executors, administrators, successors and permitted assigns;
 - (e) a statute, regulation, code or other law or a provision of any of them includes:
 - (i) any amendment or replacement of it; and
 - (ii) another regulation or other statutory instrument made under it, or made under it as amended or replaced; and
 - (f) dollars means Australian dollars unless otherwise stated.
- (2) "Including" and similar expressions are not words of limitation.
- (3) Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.
- (4) Headings and any table of contents or index are for convenience only and do not form part of this Deed or affect its interpretation.

- (5) 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.
- (6) If an act must be done on a specified day which is not a Business Day, it must be done instead on the next Business Day.
- (7) A document referred to in this Deed includes any schedule or annexure to it and as amended from time to time.

1.3 Parties

- (1) If a party consists of more than 1 person, this Deed binds each of them separately and any 2 or more of them jointly.
- (2) An obligation, representation or warranty in favour of more than 1 person is for the benefit of them separately and jointly.
- (3) A party which is a trustee is bound both personally and in its capacity as a trustee.

2. Guarantee

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

3. Indemnity

- 3.1 The Guarantor agrees to irrevocably and unconditionally indemnify the Subsidiary with respect to any liability that may arise in respect of its Obligations.
- 3.2 The Guarantor as a separate and additional and primary liability irrevocably and unconditionally agrees to indemnify the State and to keep the State indemnified against any loss or damage suffered by the State arising out of any failure by the Licensee to perform any of the Licensee's Obligations.

4. Liability as Guarantor and Indemnifier

- 4.1 Any reference in this Deed to the obligations and liabilities of the Guarantor will be construed as a reference to its obligations or liabilities, whether as a guarantor or indemnifier or both under this Deed. The use of the expression "Guarantor" in this Deed in relation to a party is not to be construed as diminishing that party's obligations as an indemnifier under this Deed.
- 4.2 The Guarantor will not be discharged, released or excused from this Deed by an arrangement made between the Licensee and the Guarantor or between the State

and the Guarantor or between the State and the Licensee with or without the consent of the Guarantor, or by any other inference arising out of the conduct between the parties.

- 4.3 The Obligations of the Licensee will continue in force and effect until the completion of the undertakings of this Deed by the Guarantor.
- 4.4 Where the Guarantor is required to perform the Obligations in accordance with this Deed, the Guarantor agrees, subject to any necessary approval under the Act, to the novation of the Licence or the Ancillary Agreement from the Licensee to the Guarantor if requested by the Minister.
- 4.5 The rights and obligations under this Deed continue until all obligations of the Guarantor under this Deed have been performed, observed and discharged and thereafter, without any further action being required by any party, this Deed will terminate.

5. Nature and preservation of liability

- 5.1 Subject to clause 4.4, the liability of the Guarantor under this Deed is absolute and is not subject to the performance or any condition precedent or subsequent, including any condition between the Guarantor and the Subsidiary.
- 5.2 This Deed binds each person who has signed it despite:
- (a) any person, whether expressed to be a party to this Deed or not, not executing this Deed or the Licence or the Ancillary Agreement;
 - (b) the execution of this Deed or the Licence or the Ancillary Agreement being invalid or irregular in any way;
 - (c) this Deed or the Licence or the Ancillary Agreement being or becoming unenforceable, void or voidable against any other person.
- 5.3 The liability of the Guarantor under this Deed will not be affected by any act, omission, matter or thing which but for this clause 5.3, might operate in Law to release the Guarantor from that liability or to reduce the Guarantor's liability under this Deed, including any of the following:
- (a) **(Invalidity etc.):** the Licence or the Ancillary Agreement, or any payment or other act, the making or doing of which would otherwise form part of the Obligations being or becoming or being conceded to be frustrated, illegal, invalid, void, voidable, unenforceable or irrecoverable in whole or in part for any reason whether past, present or future;
 - (b) **(Time or indulgence):** the State granting time, waiver or other indulgence or concession to, or making any composition or compromise to the Licensee;
 - (c) **(Forbearance):** the State not exercising or delaying (whether deliberately or otherwise) in the exercise of any Power it has for the enforcement of any Obligation;

