



# **Crown Casino Pre-Commitment Agreement**

**INTRALOT GAMING SERVICES PTY LTD**

**(ABN 93 136 875 673)**

**and**

**CROWN MELBOURNE LIMITED**

**(ABN 46 006 973 262)**

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**Table of Contents**

<b>1.</b>	<b>Definitions and interpretation .....</b>	<b>1</b>
1.1	Definitions .....	1
1.2	Interpretation .....	8
1.3	Precedence .....	9
<b>2.</b>	<b>Term .....</b>	<b>10</b>
<b>3.</b>	<b>Co-operation with Intralot.....</b>	<b>10</b>
3.1	Provision of Pre-Commitment Services at Crown Casino .....	10
3.2	Support and Upgrades .....	11
3.3	Tripartite Deed with the State .....	11
<b>4.</b>	<b>Intralot's obligations .....</b>	<b>11</b>
<b>5.</b>	<b>Crown Pre-Commitment Module Development .....</b>	<b>13</b>
<b>6.</b>	<b>Player Account Equipment .....</b>	<b>15</b>
<b>7.</b>	<b>Communications Link .....</b>	<b>15</b>
7.1	Specifications .....	15
7.2	Implementation of the Communications Link .....	15
7.3	Operation of the Communications Link .....	16
7.4	Intralot's obligations .....	17
<b>8.</b>	<b>Intralot's Pre-Commitment Services.....</b>	<b>17</b>
<b>9.</b>	<b>Crown Pre-Commitment Implementation Plan.....</b>	<b>19</b>
9.1	Key Milestones .....	19
<b>10.</b>	<b>Communication with the Pre-Commitment System .....</b>	<b>19</b>
<b>11.</b>	<b>Testing and Certification .....</b>	<b>20</b>
<b>12.</b>	<b>Development and Testing Costs.....</b>	<b>20</b>
<b>13.</b>	<b>Crown Payments .....</b>	<b>21</b>
13.1	Pre-Commitment Fee .....	21
13.2	Development Costs of the Intralot Pre-Commitment Gateway .....	21

13.3	Service and Maintenance Fee for Intralot Pre-Commitment Gateway.....	21
13.4	Communications Link Charges .....	22
<b>14.</b>	<b>Suspension of Pre-Commitment Services .....</b>	<b>22</b>
<b>15.</b>	<b>Connection to the Crown Pre-Commitment Module .....</b>	<b>23</b>
<b>16.</b>	<b>Connection of Pre-Commitment Ready Machines .....</b>	<b>23</b>
<b>17.</b>	<b>Notice of Disconnection from Pre-Commitment.....</b>	<b>24</b>
<b>18.</b>	<b>Crown's operational, services and maintenance obligations .....</b>	<b>24</b>
<b>19.</b>	<b>Crown's general obligations.....</b>	<b>26</b>
19.1	General Obligations .....	26
19.2	Conflict with Venue Conditions .....	27
<b>20.</b>	<b>Pre-Commitment Data.....</b>	<b>27</b>
20.1	State owns Pre-Commitment Data .....	27
20.2	Grant of licence to use Pre-Commitment Data .....	27
20.3	Authorised Crown Staff access.....	28
<b>21.</b>	<b>Warranties.....</b>	<b>29</b>
21.1	Crown's warranties .....	29
21.2	Intralot's Warranties .....	30
21.3	Breach of representation or warranty.....	30
<b>22.</b>	<b>Confidentiality .....</b>	<b>30</b>
22.1	Keep confidential .....	30
22.2	Exceptions to confidentiality .....	31
<b>23.</b>	<b>Privacy .....</b>	<b>31</b>
<b>24.</b>	<b>Indemnity by Crown .....</b>	<b>32</b>
24.1	Crown's acknowledgement .....	32
24.2	Indemnity.....	32
24.3	Survival .....	32
<b>25.</b>	<b>Exclusion of Liability.....</b>	<b>32</b>

25.1	Exclusion .....	32
<b>26.</b>	<b>Dispute Resolution .....</b>	<b>32</b>
26.1	Dispute Process .....	32
26.2	Performance of obligations .....	33
26.3	General .....	33
<b>27.</b>	<b>Termination .....</b>	<b>34</b>
27.1	Breach .....	34
27.2	Termination Procedures .....	34
27.3	Failure of Other Party .....	34
<b>28.</b>	<b>GST .....</b>	<b>34</b>
28.1	Interpretation .....	34
28.2	Consideration GST Exclusive .....	34
28.3	Payment of GST .....	34
28.4	Timing of GST Payment .....	35
28.5	Tax Invoice .....	35
28.6	Adjustment Event .....	35
28.7	Reimbursements .....	35
28.8	No merger .....	35
<b>29.</b>	<b>Force majeure .....</b>	<b>35</b>
29.1	Notice .....	35
29.2	Actions after Force Majeure Notice .....	36
29.3	Meeting .....	36
29.4	Suspension of Obligations .....	36
29.5	Force Majeure Ceases .....	37
29.6	Costs of Force Majeure .....	37
<b>30.</b>	<b>Miscellaneous .....</b>	<b>37</b>
30.1	Severability .....	37
30.2	Variation .....	37
30.3	Waiver .....	37

## Table of Contents

iv

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30.4	Governing Law and jurisdiction .....	37
30.5	Surviving provisions .....	37
30.6	Cost of performing obligations .....	38
30.7	Further assurance .....	38
30.8	Counterparts .....	38
30.9	Time is of the essence .....	38
30.10	Electronic delivery of documents .....	38
<b>31.</b>	<b>Notices .....</b>	<b>38</b>
<b>Schedule 1</b>	<b>Details .....</b>	<b>41</b>
<b>Schedule 2</b>	<b>Communications Link Specifications (Clause 7.1) .....</b>	<b>42</b>
<b>Schedule 3</b>	<b>Performance Standards (Clauses 1.1 and 3.1) .....</b>	<b>43</b>

**Date**

24/09/ 2015

**Intralot Gaming Services Pty Ltd (ABN 93 136 875 673)**

299 Williamstown Road, Port Melbourne, Victoria, 3207

**(Intralot)****Crown Melbourne Limited (ABN 46 006 973 262)**

Level 1, 99 Queensbridge Street, South Melbourne, Victoria, 3205

**(Crown)****Background**

- A. The Minister issued the Monitoring Licence to Intralot on 14 November 2011.
- B. On 1 April 2014 the Minister directed Intralot to supply, operate and maintain a Pre-Commitment System and provide the Pre-Commitment Services throughout Victoria, including in Crown Casino, pursuant to section 3.8A.2 of the Act.
- C. The Minister subsequently amended the Monitoring Licence accordingly.
- D. On 7 August 2014 the Minister and Intralot entered into the Pre-Commitment Related Agreement under section 3.4.48A of the Act for the purpose of facilitating the arrangements between the Minister, Intralot and Venue Licensees in relation to the provision of the Pre-Commitment Services under the Monitoring Licence.
- E. Clause 4.5(b) of the Pre-Commitment Related Agreement requires Intralot to enter into an agreement with Crown in relation to the provision of Pre-Commitment Services at Crown Casino which must meet the requirements of any direction given by the Minister under section 3.8A.15 of the Act.
- F. The Minister may, under section 3.8A.15 of the Act, direct Crown to enter into an agreement with Intralot dealing with matters relating to the provision of Pre-Commitment Services.
- G. This Agreement is the agreement referred to in Recital E, and if directed by the Minister, the agreement referred to in Recital F.
- H. In this Agreement the parties have agreed on the commercial arrangements for the implementation and operation of the Pre-Commitment System Crown Pre-Commitment Module in Crown Casino in order to provide the Pre-Commitment Services.

**Agreed terms****1. Definitions and interpretation****1.1 Definitions**

In this Agreement, unless the context otherwise requires:

**Accredited Testing Facility** means a person listed on the Roll that is accredited by the Commission to test an electronic monitoring or a pre-commitment system.

**Act** means the *Gambling Regulation Act 2003* (Vic) and the *Gambling Regulations 2015* (Vic) as amended from time to time.

**Agreement Date** means the date of this Agreement set out in Schedule 1.

**Approved Crown Pre-Commitment Implementation Plan** means Crown's Pre-Commitment Implementation Plan after it is formally approved by the State.

**Agent** means a person appointed or engaged by Crown as an agent or employee to assist Crown in the development, modification, enhancement, installation, service, maintenance or operation of the Crown Pre-Commitment Module.

**Authorised Crown Staff** means those Agents identified by Crown, who solely for the purposes of the performance of their role or function at or on behalf of Crown and are the holder of a Casino Special Employee Licence issued by the Commission, require or are authorised by senior executive management of Crown to have secure access to the Crown Pre-Commitment Module or to the Crown Pre-Commitment Data.

**Authorisation** includes a consent, approval, licence, permit, registration, resolution, direction, declaration and exemption necessary for the provision of the Pre-Commitment Services.

**Business Day** means a day that is not a Saturday, Sunday or gazetted public holiday in Melbourne.

**Carriage Service** has the same meaning as in the *Telecommunications Act 1997* (Cth).

**Carriage Service Provider** has the same meaning as in the *Telecommunications Act 1997* (Cth).

**Casino Licence** means the licence dated 19 November 1993 granted to Crown under the *Casino Control Act 1991* (Vic) to permit the operation of the Crown Casino.

**Casino Monitoring Equipment** means the equipment, systems, software and hardware used by Crown to monitor the operation of Gaming Machines in Crown Casino.

**Claim** means any claim, demand, action, proceeding, litigation, Liability, indebtedness, obligation, investigation or judgment, however it arises and whether it is present or future, fixed or unascertained, actual or contingent (including by way of contribution or indemnity).

**Commission** means the Victorian Commission for Gambling and Liquor Regulation incorporated under the *Victorian Commission for Gambling and Liquor Regulation Act 2011* and any successor body.

**Communications Link** means the agreed Carriage Service that is or will be established by Crown under this Agreement to enable the Pre-Commitment System to communicate with the Crown Pre-Commitment Module and vice versa for the purposes of the provision of the Pre-Commitment Services at Crown Casino.

**Communications Link Charges** are the charges payable by Crown to the Carriage Service Provider and includes all amounts, costs, expenses, charges, fees, fines and interest on overdue payments for the Communications Link.

**Communications Link Specifications** has the meaning given in clause 7.1.

**Conduct of Gaming** has the meaning given in sections 1.3 and 3.1.4 of the Act.

**Contractor** means a person appointed or engaged by Crown to assist Crown in the development, modification, enhancement, installation, service, maintenance or operation of the Crown Pre-Commitment Module.

**Crown Casino** means the "Melbourne Casino" as defined in the agreement that is scheduled to the *Casino (Management Agreement) Act 1991* (Vic).

**Crown Pre-Commitment Implementation Plan** means a draft plan that must be prepared by Crown to meet the requirements of clause 9 and which must be submitted to the State for approval.

**Crown Pre-Commitment Data** has the meaning given in clause 20.3(b)(i).

**Crown Pre-Commitment Gateway** is the gateway developed by Crown through which the Crown Pre-Commitment Module can exchange Pre-Commitment Information, Pre-Commitment Data and Player Information with the Pre-Commitment System via the Communications Link using and in accordance with the Protocol.

