

# **Entitlement-Related Agreement for Payment (Club Entitlements)**

**The Honourable Marlene Kairouz MP, Minister for  
Consumer Affairs, Gaming and Liquor Regulation, for and  
on behalf of the Crown in right of the State of Victoria**

**and**

**[insert name of Venue Operator]**

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## Parties

**The Honourable Marlene Kairouz MP, Minister for Consumer Affairs, Gaming and Liquor Regulation, for and on behalf of the Crown in right of the State of Victoria**

**(Minister)**

**and**

**[insert name of Venue Operator] [[ACN [insert]] or [A[insert]]]**

**(Venue Operator)**

## Background

- A. The Venue Operator seeks the allocation of Entitlements under section 3.4A.5(1) of the Act and in accordance with Allocation and Transfer Rules.
- B. Under section 3.4A.6 of the Act the Minister may refuse to allocate an Entitlement to a venue operator unless the venue operator enters into an entitlement-related agreement.
- C. The Minister requires the Venue Operator to enter into this Entitlement-Related Agreement with respect to the Club Entitlements listed in Schedule 1.
- D. This Entitlement-Related Agreement details the amounts payable by the Venue Operator for the Club Entitlements listed in Schedule 1, in respect of the period that begins on the Effective Date and ends on 15 August 2032, as determined by the Minister under section 3.4A.5(9)(ba)(i) of the Act.

## Agreed terms

### 1. Definitions and Interpretation

#### 1.1 Definitions

Words not otherwise defined in this Entitlement-Related Agreement have the same meaning as in the Act, except where a contrary intention appears.

**2022-2032 Price** means the amount so identified in Schedule 1 (or if applicable, the Adjusted 2022-2032 Price) payable with respect to each Entitlement identified, being the amount that is payable in respect of the period that begins on the Effective Date and ends on 15 August 2032.

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

**Adjustment Event** has the meaning given to that term in clause 7.1.

**Adjusted 2022-2032 Price** has the meaning given to that term in clause 7.2(a).

**Adjusted 2022-2032 Price Notification Date** means the date of the Minister's notice under clause 7.2(b), by which the Minister notifies the Venue Operator of an Adjusted 2022-2032 Price.

**Allocation and Transfer Rules** means rules for the allocation or transfer of entitlements made by the Minister under section 3.4A.3 of the Act.

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

**Club Entitlement** means a club gaming machine entitlement as defined in the Act.

**Commonwealth Bond Rate** means the then current Australian Government 10 year bond coupon rate as published by the Reserve Bank of Australia, applicable at the relevant time.

**Direction** means any lawful direction of the Minister or the Commission under the Act.

**Effective Date** means 16 August 2022.

**Entitlement** means a gaming machine entitlement as defined in the Act.

**Entitlement Offer Deed Poll** means the deed poll executed by the Venue Operator in favour for the Minister, in order to receive an allocation of Entitlements in accordance with the Allocation and Transfer Rules.

**Entitlement-Related Agreement** means this agreement including Schedules.

**EOI Form** means an expression of interest form submitted by the Venue Operator to the Minister in accordance with Allocation and Transfer Rules, in respect of each Proposed Venue.

**Instalment Due Date** has the meaning given to that term in clause 4(b)(ii)(B).

**Penalty Interest Rate** means the then current rate fixed by the Attorney-General under the *Penalty Interest Rates Act 1983* (Vic) applicable at the relevant time.

**Proposed Venue** means a gaming venue with characteristics as set out in the Venue Operator's EOI Form.

**Regulations** means any regulations made under the Act.

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

**Term** means the period from the date the last party executes this Entitlement-Related Agreement until termination under clause 9.

## 1.2 Interpretation

In this Entitlement-Related Agreement, unless the context otherwise requires:

- (a) words in the singular include the plural and vice versa;
- (b) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- (c) "includes" means includes without limitation;

- (d) no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it;
- (e) a reference to:
  - (i) a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority;
  - (ii) a person includes the person's legal personal representatives, successors, assigns and persons substituted by novation;
  - (iii) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced;
  - (iv) an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation;
  - (v) "\$", "dollars" or "AUD" is a reference to the lawful currency of the Commonwealth of Australia; and
  - (vi) a party or parties is a reference to the Minister and the Venue Operator (as the case requires); and
- (f) if the date on or by which any act must be done under this Entitlement-Related Agreement is not a Business Day, the act must be done on or by the next Business Day.