- (d) **(Variation)**: any variation, novation or alteration to or substitution of this Deed, the Licence or Ancillary Agreement, whether or not that variation is substantial or material.
- (e) **(Release)**: the full, partial or conditional release or discharge by the State or by operation of Law of the Licensee from its obligations under the Licence or Ancillary Agreement;
- (f) **(Change of constitution)**: any change for any reason in the name or manner in which the Guarantor or the Subsidiary carries on business;
- (g) **(Preference)**: any claim by any person that a payment to, receipt by, or other transaction in favour of the State in or towards satisfaction of the Obligations is void, voidable, or capable of being set aside under any Law relating to bankruptcy, insolvency, or liquidation being upheld, conceded, or compromised;
- (h) **(Administration)**: the provisions of section 440J of the Corporations Act operating to prevent or delay:
 - (i) the enforcement of this Deed against the Guarantor; and/or
 - (ii) any claim for contribution against the Guarantor;
- (i) **(Disclaimer)**: a disclaimer of any contract or property (including the Licence and the Ancillary Agreement) made by a liquidator of the Licensee or the Guarantor;
- (j) **(Event of Insolvency)**: the occurrence before, on or at any time after the date of this Deed, of any dissolution of or external administration procedures of the Licensee under Chapter 5 of the Corporations Act or any other Law in relation to the Guarantor or the Licensee; and
- (k) **(Acquiescence or other omission)**: any laches, acquiescence or other act, neglect, default, omission or mistake by the State.

6. No set off, counterclaim, etc

- 6.1 The liability of the Guarantor under this Deed will not be reduced or avoided by any defence, set off or counterclaim available to the Licensee or Guarantor against the State.

7. No representation by State

- 7.1 The Guarantor acknowledges that it has not entered into this Deed as a result of any representation, promise, warranty, statement or inducement to it by or on behalf of the State, the Subsidiary or any other person.

8. Waiver of rights

- 8.1 The Guarantor must not exercise any right to contribution, indemnity or subrogation which it might otherwise be entitled to claim and enforce against the Subsidiary until all the Obligations have been satisfied.

9. Representations and warranties

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

- (1) **(Legally binding obligation)**: this Deed constitutes a valid and legally binding obligation of it in accordance with its terms;
- (2) **(Execution, delivery and performance)**: the execution, delivery and performance of this Deed by it does not breach any Law, or any document or agreement to which it is a party or which is binding on it or any of its assets;
- (3) **(Financial Liabilities)**: it is not in default in the payment of any material sum or in the satisfaction of any material obligation in respect of any financial liability, and no event has occurred which with the giving of notice, lapse of time or other condition could constitute a default in respect of any financial liability;
- (4) **(Accounts)**: the most recent financial reports of the Guarantor delivered to the State:
 - (a) have been prepared in accordance with accounting principles and practices generally accepted in Australia; and
 - (b) give a true and fair view of the financial condition of the Guarantor as at the date to which they relate, and the results of the Guarantor's operations for the accounting period ended on that date, and since that date there has been no material adverse change in the financial condition of the Guarantor as shown in those reports or statement;
- (5) **(Laws)**: the Guarantor and the Subsidiary have so far as is material complied with all Laws;
- (6) **(No trusts)**: at the date of execution of this Deed, the Guarantor is not the trustee of any trust, except as a Trustee under any deed of cross guarantee for the purpose of any Australian Securities and Investment Commission Individual or Class Order, nor does it hold any property subject to or impressed by any trust;
- (7) **(No violation)**: the execution, delivery, and performance of this Deed does not violate its constitution or any Law applying to it and, if the Guarantor, the Subsidiary or any of its subsidiaries is listed on the Australian Stock Exchange or any other stock exchange, those listing requirement or rules;
- (8) **(Due authority)**: it has taken all corporate and other action required to enter into this Deed and to authorise the execution and delivery of this Deed and the performance and satisfaction of its obligations under this Deed; and
- (9) **(Filings)**: it has filed all material corporate notices and effected all material registrations with the Australian Securities and Investments Commission or similar office in its jurisdiction of incorporation and in any

other jurisdiction as required by Law, and all those filings and registrations are current, complete, and accurate;

