

DATED

11 October

2013

**VARIATION AGREEMENT**

**CASINO DUTY AGREEMENT**

**(ADELAIDE CASINO)**

**BETWEEN**

**THE TREASURER OF SOUTH AUSTRALIA**

**("Treasurer")**

**-AND -**

**SKYCITY ADELAIDE PTY LTD**

**(A.C.N. 082 362 061)**

**("Licensee")**



**Government  
of South Australia**

**CROWN SOLICITOR  
Level 9, 45 Pirie Street, Adelaide SA 5000**

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**THIS AGREEMENT** is made

2013

**BETWEEN:**

**THE TREASURER OF SOUTH AUSTRALIA** ("Treasurer")

**AND**

**SKYCITY ADELAIDE PTY LTD (ACN 082 362 061)** ("Licensee").

**RECITALS**

- A. The Treasurer and the Licensee are parties to the Casino Duty Agreement made on 27 October 1999 (as subsequently varied from time to time, the "CDA") pursuant to section 17(1) of the *Casino Act 1997* ("Act").
- B. Section 17(3) of the Act permits the CDA to be varied by a later agreement.
- C. The parties wish to vary the CDA on the terms of this agreement.

**OPERATIVE PART**

**1. INTERPRETATION**

**1.1 Definitions**

In this agreement, unless a contrary intention appears:

"Act" means the *Casino Act 1997*;

"Approved Licensing Agreement" has the same meaning as in the provisions contained in the Schedule;

"CDA" means the Casino Duty Licensing Agreement made on 27 October 1999 between the Treasurer, for and on behalf of the State of South Australia, and the Licensee, pursuant to section 17(1) of the Act, as varied by:

- (a) the agreement made between the Treasurer, for and on behalf of the Crown in right of the State of South Australia, and the Licensee, and known as the "Variation of Casino Duty Agreement"; and

- (b) the agreement made on 25 January 2010 between the Treasurer and the Licensee and known as the "Second Amending Agreement;

"**Minister**" has the same meaning as in the provisions contained in the Schedule;

"**Related Agreement**" means the agreement made on or about the date of this agreement between the Minister and the Licensee for the variation of the Approved Licensing Agreement;

"**Variation Date**" has the same meaning as in the Related Agreement.

## 1.2 Interpretation

In this agreement, unless a contrary intention appears:

- (a) a reference to a clause number is a reference to all its sub-clauses, paragraphs and subparagraphs;
- (b) words in the singular number include the plural and vice versa;
- (c) words of one gender include any other gender;
- (d) a reference to a Schedule is a reference to a schedule to this agreement;
- (e) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (f) a reference to a party includes its successors and assigns;
- (g) a reference to an agreement or other instrument includes a reference to it as varied or replaced from time to time; and
- (h) a term defined in the Act (unless otherwise defined in this agreement) has the same meaning when used in this agreement.

## 2. CONDITION

### 2.1 Termination

If the Related Agreement terminates because of the operation of clause 2.3 of that agreement, this agreement terminates contemporaneously with the Related Agreement.

### 2.2 No compensation

Neither party is entitled to any compensation from the other in consequence of or in connection with the termination of this agreement under clause 2.1 .

## 3. VARIATION OF CDA

### 3.1 Variation

With effect on and from the Variation Date, the CDA is varied such that its operative terms are as set out in the Schedule.

3.2 Confirmation of CDA

The terms of the CDA, as varied by this agreement, are confirmed.

4. EFFECT OF VARIATIONS

To avoid doubt, the variations made by this agreement to the CDA do not affect:

- (a) the obligations of either party under or in connection with the CDA to the extent that those obligations:
  - (i) were required to be performed before the Variation Date; or
  - (ii) arise (whether before, on or after the Variation Date) out of an act or omission of either party, or any other event or circumstance, occurring or existing before the Variation Date; or

(b) the corresponding rights of the other party,

except as provided in clause 9 of the CDA as varied by this agreement.

5. DISCLOSURE

The Licensee agrees to the disclosure of this agreement in either printed or electronic form and either generally to the public, or to a particular person as a result of a specific request.

EXECUTED AS A DEED.