**Crown Pre-Commitment Module** means the module comprising of an electronic system and software developed or to be developed by Crown under this Agreement to facilitate the provision of the Pre-Commitment Services by Intralot at Crown Casino and includes the Loyalty System Components, the Casino Monitoring Equipment, the Player Account Equipment, the Crown Pre-Commitment Gateway or other approved electronic systems for the provision of Pre-Commitment Services by Intralot at Crown Casino.

**CPI Adjustment** means an adjustment of the Service and Maintenance Fee calculated in accordance with the following formula:

$$\text{New } F = \text{Current } F \times (\text{CPI} \div \text{CPIX})$$

Where:

New F = the annual Service and Maintenance Fee payable from the current Fee Adjustment Date

Current F = the annual Service and Maintenance Fee payable immediately before the current Fee Adjustment Date

CPI = the CPI number published for the quarter ending immediately before the current Fee Adjustment Date

CPIX = the CPI number published for the quarter ending immediately before the Fee Adjustment Date 12 months earlier or, where there is no earlier Fee Adjustment Date, the quarter ending immediately before the Commencement Date.



**De-identified Crown Pre Commitment Data** means Pre-Commitment Data that does not identify any Player at Crown Casino nor provide any Player Information about a Player at Crown Casino.

**Development Costs** means the development costs of the Intralot Pre-Commitment Gateway that are agreed in this Agreement and payable by Crown to Intralot under clause 13.2.

**Dispute Notice** has the meaning given in clause 26.1(a).

**Fault** includes any error, omission, issue, defect, fault, interference, service interruption or disruption whether system, equipment or data related.

**Fault Notice** has the meaning given in clause 18(d).

**Fee Adjustment Date** means each anniversary of 1 December throughout the Term.

**Force Majeure Event** means lightning, earthquake, fire, cyclone, riots, civil commotion, natural disaster, flood, act of a public enemy, terrorism, war (declared or undeclared), revolution or radioactive contamination, but only if the consequences of which are beyond a party's control and could not have been prevented, avoided, overcome, remedied or mitigated by the affected party exercising 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 affected party breaches or is prevented from or delayed in performing or complying with any of its obligations under this Agreement, the Act or the *Casino Control Act 1991* (Vic).

**Force Majeure Notice** means a notice given by an affected party under clause 29.1(b).

**Gaming Machine** has the meaning that it has in the Act.

**Government Agency** means the State, the Commonwealth of Australia or any government, semi-governmental, judicial, municipal, statutory, public or administrative entity, agency or authority and includes a Minister of the Crown (in any right), a statutory corporation, a State-owned corporation, a self-regulatory authority established under statute or a stock or securities exchange (wherever created or located).

**Insolvency Event** means, the happening of any of the following events:

- (a) an order is made to wind up a Party which is not stayed or discharged within twenty-one (21) days; or
- (b) a liquidator or provisional liquidator is appointed in respect of a Party which appointment is not cancelled within twenty-one (21) days; or
- (c) a receiver or receiver and manager is appointed to any other assets of a Party which appointment is not cancelled within twenty-one (21) days; or
- (d) a resolution is passed to appoint an administrator in respect of a Party under Part 5.3A of the Corporations Act 2001; or
- (e) except to reconstruct or amalgamate while solvent on terms approved by the other Party (which approval must not be unreasonably withheld), a Party enters into, or resolves to enter into, a scheme of arrangement; or

- (f) a Party states that it is unable to pay its debts when they fall due; or
- (g) resolution is passed to wind up a Party or otherwise dissolve a Party except to reconstruct or amalgamate while solvent on terms approved by the other Party (which approval must not be unreasonably withheld).

**Intellectual Property Rights** means all intellectual and industrial property rights of whatever nature (whether or not registered or registrable) including, but not limited to:

- (a) patents, copyright, rights in circuit layout, designs, trade marks and the right to have confidential information kept confidential; and
- (b) any application or right to apply for registration of any of the rights in clause (a) and all renewals and extensions of those rights.

**Intralot Pre-Commitment Gateway** is the gateway developed by Intralot through which the Pre-Commitment System can exchange Pre-Commitment Information, Pre-Commitment Data and Player Information with the Crown Pre-Commitment Module via the Communications Link using and in accordance with the Protocol.

**Key Milestones** means the key requirements that must be delivered by Crown for the Crown Pre-Commitment Module to meet the Pre-Commitment Commencement Date as set out in the Crown Pre-Commitment Implementation Plan and the Approved Crown Pre-Commitment Implementation Plan.

**Law** means:

- (a) principles of law or equity established by decisions of Courts;
- (b) statutes, regulations, by-laws or other subordinate instruments of a Government Agency;
- (c) the Constitution of the Commonwealth;
- (d) binding requirements and mandatory approvals (including conditions) of a Government Agency which have the force of law; and
- (e) guidelines, codes, directions or similar provisions of a Government Agency which have the force of law.

**Liability** means any debt or other monetary liability or penalty, fine or payment or any damages, losses, indebtedness, costs, break costs, charges, outgoings or expenses of whatever description.

**Loyalty Scheme** has the meaning that it has in the Act.

**Loyalty System Component** means a computer or communications system component used in the provision of a Loyalty Scheme or which is designed for that purpose.

**Loss** means a loss, Claim, action, damage, Liability, cost, charge, expense, penalty, compensation, fine, outgoing or payment suffered, paid or incurred.

**Minister** means the Minister of the State administering the Act from time to time.

**Monitoring Licence** means the licence dated 14 November 2011 which was issued by the Minister to Intralot under section 3.4.46 of Act.

**Monitoring Licence Related Agreement** means the related agreement dated 14 November 2011 which was entered into by the Minister and Intralot under section 3.4.48 of the Act relating to the provision of Monitoring Services by Intralot.

**Operational Requirements** means the standards or requirements made under section 10.1.5C of the Act.

**Performance Standards** means the performance standards (set out in Schedule 3) which are applicable to the Crown Pre-Commitment Module that are to be met or exceeded by Crown under the terms of this Agreement.

**Plan Change Request** has the meaning given in clause 9.4.

**Player** means a person who requests to be registered or who is registered on the Pre-Commitment System for the purposes of Gaming in Crown Casino.

**Player Account Equipment** has the meaning given in the Act and includes such equipment necessary for the operation of the Crown Pre-Commitment Module and for the provision of Pre-Commitment Services at the Crown Casino.

**Player Information** means Pre-Commitment Information relevant to a Player.

**Pre-Commitment Data** means all data and expressions of data contained in, or processed or generated by the Crown Pre-Commitment Module, in whatever form including without limitation, all data and expressions of data comprising reports generated by the Crown Pre-Commitment Module.

**Pre-Commitment Commencement Date** means 1 December 2015.

**Pre-Commitment Fee** means the fee determined from time to time and published by the Minister as being the fee that will be payable as part of the Venue Conditions.

**Pre-Commitment Information** has the meaning that it has in the Act and which information is configured in accordance with the Protocol.

**Pre-Commitment Ready Machine** means those Gaming Machines at the Crown Casino (anticipated to be a minimum of 2,500 Gaming Machines as at the Pre-Commitment Commencement Date) that:

- (a) are located in approved gaming machine areas of Crown Casino;
- (b) are connected to the Casino Monitoring Equipment;
- (c) are approved by the Commission (including approval of all Player Account Equipment installed or to be installed on the Gaming Machines);
- (d) are capable of the Conduct of Gaming;
- (e) have all Player Account Equipment installed; and
- (f) are capable of connecting to the Crown Pre-Commitment Module.

**Pre-Commitment Related Agreement** means the agreement dated 7 August 2014 entered into by the Minister and Intralot in relation to the Pre-Commitment System and the provision of Pre-Commitment Services under section 3.4.48A of the Act.

**Pre-Commitment System** has the meaning that it has in the Act and which system is operated by Intralot.

**Pre-Commitment Services** has the meaning that it has in the Act.

**Pre-Commitment Transition In Period** means the period from the date of this Agreement to the Pre-Commitment Commencement Date.

**Preparatory Action** has the meaning that it has in the Act.

**Protocol** is the application link S2S protocol which must be implemented by Crown to be used for communication between the Pre-Commitment System and the Crown Pre-Commitment Module using the Communications Link.

**Records** means all records, materials, books, accounts, reports, statements and documents necessary or appropriate for, or in any way relating to the conduct of, or the provision of the services in support of the conduct of the Pre-Commitment Services at Crown Casino including:

- (a) Crown's copies of the agreements it has with its Agents, Contractors and any other persons relating to the conduct of the Pre-Commitment Services at Crown Casino;
- (b) documents created by or on behalf of Crown containing details of its Gaming Machines and Crown Pre-Commitment Module;
- (c) accounts and records of the affairs of Crown and such other records as sufficiently explain the financial operations and financial position of Crown as it relates to the provision of the Pre-Commitment Services at Crown Casino; and
- (d) all records, books, accounts, statements, recorded information and documents used to prepare any returns, financial statements, agreements, accounts, particulars, reports, declarations or other documents Crown is required to provide or retain under the Act or the *Casino Control Act 1991 (Vic)*.

**Representatives** include members, directors, officers, employees, Agents and Contractors.

**Roll** means the Roll of Manufacturers, Suppliers and Testers kept by the Commission under section 3.4.60 of the Act.

**Service and Maintenance Fee** is the annual amount that is agreed in this Agreement and payable by Crown to Intralot under clause 13.3 for the service and maintenance of the Intralot Pre-Commitment Gateway and excludes any costs, charges, expenses and fees in relation to development of, and upgrades to, the Intralot Pre-Commitment Gateway.

**State** means the State of Victoria and includes the Minister or any person acting as, or in the capacity of, the Minister.

**Technical Standards** means the standards made under section 10.1.5A or section 10.1.5B of the Act.

**Term** means the period of time from the commencement of this Agreement until the earlier of:

- (a) 11:59 pm on 15 August 2027;
- (b) the date on which the Monitoring Licence is cancelled in accordance with the Act;
- (c) the date on which the Monitoring Licence is surrendered in accordance with the Monitoring Licence Related Agreement;
- (d) the date on which the direction issued under section 3.8A.2 of the Act is revoked; and
- (e) the date on which this Agreement terminates in accordance with its terms.

**Venue Conditions** means the conditions determined by the Minister under the Act that will apply to Intralot and all Venue Licensees in relation to the supply of Pre-Commitment Services.

**Venue Licensee** means a Venue Operator that holds gaming machine entitlements under the Act or the holder of a casino licence under the *Casino Control Act 1991* (Vic) under which it is authorised to operate Gaming Machines.