### **1.3 Precedence**

- (a) This Entitlement-Related Agreement must be read in conjunction with the Act, the Regulations and the Allocation and Transfer Rules.
- (b) In the interpretation of this Entitlement-Related Agreement, to the extent that there is any inconsistency between the provisions of this Entitlement-Related Agreement and the provisions of the Act, the Regulations and the Allocation and Transfer Rules, then the following descending order of precedence will apply:
  - (i) the Act and any Regulations;
  - (ii) the Allocation and Transfer Rules; and
  - (iii) this Entitlement-Related Agreement.

## **2. Agreement**

### **2.1 Term, variation and Venue Operator's obligation**

- (a) This Entitlement-Related Agreement commences on the date the last party executes this Entitlement-Related Agreement and will continue for the Term.

- (b) This Entitlement-Related Agreement may be amended or varied, but any amendment or variation to this Entitlement-Related Agreement is not effective unless it is in writing and signed by the parties.
- (c) The Venue Operator must at all times act reasonably and in good faith in its dealings with the State associated or in connection with an Entitlement.

## 2.2 Condition precedent

This Entitlement-Related Agreement has no effect and is not binding unless and until the Minister provides written notice to the Venue Operator that the Entitlements listed in Schedule 1 are allocated (rather than provisionally allocated) to the Venue Operator.

## 3. Agreement relates to Entitlements listed

This Entitlement-Related Agreement is an entitlement-related agreement under section 3.4A.6 of the Act and relates jointly and severally to those Entitlements listed in Schedule 1.

## 4. Payment of 2022-2032 Price

- (a) As a first instalment for the Entitlements listed in Schedule 1, in accordance with the Entitlement Offer Deed Poll the Venue Operator has paid to the State an amount equal to 2.5% of the 2022-2032 Price.
- (b) The Venue Operator must pay to the State the balance of the 2022-2032 Price as follows:
  - (i) an amount equal to 2.5% of the 2022-2032 Price (**Second Instalment**), on or before 28 February 2019; and
  - (ii) (**subsequent instalments**) the balance of the 2022-2032 Price, either:
    - (A) on or before the Effective Date; or
    - (B) (**deferred payments**) in equal instalments on or before the last day of every third month during the 84 month period after the Effective Date (each such date being an **Instalment Due Date**).

## 5. Payment Terms

### 5.1 Interest payable on deferred payments

- (a) If the Venue Operator does not pay the balance of the 2022-2032 Price on or before the Effective Date, interest will be payable on the amount outstanding at a rate of interest equivalent to the then current Commonwealth Bond Rate calculated on a daily compounded basis.
- (b) On each Instalment Due Date, interest accrued in accordance with clause 5.1(a) will be calculated and the amount calculated is payable on or before the next Instalment Due Date (or in the case of the final interest payment, on or before the last day of the third month after the final Instalment Due Date) (each such date being a **Deferred Payment Interest Due Date**).

## 5.2 Interest payable on late payments

- (a) If the Venue Operator does not pay an amount due under this Entitlement-Related Agreement on or before the date due under clause 4(b) or 5.1(b), interest will be payable on the amount due at a rate of interest equivalent to the then current Penalty Interest Rate calculated on a daily compounded basis.
- (b) If the Venue Operator fails to pay:
  - (i) the Second Instalment on or before 28 February 2019, interest accrued in accordance with clause 5.2(a) is payable on or before 31 May 2019;
  - (ii) a 2022-2032 Price instalment payable under clause 4(b)(ii)(B) on or before the Instalment Due Date, interest accrued in accordance with clause 5.2(a) is payable on or before the next Instalment Due Date (or in the case of the final payment under clause 4(b)(ii)(B), on or before the last day of the third month after the final Instalment Due Date); or
  - (iii) an amount payable under clause 5.1 on or before the Deferred Payment Interest Due Date, interest accrued in accordance with clause 5.2(a) is payable on or before the next Deferred Payment Interest Due Date (or in the case of the final amount due under clause 5.1, on or before the last day of the third month after the final Deferred Payment Interest Due Date).

## 5.3 Early payment

At the discretion of the Venue Operator, the Venue Operator may pay an amount owing earlier than the date required under this Entitlement-Related Agreement (including the balance of the 2022-2032 Price in full).