THE COMMON SEAL of the TREASURER )  
OF SOUTH AUSTRALIA )  
 was hereto affixed by authority of the Treasurer )  
 in the presence of: )

*[Handwritten Signature]*  
 .....  
 Witness  
 [Print Name: *GABRIEL TALLIA* ]

EXECUTED by SKYCITY ADELAIDE )  
PTY LTD (ACN 082 362 061) )  
 in accordance with section 127 of the )  
*Corporations Act 2001* (Cth) )

*[Handwritten Signature]*  
 .....  
 Director

*[Handwritten Signature]*  
 .....  
 Director/Secretary

*[Handwritten Signature]*  
 .....  
 Name (please print)

*[Handwritten Signature]*  
 .....  
 Name (please print)

**SCHEDULE**  
**OPERATIVE TERMS OF CDA AS VARIED**

## 1. DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

In this agreement:

**“Approved Deductions”** means as follows:

- (a) genuine, verifiable commissions or other inducements which are paid or allowed by the Licensee to Premium Customers, or to third parties in connection with Premium Customers, and which are of a type that the Treasurer has approved in writing for the time being for the purposes of this definition; and
- (b) genuine, verifiable commissions or cash payments calculated on the basis of gross gambling revenue attributable to Premium Customers who are not Australian residents and which are paid by the Licensee to such Premium Customers, or to third parties in connection with such Premium Customers, that the Liquor and Gambling Commissioner has approved in writing under an international customer attraction programme for the time being for the purposes of this definition;

**“Approved Licensing Agreement”** means the agreement so entitled in force as between the Licensee and the Minister in accordance with section 16 of the Casino Act;

**“Automated Table Game”** has the same meaning as in the Approved Licensing Agreement;

**“bad debt”** means any amount by way of the consideration to what the Licensee is entitled for or in respect of gambling that is due as a debt but has not been received and which the Licensee writes off as bad, whether in whole or in part;

**“Casino Act”** means the *Casino Act 1997*;

**“Casino Business”** has the same meaning as in the Approved Licensing Agreement;

**“EGM Prescribed Rate”** for a financial year means the lesser of:

- (a) 41%; and
- (b) the total amount of prescribed gaming tax that is payable to the Treasurer under the *Gaming Machines Act 1992* by the holders of gaming machine licences on their net gambling revenue (as defined in that Act) for the period of 12 months ending on 31 March in the financial year, expressed as a percentage of that net gambling revenue (but disregarding net gambling revenue and prescribed gaming tax attributable to non-profit businesses (as defined in that Act));

**“financial year”** means a year of the term that ends (or would, if this agreement were to continue in force, end) on 30 June or such other date as may be agreed by the Licensee and the Treasurer and includes a part of such a year;

**“gross gambling revenue”** for a period means:

- (a) the gross amount received by the Licensee during the period for or in respect of consideration for gambling in the casino premises; and

(b) any bad debt to the extent recovered by the Licensee during the period;

“**GST**” has the meaning attributed in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

“**jackpot prize**” means a single prize capable of being won by playing any one of a number of games (which may or may not be played on gaming machines) that are linked together for the purposes of playing for that prize;

“**Keno Prescribed Rate**” means 41% or such other rate as corresponds to the rate (“reference rate”) at which tax or a tax equivalent is, for the time being, payable by the Lotteries Commission, or its successor, on the net revenue attributable to Keno (and if there is a dispute between the parties as to the reference rate, the reference rate will be as determined by the Treasurer);

“**Licensee**” means Skycity Adelaide Pty Ltd;

“**Minister**” means the Minister of the Crown to whom the administration of the Casino Act is committed from time to time and includes any Minister to whom the power to enter into an approved licensing agreement under section 16 of the Casino Act is delegated from time to time;

“**monetary prize**” means:

- (a) any prize (or part of a prize) provided by the Licensee for or in respect of gambling in the form of money, the provision of a credit or of gambling chips that may be redeemed for money from the Licensee - in all cases paid or awarded in accordance with systems, rules or procedures approved under the Approved Licensing Agreement;
- (b) any prize (which may or may not be a jackpot prize) provided by the Licensee, that satisfies the following criteria:
  - (i) the prize is provided in the form of chattels;
  - (ii) the prize is provided for, or in respect of, a game (which may or may not be played on a gaming machine); and
  - (iii) the Treasurer has approved in writing that the chattels provided by the Licensee as a prize for, or in respect of, that particular game are a “monetary prize” for the purposes of this paragraph (b) and the Licensee has complied with any terms and conditions of that approval stipulated by the Treasurer,

valued by reference to the actual purchase cost of the chattel plus other costs associated with the purchase, such as incidental taxes (other than GST), fees and charges, verified by such documentation as required by the Treasurer - in all cases awarded in accordance with systems, rules or procedures approved under the Approved Licensing Agreement;

- (c) bad debts; and
- (d) any amount by which monetary prizes exceeded gross gambling revenue in the period prior to the relevant period;

“**month**” means a calendar month of a financial year or such other period agreed by the Licensee and the Treasurer to constitute a month (and includes a part of such a month);

“**net gambling revenue**” in respect of gambling for a period means:



- (a) for net gambling revenue that is attributable to Premium Table Gaming - the gross gambling revenue for the relevant period that is attributable to Premium Table Gaming, less the aggregate of:
  - (i) the value of monetary prizes that the Licensee was liable to pay during that period that are attributable to Premium Table Gaming (whether or not awarded in respect of gambling for that period); and
  - (ii) the value of Approved Deductions for that period; or
- (b) for net gambling revenue that is attributable to other gambling - the gross gambling revenue for the relevant period that is attributable to the gambling, less the value of monetary prizes that the Licensee was liable to pay during that period that are attributable to the gambling (whether or not awarded in respect of gambling for that period);

**“Non-premium EGM Gaming”** means the playing of games on gaming machines in gaming areas that are not premium gaming areas;

**“Non-premium Table Gaming”** means the playing of table games in gaming areas that are not premium gaming areas;

**“party”** means the Licensee or the Treasurer;

**“Premium Customer”** has the same meaning as in the Approved Licensing Agreement;

**“Premium EGM Gaming”** means the playing of games on gaming machines in premium gaming areas;

**“Premium Table Gaming”** means the playing of table games in premium gaming areas;

**“Relevant Period”**, in respect of a month, means the period on and from the first day of the financial year that includes the month until and including the last day of the month;

**“table game”** has the same meaning as in the Approved Licensing Agreement;

**“term”** means the term of this agreement determined under clause 4;

**“2013 Variation Agreement”** means the agreement that varied this agreement by, among other things, inserting this definition in this clause 1.1; and

**“Variation Date”** has the same meaning as in the 2013 Variation Agreement, but otherwise, terms have the same meaning as in the Casino Act.

## 1.2 Interpretation Rules

In this agreement, unless a contrary intention appears:

- 1.2.1 a reference to this agreement is a reference to this agreement as amended, varied, novated, supplemented or replaced from time to time;
- 1.2.2 a reference to any legislation or any provision of any legislation includes:
  - (a) all regulations, orders or instruments issued under the legislation or provision; and

- (b) any modification, consolidation, amendment, re-enactment, replacement or codification of such legislation or provision;
- 1.2.3 words or expressions:
  - (a) importing the singular include the plural and vice versa;
  - (b) importing a gender include the other genders;
  - (c) denoting individuals include corporations, firms, unincorporated bodies, authorities and instrumentalities;
  - (d) given meaning in the Recitals have the same meaning in the body of this agreement;
- 1.2.4 a reference to a party to this agreement or any other instrument includes that party's successors and assigns;
- 1.2.5 where a word or phrase is defined or given meaning, any other part of speech or grammatical form has a corresponding meaning;
- 1.2.6 a reference to a clause number, schedule number or annexure number (or letter) is a reference to a clause, Schedule or Annexure of this agreement;
- 1.2.7 a reference to \$ or dollars is a reference to Australian dollars;
- 1.2.8 any heading, index, table of contents or marginal note is for convenience only and does not affect the interpretation of this agreement;
- 1.2.9 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;
- 1.2.10 the Schedules, Recitals and Annexures to this agreement form part of this agreement and have effect as if set out in full in this agreement;
- 1.2.11 a reference to a payment in immediately available funds is a reference to cash, a cheque the drawer of which is an Australian bank, a telegraphic transfer of cleared funds or a direct credit of cleared funds;
- 1.2.12 where an act would be required to be done, or a time limit or period would expire, on a day which is not a business day, the act must be done, or the limit or period will expire, on the following business day;
- 1.2.13 periods of time will be determined in accordance with the provisions of section 105 of the *Corporations Act 2001* (Cth), and a reference to time is a reference to standard legal time in South Australia.