**Venue Operator** has the same meaning as set out in section 1.3 of the Act.

## 1.2 Interpretation

In this Agreement, unless the context otherwise requires:

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

- instruments issued under, such statute, regulation, by-law or guideline or such provision;
- (v) unless otherwise defined, words in the singular include the plural and vice versa;
  - (vi) words denoting individuals or persons includes a corporation, partnership, joint venture, unincorporated association and a government or statutory body or authority;
  - (vii) words denoting any gender includes all genders;
  - (viii) references to any party or person include that party's or person's successor or permitted assigns;
  - (ix) 'writing' and cognate expressions include all means of reproducing words in tangible and permanently visible form;
  - (x) where any word or phrase is defined its other grammatical forms have corresponding meanings;
  - (xi) '\$' or 'dollars' is a reference to the lawful currency of Australia;
  - (xii) the terms 'including' and 'include' mean 'including' or 'include' (as applicable) without limitation;
  - (xiii) where a right or remedy is conferred on the Minister or Commission under this Agreement, that right or remedy is in addition to, and not in substitution of, any other right or remedy conferred on the Minister or Commission under the Act or the Monitoring Licence or otherwise according to Law;
  - (xiv) the term 'may' when used in the context of the power or right exercisable by the Minister or Commission means that the Minister or Commission (as applicable) can exercise that right or power in his or its absolute and unfettered discretion and the Minister or Commission (as applicable) has no obligation to either party to do so;
  - (xv) where in this Agreement the Minister, a representative of the State or the Commission may give consent or approval, the Minister, the representative of the State or Commission (as applicable) has an absolute and unfettered discretion as to whether he or she or it gives that consent or approval and they have no obligation to either party to do so; and
  - (xvi) a provision which is expressed to be 'subject to' another provision of this Agreement will apply without limiting the operation of that other provision.

### 1.3 Precedence

In the interpretation of this Agreement, to the extent that there is any inconsistency between the provisions of this Agreement, the provisions of the Act, the Monitoring Licence, the Monitoring Licence Related Agreement, the Pre-Commitment Related Agreement, a provision of any of the Technical Standards or the Operational Requirements then the following descending order of precedence will apply:

- (a) the Act;
- (b) any directions given by the Minister under the Act;
- (c) the Technical Standards and the Operational Requirements;
- (d) the Monitoring Licence;
- (e) the Pre-Commitment Related Agreement;
- (f) this Agreement.

## **2. Term**

This Agreement commences on the Agreement Date and unless terminated earlier in accordance with clause 27 will continue for the Term. If the term of the Monitoring Licence is extended, then this Agreement will continue in accordance with the extended term of the Monitoring Licence. Neither party can terminate this Agreement without the consent of the Minister or as otherwise provided for in this Agreement in clause 27.

## **3. Co-operation with Intralot**

### **3.1 Provision of Pre-Commitment Services at Crown Casino**

Crown must at all times and at its own cost and expense (unless otherwise stated) cooperate with Intralot and its Representatives and act reasonably and in good faith in all dealings with them:

- (a) relating to or in connection with:
  - (i) the Crown Pre-Commitment Module;
  - (ii) the Crown Pre-Commitment Gateway;
  - (iii) the Intralot Pre-Commitment Gateway;
  - (iv) the provision by Intralot and the receipt by Crown of Pre-Commitment Services at Crown Casino; and
  - (v) the Communications Link;
- (b) to the extent otherwise reasonably necessary to:
  - (i) facilitate an orderly and efficient connection of all Pre-Commitment Ready Machines in Crown Casino to the Crown Pre-Commitment Module on or before the Pre-Commitment Commencement Date; and
  - (ii) ensure that the Pre-Commitment Services can commence at the Crown Casino on the Pre-Commitment Commencement Date;
  - (iii) ensure that the Performance Standards are met or exceeded; and
- (c) so as not at any time to subject Intralot to a material breach of:
  - (i) the Act;

- (ii) the Monitoring Licence;
  - (iii) the Pre-Commitment Related Agreement; or
  - (iv) this Agreement.
- (d) The obligations of Crown under this Agreement (including this clause 3) are subject to:
- (i) Intralot's development of the Pre-Commitment System and the Intralot Pre-Commitment Gateway in accordance with this Agreement;
  - (ii) Intralot's compliance with this Agreement; and
  - (iii) Intralot's compliance with its obligations to the State.

### **3.2 Support and Upgrades**

- (a) Crown must act, in good faith and provide reasonable co-operation to Intralot to support any required application to the Commission for approval of the Pre-Commitment System (or any variation to it) under the Act, including the provision of any Accredited Testing Facility certificate or such other information as may be required by the Commission.
- (b) If Intralot is required or wishes to make upgrades to the Pre-Commitment System or the Pre-Commitment Services at Crown Casino, Intralot and Crown will acting reasonably agree a time when the upgrade can occur and to ensure neither party is in breach of any Law by failing to implement any upgrades.

### **3.3 Tripartite Deed with the State**

If required by the State, Crown agrees to enter into a Tripartite Deed with Intralot and the State in a form and on terms acceptable to Crown and Intralot (both acting reasonably).

## **4. Intralot's obligations**

- (a) Intralot must at all times and at its own cost and expense (other than in respect of the Communications Link, the cost of which is solely with Crown) co-operate with Crown and its Representatives and act reasonably, (other than where Intralot is directed by the State to undertake any action or dealing) and in good faith in all of its dealings with them relating to or in connection with:
  - (i) the Pre-Commitment System;
  - (ii) the Intralot Pre-Commitment Gateway;
  - (iii) the Crown Pre-Commitment Gateway;
  - (iv) the provision of Pre-Commitment Services at Crown Casino; and
  - (v) the Communications Link,



so as not to subject Crown at any time to a material breach of the Act or this Agreement.

- (b) Other than for Crown's obligations set out in this Agreement including Crown's obligation to develop, modify, enhance and use the Crown Pre-Commitment Module at the Crown Casino to facilitate the provision of Pre-Commitment Services at Crown Casino and to meet the Key Milestones and Performance Standards, Intralot is responsible to provide the Pre-Commitment Services in order to meet its obligations for:
- (i) the operation of the Pre-Commitment System throughout Victoria; and
  - (ii) the delivery of Pre-Commitment Services throughout Victoria pursuant to:
    - (A) the Act;
    - (B) the directions of the Minister under the Act;
    - (C) the Monitoring Licence; and
    - (D) the Pre-Commitment Related Agreement.
- (c) Intralot may suspend or require the suspension of the Pre-Commitment Services at Crown Casino, and if possible, suspend or require the suspension of use of the Crown Pre-Commitment Module at the Crown Casino if Intralot:
- (i) becomes aware of; or
  - (ii) is notified by the Commission that,
- the Crown Pre-Commitment Module, or any component of it, in operation at the Crown Casino in the provision of Pre-Commitment Services is not (in whole or in part) approved by the Commission.
- (d) Intralot will not be liable to Crown under any circumstances for any Claim, Loss or Liability suffered by Crown in relation to any action taken or not taken by Intralot or the Commission in relation to any suspension of the Pre-Commitment Services to Crown for the reason set out in sub-section c).
- (e) Subject to clause 8(c), Intralot must provide the Pre-Commitment Services to Crown for the Term and in so doing must comply with all Laws, standards, requirements, directions of the Minister under the Act, directions of the Commission and binding guidelines applicable to the provision of the Pre-Commitment Services including in accordance with (without limitation and in no particular order):
- (i) the Act;
  - (ii) the Monitoring Licence;
  - (iii) the Pre-Commitment Related Agreement;
  - (iv) the Technical Standards and the Operational Requirements; and

- (v) the Monitoring Licence Related Agreement.
- (f) Intralot must to the extent required to provide the Pre-Commitment Services at Crown Casino:
  - (i) obtain and maintain all Authorisations required for:
    - (A) the Pre-Commitment System; and
    - (B) subject to Crown's compliance with clause 3 and meeting the Performance Standards, the provision of the Pre-Commitment Services at Crown Casino; and
  - (ii) otherwise comply with all of its obligations under the Act, the Monitoring Licence, the Related Agreement and the Pre-Commitment Related Agreement.
- (g) Intralot will develop the Intralot Pre-Commitment Gateway by the Pre-Commitment Commencement Date, in exchange for Crown's payment of the Development Costs under clause 13.2, so that Intralot can provide the Pre-Commitment Services at Crown Casino in accordance with Intralot's obligations set out in this Agreement. Intralot must have the Intralot Pre-Commitment Gateway approved by the Commission. Intralot will be responsible (including the costs) for the testing of the Intralot Pre-Commitment Gateway by an Accredited Testing Facility.
- (h) Intralot will service and maintain the Intralot Pre-Commitment Gateway (in accordance with Schedule 4 of the PCRA), in exchange for Crown's payment of the Service and Maintenance Fee under clause 13.3. Intralot will keep the Intralot Pre-Commitment Gateway in good and workable condition capable of providing the Pre-Commitment Services at Crown Casino in accordance with Intralot's obligations set out in this Agreement.

## **5. Crown Pre-Commitment Module Development**

- (a) Crown acknowledges that under the Act, the Monitoring Licence and any directions of the Minister under the Act:
  - (i) Intralot is the provider of the Pre-Commitment System and the Pre-Commitment Services throughout Victoria; and
  - (ii) the Pre-Commitment System includes all software and other components used or proposed to be used to deliver the Pre-Commitment System and Pre-Commitment Services at Crown Casino, except for the Crown Pre-Commitment Module and the Communications Link.
- (b) Crown will accept and facilitate the provision of the Pre-Commitment Services at Crown Casino on and from the Pre-Commitment Commencement Date and throughout the Term in accordance with this Agreement. Intralot agrees that it will consult with Crown to obtain Crown's input and share with Crown any submissions Intralot may make dealing with any specific requirements of the State (and any subsequent changes to the State's specific requirements requested by the State) using the Crown Pre-Commitment Module that is appropriately developed, modified or enhanced for this purpose.

- (c) Crown must therefore, at its own cost and expense, ensure that the Crown Pre-Commitment Module used to facilitate the provision of Pre-Commitment Services at Crown Casino:
- (i) is developed, modified and enhanced in a timely manner before the Pre-Commitment Commencement Date (and in any event to achieve the Key Milestones and the Performance Standards) to, subject to clause 3.1(d), enable Intralot to provide the Pre-Commitment Services at Crown Casino on and from the Pre-Commitment Commencement Date to comply with the requirements of the:
    - (A) the Act;
    - (B) the directions of the Minister under the Act;
    - (C) the Monitoring Licence;
    - (D) the Technical Standards and Operational Requirements;
    - (E) the Pre-Commitment Related Agreement; and
    - (F) any changes to the Pre-Commitment System or Pre-Commitment Services requested by the State,
  - (ii) are tested by an Accredited Testing Facility under the Act for compliance including compliance with the requirements of clause 5(b)(i); and
  - (iii) is approved by the Commission.
- (d) Crown must, at its own cost and expense, develop, modify and enhance in a timely manner before the Pre-Commitment Commencement Date (and in any event to achieve the Key Milestones and the Performance Standards):
- (i) all necessary and appropriate software and to procure the provision of all necessary and appropriate hardware to operate the Crown Pre-Commitment Module on and from the Pre-Commitment Commencement Date; and
  - (ii) the Crown Pre-Commitment Module to ensure that it can communicate with the Pre-Commitment System over the Communications Link using and in accordance with the Protocol.
- (e) Crown is responsible, at its own cost and expense, to ensure that all Pre-Commitment Data that is generated or received by the Crown Pre-Commitment Module be exchanged with the Pre-Commitment System as developed by Intralot over the Communications Link using and in accordance with the Protocol:
- (i) to the standards required to meet the requirements for certification by the Accredited Testing Facility;
  - (ii) to meet the Performance Standards; and
  - (iii) to meet the requirements of the Commission for approval of the Pre-Commitment System under the Act.

