

Dated 3 September 2014

**THE HONOURABLE EDWARD O'DONOHUE, MLC**

**-and-**

**CROWN MELBOURNE LIMITED**

**(ACN 006 973 262)**

**MELBOURNE CASINO PROJECT**

**TENTH DEED OF VARIATION TO THE MANAGEMENT AGREEMENT**

## TENTH DEED OF VARIATION TO THE MANAGEMENT AGREEMENT

### MELBOURNE CASINO PROJECT

DEED dated 3 September 2014

#### BETWEEN:

**THE HONOURABLE EDWARD O'DONOHUE MLC**, the Minister of the Crown for the time being administering the *Casino Control Act 1991* acting for and on behalf of the State of Victoria ("**State**")

#### AND

**CROWN MELBOURNE LIMITED ACN 006 973 262** with its registered office at 8 Whiteman Street, Southbank, Victoria ("**Company**")

#### RECITALS

- A. The State and the Company entered into an agreement dated 20 September 1993 ratified by and scheduled to the *Casino (Management Agreement) Act 1993* ("**Management Agreement**").
- B. The Management Agreement has been varied by:
- (a) a deed of variation dated 14 November 1994 ratified by and scheduled to the *Casino (Management Agreement) (Amendment) Act 1994* and inserted as Schedule 2 to the *Casino (Management Agreement) Act 1993*;
  - (b) a deed of variation dated 12 October 1995 ratified by and scheduled to the *Casino (Management Agreement) (Further Amendment) Act 1995* and inserted as Schedule 3 to the *Casino (Management Agreement) Act 1993*;
  - (c) a deed of variation dated 3 June 1996 ratified by the *Gaming Acts (Amendment) Act 1996* and inserted as Schedule 4 to the *Casino (Management Agreement) Act 1993*;
  - (d) a deed of variation dated 7 November 1996 ratified by the *Casino (Management Agreement) (Amendment) Act 1996* and inserted as Schedule 5 to the *Casino (Management Agreement) Act 1993*;
  - (e) a deed of variation dated 1 October 1998 ratified by the *Gaming Acts (Further Amendment) Act 1998* and inserted as Schedule 6 to the *Casino (Management Agreement) Act 1993*;
  - (f) a deed of variation dated 3 April 2000 ratified by the *National Taxation Reform (Further Consequential Provisions) Act 2000* and inserted as Schedule 7 to the *Casino (Management Agreement) Act 1993*;

- (g) a deed of variation dated 7 May 2002 ratified by the *Casino (Management Agreement) (Amendment) Act 2002* and inserted as Schedule 8 to the *Casino (Management Agreement) Act 1993*;
  - (h) a deed of variation dated 8 July 2005 ratified by the *Casino Control (Amendment) Act 2005* and inserted as Schedule 9 to the *Casino (Management Agreement) Act 1993*;
  - (i) a deed of variation dated 4 June 2009 ratified by the *Casino (Management Agreement) (Amendment) Act 1994* and inserted in Schedule 10 to the *Casino (Management Agreement) Act 1993*.
- C. The parties have agreed to further vary the Management Agreement as provided in this Deed of Variation.

## AGREEMENT

### 1. Definitions

Unless the context otherwise requires or the contrary intention appears, terms defined in the *Casino Control Act 1991* or the Management Agreement have the same meaning when used in this Deed.

### 2. Ratification and operation of provisions

2.1 A Minister of the State must as soon as reasonably practicable after the execution of this Deed introduce and sponsor a Bill in the Parliament of Victoria to:

- (a) ratify this Deed;
- (b) amend the *Casino Control Act 1991* to permit the increase in the maximum number of gaming machines available for gaming at any time while the Melbourne Casino is open for business as set out in clause 2.2(b)(ii) of this document;
- (c) extend the date upon which the Casino Licence ceases to have effect to 18 November 2050; and
- (d) make ancillary amendments to other legislation.