## 2. CASINO DUTY AGREEMENT OPERATES AS A DEED

This agreement operates as a deed.

## 3. APPROVALS, AUTHORISATIONS, DETERMINATIONS AND NOTIFICATIONS

3.1 Under this agreement:

- 3.1.1 a direction, approval, authorisation or notice must be in writing signed by the person authorised to give it and may be given, varied or revoked from time to time; and
- 3.1.2 an approval or authorisation may be given or withheld at the discretion of the person authorised to give it and may be given subject to conditions.
- 3.2 The existence of this agreement does not diminish any right of the Licensee for judicial review of any direction, approval, authorisation, notice or decision given or made in the course of the exercise of the regulatory regime.
- 3.3 An authorisation or approval under or pursuant to the *Casino Act 1983* which applies in relation to the operation of the Adelaide Casino immediately prior to the grant of the first casino licence to Adelaide Casino Pty Limited under section 5 of the *Casino Act 1997*:
  - 3.3.1 if it is inconsistent with this agreement - is superseded by this agreement; and
  - 3.3.2 otherwise - remains in operation and takes effect as an authorisation or approval under this agreement.
- 3.4 To avoid doubt, every notice, approval, direction or other act or thing that was given, made or done before the Variation Date under or for the purposes of this agreement, as then in force, continues to have the same effect under this agreement, as varied by the 2013 Variation Agreement, to the extent that the variations, and the Casino Act, permit.

#### 4. TERM

This agreement operates on and from the date on which the casino licence is issued until and including the earliest of:

- (a) if clauses 14.1, 14.2, 14.4, 14.4A, 14.4B, 14.4C and 14.5 of the Approved Licensing Agreement cease to have effect because of the operation of clause 14.6 of that agreement - the date on which those clauses cease to have effect;
- (b) 30 June 2035; and
- (c) the last day of the Term (as defined in the Approved Licensing Agreement).

#### 5. ANNUAL LIABILITY FOR CASINO DUTY

The Licensee must pay casino duty in respect of net gambling revenue for a financial year of an amount which is the greater of a nil amount and the sum of the following amounts:

- (a) 0.91% of net gambling revenue for the financial year that is attributable to Premium Table Gaming;
- (b) 3.41% of net gambling revenue for the financial year that is attributable to Non-premium Table Gaming;
- (c) 10.91% of net gambling revenue for the financial year that is attributable to Premium EGM Gaming;
- (d) the EGM Prescribed Rate, for that financial year, of net gambling revenue for the financial year that is attributable to Non-premium EGM Gaming;

- (e) 10.91% of net gambling revenue for the financial year that is attributable to Automated Table Games;
- (f) the Keno Prescribed Rate of net gambling revenue for the financial year that is attributable to Keno or any derivative of Keno; and
- (g) in respect of any other gambling which is not otherwise liable to duty being paid to the Treasurer, duty at the rate agreed between the Licensee and the Treasurer and failing agreement, as determined by the Treasurer at the time of introduction of that form of gambling.

## 6. PAYMENT OF CASINO DUTY BY MONTHLY PAYMENTS

6.1 The Licensee must, within 7 days of the end of each month of a financial year, pay the Treasurer:

6.1.1 the sum of the following amounts:

- (a) 0.91% of net gambling revenue for the Relevant Period that is attributable to Premium Table Gaming;
- (b) 3.41% of net gambling revenue for the Relevant Period that is attributable to Non-premium Table Gaming;
- (c) 10.91% of net gambling revenue for the Relevant Period that is attributable to Premium EGM Gaming;
- (d) 41% of net gambling revenue for the Relevant Period that is attributable to Non-premium EGM Gaming;
- (e) 10.91% of net gambling revenue for the Relevant Period that is attributable to Automated Table Games;
- (f) the Keno Prescribed Rate of net gambling revenue for the Relevant Period that is attributable to Keno or any derivative of Keno; and
- (g) duty at the rate agreed between the Licensee and the Treasurer (and failing agreement, as determined by the Treasurer at the time of introduction of that form of gambling) as applied to each other form of gambling that has occurred within the Relevant Period

less the sum of each payment made under this clause 6 in respect of a previous month of the Relevant Period; or

6.1.2 a nil amount,

whichever is the greater.