- (f) If there is a failure to meet the requirements of clauses 5(b) to 5(e) inclusive at any time, Crown must, at its own cost and expense, rectify the failure:
  - (i) to meet the requirements of the Commission for approval of the Pre-Commitment System under the Act; and
- (g) Crown must indemnify Intralot against any Claim, Loss or Liability to the State pursuant to the Pre-Commitment Related Agreement suffered by Intralot, which arises directly or indirectly from Crown's failure to meet the requirements of clauses 5(b) to 5(e) to the extent that Intralot:
  - (i) did not cause such Claim, Loss or Liability either directly or indirectly; and
  - (ii) suffers such Claim, Loss or Liability as the licensed provider of Pre-Commitment Services in Victoria pursuant to the Pre-Commitment Related Agreement.

## **6. Player Account Equipment**

Crown must ensure, at its own cost and expense, that in relation to all Gaming Machines that are or will be engaged in the Conduct of Gaming at the Crown Casino on and from the Pre-Commitment Commencement Date:

- (a) they are approved by the Commission (as required under the Act);
- (b) they meet the requirements of the Technical Standards and Operational Requirements;
- (c) all Player Account Equipment is installed; and
- (d) they are connected to the Crown Pre-Commitment Module.

## **7. Communications Link**

### **7.1 Specifications**

The specifications for the Communications Link are set out in Schedule 2 (**Communications Link Specifications**).

### **7.2 Implementation of the Communications Link**

Crown must in relation to the provision of Pre-Commitment Services at Crown Casino:

- (a) at its own cost and expense, establish, implement and arrange for the connection of the Communications Link with an agreed Carriage Service Provider between the inside interface of the Carriage Service Provider's router located at Intralot's primary data centre and the Crown Pre-Commitment Gateway and the Pre-Commitment Module;
- (b) at its own cost and expense, establish, implement and arrange for the connection of the Communications Link with an agreed Carriage Service Provider between the inside interface of the Carriage Service Provider's router located at Intralot's disaster recovery data centre and the Crown Pre-Commitment Gateway and the Pre-Commitment Module;

- (c) only establish, implement and use throughout the Term a Communications Link that meets or exceeds the Communications Link Specifications; and
- (d) comply with this clause 7.2 within the timeframes specified in the Approved Crown Pre-Commitment Implementation Plan or, if the Approved Crown Pre-Commitment Implementation Plan does not contain such a timeframe, then within the timeframe reasonably determined by Intralot and agreed by Crown so that there is sufficient time for Crown (in conjunction with Intralot) to test the Communications Link prior to the Pre-Commitment Commencement Date.

### **7.3 Operation of the Communications Link**

- (a) As at the Agreement Date the agreed Carriage Service Provider is Telstra Corporation Limited. If Crown changes the Carriage Service Provider for the Communications Link during the Term, it must give Intralot and the Commission written notice of that change.
- (b) Crown is primarily responsible for:
  - (i) the connection, operation and continued availability of the Communications Link (between the inside interface of the Carriage Service Provider's router located at Intralot's data centre and the Crown Pre-Commitment Gateway and/ or the Pre-Commitment Module) to, subject to clause 3.1(d), facilitate the provision of the Pre-Commitment Services at the Crown Casino throughout the Term;
  - (ii) entering into and managing the commercial relationship with the Carriage Service Provider in relation to the Communications Link; and
  - (iii) meeting or exceeding the Performance Standards in relation to the Communications Link;
- (c) Crown must pay the Communications Link Charges to the Carriage Service Provider on time and in accordance with clause 13.4.
- (d) If there is any Fault with the Communications Link during the Term, Crown must act immediately, in conjunction with the Carriage Service Provider, to rectify the Fault and to restore the Communications Link as soon as practicable. Intralot will provide reasonable assistance to Crown and to the Carriage Services Provider (other than the payment of money) in relation to any rectification of any Fault and restoration of the Communications Link. If Intralot fails to provide reasonable assistance (and that failure is not as a result of anything done by Crown or the Carriage Service Provider), Intralot must pay to Crown all of Crown's reasonable and other costs and expenses arising from that breach.
- (e) If Crown fails or refuses to immediately act to rectify the Fault or fails or refuses to work with the Carriage Service Provider to restore the Communications Link, Intralot is authorised (and Crown must take the required action with the Carriage Service Provider to ensure that Intralot is authorised) to work with the Carriage Service Provider to rectify the Fault and to restore the Communications Link. In these circumstances Crown must pay to Intralot all of Intralot's reasonable costs and expenses of rectifying the Fault and restoring the Communications Link, on demand.

- (f) For the avoidance of doubt, Crown must not make any Claim against Intralot for any amounts under this Agreement or the Venue Conditions because the Communications Link is not available for any reason for Crown to operate the Crown Pre-Commitment Module or to deliver the Pre-Commitment Services at Crown Casino provided that the unavailability of the Communications Link was not caused by Intralot or due to anything that is within Intralot's direct responsibility and control under this Agreement.

#### **7.4 Intralot's obligations**

Intralot acknowledges and agrees that:

- (a) Subject to clause 7.4(e), all the equipment relating to the Communications Link ("**Equipment**") will be stored at Intralot's premises in 1279 Nepean Highway, Cheltenham and 299 Williamstown Road, Port Melbourne at no cost to Crown for the Term;
- (b) Intralot will not interfere with or access the Equipment at any time and must keep the Equipment secure at all times during the Term;
- (c) Intralot must provide to Crown (and its nominated representatives) access to the Equipment at all times upon reasonable request;
- (d) Intralot will have no right or title to the Equipment at any time; and
- (e) If at any time after the Agreement Date:
  - (i) Intralot relocates from either of the locations specified in clause 7.4(a); and
  - (ii) as a result of the relocation it is necessary to also relocate the Equipment,

the cost of relocating the Equipment will be borne solely by Crown. In these circumstances this clause 7.4 will apply to the Equipment as stored at the new location.

#### **8. Intralot's Pre-Commitment Services**

- (a) Intralot will provide the Pre-Commitment Services to Crown in such a manner approved by the Commission so that Crown can facilitate the provision of Pre-Commitment Services at Crown Casino through the Crown Pre-Commitment Module.
- (b) Intralot will provide the Pre-Commitment Services at Crown Casino by using and engaging or requiring the use or engagement of:
  - (i) the Pre-Commitment System;
  - (ii) the Intralot Pre-Commitment Gateway;
  - (iii) the Communications Link;
  - (iv) the Crown Pre-Commitment Gateway; and
  - (v) the Crown Pre-Commitment Module.

- (c) The obligations of Intralot under this Agreement (including this clause 8) are subject to:
- (i) the development, modification, enhancement, operation and support of the Crown Pre-Commitment Module by Crown in accordance with this Agreement;
  - (ii) Crown's compliance with this Agreement; and
  - (iii) Crown's compliance with its obligations to the State.
- (d) Crown acknowledges and agrees that Intralot or its Representatives owns all Intellectual Property Rights in the Pre-Commitment System and the Intralot Pre-Commitment Gateway and that at no time does Crown have any right, title or interest in either the Pre-Commitment System or the Intralot Pre-Commitment Gateway.
- (e) Intralot and Crown acknowledge and agree that:
- (i) Crown or a third party may own part or all Intellectual Property Rights in the Crown Pre-Commitment Module and the Crown Pre-Commitment Gateway and that at no time does Intralot have any right, title or interest in or to any of those Intellectual Property Rights;
  - (ii) for the sole purpose of Intralot fulfilling its obligations under this Agreement, the Act, the Monitoring Licence and the Pre-Commitment Related Agreement (as the case may require), Crown agrees to:
    - (A) where Crown has the right to sub-licence its rights to the relevant Intellectual Property Rights, grant a non-exclusive, royalty free licence to the Intellectual Property Rights in the Crown Pre-Commitment Module and the Crown Pre-Commitment Gateway to Intralot for the Term;
    - (B) where Crown does not have the right to sub-licence its rights to the relevant Intellectual Property Rights, use reasonable endeavours to obtain that right from the applicable third party and, subject to obtaining that right from the applicable third party, Crown will grant Intralot the licence referred to in (A).
  - (iii) if requested by the State or in order for Intralot to comply with this Agreement, the Act, the Monitoring Licence or the Pre-Commitment Related Agreement, Crown agrees to:
    - (A) where Crown has the right to sub-licence its rights to the relevant Intellectual Property Rights, grant a non-exclusive, royalty free licence to the Intellectual Property Rights in the Crown Pre-Commitment Module and the Crown Pre-Commitment Gateway to the State on such terms as the State or the Minister deems fit and agreed by Crown (acting reasonably);
    - (B) where Crown does not have the right to sub-licence its rights to the relevant Intellectual Property Rights, use

reasonable endeavours to obtain that right from the applicable third party and, subject to obtaining that right from the applicable third party, Crown will grant the State the licence referred to in (A).

## **9. Crown Pre-Commitment Implementation Plan**

### **9.1 Key Milestones**

- (a) Crown must:
  - (i) deliver the Crown Pre-Commitment Module in accordance with the provisions of this Agreement; and
  - (ii) must meet all of the State's requirements for the Crown Pre-Commitment Module.

## **10. Communication with the Pre-Commitment System**

- (a) Crown must ensure that subject to clauses 3.1(b), 10(d) and 10(e), the Crown Pre-Commitment Module communicates with the Pre-Commitment System so that, Pre-Commitment Information, Pre-Commitment Data and Player Information can be exchanged effectively in accordance with the Protocol, the Technical Standards and the Operational Requirements, between them.
- (b) Crown must engage, at its own cost and expense, an Accredited Testing Facility to test and certify the Crown Pre-Commitment Module prior to Crown seeking Commission approval to the Crown Pre-Commitment Module.
- (c) Crown undertakes and agrees that Crown will do all that is required:
  - (i) for the Crown Pre-Commitment Module to effectively exchange Pre-Commitment Information, Pre-Commitment Data and Player Information between the Pre-Commitment System and the Crown Pre-Commitment Module in accordance with the Protocol, the Technical Standards and the Operational Requirements; and
  - (ii) to obtain written certification from an Accredited Testing Facility for the Crown Pre-Commitment Module under the Act at Crown's own cost and expense.
- (d) Intralot must ensure that the Pre-Commitment System is available so that Pre-Commitment Information, Pre-Commitment Data and Player Information can be exchanged effectively with the Crown Pre-Commitment Module in accordance with the Protocol, the Technical Standards and the Operational Requirements, between them.
- (e) Intralot undertakes and agrees that Intralot will do all that is required:
  - (i) for the Pre-Commitment System to be available to effectively exchange Pre-Commitment Information, Pre-Commitment Data and Player Information between the Pre-Commitment System and the Crown Pre-Commitment Module in accordance with the



Protocol, the Technical Standards and the Operational Requirements; and

- (ii) to obtain written certification from an Accredited Testing Facility for the Pre-Commitment System under the Act at Intralot's own cost and expense.