2.2 This Deed (other than clauses 1, 2, 5 and 7 which are effective on and from the date of this Deed) shall come into operation once all the following have occurred:

- (a) the Bill referred to in clause 2.1 has come into operation as an Act; and
- (b) the following amendments to the Casino Licence take effect:
  - (i) amendments to clause 8 (a) of the Casino Licence to:

- (A) increase the maximum number of gaming tables in operation and available for the playing of Table Games at any time while the Melbourne Casino is open for business from 400 to 440; and
- (B) increase the number of stations connected to any Fully Automated Table Games from 200 to 250 stations in operation and available for gaming at any time while the Melbourne Casino is open for business;
- (ii) an amendment to clause 8(c) of the Casino Licence to increase the maximum number of gaming machines available for gaming at any time while the Melbourne Casino is open for business from 2,500 to 2,628; and
- (c) an amended Casino Licence is provided to the Company that reflects the extension of the Casino Licence referred to in clause 2.1 (c),

(the date on which the last of those to occur being the "**Operative Date**").

### 3. Variation of Management Agreement

3.1 The Management Agreement is varied from the Operative Date so that:

- (a) all references to "Crown Casino Ltd" are replaced by references to "Crown Melbourne Ltd";
- (b) all references to the *Gaming Machine Control Act 1991* are replaced by references to the *Gambling Regulation Act 2003*;
- (c) in clause 2:
  - (i) the definition of "Authority" is replaced by the following definition:

"**Authority**" means the Victorian Commission for Gambling and Liquor Regulation;
  - (ii) the definition of "Casino Licence" is amended to include the words "as varied from time to time" after the words "Casino Agreement";
  - (iii) in clause 2 the following new definitions are inserted in alphabetical order:

"**Tenth Deed of Variation**" means the Tenth Deed of Variation to the Management Agreement between the State and the Company dated on or about 1 September 2014;

"**Tenth Variation Commencement Date**" has the same meaning as the term "Operative Date" in the Tenth Deed of Variation to the Management Agreement;
- (d) new clauses 21A, 21B and 21C are inserted as follows:

**"21A Further payments**

The Company will make the following payments to the State:

- (a) \$250,000,000, payable within seven (7) days after the Tenth Variation Commencement Date; and
- (b) \$250,000,000, payable on 1 July 2033.

**21B Contingent payments**

- (a) In addition to the payments referred to in clause 21A, the Company will pay to the State the following additional amounts on 1 September 2022:
  - (i) if the Compound Annual Growth Rate of Normalised Gaming Revenue from the Financial Year ending 30 June 2014 to the Financial Year ending 30 June 2022 exceeds 4.0%, then the Company will pay to the State an amount of \$100,000,000; and
  - (ii) if the Compound Annual Growth Rate of Normalised Gaming Revenue from the Financial Year ending 30 June 2014 to the Financial Year ending 30 June 2022 exceeds 4.7%, then the Company will pay to the State, in addition to the payment referred to in sub-paragraph (a)(i), a further amount of \$100,000,000.
- (b) In this clause 21B:
  - (i) **"Compound Annual Growth Rate"** is calculated as follows (and expressed as a percentage):

$$(\text{Ending Value}/\text{Beginning Value})^{1/8} - 1$$

Where:

Ending Value is the Normalised Gaming Revenue for the Financial Year ending 30 June 2022; and

Beginning Value is the Normalised Gaming Revenue for the Financial Year ending 30 June 2014;

- (ii) **"Normalised Gaming Revenue"** means Gross Gaming Revenue, plus Normalised Revenue from Commission Based Play; and
  - (iii) **"Normalised Revenue from Commission Based Play"** means the total turnover from Commission Based Players, multiplied by 1.35%.
- (c) The State may request details from the Company of the total turnover from Commission Based Players at any time (but no more frequently than twice in any one year). The Company must provide such details promptly following the request.

## 21C Interest

21C.1 The amounts referred to in clauses 21A and 21B must be paid in same day settlement funds before 2.00pm on the due date.

21C.2 If the Company fails to pay any amount due under clause 21A or clause 21B by the due date, without prejudice to any other right or remedy arising because of that failure, the Company must pay to the State interest (calculated daily) on the amount in default (including accrued interest) at the Default Rate for the period from the due date until the amount due and all interest payable has been paid."