6.2 If, for any month, the amount described in clause 6.1.1(a) is less than zero, that amount will be taken to be zero for the purposes of calculating the amount payable by the Licensee under clause 6.1 for that month.

## 7. ANNUAL ADJUSTMENT

Within 21 days of the end of each financial year:

- (a) if the sum of the monthly amounts paid by the Licensee under clause 6 for that financial year is greater than the Licensee's annual liability to duty in respect

of that financial year calculated under clause 5, the Treasurer must refund the difference to the Licensee; and

- (b) if the Licensee's annual liability to duty in respect of that financial year calculated under clause 5 is greater than the sum of the monthly amounts paid by the Licensee under clause 6 for that financial year, the Licensee must pay the difference to the Treasurer.

## 8. RETURNS

The Licensee must:

- (a) within 7 days of the end of each month of a financial year, provide the Treasurer with a return for the Relevant Period in respect of that month; and
- (b) within 7 days of the end of each financial year, provide the Treasurer with a return for that financial year,

in the form, and containing the information, agreed between the Licensee and the Treasurer and, failing agreement, as approved or determined by the Treasurer.

## 9. 2013 VARIATION AGREEMENT - TRANSITIONAL

Where the Variation Date is not 1 July:

- (a) despite the variations to this agreement made by the 2013 Variation Agreement, the provisions of this agreement, as in force immediately before the Variation Date, relating to liability for and calculation and payment of casino duty (including adjustments and payment of interest) and the provision of returns, continue to apply, as affected by clause 9(b), on and after the Variation Date, in relation to net gambling revenue for the period ending on the day preceding the Variation Date and starting on the preceding 1 July (both dates inclusive) (the "**First Broken Period**");
- (b) each of:
  - (i) the First Broken Period; and
  - (ii) the period starting on the Variation Date and ending on the following 30 June (both dates inclusive) (the "**Second Broken Period**")

is taken to be a "financial year" for the purposes of this agreement (including as it applies under clause 9(a)); and

- (c) if the Second Broken Period has no 31 March, paragraph (b) of the definition of "EGM Prescribed Rate" in clause 1.1 will have effect in relation to the financial year constituted by the Second Broken Period as if the reference to "31 March in the financial year" were a reference to "31 March preceding the financial year".

## 10. ESTIMATED FEES

If the Licensee fails to maintain the records, or fails to provide access to those records as required by or under the Casino Act or this agreement within such reasonable period as the Treasurer may nominate for that purpose and, as a result, the Treasurer is unable to determine whether the Licensee has paid casino duty, or interest payable in respect of casino duty, in accordance with this agreement, the Treasurer may determine the amount of casino duty and interest payable by the Licensee on any basis that the Treasurer thinks fit and the Licensee must pay the

Treasurer that casino duty within such reasonable period as the Treasurer may nominate when notifying the Licensee of that determination.

**11. INTEREST PAYABLE IN RESPECT OF CASINO DUTY**

If the Licensee fails to pay casino duty in accordance with this agreement, the Treasurer may by written notice require the Licensee:

- (a) to make good the default; and
- (b) in addition, to pay interest at 20% per annum of the outstanding amount calculated from the due date of payment daily on a cumulative basis.

**12. APPROVAL OF SYSTEMS FOR PAYMENT OF CASINO DUTY**

The Licensee must ensure that the Casino Business is carried on in accordance with the systems and procedures for the time being approved by the Treasurer in respect of:

- (a) calculation and recording of gross gambling revenue and net gambling revenue in respect of gambling; and
- (b) payment of money required for the payment of casino duty or interest for late payment or non-payment of casino duty.