## **11. Testing and Certification**

- (a) Crown is solely responsible, at its own cost and expense, for:
  - (i) testing and obtaining certification of the Crown Pre-Commitment Module and the Communications Link by an Accredited Testing Facility under the Act; and
  - (ii) all costs and expenses of approval of the Crown Pre-Commitment Module from the Commission.
- (b) Crown must make such changes at the cost of Crown to the Crown Pre-Commitment Module as may be recommended or required by the Accredited Testing Facility in order to obtain Commission approval of the Crown Pre-Commitment Module or any variation to the Crown Pre-Commitment Module.
- (c) Crown must make such changes at the cost of Crown to the Crown Pre-Commitment Module as may be required by the Commission in order for the Commission to give approval to the Pre-Commitment System or the Crown Pre-Commitment Module or any variation to the Pre-Commitment System or the Crown Pre-Commitment Module.
- (d) Intralot must make such changes at the cost of Intralot to the Pre-Commitment System as may be recommended or required by the Accredited Testing Facility in order to obtain Commission approval of the Pre-Commitment System or any variation to the Pre-Commitment System.
- (e) Intralot must make such changes at the cost of Intralot to the Pre-Commitment System as may be required by the Commission in order for the Commission to give approval to the Pre-Commitment System or any variation to the Pre-Commitment System.

## **12. Development and Testing Costs**

- (a) Crown must meet all costs and expenses incurred by Crown associated with the development, modification, enhancement, operation and testing of the Crown Pre-Commitment Module, including all costs and expenses of the Crown Pre-Commitment Gateway and the Communications Link between the Crown Pre-Commitment Module and the Pre-Commitment System.
- (b) Intralot will co-operate with Crown and make the Intralot Pre-Commitment Gateway available to Crown for testing at agreed times. Intralot will meet its own costs of co-operating with Crown in the testing of the Pre-Commitment System and the Intralot Pre-Commitment Gateway.
- (c) Despite clause 12(b), Intralot is under no obligation to change its Pre-Commitment System or to bear any cost or expense associated with any changes to its Pre-Commitment System should changes be required for the

provision of Pre-Commitment Services at Crown Casino by either the Accredited Testing Facility or the Commission. If any changes are required to the Pre-Commitment System or the Intralot Pre-Commitment Gateway that are due to Crown or the Crown Pre-Commitment Module, these costs and expenses will be payable by Crown.

- (d) All reasonable costs and expenses incurred by Intralot in relation to the Crown Pre-Commitment Module, the Crown Pre-Commitment Gateway or the Communications Link, other than those arising from Intralot's co-operation in Intralot Pre-Commitment Gateway testing and certification, will be payable by Crown.

### **13. Crown Payments**

#### **13.1 Pre-Commitment Fee**

- (a) On and from the Pre-Commitment Commencement Date, Crown must pay the Pre-Commitment Fee as annually reviewed consistently with the Pre-Commitment Related Agreement) to Intralot in accordance with the Venue Conditions as varied from time to time.
- (b) Intralot has no Liability to Crown and will not refund or waive any of the Pre-Commitment Fees payable by Crown if Pre-Commitment Services at Crown Casino are unavailable due to any failure, default or neglect of Crown or due to any failure of the Crown Pre-Commitment Module or the Communications Link. For the avoidance of doubt, the Pre-Commitment Fee is payable to Intralot in such circumstances and Crown cannot claim any refund or waiver of such fees.

#### **13.2 Development Costs of the Intralot Pre-Commitment Gateway**

- (a) Crown and Intralot agree that Intralot's Development Costs for the Intralot Pre-Commitment Gateway will be a fixed cost of \$330,000 (exclusive of GST).
- (b) Subject to the approval of Pre-Commitment Gateway by the Commission, Crown must pay the Development Costs of the Intralot Pre-Commitment Gateway to Intralot within 30 days from the receipt of a valid tax invoice. Written notice from Intralot to Crown that approval has been given will be sufficient evidence of approval for the purposes of this clause 13.2.

#### **13.3 Service and Maintenance Fee for Intralot Pre-Commitment Gateway**

- (a) Crown and Intralot agree that the Service and Maintenance Fee for the Intralot Pre-Commitment Gateway will be AUD\$66,000 (exclusive of GST) per year of the Term. For the avoidance of doubt, the Services and Maintenance Fee excludes any costs, charges, expenses and fees in relation to any future development of, and upgrades to, the Intralot Pre-Commitment Gateway. Such future development of, and upgrades to, the Intralot Pre-Commitment Gateway will be the subject of a separate agreement with Crown, with costs payable by Crown and other terms and conditions, to be agreed.

- (b) Crown must pay to Intralot the Service and Maintenance Fee for the Intralot Pre-Commitment Gateway within 14 days after receipt of a valid Tax Invoice for the Service and Maintenance Fee each year during the Term.
- (c) On each Fee Adjustment Date, the Service and Maintenance Fee will increase by the CPI Adjustment.
- (d) Intralot will deliver a valid Tax Invoice to Crown for the whole of the Service and Maintenance Fee for each year of the Term at the following times:
  - (i) on 1 December 2015, for the period 1 December 2015 to 30 November 2016; and
  - (ii) from 1 December 2016, as soon as practicable after the CPI Adjustment for the following 12 month period has been calculated.

#### **13.4 Communications Link Charges**

- (a) Crown must pay the Communications Link Charges associated with the implementation, installation, use and operation of the Communications Link directly to the Carriage Service Provider when they are due.
- (b) Crown must seek to resolve any dispute with the Carriage Service Provider in such a way so there is no disruption to, or disconnection of the Communications Link.

#### **14. Suspension of Pre-Commitment Services**

- (a) Intralot is entitled to suspend or require the suspension of the Pre-Commitment Services at Crown Casino or to suspend or require the suspension of communications between the Crown Pre-Commitment Module and the Pre-Commitment System:
  - (i) under the provisions of section 22 and 26.5 of the Pre-Commitment Related Agreement; or
  - (ii) if directed to do so by the Minister.
- (b) If Intralot wishes to suspend Pre-Commitment Services at Crown Casino under clause 14(a)(i) or (ii), Intralot must first notify Crown in writing and give Crown at least 14 days' written notice unless the Minister directs a shorter or longer period of time to give effect to the suspension in which case Intralot must give Crown written notice of the Minister's direction as soon as practicable thereafter and the date and time the suspension will take place.
- (c) If Crown fails or refuses to comply with Intralot's notice or to make good Crown's default in the payment of any amounts due and owing to Intralot under this Agreement, Intralot may suspend or require the suspension of the Pre-Commitment Services at Crown Casino or suspend or require the suspension of communications between the Crown Pre-Commitment Module and the Pre-Commitment System until Crown complies or makes good.
- (d) Intralot will not be liable to Crown or any other person for any Claim, Loss or Liability whatsoever if Intralot suspends or requires the suspension of the Pre-Commitment Services at Crown Casino or suspends or requires the

suspension of communications between the Crown Pre-Commitment Module and the Pre-Commitment System under this clause 14.

## **15. Connection to the Crown Pre-Commitment Module**

- (a) A Gaming Machine is not a Pre-Commitment Ready Machine, and cannot be connected to the Crown Pre-Commitment Module, until all required Player Account Equipment has been approved and installed in:
  - (i) relation to those Gaming Machines; and
  - (ii) accordance with the Technical Standards and Operational Requirements.
- (b) Crown must ensure that all Gaming Machines installed and engaged in the Conduct of Gaming in Crown Casino are:
  - (i) Pre-Commitment Ready Machines prior to the Pre-Commitment Commencement Date; and
  - (ii) available for connection to the Crown Pre-Commitment Module on and from that date or such earlier date as may be required for the purposes of Preparatory Action as set out in the Approved Pre-Commitment Implementation Plan.
- (c) Crown must meet all obligations set out in its Approved Pre-Commitment Implementation Plan for the development, installation and operation of the Crown Pre-Commitment Module including that all:
  - (i) Player Account Equipment is installed as required in that plan; and
  - (ii) aspects of Crown Pre-Commitment Module are fully developed, modified, enhanced, installed, independently tested and approved by the Commission,

in order to allow for the connection of all Gaming Machines located at the Crown Casino by way of Preparatory Action before the Pre-Commitment Commencement Date.
- (d) Intralot has no obligation or Liability to Crown whatsoever to the Crown Pre-Commitment Module to communicate with the Pre-Commitment System or for Intralot to provide Pre-Commitment Services at Crown Casino until the obligations set out in this clause 15 have been met.

## **16. Connection of Pre-Commitment Ready Machines**

- (a) Intralot is not required to allow any Gaming Machine at Crown Casino to communicate with the Pre-Commitment System unless it is a Pre-Commitment Ready Machine.
- (b) Crown must connect to the Crown Pre-Commitment Module all of its Pre-Commitment Ready Machines that will be engaged in the Conduct of Gaming on and after the Pre-Commitment Commencement Date by the sooner of:
  - (i) the date set out in the Approved Crown Pre-Commitment Implementation Plan; or

- (ii) the Pre-Commitment Commencement Date.
- (c) As at the Agreement Date, subject to Crown's Gaming Machines being Pre-Commitment Ready Machines, Crown will be connecting to the Crown Pre-Commitment Module on and from the Pre-Commitment Commencement Date the same number of Gaming Machines that it is entitled to operate under its Casino Licence.
- (d) If the number of Pre-Commitment Ready Machines set out in clause 16(c) is not being connected to the Crown Pre-Commitment Module on and from the Pre-Commitment Commencement Date, then by 30 October 2015 Crown must notify Intralot in writing of all Pre-Commitment Ready Machines that Crown will be connecting to the Crown Pre-Commitment Module on the Pre-Commitment Commencement Date. For the avoidance of doubt, Crown will not be able to lawfully operate any Gaming Machine located at Crown Casino on and after the Pre-Commitment Commencement Date if that Gaming Machine is not connected to the Crown Pre-Commitment Module.
- (e) With respect to any Gaming Machines that Crown wishes to connect to, or disconnect from, the Crown Pre-Commitment Module after the Pre-Commitment Commencement Date, Crown must on a monthly basis provide a written report to Intralot (in an agreed form) specifying in reasonable detail the number of Gaming Machines connected to and disconnected from the Crown Pre-Commitment Module during any month of the Term. Such report must be given by Crown to Intralot on a day of the month specified by Intralot acting reasonably.
- (f) If reasonably required by Intralot in order to perform the Pre-Commitment Services at Crown Casino, Crown must notify to Intralot in writing all Gaming Machines that Crown wishes to connect to, or disconnect from, the Crown Pre-Commitment Module after the Pre-Commitment Commencement Date within 24 hours after the occurrence.
- (g) Crown must provide such reports to the Commission, in the form requested by the Commission, in relation to all Gaming Machines operating at Crown Casino as requested by the Commission.