(e) a new clause 22.10 is inserted as follows:

- "22.10
- (a) Gross Gaming Revenue and Commission Based Players' Gaming Revenue from New Gaming Product must be separately accounted for by the Company and verified by the Authority.
  - (b) If casino tax paid to the State in accordance with clauses 22.1(b)(iii), 22.1(f) and 22A.1 in respect of Gross Gaming Revenue and Commission Based Players' Gaming Revenue from New Gaming Product in any Financial Year during the Guarantee Period is less than \$35,000,000, the Company must pay to the State within 60 days following the end of that Financial Year, as additional casino tax, an amount equal to \$35,000,000 less the casino tax paid in respect of Gross Gaming Revenue and Commission Based Players' Gaming Revenue from New Gaming Product for that Financial Year.
  - (c) New Gaming Product will be deployed throughout the Guarantee Period at the Melbourne Casino on the following basis:
    - (i) no less than 80 per cent of the new gaming machines will be placed in Non-VIP areas and no less than 75 per

cent of those new gaming machines placed in Non-VIP areas will be operated in Restricted Mode only;

- (ii) no less than 75 per cent of the new Gaming Tables will be placed in Non-VIP areas and all of the remaining new Gaming Tables will be placed in Non-smoking areas within the VIP areas; and
- (iii) 100 per cent of the additional stations connected to Fully Automated Table Games will be placed in Non-VIP areas.

In this clause 22.10:

**"Fully Automated Table Game"** has the same meaning as in the Casino Licence;

**"Gaming Table"** has the same meaning as in the Casino Licence;

**"Guarantee Period"** means the period from 1 July 2015 to 30 June 2021;

**"New Gaming Product"** means the new gaming products permitted to be installed as a consequence of the amendments to the Casino Licence referred to in clause 2.2(b) of the Tenth Deed of Variation and does not include any gaming product installed at the Melbourne Casino as at the Tenth Variation Commencement Date;

**"Non-smoking areas"** means all areas of the Melbourne Casino except those areas declared pursuant to section 3E of the *Tobacco Act 1987* as smoking areas;

**"Non-VIP areas"** means all areas of the Melbourne Casino except VIP areas;

**"Restricted Mode"** means the usual mode of operation of a gaming machine that is not operating in Unrestricted Mode;

**"Semi Automated Table Game"** has the same meaning as in the Casino Licence;

**"Unrestricted Mode"** means the mode of operation of a gaming machine operated at the Melbourne Casino within "Specified Areas" pursuant to the notice issued by the Authority dated 17 August 2012 and permitted pursuant to Ministerial Directions dated 17 August 2012 issued under section 3.2.3 (1) of the *Gambling Regulation Act 2003*;

**"VIP areas"** means those areas in the Melbourne Casino reserved for the use of Commission Based Players and certain designated members of the Company's complex wide loyalty program and guests and

comprising as at the Tenth Variation Commencement Date those areas known as "Teak Room", "Mahogany Room", "Riverside Slots" and the private salons on levels 29 and 39 of "Crown Towers".

- (f) clauses 22A.4 to 22A.9 (inclusive) are deleted in their entirety;
- (g) a new Part 5A is inserted as follows:

#### **"PART 5A – REGULATORY CERTAINTY**

24A.1 In this clause 24A and Annexure 1 the following terms have the meanings indicated:

**"Expert"** means a partner or director of an independent, internationally recognised chartered accounting firm or investment bank (or other professional organisation agreed by the parties) which is not the then current auditor of the Company or the Authority or (unless otherwise agreed) has not been during the past twelve month period an adviser to Crown, the Authority, the Department of Treasury and Finance or the Department of Justice (in relation to gambling matters) and who has experience of the gaming industry;

**"Senior Management Representative"** means:

- (a) in the case of the State, the representative from time to time nominated by the Minister of the Crown for the time being administering the Casino Control Act; and
- (b) in the case of the Company, the Chief Executive Officer of the Company, or if that position does not exist, a position of equivalent seniority or higher;

**"Trigger Event"** has the meaning given in section 1 of Annexure 1.

- 24A.2
- (a) The State or the Authority must not without the Company's prior written consent, take any action or series of actions that has or will have the effect of:
    - (i) cancelling or varying the Casino Licence, other than the revocation, termination, suspension or variation by the Authority of the Casino Licence in accordance with section 20 of the Casino Control Act (except where the Authority is relying on section 20(1)(e) of the Casino Control Act as a ground for disciplinary action);
    - (ii) increasing the then current rates of casino tax (or any part of it) such that the increased rate exceeds the rate of that casino tax (or part of it) set out in this Agreement as at the date of the Tenth Deed of