**13. MISCELLANEOUS PROVISIONS**

**13.1 Waiver**

A waiver of any provision of this agreement:

- 13.1.1 must be in writing; and
- 13.1.2 does not operate as a waiver of another breach of the same or of any other provision.

Forbearance, delay or indulgence by a party in enforcing the provisions of this agreement will not be taken to prejudice or restrict the rights of that party.

**13.2 Entire Agreement**

This agreement is the entire agreement between the parties as to its subject matter. It supersedes all prior agreements, representations, conduct and understandings.

**13.3 Amendments**

No amendment of, nor addition to, this agreement is binding unless it is in writing and executed by the parties to this agreement.

**13.4 Courts and Governing Law**

This agreement is governed by, and must be construed in accordance with, the law for the time being in force in the State of South Australia and, subject to the Casino Act, the Courts having jurisdiction in South Australia have jurisdiction in respect of any dispute arising between the parties out of or in respect of this agreement.

**13.5 Compliance to be at Licensee's Own Expense**

The Licensee must comply with its obligations arising under or in connection with this agreement at its own expense in all things.

**13.6 Costs**

Each party must bear its own costs incurred in or incidental to the negotiation, preparation and execution of this agreement.

**13.7 Further Acts**

The parties will do all things and execute all documents required to permit or facilitate the performance of the transactions contemplated by this agreement.

**13.8 Counterparts**

This agreement may be executed in counterparts, which when taken together are one instrument.

**13.9 No Assignment**

No party may assign its rights under this agreement unless:

13.9.1 in the case of the Treasurer, to a Minister to whom the administration of the Casino Act has been committed pursuant to the *Administrative Arrangements Act 1994* or otherwise to reflect an amendment to the Casino Act; and

13.9.2 in the case of the Licensee, to a person that is the holder of the licence under the Casino Act.

**13.10 Severability, Ambiguity and Reading Down**

13.10.1 A clause or part of this agreement that is ambiguous or capable of bearing a meaning that would be void, illegal or ineffective must be construed, or if necessary read down, so as to bear a meaning which is not void, illegal or ineffective.

13.10.2 A clause or part of this agreement that is held by a court to be invalid or unenforceable will be taken to be deleted from this agreement and the remainder of the agreement will remain in full force and effect.

**14. NOTICES**

**14.1 How Notices Must Be Given**

A notice, approval, direction, consent, offer, demand or other communication in connection with this agreement must be:

14.1.1 in writing;

14.1.2 signed by an authorised officer of the relevant party; and

14.1.3 given to the recipient party:

(a) by hand delivery; or

(b) by pre-paid mail sent to that party; or

(c) by facsimile transmission to that party.

**14.2 Where Such Notices Must Be Sent**

For the purposes of clause 14.1:

- 14.2.1 deliveries must be delivered to the address of the recipient party set out below;
- 14.2.2 mail must be sent to the address of the recipient party set out below;
- 14.2.3 facsimile messages must be transmitted to the facsimile number of the recipient party set out below; and in each case
- 14.2.4 must be marked for the attention of the person specified below in relation to the recipient party:

Name: Treasurer  
Address: 8th Floor, State Administration Centre  
200 Victoria Square East,  
Adelaide SA 5000  
Attention: Under Treasurer  
Facsimile: (08) 8226 9477

Name: Skycity Adelaide Pty Limited  
Address: 2nd Floor South, Casino Building  
North Terrace,  
Adelaide SA 5000  
Attention: Managing Director  
Facsimile: (08) 8410 4458

#### 14.3 Change of Details

- 14.3.1 A party may from time to time change any of the details specified above by not less than 5 business days notice to each other party.
- 14.3.2 If details are changed in accordance with this clause, this clause applies as if those changed details were set out above.

#### 14.4 Proof of Notices

- 14.4.1 Proof of posting by pre-paid mail of a notice in accordance with clauses 14.1 and 14.2 is proof of receipt of such notice on the second clear business day after posting.
- 14.4.2 Proof of transmission by facsimile of a notice in accordance with clauses 14.1 and 14.2 is proof of receipt on the date of transmission, but if a transmission is not made on a business day or not made before 4.00pm, then it will be deemed to have been received at 10.00am on the next business day after transmission.