## **17. Notice of Disconnection from Pre-Commitment**

If for any reason Crown wishes to disconnect, either temporarily or permanently, any Gaming Machines from the Crown Pre-Commitment Module after the Pre-Commitment Commencement Date, it must give written notice to Intralot as set out in clause 16. The indemnity in clause 24.2 will apply to any Claim, Loss or Liability whatsoever suffered by Intralot, which arises either directly or indirectly from any disconnection of a Gaming Machine from the Crown Pre-Commitment Module to the extent that Intralot:

- (a) did not cause such Claim, Loss or Liability either directly or indirectly; and
- (b) suffers such Claim, Loss or Liability as the licensed provider of the Pre-Commitment Services in Victoria.

## **18. Crown's operational, services and maintenance obligations**

- (a) Crown must:

- (i) implement the Crown Pre-Commitment Module in readiness for the Pre-Commitment Commencement Date in a manner:
  - (A) consistent with the Act, the Technical Standards and the Operational Requirements; and
  - (B) to meet all reasonable requirements of the State, the Commission or Intralot or any direction given by the Minister under the Act; and
  - (C) so as not to interfere with Intralot's obligations to provide Pre-Commitment Services throughout Victoria.
- (ii) operate and continually service and maintain the Crown Pre-Commitment Module during the Term to a reasonable standard and (without limitation) to meet:
  - (A) the requirements of the Technical Standards and Operational Requirements; and
  - (B) all reasonable requirements of the State, the Commission or Intralot or any direction given by the Minister under the Act; and
  - (C) so as not to interfere with Intralot's obligations to provide Pre-Commitment Services throughout Victoria.
- (b) If any Fault is identified by either party or occurs in relation to the delivery of Pre-Commitment Services at Crown Casino, Intralot and Crown will work together in good faith to establish the cause of the Fault.
- (c) If the Fault is established to be caused by Intralot and relates to the Intralot Pre-Commitment Gateway then Intralot must act immediately to rectify the Fault and to restore Pre-Commitment Services at Crown Casino as soon as possible having regard to the nature and severity of the Fault. Intralot will communicate with Crown and its Authorised Crown Staff in relation to the Fault, its rectification and inform Crown when Intralot believes that Pre-Commitment Services will be restored.
- (d) If any Fault is identified or occurs that interferes with the delivery of Pre-Commitment Services at Crown Casino and after discussing the Fault, Crown and Intralot agree that such Fault is due to:
  - (i) the Crown Pre-Commitment Module;
  - (ii) the Communications Link;
  - (iii) any other system operating at Crown Casino;
  - (iv) the Crown delivery of the Pre-Commitment Services;
  - (v) the Player Account Equipment located at Crown Casino;
  - (vi) the data generated from Gaming Machines located at Crown Casino,

Intralot will give notice to Crown (**Fault Notice**) as soon as practicable. Such notice may be given by Intralot in writing or by email to Crown (or its Representatives or Authorised Crown Staff).

- (e) Crown must act immediately to resolve the Fault specified in the Fault Notice and to restore the delivery of Pre-Commitment Services at Crown Casino, to the reasonable satisfaction of Intralot, the State or the Commission, as the case may be.
- (f) Whether or not the subject of a Fault Notice from Intralot, Crown must act immediately to resolve any Fault (to enable the delivery of Pre-Commitment Services at Crown Casino), that is caused by:
  - (i) the matters listed in clause 18(d)(i) to (vi) inclusive; or
  - (ii) by a failure of Crown to comply with any provision of this Agreement; or
  - (iii) by any other failure or default of Crown,
 to the reasonable satisfaction of Intralot, the State or the Commission, as the case may be.
- (g) If a Fault in the delivery of the Pre-Commitment Services at Crown Casino is found to have been caused or contributed by:
  - (i) any of the matters listed in clause 18(d)(i) to (vi) inclusive;
  - (ii) by a failure of Crown to comply with any provision of this Agreement; or
  - (iii) by any other failure or default of Crown,
 all reasonable costs and expenses incurred by Intralot in relation to the identification or rectification of the Fault (including in assisting Crown in such identification or rectification) are payable by Crown on demand.
- (h) Subject to any lawful finding or lawful determination of the Commission, any dispute as to the application of this clause 18 shall be resolved in accordance with clause 26.

## **19. Crown's general obligations**

### **19.1 General Obligations**

Crown must:

- (a) punctually pay all amounts due and payable to Intralot as provided for in this Agreement, and the Pre-Commitment Related Agreement.
- (b) co-operate with Intralot so as to not interfere with, restrict or prevent Intralot from performing its obligations under the Monitoring Licence, the Pre-Commitment Related Agreement and the Venue Conditions.
- (c) Crown must comply with:

- (i) all obligations applicable to a venue operator, including the Venue Conditions, under the Act, the Technical Standards and the Operational Requirements;
  - (ii) its relevant obligations under the *Casino Control Act 1991* (Vic), the Act, the Technical Standards and the Operational Requirements;
  - (iii) the Performance Standards; and
  - (iv) the Law in facilitating the provision of Pre-Commitment Services at Crown Casino.
- (d) take reasonable care of and regularly service and maintain (including replacement as required) the Crown Pre-Commitment Module (and all components of the Crown Pre-Commitment Module referred to in the definition in clause 1.1) operating in Crown Casino.

## 19.2 Conflict with Venue Conditions

To the extent that the Venue Conditions conflict with the terms and conditions of this Agreement, the terms and conditions of this Agreement will prevail.

## 20. Pre-Commitment Data

### 20.1 State owns Pre-Commitment Data

- (a) Crown unconditionally and irrevocably acknowledges and agrees that the State owns and will have all right, title or interest in the Pre-Commitment Data including all Intellectual Property Rights in the Pre-Commitment Data and that this right, title or interest unconditionally and irrevocably vests in the State upon creation of the Pre-Commitment Data.

### 20.2 Grant of licence to use Pre-Commitment Data

- (a) Intralot is permitted to have access to and may deal with Pre-Commitment Data in accordance with the Pre-Commitment Related Agreement.
- (b) Crown must have written approval from the State for Crown to have access to:
- (i) Pre Commitment Data and expressions of Pre Commitment Data contained in, processed or generated by the Crown Pre Commitment System (**Crown Pre-Commitment Data**) solely for the purpose of the operation of the Crown Pre-Commitment Module to allow Player Information to be entered onto the Crown Pre-Commitment Module and to address Player enquiries in relation to a Player's registration on the Crown Pre-Commitment Module; and/or
  - (ii) De-identified Crown Pre-Commitment Data for the sole purpose of the facilitation and encouragement of Players to take up Pre-Commitment at Crown Casino.



- (c) It is anticipated that the State will grant the rights to Crown for the purpose of clause 20.2(a) under the terms of a licence reasonably determined by the State.
- (d) Subject to the terms of the licence granted to Crown under clause 20.2(b) and to the requirements of the Pre-Commitment Related Agreement, if it is requested by Crown to do so, Intralot will act reasonably to facilitate access by Crown to the Crown Pre-Commitment Data and to the De-identified Crown Pre Commitment Data for the purposes of this clause 20.2.

### **20.3 Authorised Crown Staff access**

- (a) Subject to the written approval granted by the State under clause 20.2, the Authorised Crown Staff will be permitted to have access to the Crown Pre-Commitment Module and to Crown Pre-Commitment Data solely for the purpose of the operation of the Crown Pre-Commitment Module to allow Player Information to be entered into the Crown Pre-Commitment Module and to address Player enquiries in relation to a Player's registration on the Crown Pre-Commitment Module.
- (b) Access under clause 20.4(a) must only be available to Authorised Crown Staff who use their own allocated User ID and Password as recorded on the Crown Pre-Commitment Module. All access to the Crown Pre-Commitment Module by Authorised Crown Staff must be recorded on the audit log provided on the Crown Pre-Commitment Module by identifying the correct User ID and Password for the relevant member of the Authorised Crown Staff.
- (c) All Player Information collected for the purposes of clause 20.4(b) must be immediately entered onto or transmitted to the Pre-Commitment System or deleted or destroyed. If there is any delay in entry or transmission of Player Information on to the Pre-Commitment System, that failure must be rectified as soon as practicable and any Player Information otherwise recorded must be immediately deleted or destroyed.
- (d) Any employee or agent of Crown (including any Authorised Crown Staff) who obtains Player Information must not use or disclose that information for any purpose other than the purposes set out in clause 20.3(c). It is an offence under the Act to disclose Pre-Commitment Data or Crown Pre-Commitment Data for a purpose other than those permitted under the Act.
- (e) If applicable and required by the State or the Commission, any facility for online access to the Crown Pre-Commitment Module provided for the purposes of this clause 20.3 must be controlled by Crown in a secure manner to ensure that only personnel who are Authorised Crown Staff can gain access to the Crown Pre-Commitment Module or to Crown Pre-Commitment Data.
- (f) Each Player must consent to use of their Player Information on the Crown Pre-Commitment Module before any Player Information is obtained from them.
- (g) Authorised Crown Staff must record a Player's consent in the manner provided on the Crown Pre-Commitment Module in Crown Casino.
- (h) Intralot must facilitate access by Crown to the Pre-Commitment System and to Pre-Commitment Data for the purposes of this clause 20.3, subject

to the requirements of the Act, the *Casino Control Act 1991 (Vic)* and the Pre-Commitment Related Agreement.

## **21. Warranties**

### **21.1 Crown's warranties**

Crown warrants to Intralot that:

- (a) Crown, in accordance with the provisions of this Agreement, can prepare and implement the Approved Pre-Commitment Implementation Plan and can undertake all required Preparatory Action that relates to Crown Casino;
- (b) Crown must and can provide the Crown Pre-Commitment Module to meet the Technical Standards, Operational Requirements, Performance Standards and other requirements of the State as they exist at the date of this Agreement;
- (c) Crown will and can comply with all of its obligations under the Act and the *Casino Control Act 1991 (Vic)*, the Technical Standards and the Operational Requirements;
- (d) For the purposes of this Agreement the Crown Pre-Commitment Module will:
  - (i) be free from all material design and operational defects;
  - (ii) be fit for the purpose for which the Crown Pre-Commitment Module is intended to be used; and
  - (iii) enable Intralot at all material times to provide the Pre Commitment Services to Crown so that the provision of the Pre Commitment Services at Crown Casino complies with the Act, the Monitoring Licence, the Technical Standards and any Operational Requirements;
- (e) the Crown Pre-Commitment Module will at all times be:
  - (i) in good condition and repair; and
  - (ii) regularly and properly maintained and serviced;
- (f) Crown 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;
- (g) this Agreement has been duly authorised, executed and delivered by Crown and constitutes a legal, valid and binding obligation enforceable against it in accordance with its terms, and no other acts or conduct on the part of Crown is necessary to authorise the execution and operation of this Agreement; and
- (h) the execution and delivery of this Agreement and the performance by the Crown of its obligations in this Agreement do not:
  - (i) conflict with the constitution or by-laws of Crown;

- (ii) to the best of Crown's knowledge, information and belief, constitute a violation of or a default under any agreements or arrangements to which Crown is a party; or
- (iii) contravene any Law.