- Variation or such higher rate as may be agreed by the parties from time to time;
  - (iii) imposing any new tax or increasing any tax (including levies or similarly described payments) on the Company, except where such new or increased tax:
    - (A) applies generally to Victorian businesses or property owners or occupiers;
    - (B) applies generally to businesses or property owners or occupiers in the Melbourne CBD or a similar geographic location (but is not specifically directed at the Company or the Melbourne Casino Complex); or
    - (C) applies generally to businesses in the hospitality industry (including non-gaming businesses).
  - (b) The State acknowledges that the Company will suffer loss and damage in the event of breach of paragraph (a) and the State and the Company acknowledge that the ordinary principles for breach of contract apply.
- 24A.3 The State and the Company agree that certain other actions or series of actions by the State or the Authority may give rise to compensation being payable by the State to the Company.
- 24A.4 The actions or series of actions by the State and/or the Authority referred to in clause 24A.3 and the principles and process for determining the amount of compensation payable (if any) are set out in Annexure 1.
- 24A.5 If any variation of the Casino Licence constitutes a Trigger Event, the Company will not be entitled to bring or maintain a claim for breach of clause 24A.2 in respect of that variation.
- 24A.6 (a) For the avoidance of doubt, for the purposes of this clause 24A and Annexure 1, the State does not include the Commonwealth, local government or any Commonwealth or local government authority or body.
- (b) For the avoidance of doubt, no damages for breach of clause 24A.2 or compensation under clause 24A.3 and Annexure 1 will be due or payable by the State or the Authority with respect to:
- (i) the granting of one or more casino licences or similar authorities to any person or persons other than the

Company or the granting of licences or authorities permitting the operation or playing of gaming product to any person or persons other than the Company; or

- (ii) action or actions necessary to put in place the Victorian government's current state-wide voluntary pre-commitment system, including the prohibition of any alternative limit setting system (which, for the avoidance of doubt, includes the Company's existing loss and time limit setting system known as "Play Safe") from 1 December 2015."

- (i) A new Annexure 1 is inserted in the form of Annexure 1 to this Deed.
- (j) sub-paragraphs 32.1(b)(i) and (ii) are deleted in their entirety and replaced with the following:

- "(i) in the case of the State-  
The Secretary to the Department of Treasury and Finance  
1 Treasury Place  
MELBOURNE VIC 3000

Facsimile: (03) 9651 6228

with a copy to the Authority-

Chairman  
Victorian Commission for Gambling and Liquor Regulation  
49 Elizabeth Street  
RICHMOND VIC 3121

Facsimile: (03) 9651 3777

- (ii) in the case of the Company-

Chief Executive Officer  
Crown Melbourne Ltd.  
8 Whiteman Street  
SOUTHBANK VIC 3006

Facsimile: (03) 9292 7041"

- 3.2 The Company will not be required to make any payment in respect of any accrued liability under clauses 22A.4 to 22A.9 (inclusive) in respect of the period from 1 July 2014 to the Operative Date.

#### 4. Previous agreement

On and from the Operative Date, this Deed supersedes all previous agreements or understandings between the parties in connection with its subject matter, other than any

confidentiality undertakings made by any party in favour of the other, which remain in force in accordance with their terms.

**5. Force Majeure Event**

None of the negotiation, preparation and execution of this Deed, its ratification under clause 2 or any of the circumstances relating to or giving rise to the creation of this Deed has or will cause or create any Government Action, Force Majeure Event or breach of obligation under any Transaction Document and the Company and the State so acknowledge.

**6. Confirmation of other terms**

The parties acknowledge and confirm that except as varied by this Deed the terms and conditions of the Management Agreement remain in full force and effect.

**7. General provisions**

Clauses 33 and 35 to 40 (inclusive) of the Management Agreement apply to this Deed as if expressly included in this Deed.

**EXECUTED AS A DEED.**

**SIGNED SEALED AND DELIVERED** )  
by **THE HONOURABLE** )  
**EDWARD O'DONOHUE MLC** )  
Minister for Liquor and Gaming )  
Regulation for and on behalf )  
of the State of Victoria in the presence )  
of: **Confidential**

(Signature **Confidential**)  
.....  
.....