- (10) **(Consideration)**: this Deed is executed for valuable consideration, the receipt and adequacy of which the Guarantor acknowledges;
- (11) **(Status)**: it is not insolvent and is not the subject of a direction under, or having effect as if it were a direction under, section 14 of the *Australian Securities and Investment Commission Act 2001* (Cth), or the subject of an investigation under, or taken to be under, that Act;
- (12) **(Ownership of property)**: it has full legal capacity and power to own its property and assets and carry on its business as it is now being conducted;
- (13) **(Ranking of obligations)**: this Deed constitutes a valid and legally binding obligation, enforceable in accordance with its terms, to rank at all times at least equally with all of its other present and future unsecured payment obligations (including, without limitation, contingent obligations), other than those which are mandatorily preferred by Law and that the Guarantor has taken all action required to ensure that its obligations under this Deed so rank and will continue to so rank;
- (14) **(No litigation)**: at the date of execution of this Deed, no litigation, arbitration, mediation, conciliation, criminal or administrative proceedings are taking place, pending or, to the knowledge of the Guarantor or any of its officers, threatened against it or any of its subsidiaries or any of its or their property which, if adversely determined, could have either separately or in aggregate make it unable to perform the Obligations;
- (15) **(Information)**: all information which it has given to the State in connection with this Deed:
 - (a) was, when provided, true and accurate in all material respects and not misleading, whether by omission or otherwise; and
 - (b) to the extent it contained forecasts or opinions, such forecasts and opinions were made or formed after due and careful consideration on the part of the Guarantor's relevant officers based on the best information available to it and were fair and reasonable when made or formed.

9.2 Representations and warranties repeated

Each representation and warranty in this Deed will be repeated on each day whilst any of the Obligations remain to be performed or satisfied and remain outstanding (whether or not then due for payment) with reference to the facts and circumstances then subsisting, as if made on each such day.

9.3 Reliance on representations and warranties

The Guarantor acknowledges that the State has entered into this Deed on the basis of the representations and warranties in clause 9.1 and clause 9.2.

9.4 **Notification by Guarantor**

Until the Guarantor's obligations under this Deed are extinguished, fulfilled, terminated or otherwise cease, the Guarantor will within 30 Business Days of becoming aware of such, provide a notice to the State if:

- (1) the Guarantor becomes the trustee of a trust, except as a Trustee under any deed of cross guarantee for the purpose of any Australian Securities and Investment Commission Individual or Class Order, or holds any property subject to or impressed by any trust; or
- (2) any litigation, arbitration, mediation, conciliation, criminal or administrative proceedings are taking place, pending or, to the knowledge of the Guarantor or any of its officers, threatened against it or any of its subsidiaries or any of its or their property which, if adversely determined, could have either separately or in aggregate affect its ability to perform the Obligations.

10. **COMPLIANCE WITH LAWS**

10.1 **Comply with Statutes**

The Guarantor will comply with all Laws.

11. **NOTIFICATION OF CERTAIN EVENTS**

11.1 The Guarantor will immediately notify the State in writing if it becomes aware of the occurrence of any of the following:

- (1) (Litigation): any litigation, arbitration, criminal or administrative proceeding or labour dispute relating to the Guarantor, the Subsidiary or any of its or their property, assets or revenues that involves a claim that, if adversely determined, could have a material adverse effect; or
- (2) (Appointment as trustee): if it becomes or is appointed the trustee of any trust or comes to hold any property subject to or impressed by any trust.

11.2 The Guarantor will provide the State with complete details in relation to any of the above immediately that any of them become aware of those matters.

12. **EXPENSES AND STAMP DUTY**

12.1 **Expenses**

The Guarantor must reimburse the State on demand for, and indemnify and keep the State indemnified against, all expenses including legal fees, costs, and disbursements (on a solicitor/own client basis), incurred by the State in connection with exercising, enforcing, or preserving, or attempting to exercise, enforce or preserve, any rights under this Deed, except where it is not entitled to exercise, enforce or preserve any such rights because the Guarantor is not liable under this Deed.

12.2 Stamp duties

The Guarantor:

- (1) (**Payment of all duties**): will pay all stamp duties, transaction, registration, and similar taxes, including fines and penalties and debits tax that may be payable to or required to be paid by any appropriate authority, or determined to be payable in connection with the execution, delivery, performance, enforcement, or attempted enforcement of this Deed or any payment, receipt or other transaction contemplated by this Deed; and
- (2) (**Indemnity**): indemnify and keep the State indemnified against any loss or liability incurred or suffered by it as a result of the delay or failure by the Guarantor to pay the taxes referred to in paragraph (a).

13. GST

13.1 Interpretation

Except where the context suggests otherwise, terms used in this clause 10 have the meanings given to those terms by the *A New Tax System (Goods and Services Tax) Act 1999* (as amended from time to time).