## 21.2 Intralot's Warranties

Intralot warrants to Crown that:

- (a) Intralot 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;
- (b) this Agreement has been duly authorised, executed and delivered by Intralot and constitutes a legal, valid and binding obligation enforceable against it in accordance with its terms, and no other acts or conduct on the part of Intralot is necessary to authorise the execution and operation of this Agreement;
- (c) the execution and delivery of this Agreement and the performance by Intralot of its obligations in this Agreement do not:
  - (i) conflict with the constitution or by-laws of Intralot;
  - (ii) to the best of Intralot's knowledge, information and belief, constitute a violation of or a default under any agreements or arrangements to which Intralot is a party; or
  - (iii) contravene any Law;
- (d) Intralot is able to comply with all of its obligations under:
  - (i) the Act;
  - (ii) the Monitoring Licence;
  - (iii) the Technical Standards and Operational Requirements; and
  - (iv) the Pre-Commitment Related Agreement; and
- (e) the Intralot Pre-Commitment Gateway will be maintained in accordance with Intralot's obligations to the State.

## 21.3 Breach of representation or warranty

Each party acknowledges and agrees that a breach by a party of any representation or warranty under this Agreement constitutes a breach of this Agreement.

## 22. Confidentiality

### 22.1 Keep confidential

Subject to clause 22.2, the parties must:

- (a) keep confidential the contents of this Agreement; and

- (b) keep confidential all documents and information created by it, or made available to it under, or in connection with, or in the course of the performance of, its obligations under this Agreement (including, without limitation Records and Pre-Commitment Data); and
- (c) not disclose the same to any other person without the prior written consent of Intralot and/or the State (as the case may be) unless otherwise expressly permitted under this Agreement.

## 22.2 Exceptions to confidentiality

- (a) Clause 22.1 will not apply in the following circumstances:
  - (i) any disclosure required by Law, securities exchange or legally binding approval;
  - (ii) in respect of information already in the public domain (other than as a result of breach of this Agreement);
  - (iii) any disclosure required by any applicable stock or securities exchange listing rules;
  - (iv) any disclosure to the parent or ultimate holding company of the party, but only to the extent that the parent or ultimate holding company:
    - (A) requires that information for corporate governance purposes; and
    - (B) agrees that it will only use the information for corporate governance purposes;
  - (v) disclosure to lawyers or other professional advisers under a duty of confidentiality;
  - (vi) disclosure to a banker or other financial institution relevant to a party, to the extent required for the purpose of raising funds or maintaining compliance with credit arrangements, if the banker or financial institution first gives a binding covenant to Intralot and/or the Minister (as the case may be) to maintain confidentiality of the information, in form and substance satisfactory to Intralot and/or the Minister (as the case may be);
  - (vii) disclosure in order for an Agent or Contractor to perform their obligations under the Act or this Agreement provided that that Agent or Contractor first gives a binding covenant to maintain confidentiality of the information, in a form and substance satisfactory to Intralot and/or the Minister (as the case may be); or
  - (viii) any disclosure to the State or to the Commission.

## 23. Privacy

In performing their obligations in this Agreement, Crown and its Representatives must comply with the Australian Privacy Principles in the *Privacy Act 1988 (C'th)*.

## **24. Indemnity by Crown**

### **24.1 Crown's acknowledgement**

Crown acknowledges and agrees that:

- (a) Crown is facilitating the provision of Pre-Commitment Services to Players at Crown Casino through the Crown Pre-Commitment Module;
- (b) Crown is wholly responsible, at its cost and expense, for the continuing operation, service and maintenance of the Crown Pre-Commitment Module and the Communications Link; and
- (c) in order to facilitate the provision of Pre-Commitment Services at Crown Casino the Crown Pre-Commitment Module must communicate with the Pre-Commitment System via the Communications Link.

### **24.2 Indemnity**

- (a) Subject to sub-section b), Crown indemnifies Intralot and Crown must keep Intralot indemnified against any Claim, Loss or Liability whatsoever suffered by Intralot, which arises either directly or indirectly from any failure in the operation of the Crown Pre-Commitment Module, the Communications Link or the provision of Pre-Commitment Services at Crown Casino which is caused by Crown and which Intralot suffers as the licensed provider of the Pre-Commitment Services in Victoria.
- (b) The indemnity in sub-section a) does not apply to the extent that Intralot caused such Claim, Loss or Liability.

### **24.3 Survival**

The indemnity in this clause 24 is a continuing indemnity and it survives the frustration, rescission, suspension, termination, cancellation, surrender or expiration of this Agreement.

## **25. Exclusion of Liability**

### **25.1 Exclusion**

Other than as set out in the Act and this Agreement, Intralot, the State, the Commission and any Monitoring Services Providers (and any of their respective Representatives) have no liability to Crown (or its Representatives) for a failure in the operation of the Pre-Commitment System, the Crown Pre-Commitment Module or the provision of Pre-Commitment Services.

## **26. Dispute Resolution**

### **26.1 Dispute Process**

- (a) If a dispute arises between Crown and Intralot in relation to a matter arising under this Agreement (which must not be vexatious, frivolous or an abuse of process), the party claiming that there is a dispute must notify the other party in writing, setting out the date of the notice and with adequate details and nature of the dispute (**Dispute Notice**).

- (b) If a Dispute Notice is issued under this clause, the parties must negotiate in good faith and attempt to resolve the dispute as soon as possible. The parties must meet within 10 Business Days after a party receives, or is deemed to receive, a Dispute Notice for this purpose.
- (c) If either party reasonably requests further information from the other party in relation to the Dispute Notice, the other party must provide that information as soon as possible and, in any event, within 5 Business Days after the request is made.
- (d) For the avoidance of doubt, despite the initiation of a dispute under this Agreement Crown must pay and continue to pay all amounts due and payable to Intralot for the provision of Pre-Commitment Services that are not the subject of the Dispute Notice and Intralot must continue to provide Pre-Commitment Services to Crown during this time.
- (e) If the parties are unable to resolve the dispute the subject of the Dispute Notice within 15 Business Days after a party receives a Dispute Notice, the dispute may be referred by either party to an independent expert selected by agreement between the parties (**Independent Expert**) for a binding determination.
- (f) If the parties are not able to agree on the appointment of the Independent Expert within 5 Business Days, the party referring the dispute must arrange for an Independent Expert to be appointed by the President or Chief Executive Officer for the time being of the Law Institute of Victoria.
- (g) The Independent Expert must be requested to determine any dispute within 10 Business Days after the date of the Independent Expert's appointment.
- (h) The determination by the Independent Expert will be final and binding on the parties subject to the Act and the Monitoring Licence.

## 26.2 Performance of obligations

The existence of a dispute or the issues of a Dispute Notice does not affect the obligations of the parties to perform their respective obligations under this Agreement. The parties must continue to perform such obligations notwithstanding the issue of a Dispute Notice and the commencement of the processes contemplated by this clause 26.

## 26.3 General

- (a) Subject to paragraph (b), a party may not bring court proceedings in respect of any dispute unless it first complies with the requirements of this clause 26.
- (b) Nothing in this clause will prevent either party from instituting court proceedings to seek urgent injunctive, interlocutory or declaratory relief in respect of a dispute.

## **27. Termination**

### **27.1 Breach**

A Party may terminate this Agreement immediately by giving written notice to the other Party if:

- (a) an Insolvency Event occurs in respect of the other party; and
- (b) the other party commits a breach of this Agreement and fails to rectify that breach within 15 Business Days of receiving written notice from the non-defaulting Party setting out the particulars of the breach.

### **27.2 Termination Procedures**

If this Agreement terminates under clause 27.1, then in addition to any other rights provided by Law:

- (a) each Party is released from its obligations under this Agreement except those specified in clause 30.5; and
- (b) a Party retains the rights it has against the other Party in respect of any past breach.

### **27.3 Failure of Other Party**

A Party that is in breach of this Agreement will be taken not to be in breach of this Agreement to the extent that the breach arises or subsists solely because of the failure of the other Party to perform one or more of its obligations under this Agreement.

## **28. GST**

### **28.1 Interpretation**

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

### **28.2 Consideration GST Exclusive**

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

### **28.3 Payment of GST**

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

**28.4 Timing of GST Payment**

The recipient will pay the amount referred to in clause 28.3 in addition to and at the same time that the consideration for the supply is to be provided under this Agreement.

**28.5 Tax Invoice**

The Supplier must deliver a tax invoice or an adjustment note to the recipient before the Supplier is entitled to payment of an amount under clause 28.3. The recipient can withhold payment of the amount until the Supplier provides a tax invoice or an adjustment note, as appropriate.

**28.6 Adjustment Event**

If an adjustment event arises in respect of a taxable supply made by a Supplier under this Agreement, the amount payable by the recipient under clause 28.3 will be recalculated to reflect the adjustment event and a payment will be made by the recipient to the Supplier or by the Supplier to the recipient as the case requires.

**28.7 Reimbursements**

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

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

**28.8 No merger**

This clause 28 does not merge in the completion or termination of this Agreement or on the transfer of the property supplied under this Agreement.

**29. Force majeure****29.1 Notice**

- (a) If a party to this Agreement is of the opinion that a Force Majeure Event has occurred it will immediately advise the other party and the Commission in writing of that occurrence.
- (b) The affected party must give the other party and the Commission a written notice, within 2 Business Days after it forms the opinion that the Force Majeure Event has occurred, which must include full particulars of all relevant matters including:
  - (i) details of the Force Majeure Event;
  - (ii) details of the obligations affected;



- (iii) details of the action that the affected party has taken and proposes to take to avoid or minimise the consequences of the Force Majeure Event;
- (iv) an estimate of the timing during which the affected party will be unable to carry out the affected obligations due to the Force Majeure Event;
- (v) an estimate of the costs that the affected party would incur to remedy the situation were it able to do so; and
- (vi) details of all insurance moneys on which the affected party may be able to rely in making good any damage caused by the Force Majeure Event.

## 29.2 Actions after Force Majeure Notice

After the affected party gives a Force Majeure Notice it will:

- (a) continue to provide the other party and the Commission with all relevant information relating to the Force Majeure Event; and
- (b) promptly take proper and reasonable steps (including expenditure of money, rescheduling of manpower and resources and implementing appropriate temporary measures) to remedy, avoid or minimise the consequences of the Force Majeure Event.

## 29.3 Meeting

- (a) The parties and the Commission will meet within 2 Business Days of service of a Force Majeure Notice to discuss and agree the consequences of the Force Majeure Event including:
  - (i) whether the Force Majeure Event will delay or prevent or impair the affected party's ability to provide the Pre-Commitment Services and, if so, by how long;
  - (ii) how long it is estimated that the Force Majeure Event will continue;
  - (iii) what obligations of the affected party (if any) will be affected by the Force Majeure Event; and
  - (iv) whether the Force Majeure Event is covered by insurance.
- (b) The parties must attend such other meetings as are requested by the State in relation to any Force Majeure Event.