**EDWARD O'DONOHUE MLC**

(Signature)  
.....  
Name of w

**Confidential**

**EXECUTED** in accordance with section )  
127 of the *Corporations Act 2001* by )  
**CROWN MELBOURNE LIMITED** )  
(ACN 006 973 262): )

(Signature) **Confidential**  
.....  
Name: Rowen Craigie

Director **Confidential**  
(Signature) **Confidential**  
.....  
Name: Debra Tegoni

Secretary

## Annexure 1

### Regulatory Certainty

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#### 1. Regulatory Events

- 1.1 Compensation is payable by the State to the Company if, after the date of the Tenth Deed of Variation, during the term of the Casino Licence, and without the Company's prior written consent, the State or the Authority or any State authority or State body takes any action or series of actions which has the effect of:
- (a) removing, reducing, amending or rendering ineffective (partially or wholly) the then current exemption from the prohibition on smoking within the VIP areas at the Melbourne Casino Complex (being, as at the Tenth Variation Commencement Date, those areas declared pursuant to section 3E of the *Tobacco Act 1987* as smoking areas) (except where all other Australian State and Territory Governments have taken substantially the same action or series of actions); or
  - (b) adversely impacting the earnings before interest, taxes, depreciation and amortisation ("**EBITDA**") of the Company by:
    - (i) reducing any maximum bets on Table Games, Semi Automated Table Games and Fully Automated Table Games or gaming machines (except where all other Australian State and Territory Governments have taken substantially the same action or series of actions);
    - (ii) removing, reducing in number or amending or restricting the then current manner in which gaming machines in unrestricted mode within the Melbourne Casino are permitted to operate;
    - (iii) removing, reducing in number or restricting or amending the then current manner in which Automated Teller Machines are permitted to operate within the Melbourne Casino Complex (except where all other Australian State and Territory Governments have taken substantially the same action or series of actions);
    - (iv) introducing any form of mandatory pre-commitment other than the requirement for players of gaming machines operating in unrestricted mode to set time and net loss limits using the state-wide pre-commitment system (except where all other Australian State and Territory Governments have introduced mandatory pre-commitment with a similar effect); or
    - (v) restricting or amending the then current manner in which the Company's loyalty scheme is permitted to operate (except where all other Australian State and Territory Governments have taken substantially the same action or series of actions).

(each such action or series of actions is a "**Trigger Event**")

## **2. Methods of Calculating Compensation - Trigger Events**

### **2.1 Calculation of Compensation**

In the event of a Trigger Event, subject to the rest of this clause 2, the Company will be entitled to compensation, calculated as follows:

$$C = (M \times A)$$

Where:

**C** is the amount of compensation;

**A** is the annualised negative impact on the EBITDA of the Company (normalised for a theoretical win rate of 1.35% applied to turnover of Commission Based Players) as a result of the Trigger Event; and

**M** is the multiple applicable at the time the relevant action or the first action in a relevant series of actions by the State or the Authority (or State authority or State body) occurred as set out in the table below:

<b>Financial Year</b>	<b>Multiple (M)</b>
FY15 to FY30 (inclusive)	10.5
FY31	10.0
FY32	9.5
FY33	9.0
FY34	8.5
FY35	8.0
FY36	7.5
FY37	7.0
FY38	6.5
FY39	6.0
FY40	5.5
FY41	5.0
FY42	4.5
FY43	4.0
FY44	3.5
FY45	3.0
FY46	2.5
FY47	2.0
FY48	1.5
FY49	1.0
FY50	0.5

## 2.2 Cap on compensation

- (a) In respect of all Trigger Events occurring in any term of a Victorian Government ("**Term**") the amount of compensation (**C**) will not exceed the cap determined in accordance with paragraph (b) regardless of the number or types of Trigger Events occurring in that Term.
- (b) The cap for the period from the Tenth Variation Commencement Date to 30 June 2015 will be \$200,000,000. On 1 July 2015 and each 1 July thereafter (each being an "**Adjustment Date**"), the cap will be adjusted in accordance with the formula set out below:

$$\text{cap} = \frac{X}{Y} \times Z$$

Where:

- cap is the amount of the cap on and from the Adjustment Date;
- X is the CPI number published for the quarter ending immediately before the Adjustment Date;
- Y is the CPI number published for the quarter ending immediately before the previous Adjustment Date or, where there is no previous Adjustment Date, the quarter ending immediately before the Tenth Variation Commencement Date;
- Z is the amount of the cap calculated in accordance with this formula on the previous Adjustment Date; and
- CPI number is the Consumer Price Index (All Groups for Melbourne) published by the Australian Bureau of Statistics (or any other index published in substitution for this index).