## 5.4 Application of payments

- (a) Payments made by the Venue Operator will be applied in the following order:
  - (i) first, to interest payable under clause 5.2
  - (ii) secondly, to interest payable under clause 5.1; and
  - (iii) finally to the Entitlement(s) listed and in the order specified in Schedule 1 (from top to bottom), in the amount then due under clause 4(b) in respect of each such Entitlement.
- (b) If payments made by the Venue Operator are insufficient to meet all payments due under clauses 4(b), 5.1 and 5.2 then, for the purposes of clauses 6.1 and 6.2, the Entitlement(s) with respect to which the Venue Operator is in default will be those subsequent to the last Entitlement to which payment in full has been applied in accordance with clause 5.4(a).



## 5.5 Payment method

All payments to be made by the Venue Operator under this Entitlement-Related Agreement must be made to the Commission, on behalf of the State, in the manner notified by the Commission.

## 6. Forfeiture

### 6.1 Default - Second Instalment

If the Venue Operator fails to pay on or before 31 May 2019:

- (a) the Second Instalment; and
- (b) any interest accrued and payable in accordance with clause 5.2,

then the Entitlement(s) with respect to which the Venue Operator is in default are forfeited to the State.

### 6.2 Default - deferred payments

If the Venue Operator fails to pay:

- (a) a 2022-2032 Price instalment due under clause 4(b)(ii)(B) (**First Defaulting Instalment**) on or before the relevant Instalment Due Date (**First Due Date**); and
- (b) on or before the Instalment Due Date immediately following the First Due Date (or where the First Due Date is the final Instalment Due Date, on or before the last day of the third month after the final Instalment Due Date) (**Second Due Date**):
  - (i) the First Defaulting Instalment;
  - (ii) any interest accrued and payable in accordance with clause 5.2;
  - (iii) any interest accrued and payable in accordance with clause 5.1; and
  - (iv) the subsequent 2022-2032 Price instalment,

then the Entitlement(s) with respect to which the Venue Operator is in default are forfeited to the State.

### 6.3 Default - final interest on deferred payments

- (a) If the Venue Operator fails to pay on or before the last day of the third month after the final Deferred Payment Interest Due Date:
  - (i) the final interest payment accrued and payable in accordance with clause 5.1; and
  - (ii) any interest accrued and payable in accordance with clause 5.2,

then the Entitlement(s) described in 6.3(b) are forfeited to the State.

- (b) The Entitlement(s) forfeited under this clause 6.3 will be that number of Entitlements whose 2022-2032 Price (or sum of 2022-2032 Prices) totals at

least the amount owing under clause 6.3(a). Only that number of Entitlement(s) necessary to reach the amount owing under clause 6.3(a) will be forfeited (to the nearest whole number of Entitlements). For the purposes of this clause 6.3, the Entitlement(s) forfeited will be determined in reverse order to that specified in Schedule 1 (from bottom to top).

## **6.4 Forfeiture provisions under the Act**

- (a) For the purposes of section 3.4A.27 of the Act:
  - (i) clauses 6.1, 6.2 and 6.3 are forfeiture provisions; and
  - (ii) with respect to clause 6.1, the relevant date is 1 June 2019;
  - (iii) with respect to clause 6.2, the relevant date is the date immediately following the Second Due Date; and
  - (iv) with respect to clause 6.3, the relevant date is the date immediately following the last day of the third month after the final Deferred Payment Interest Due Date.
- (b) Additional forfeiture provisions apply to the Venue Operator pursuant to the Act.

## **7. Adjustment to 2022-2032 Price**

### **7.1 Adjustment Event**

- (a) If the Venue Operator:
  - (i) is allocated Entitlements in respect of a Proposed Venue; and
  - (ii) uses some or all of those Entitlements for the first time to conduct gaming at an approved venue which differs materially from the Proposed Venue,

**(Adjustment Event)**

then the price payable for those Entitlements used in the approved venue will be adjusted in accordance with this clause 7.
- (b) For the purposes of this clause 7, 'differs materially' will be determined by the Minister acting reasonably, taking into account:
  - (i) the geographic location of the approved venue and whether it differs from the geographic location of the Proposed Venue, such that the geographic area condition of the Entitlements differs from the geographic area condition imposed on the Entitlements at allocation;
  - (ii) the number of gaming machines operating in the approved venue and whether it is within the range of the number of Entitlements requested for the Proposed Venue in the applicable EOI Form; and
  - (iii) the venue type of the approved venue and whether it is different to the Proposed Venue.