## 29.4 Suspension of Obligations

- (a) The obligations of each party under this Agreement that are affected by the Force Majeure Event will be suspended, but only to the extent that the Force Majeure Event prevents that party from meeting its obligations in a timely manner under this Agreement;
- (b) Any suspension of obligations under clause 29.4(a) will immediately terminate on the later of:

- (i) cessation of the Force Majeure Event; or
- (ii) cessation of the impact of the Force Majeure Event on the affected party's performance or the time when that impact should have ceased to prevent performance if clause 29.2(b) were observed by the affected party.

### **29.5 Force Majeure Ceases**

When the period of suspension of performance of obligations affected by the Force Majeure Event ceases in accordance with clause 29.4(b), the affected party will promptly notify the other party and the Commission to that effect, and the affected party will immediately recommence performance of all obligations that were suspended under clause 29.4(a).

### **29.6 Costs of Force Majeure**

Unless otherwise expressly provided in this Agreement, each party will bear its own costs incurred as a result of the occurrence of a Force Majeure Event.

## **30. Miscellaneous**

### **30.1 Severability**

If anything in this Agreement is unenforceable, illegal or void then it is severed to the extent necessary to give this Agreement full force and effect and the remainder of this Agreement remains in force and effect.

### **30.2 Variation**

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

### **30.3 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.

### **30.4 Governing Law and jurisdiction**

The Law of Victoria governs this Agreement. The parties submit to the non-exclusive jurisdiction of the courts of Victoria, the courts of appeal from them and of the Commonwealth of Australia.

### **30.5 Surviving provisions**

- (a) An indemnity given under this Agreement survives the frustration, rescission, suspension, termination, cancellation, surrender or expiration of this Agreement.
- (b) All clauses that by their nature survive expiration or termination of this Agreement will remain in full force, which include without limitation and for

the avoidance of doubt, clauses 1.1, 1.2, 1.3, 3, 4, 7, 8, 13, 17, 18, 19, 20, 21, 22, 24, 25, 26, 30.4, 30.5, 30.9 and 31.

- (c) Any rights or obligations accrued prior to the frustration, rescission, suspension, cancellation, surrender, termination or expiration of this Agreement survive such frustration, rescission, suspension, termination or expiration.
- (d) The dispute resolution procedures in clause 26 survive frustration, rescission, suspension, cancellation, surrender, termination or expiration of this Agreement.

### **30.6 Cost of performing obligations**

A party who has an obligation to do anything under this Agreement must perform that obligation at its own cost and expense, unless a provision of this Agreement expressly provides otherwise.

### **30.7 Further assurance**

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

### **30.8 Counterparts**

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

### **30.9 Time is of the essence**

Time is of the essence of this Agreement.

### **30.10 Electronic delivery of documents**

If a party delivers an executed counterpart of this Agreement or any other document executed in connection with it (**Relevant Document**) by facsimile or other electronic means:

- (a) the delivery will be deemed to be an effective delivery of an originally executed counterpart; and
- (b) the party will still be obliged to deliver an originally executed counterpart, but the failure to do so will not affect the validity or effectiveness of the Relevant Document.

## **31. Notices**

- (a) Any communication under or in connection with this Agreement:
  - (i) must be in writing;
  - (ii) subject to clause 31(b), must be addressed as shown in Schedule 1;
  - (iii) must be signed by the party making the communication;

**28.4 Timing of GST Payment**

The recipient will pay the amount referred to in clause 28.3 in addition to and at the same time that the consideration for the supply is to be provided under this Agreement.

**28.5 Tax Invoice**

The Supplier must deliver a tax invoice or an adjustment note to the recipient before the Supplier is entitled to payment of an amount under clause 28.3. The recipient can withhold payment of the amount until the Supplier provides a tax invoice or an adjustment note, as appropriate.

**28.6 Adjustment Event**

If an adjustment event arises in respect of a taxable supply made by a Supplier under this Agreement, the amount payable by the recipient under clause 28.3 will be recalculated to reflect the adjustment event and a payment will be made by the recipient to the Supplier or by the Supplier to the recipient as the case requires.

**28.7 Reimbursements**

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

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

**28.8 No merger**

This clause 28 does not merge in the completion or termination of this Agreement or on the transfer of the property supplied under this Agreement.

**29. Force majeure****29.1 Notice**

- (a) If a party to this Agreement is of the opinion that a Force Majeure Event has occurred it will immediately advise the other party and the Commission in writing of that occurrence.
- (b) The affected party must give the other party and the Commission a written notice, within 2 Business Days after it forms the opinion that the Force Majeure Event has occurred, which must include full particulars of all relevant matters including:
  - (i) details of the Force Majeure Event;
  - (ii) details of the obligations affected;

- (iii) details of the action that the affected party has taken and proposes to take to avoid or minimise the consequences of the Force Majeure Event;
- (iv) an estimate of the timing during which the affected party will be unable to carry out the affected obligations due to the Force Majeure Event;
- (v) an estimate of the costs that the affected party would incur to remedy the situation were it able to do so; and
- (vi) details of all insurance moneys on which the affected party may be able to rely in making good any damage caused by the Force Majeure Event.

## 29.2 Actions after Force Majeure Notice

After the affected party gives a Force Majeure Notice it will:

- (a) continue to provide the other party and the Commission with all relevant information relating to the Force Majeure Event; and
- (b) promptly take proper and reasonable steps (including expenditure of money, rescheduling of manpower and resources and implementing appropriate temporary measures) to remedy, avoid or minimise the consequences of the Force Majeure Event.

## 29.3 Meeting

- (a) The parties and the Commission will meet within 2 Business Days of service of a Force Majeure Notice to discuss and agree the consequences of the Force Majeure Event including:
  - (i) whether the Force Majeure Event will delay or prevent or impair the affected party's ability to provide the Pre-Commitment Services and, if so, by how long;
  - (ii) how long it is estimated that the Force Majeure Event will continue;
  - (iii) what obligations of the affected party (if any) will be affected by the Force Majeure Event; and
  - (iv) whether the Force Majeure Event is covered by insurance.
- (b) The parties must attend such other meetings as are requested by the State in relation to any Force Majeure Event.

## 29.4 Suspension of Obligations

- (a) The obligations of each party under this Agreement that are affected by the Force Majeure Event will be suspended, but only to the extent that the Force Majeure Event prevents that party from meeting its obligations in a timely manner under this Agreement;
- (b) Any suspension of obligations under clause 29.4(a) will immediately terminate on the later of:

- (i) cessation of the Force Majeure Event; or
- (ii) cessation of the impact of the Force Majeure Event on the affected party's performance or the time when that impact should have ceased to prevent performance if clause 29.2(b) were observed by the affected party.

### **29.5 Force Majeure Ceases**

When the period of suspension of performance of obligations affected by the Force Majeure Event ceases in accordance with clause 29.4(b), the affected party will promptly notify the other party and the Commission to that effect, and the affected party will immediately recommence performance of all obligations that were suspended under clause 29.4(a).

### **29.6 Costs of Force Majeure**

Unless otherwise expressly provided in this Agreement, each party will bear its own costs incurred as a result of the occurrence of a Force Majeure Event.

## **30. Miscellaneous**

### **30.1 Severability**

If anything in this Agreement is unenforceable, illegal or void then it is severed to the extent necessary to give this Agreement full force and effect and the remainder of this Agreement remains in force and effect.

### **30.2 Variation**

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

### **30.3 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.

### **30.4 Governing Law and jurisdiction**

The Law of Victoria governs this Agreement. The parties submit to the non-exclusive jurisdiction of the courts of Victoria, the courts of appeal from them and of the Commonwealth of Australia.

### **30.5 Surviving provisions**

- (a) An indemnity given under this Agreement survives the frustration, rescission, suspension, termination, cancellation, surrender or expiration of this Agreement.
- (b) All clauses that by their nature survive expiration or termination of this Agreement will remain in full force, which include without limitation and for

the avoidance of doubt, clauses 1.1, 1.2, 1.3, 3, 4, 7, 8, 13, 17, 18, 19, 20, 21, 22, 24, 25, 26, 30.4, 30.5, 30.9 and 31.

- (c) Any rights or obligations accrued prior to the frustration, rescission, suspension, cancellation, surrender, termination or expiration of this Agreement survive such frustration, rescission, suspension, termination or expiration.
- (d) The dispute resolution procedures in clause 26 survive frustration, rescission, suspension, cancellation, surrender, termination or expiration of this Agreement.

### **30.6 Cost of performing obligations**

A party who has an obligation to do anything under this Agreement must perform that obligation at its own cost and expense, unless a provision of this Agreement expressly provides otherwise.

### **30.7 Further assurance**

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

### **30.8 Counterparts**

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

### **30.9 Time is of the essence**

Time is of the essence of this Agreement.

### **30.10 Electronic delivery of documents**

If a party delivers an executed counterpart of this Agreement or any other document executed in connection with it (**Relevant Document**) by facsimile or other electronic means:

- (a) the delivery will be deemed to be an effective delivery of an originally executed counterpart; and
- (b) the party will still be obliged to deliver an originally executed counterpart, but the failure to do so will not affect the validity or effectiveness of the Relevant Document.

## **31. Notices**

- (a) Any communication under or in connection with this Agreement:
  - (i) must be in writing;
  - (ii) subject to clause 31(b), must be addressed as shown in Schedule 1;
  - (iii) must be signed by the party making the communication;

- (iv) must be delivered or posted by prepaid post to the address, or sent by fax to the number, of the addressee, in accordance with clause 31(a)(ii); and
- (v) will be deemed to be received by the addressee:
  - (A) (in the case of prepaid post) on the second Business Day after the date of posting;
  - (B) (in the case of fax) at the local time (in the place of receipt of that fax) which then equates to the time at which the fax is sent as shown on the transmission report which is produced by the machine from which that fax is sent and which confirms transmission of that fax in its entirety unless that local time is a non-Business Day, or is after 5.00pm on a Business Day, in which case that communication will be deemed to have been received at 9.00am on the next Business Day; and
  - (C) (in the case of delivery by hand) on delivery at the address of the recipient as provided in clause 31(a), unless that delivery is made on a non-Business Day, or after 5.00pm on a Business Day, in which case that delivery will be deemed to have been received at 9.00am on the next Business Day.
- (b) Either party may amend their address for service by giving notice to the other.



**Signing Page**

**EXECUTED** as an Agreement

**SIGNED by INTRALOT GAMING SERVICES PTY LTD** (ABN 93 136 875 673) in accordance with section 127 of the *Corporations Act 2001* (Cth):

[Redacted Signature]

Director

**PETER DAVID SIDWELL**

[Redacted Signature]

Secretary

**NICHOLAS H R HARRISON**

**SIGNED by**

as attorney for **CROWN MELBOURNE LIMITED** (ABN 46 006 973 262) under power of attorney dated 26 July 2013 in the presence of

[Redacted Signature]

Signature of witness

*NICOLA K. WENDT*

Name of witness (please print)

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)  
)  
)

[Redacted Signature]

Signature of attorney