The cap will be adjusted on each Adjustment Date in accordance with this clause 2.2(b) regardless of whether, at any time prior to the Adjustment Date, a claim for compensation has been made by the Company or a payment of compensation has been made by the State.

- (c) The cap that is applicable to any compensation payable in respect of a Trigger Event which occurs in a Term ("**Applicable Cap**") is the cap applicable at the time at which the relevant action or the first of any series of actions which constitutes that Trigger Event occurs.
- (d) If the compensation paid with respect to one or more Trigger Events occurring in a Term equals the Applicable Cap, no further compensation is payable to the Company with respect to any other Trigger Event that occurs during that Term.
- (e) No compensation will be payable in any Term for any action or series of actions which constitutes a Trigger Event which occurred in a prior Term and for which compensation has already been paid (or not paid as a result of the cap). However, for the avoidance of doubt, the amount of compensation payable in respect of Trigger Events which occur during a Term will not be affected by any payment of compensation made in relation to any Trigger Event which occurred during a prior Term.
- (f) For the purposes of this Annexure, the Term of each Victorian Government ends when a new Victorian Government is sworn in following a Victorian general election. For the avoidance of doubt, the Company's entitlement to compensation in relation to Trigger Events which occur in any Term will not be extinguished as a result of a change of government following a Victorian general election.



### 2.3 Exclusions

No compensation will be due or payable to the Company under clause 24A.3 and this Annexure 1 with respect to actions which:

- (a) have an adverse impact on the Company's EBITDA of less than \$1 million per annum as assessed by the Company acting reasonably;
- (b) arise directly from disciplinary action validly taken against the Company; or
- (c) advertise or promote the Victorian government's responsible gambling, responsible service of alcohol or "quit smoking" programs, provided such actions are not targeted solely at the Company.

### 3. Process for Determining Compensation Payable

- (a) Where the Company is entitled to recover any amount (whether by payment, discount, credit or otherwise) from any third party (including from an insurer or under an indemnity or guarantee) in relation to any matter for which a claim for compensation under this Annexure 1 could be made or brought against the State by the Company, the State is nevertheless liable for that Claim (the "Relevant Claim") but, if and to the extent the Relevant Claim is satisfied by the State, the Company must assign to the State the benefit it may receive of any proceeds, debts, claims or other actions from any third party in respect of the Relevant Claim, and otherwise hold such benefit on trust for the State, save where to do so would be contrary to or in breach of the Company's insurer's rights of subrogation.
- (b) The Company is obliged to take all reasonable steps to mitigate any loss that may otherwise arise in relation to any matter or for which a claim for compensation under this Annexure 1 could be made or brought against the State by the Company.
- (c) The Company will not be entitled to make a claim under this Annexure 1 to the extent it has received (or, as a result of the cap, not received) a compensation payment under this Annexure 1 in respect of the same Trigger Event.
- (d) The Company agrees that any compensation payable under this Annexure 1 is the entire remedy for the occurrence of the Trigger Events which may occur and it will not seek any other remedy against the State in connection with the Trigger Events.
- (e) If the Company becomes aware that a Trigger Event has occurred, the Company must promptly provide a written notice to the State which must set out in reasonable detail the Trigger Event and, at any time within 2 years from becoming aware that a Trigger Event has occurred, the Company may provide a written notice ("**Compensation Notice**") to the State which must state that it is a Compensation Notice under this Annexure 1 and set out in reasonable detail:
  - (i) the Trigger Event giving rise to the claim for compensation; and

- (ii) the amount which the Company considers to be the compensation payable ("**Compensation Payable**") by the State to the Company in respect of the relevant Trigger Event.
- (f) Within 3 months after the Company provides the Compensation Notice to the State under clause 3(e), the State must by written notice to the Company, either:
  - (i) accept the amount set out in the Compensation Notice as the "Compensation Payable" in which case that amount will constitute the compensation payable by the State to the Company in respect of the relevant Trigger Event; or
  - (ii) request from the Company such further details in relation to, or clarification of, information provided in the Compensation Notice or the methodology used to determine the amount set out in the Compensation Notices as the "Compensation Payable" as the State may reasonably require to assist the State in understanding the impact of the Trigger Event on the Company's EBITDA or the calculation of the amount set out in the Compensation Notice as the "Compensation Payable"; or
  - (iii) dispute the correctness of the amount set out in the Compensation Notice as the "Compensation Payable" setting out in reasonable detail:
    - (A) the basis on which the State disputes the amount set out in the Compensation Notice as the "Compensation Payable"; and
    - (B) the amount which the State considers to be the Compensation Payable or, if not precisely known, its best estimate of that amount.
- (g) If the State submits a request for further details or clarification under clause 3(f)(ii):
  - (i) the Company must provide such further details or clarification to the extent that it can reasonably do so promptly following the request; and
  - (ii) within 20 Business Days of receipt of the response from the Company, the State must by written notice to the Company, either:
    - (A) accept the amount set out in the Compensation Notice as the "Compensation Payable", in which case that amount will constitute the compensation payable by the State to the Company in respect of the relevant Trigger Event; or
    - (B) dispute the correctness of the amount set out in the Compensation Notice as the "Compensation Payable".
- (h) If the State does not take any of the actions required of it under and within the time frames set out in clause 3(f) and 3(g)(ii), the amount set out in a Compensation Notice as the "Compensation Payable" will constitute the compensation payable by the State to the Company in respect of the relevant Trigger Event.

- (i) If the State issues a notice in accordance with clause 3(f)(iii) or 3(g)(ii)(B) (a "**Compensation Dispute Notice**"):
  - (i) the dispute must be resolved in accordance with the procedure set out in clause 3(j); and
  - (ii) the compensation (if any) payable by the State to the Company in respect of the relevant Trigger Event will be the amount (if any) determined in accordance with clause 3(j).
- (j) If the State issues a Compensation Dispute Notice in accordance with clause 3(f)(iii) or 3(g)(ii)(B) then the following procedure will apply:
  - (i) Within 20 Business Days of the State giving the Compensation Dispute Notice ("**Negotiation Period**"), the Senior Management Representative from each of the parties must meet at least once to attempt to resolve the dispute ("**Dispute**").
  - (ii) The Senior Management Representatives may meet more than once to resolve the Dispute. The Senior Management Representatives may meet in person, via telephone, videoconference or any other agreed means of instantaneous communication to effect the meeting.
  - (iii) Each party warrants that its Senior Management Representative has full authority to resolve any dispute as to the compensation payable.
  - (iv) If the Senior Management Representatives are unable to resolve the Dispute during the Negotiation Period, the State must nominate an Expert by notice in writing to the Company within 30 Business Days from the date of expiration of the Negotiation Period ("**Nomination Period**").
  - (v) Within the Nomination Period, the Company must also nominate an Expert by notice in writing to the State.
  - (vi) Within 30 Business Days of the date of expiration of the Nomination Period, the Experts so nominated will endeavour jointly to determine the compensation (if any) payable in accordance with clause 3(j)(vii). The Experts must give to the parties any joint determination and their reasons in writing within that 30 Business Day period. If the experts jointly determine that compensation is payable, the written determination must set out the Experts' calculation of each component of the formula.
  - (vii) In determining the compensation (if any) payable, each Expert must:
    - (A) act as expert and not as arbitrator;
    - (B) have regard to the provisions of this Agreement and apply the principles set out in Annexure 1; and
    - (C) have regard to any written submissions made to it by the State and the Company,

and either Expert may make such enquiries as it considers in its absolute discretion to be necessary or desirable.

- (viii) If either the Company or the State has failed to nominate an Expert within the Nomination Period, the determination of the compensation (if any) payable will be made within 30 Business Days of the date of expiration of the Nomination Period by the sole Expert nominated by either the Company or the State as the case may be.
- (ix) If the Experts are unable jointly to determine the Dispute within the period of 30 Business Days referred to in clause 3(j)(vi), then the Company and the State jointly must, within 2 Business Days of the expiry of that period, request the Law Institute of Victoria President to nominate, within 10 Business Days of the date of the request, another Expert ("**Umpire**") to make a final determination of the compensation (if any) payable in accordance with the following provisions of this clause 3(j).

The Umpire must give its determination and its reasons in writing within 30 Business Days of its appointment. If the Umpire determines that compensation is payable, the written determination must set out the Umpire's calculation of each component of the formula.