## 7.2 Calculation of Adjusted 2022-2032 Price

- (a) If an Adjustment Event occurs, the Minister will determine the price payable for such Entitlements in accordance with rule 12 of the Allocation and Transfer Rules published in the Victoria Government Gazette (No. S379/17), using the characteristics of the approved venue (rather than the characteristics of the Proposed Venue) to determine a most similar pre-existing venue (and therefore in accordance with that rule, the price payable for such Entitlements) (**Adjusted 2022-2032 Price**).
- (b) Unless clause 7.3(b) applies, the Minister will notify the Venue Operator of the Adjusted 2022-2032 Price applicable to those Entitlements and of any amounts immediately owing under clauses 4 and 5 as a result of the 2022-2032 Price being revised to the Adjusted 2022-2032 Price.

## 7.3 Payment of Adjusted 2022-2032 Price

- (a) Unless paragraph (b) applies, if the Adjusted 2022-2032 Price is greater than the 2022-2032 Price (prior to it being revised to the Adjusted 2022-2032 Price), then:
  - (i) within 20 Business Days after the Adjusted 2022-2032 Price Notification Date, the Venue Operator must pay to the State all amounts immediately owing as set out in the Minister's notification; and
  - (ii) any further amounts due under this Entitlement-Related Agreement will be calculated using the Adjusted 2022-2032 Price.
- (b) If the Adjusted 2022-2032 Price is:
  - (i) less than the 2022-2032 Price (prior to it being revised to the Adjusted 2022-2032 Price); or
  - (ii) no more than 5% more than the 2022-2032 Price (prior to it being revised to the Adjusted 2022-2032 Price),

the Minister will disregard the Adjusted 2022-2032 Price and the 2022-2032 Price (not revised to the Adjusted 2022-2032 Price) will continue to apply.

## 8. General Warranties

The Venue Operator warrants at the date of this Entitlement-Related Agreement and on each day during the Term, and must at all times during the Term ensure that:

- (a) 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 Entitlement-Related Agreement, perform its obligations under this Entitlement-Related Agreement and perform its obligations under any other entitlement-related agreements;
- (b) this Entitlement-Related Agreement has been duly authorised, executed and delivered by the Venue Operator and constitutes a legal, valid and binding obligation of the Venue Operator enforceable against it in accordance with its terms, and no other proceedings on the part of the Venue Operator are necessary to authorise this Entitlement-Related Agreement;

- (c) the execution and delivery of this Entitlement-Related Agreement and the performance by the Venue Operator of its obligations do not:
  - (i) conflict with the constitution or by-laws of the Venue Operator;
  - (ii) constitute a violation of or a default under any agreements or arrangements to which the Venue Operator is a party; or
  - (iii) contravene any law;
- (d) the Venue Operator has declared and will continue to declare to the Commission any breach of any laws relating to the conduct of gaming in Victoria or elsewhere;
- (e) the Venue Operator has declared and will continue to declare to the Commission any offences it has committed relating to the conduct of gaming whether in Victoria or elsewhere; and
- (f) all information provided in writing by or on behalf of the Venue Operator to the Minister and Commission was in all material respects true and accurate and not misleading by omission.

## **9. Termination**

- (a) This Entitlement-Related Agreement will terminate on the date that the Venue Operator has:
  - (i) properly transferred all Entitlement(s) the subject of this Entitlement-Related Agreement in accordance with section 3.4A.17 of the Act;
  - (ii) properly surrendered all Entitlement(s) the subject of this Entitlement-Related Agreement in accordance with section 3.4A.20AAB of the Act; or
  - (iii) otherwise discharged all of its obligations under this Entitlement-Related Agreement.
- (b) Despite any other provisions to the contrary, this Entitlement-Related Agreement may be terminated by agreement in writing between the Venue Operator and the Minister.

## **10. Compliance with Act and Regulations**

The Venue Operator must comply with the Act, the Regulations, the Allocation and Transfer Rules and any Direction.

## **11. Governing Law**

This Entitlement-Related Agreement is governed by the law of Victoria. The parties submit to the non-exclusive jurisdiction of the courts of Victoria and of the Commonwealth of Australia.

## **12. Notices**

- (a) A notice or other communication connected with this Entitlement-Related Agreement has no legal effect unless it is in writing.