- (1) Any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 13.
- (2) Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purpose of this clause 13.

13.2 Reimbursements and similar payments

Any payment or reimbursement required to be made under this Deed for a cost, expense, or other amount paid or incurred will be limited to the total cost, expense or amount less the amount of any input tax credit to which an entity (or its representative member) is entitled for the acquisition to which the cost, expense or amount relates.

13.3 GST payable

If GST is payable in relation to a supply made under or in connection with this Deed then, subject to the provision of a proper tax invoice:

- (1) any party ("**Recipient**") that is required to provide consideration to another party ("**Supplier**") for that supply must pay an additional amount to the Supplier equal to the amount of that GST;
- (2) except to the extent that paragraph (3) applies, the additional amount is payable at the same time as any other consideration is to be first provided for that supply or, if later, within 14 days after the day on which the Supplier provides the Recipient with a tax invoice for the supply; and

- (3) where additional amounts are payable between two parties to this Deed pursuant to paragraph (1), amounts so payable, to the extent they are equivalent in amount, attributable to the same tax period and tax invoices have been provided shall be set off against each other as if paid.

13.4 **GST and Set-off**

Where there is a set-off between the State and the Guarantor, for GST purposes each party must recognise that there are two separate supplies. Each party must issue a tax invoice disclosing the gross amount and the GST applicable to each taxable supply, unless both supplies are included on a tax invoice. If a tax invoice is issued in respect of both supplies, the tax invoice must disclose the appropriate details of each separate supply and each supplier must include the relevant GST amount in determining its own GST net amount.

13.5 **Variation of GST**

If the GST payable in relation to a supply made under or in connection with this Deed varies from the additional amount paid by the Recipient under clause 13.3 such that a further amount of GST is payable in relation to the supply or a refund or credit of GST is obtained in relation to the supply, then the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient. Any payment, credit or refund under this clause 13.5 is deemed to be a payment, credit or refund of the additional amount payable under clause 13.3. The Supplier must provide the Recipient with a tax invoice or adjustment note as may be required in accordance with the GST law.

13.6 **Survival**

This clause survives termination, completion or expiration of this Deed.

14. **GOVERNING LAW AND JURISDICTION**

14.1 **Governing law**

This Deed is governed by and must be construed in accordance with the Laws applying in Victoria.

14.2 **Jurisdiction**

- (a) **(Acceptance of jurisdiction)**: The Guarantor irrevocably submits to and accepts, generally and unconditionally, the non-exclusive jurisdiction of the courts and appellate courts of Victoria with respect to any legal action or proceedings that may be brought at any time relating in any way to this Deed.
- (b) **(No objection to inconvenient forum)**: The Guarantor irrevocably waives any objection it may now or in the future have to the venue of any action or proceeding, and any claim it may now or in the future have that any action or proceeding has been brought in an inconvenient forum.

- (c) **(Enforcement of Victorian judgment):** The Guarantor agrees that, subject to any rights of appeal which the Guarantor may have in Victoria or to the High Court of Australia, a judgment or order of a Victorian court in connection with this Deed:
- (i) is conclusive and binding on the Guarantor; and
 - (ii) may be enforced against the Guarantor in the courts of any other jurisdiction.

15. MISCELLANEOUS

15.1 Further assurance

The Guarantor will upon request (given in accordance with clause 16 by the State and at the entire cost and expense of the Guarantor, perform all things and execute and deliver all agreements, assurances, and other documents as the State reasonably requires or as required by law, to perfect or give effect to the rights and Powers of the State created, or intended to be created, by this Deed.

15.2 Rights under Deed several

The rights of the State and the Subsidiary under this Deed are several and subject to clause 15.3, the State may exercise its rights independently of the Subsidiary.

15.3 Notice Required

If the State or the Subsidiary wish to exercise a right under this Deed against the Guarantor they must issue a notice to the other party pursuant to clause 16.

15.4 Form of demand

At a minimum, a demand on the Guarantor for the performance of the Obligations must be made in accordance with clause 16 and must specify the Obligation to be performed.

15.5 Severability of provisions

If at any time a provision of this Deed is or becomes illegal, invalid or unenforceable in any respect under the Law of any jurisdiction, that will not affect or impair:

- (a) the legality, validity or enforceability in that jurisdiction of any other provision of this Deed; or
- (b) the legality, validity or enforceability under the Law of any other jurisdiction of that or any other provision of this Deed.

15.6 Waiver

- (a) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of any Power by the State or the Subsidiary does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other Power.

- (b) A waiver or consent given by the State under this Deed is only effective and binding on the State if it is given or confirmed in writing.

15.7 Consents and approvals

Where under this Deed the consent or approval of the State is required to any act or thing, then unless expressly provided otherwise in this Deed, that consent or approval may be reasonably given or withheld.

15.8 Moratorium legislation

If any Law changes the Guarantor's rights or obligations under this Deed so that the State's rights or obligations are adversely affected, the Guarantor waives its rights under that Law to the extent that the waiver is not prohibited or made ineffective by Law.

15.9 Counterparts

This Deed may be executed in any number of counterparts and by the different parties on different counterparts, each of which constitutes an original of this Deed, and all of which together constitute one and the same instrument.

15.10 Execution by less than all parties

This Deed binds each of the persons executing it notwithstanding:

- (a) that one or more of the persons named in this Deed as a Guarantor may not execute or may not become or may cease to be bound by this Deed; or
- (b) that a party may not execute or may only subsequently execute this Deed.

15.11 No setoff or deduction

Subject to this Deed and the Licence and the Ancillary Agreement, all payments by the Guarantor to the State will be:

- (1) free of any set-off or counterclaim; and
- (2) without deduction or withholding for or on account of any present or future taxes, unless the Guarantor is compelled by Law to make any deduction or withholding.

16. Notices

- 16.1 A notice or other communication is properly given or served if the party delivers it by hand, posts it or transmits a copy electronically (by electronic mail or facsimile) to the address last advised by one of them to the other. Where the notice is given or served electronically, the sending party can confirm receipt by any other means.

16.2 The address for services of notice for a party is:

The Guarantor:

615 St Kilda Road
Melbourne, Victoria, 3004
Attention: Company Secretary
Fascimile: (03) 8517 7752

The Subsidiary:

615 St Kilda Road
Melbourne, Victoria, 3004
Attention: Company Secretary
Fascimile: (03) 8517 7752

The State:

The Executive Director
Gaming and Racing
Department of Justice
121 Exhibition Street
Melbourne 3000
Facsimile: (03) 8684 4900

or such other address as a party may notify to the other party in writing from time to time.

16.3 A notice or other communication is deemed to be received if:

- (1) delivered by hand, when the party who sent the notice holds a receipt for the notice signed by a person employed at the physical address for service;
- (2) sent by post from and to an address within Australia, after three (3) Business Days;
- (3) sent by post from or to an address outside Australia, after ten (10) Business Days;
- (4) sent by facsimile, at the time which the facsimile machine to which it has been sent records that the communication has been transmitted satisfactorily (or, if such time is outside normal business hours, at the time of resumption of normal business hours);
- (5) sent by electronic mail, only in the event that the other party acknowledges receipt by any means; or
- (6) sent by any other electronic means, only in the event that the other party acknowledges receipt by any means.

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

Executed by Tattersall's Limited
ACN 108 686 040 in accordance with
section 127 of the *Corporations Act 2001* by or
in the presence of:

Signature of Director

Signature of Secretary/other Director

Name of Director

Name of Secretary/other Director in full

Executed by Tattersall's Sweeps Pty Ltd
ABN 99 081 925 662 in accordance with
section 127 of the *Corporations Act 2001* by or
in the presence of:

Signature of Director

Signature of Secretary/other Director

Name of Director

Name of Secretary/other Director in full

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

Signature of Witness

Signature of the Minister

Name of Witness
(BLOCK LETTER)

Executed by **John Lenders, MLC, Treasurer**
for and on behalf of the Crown in right of the
State of Victoria

Signature of Witness

Signature of the Treasurer

Name of Witness
(BLOCK LETTER)

Annexure A

Sales Table

The following table of figures is presented in \$,000.

FY09	FY10	FY11	FY12	FY13	FY14	FY15	FY16	FY17	FY18
\$ 977,914	\$ 1,017,539	\$ 1,049,140	\$ 1,075,638	\$ 1,111,535	\$ 1,135,590	\$ 1,156,900	\$ 1,189,903	\$ 1,216,691	\$ 1,242,704

Annexure B

Representations of 'George's Head' and "Tattersall's" banner logos/trademarks