- (x) Any determination of the Experts (or, in the circumstances contemplated by clause 3(j)(viii), the sole Expert) or the Umpire in accordance with this Annexure 1 will be final and binding on the parties in respect of the relevant Trigger Event. However, within 20 Business Days of the determination being notified to the Parties, either the Company or the State is entitled to make an application to the court for a declaration that, in reaching the determination, the Experts, the sole Expert or the Umpire, as the case may be, made an error in relation to a question of law.
- (xi) If the court issues a declaration to the effect that an error has been made in relation to the relevant question of law, whichever of the Company or the State sought the declaration must immediately inform the Experts, the sole Expert or the Umpire, as the case may be, provide them with a copy of the declaration and request that they issue an updated determination, together with reasons, in writing within 20 Business Days of receiving a copy of the declaration. That updated determination will be final and binding on the parties in respect of the relevant Trigger Event.

If the updated determination is to be issued by the Experts and they are unable to agree on the determination within the period of 20 Business Days referred to above, the matter must be referred to the Umpire in accordance with clause 3(j)(ix).

- (xii) If the court issues a declaration to the effect that no error has been made in relation to the relevant question of law, the original determination of the Experts, the sole Expert or the Umpire, as the case

may be, will be final and binding on the parties in respect of the relevant Trigger Event.

- (xiii) To the extent of any inconsistency between the terms of this Agreement and the applicable rules for expert determination published by the Law Institute of Victoria, the terms of this Agreement prevail.
- (xiv) In determining the compensation (if any) payable, the Umpire:
  - (A) must act as expert and not as arbitrator;
  - (B) must have regard to the provisions of this Agreement and apply the principles set out in Annexure 1;
  - (C) must have due regard to any evidence submitted by the Experts appointed in accordance with clauses 3(j)(iv) and (v) as to their respective assessments of the compensation (if any) payable;
  - (D) must act fairly and impartially as between the parties, giving each party a reasonable opportunity to:
    - (I) put its case and deal with the case of the opposing Party; and
    - (II) make submissions on the conduct of the expert determination;
  - (E) subject to clauses 3(j)(xiv)(A) to 3(j)(xiv)(D), inclusive, may:
    - (I) proceed in any manner he or she thinks fit;
    - (II) conduct any investigation which he or she considers necessary to resolve the Dispute;
    - (III) examine such documents, and interview such persons, as he or she may require and may make such directions for the conduct of the determination as he or she considers necessary;
  - (F) must within 3 Business Days of nomination, disclose to the parties any:
    - (I) interest he or she has in the outcome of the determination;
    - (II) conflict of interest;
    - (III) conflict of duty;
    - (IV) personal relationship that the Umpire has with either party, or either party's representatives or Experts; and

(V) other fact, matter or thing which a reasonable person may regard as giving rise to the possibility of bias; and

within 5 Business Days of receipt of any disclosure referred to in this paragraph (F) a party may object to the Umpire. If so, the Company and the State jointly must, within a further 2 Business Days, request the Law Institute of Victoria President to nominate, within 10 Business Days of the date of the request, a replacement Umpire for the purpose of this clause 3; and

(G) must not communicate with one party without the knowledge of the other party.

(xv) Each party must do all things reasonably necessary for the proper, expeditious and cost-effective conduct of the expert determination process contemplated by this clause 3.

(k) Within 20 Business Days of the amount of compensation that is payable by the State to the Company being agreed or determined in accordance with this clause 3, the State must pay that amount to the Company in cleared funds.

(l) Except as contemplated in clause 3(m), each party must bear its own costs in complying with this clause 3.

(m) (i) Subject to paragraph (ii), the aggregate costs of the Experts (and the Umpire, if applicable) will be borne equally by the parties.

(ii) If the amount of compensation that is payable by the State is determined by an Expert, Experts or Umpire and is:

(A) more than 10% below the amount set out in the Company's Compensation Notice under clause 3(e), the Company will bear the costs of the Expert, Experts and Umpire, as applicable; or

(B) more than 10% above the amount set out in the Company's Compensation Notice under clause 3(e), the State will bear the costs of the Expert, Experts and Umpire, as applicable.

(n) Nothing in this clause 3 will prevent a party from instituting proceedings to seek urgent injunctive, interlocutory or declaratory relief in respect of a dispute as to the compensation payable.

(o) Time is of the essence of the parties' obligations under this clause 3.