- (b) The Minister nominates the person holding the position specified in Schedule 2 as its representative to receive all notices and communications from the Venue Operator in connection with this Entitlement-Related Agreement.
- (c) The Venue Operator nominates the person specified in Schedule 2 as its representative to receive all notices and communications from the Minister and the Minister's representative in connection with this Entitlement-Related Agreement.
- (d) The address of the Venue Operator and the Minister's representative for service of notices at the date of this Entitlement-Related Agreement are set out in Schedule 2.
- (e) Either party may amend their address for service by giving notice to the other.
- (f) In addition to any other method of service provided by law, the notice may be:
  - (i) sent by prepaid post to; or
  - (ii) delivered at,the address of the addressee set out in this Entitlement-Related Agreement or subsequently notified.
- (g) If the notice is sent or delivered in a manner provided by this clause 12, it must be treated as given to and received by the party to which it is addressed:
  - (i) if sent by post, on the sixth Business Day (at the address to which it is posted) after posting;
  - (ii) if delivered before 5.00pm on a Business Day at the place of delivery, upon delivery, and otherwise on the next Business Day at the place of delivery.

**Signing page**

**Executed** as an agreement.

**Executed** by the Honourable Marlene )  
Kairouz MP, Minister for Consumer Affairs, )  
Gaming and Liquor Regulation, for and on )  
behalf of the Crown in right of the State of )  
Victoria

Date:

***Use this execution clause where the Venue Operator is a company executing under common seal:***

The common seal of the Venue Operator      *Affix seal*  
was affixed in accordance with s 127(2) of  
the *Corporations Act 2001* (Cth) in the  
presence of:

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Signature of director/company secretary  
(Please delete as applicable)

\_\_\_\_\_  
Name of director (print)

\_\_\_\_\_  
Name of director/company secretary (print)

\_\_\_\_\_  
Date (print)

***Use this execution clause where the Venue Operator is a company executing without a common seal:***

Executed by the Venue Operator in  
accordance with s 127(1) of the  
*Corporations Act 2001* (Cth) in the  
presence of:

---

Signature of director

---

Signature of director/company secretary  
(Please delete as applicable)

---

Name of director (print)

---

Name of director/company secretary (print)

---

Date (print)

***Use this execution clause where the Venue Operator is a company or an incorporated association executing through an attorney under power of attorney:***

Signed by

---

(Name of attorney - print)  
as attorney for the Venue Operator under  
power of attorney in the presence of:

---

Signature of witness

---

Signature of attorney

---

Name of witness (print)

---

Date of power of attorney (print)

---

Date (print)

***Use this execution clause where the Venue Operator is an incorporated association executing under common seal:***

The common seal of the Venue Operator was  
affixed by authority of the committee in the  
presence of:

*Affix seal*

\_\_\_\_\_  
Signature of committee member

\_\_\_\_\_  
Signature of committee member

\_\_\_\_\_  
Name of committee member (print)

\_\_\_\_\_  
Name of committee member (print)

\_\_\_\_\_  
Date (print)

***Use this execution clause where the Venue Operator is an incorporated association executing without a common seal:***

Executed by the Venue Operator by authority  
of the committee:

\_\_\_\_\_  
Signature of committee member

\_\_\_\_\_  
Signature of committee member /  
secretary  
(Please delete as applicable)

\_\_\_\_\_  
Name of committee member (print)

\_\_\_\_\_  
Name of committee member / secretary  
(Please delete as applicable)

\_\_\_\_\_  
Date (print)



**Schedule 1      List of Entitlements**

[insert name of Venue Operator]				
Order specified for cl 5.4(a)	Entitlement Number	Geographic Area condition	Venue condition	2022-2032 Price \$
1.	[insert]	[insert]	[insert]	[insert]
2.	[insert]	[insert]	[insert]	[insert]
3.	[insert]	[insert]	[insert]	[insert]
TOTAL				[insert]

## **Schedule 2      Notice Details**

**The Minister's representative and address for service of notices at the date of this Entitlement-Related Agreement:**

Representative:            Executive Director  
                                 Office of Liquor, Gaming & Racing  
                                 Department of Justice & Regulation

Address:                    Level 29  
                                 121 Exhibition Street  
                                 Melbourne Vic 3000

**The Venue Operator's representative and address for service of notices at the date of this Entitlement-Related Agreement:**

Representative:

Address: