

# Third Deed of Amendment (Continuity and Co-operation Agreement)

Casino Liquor and Gaming Control Authority

Star City Pty Limited

Sydney Harbour Casino Properties Pty Limited

Star City Holdings Limited

Tabcorp Investments Pty Limited

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# Third Deed of Amendment (Continuity and Co-operation Agreement)

Allens Arthur Robinson 

<b>Date</b>	20 MAY 2011
<b>Parties</b>	<ol style="list-style-type: none"><li>1. <b>Casino, Liquor and Gaming Control Authority</b> a statutory corporation constituted by the <i>Casino, Liquor and Gaming Control Authority Act 2007</i> (NSW) of Level 6, 323 Castlereagh Street, Haymarket, New South Wales 2000 (the <i>Authority</i>);</li><li>2. <b>Star City Pty Limited</b> (ACN 060 510 410) of 5 Bowen Crescent, Melbourne, Victoria, Australia (the <i>Licensee</i>);</li><li>3. <b>Sydney Harbour Casino Properties Pty Limited</b> (ACN 050 045 120) of 5 Bowen Crescent, Melbourne, Victoria, Australia (<i>SHC Properties</i>);</li><li>4. <b>Star City Holdings Limited</b> (ACN 064 054 431) of 5 Bowen Crescent, Melbourne, Victoria, Australia (<i>Star City</i>); and</li><li>5. <b>Tabcorp Investments Pty Limited</b> (ACN 085 513 300) of 5 Bowen Crescent, Melbourne, Victoria 3000 (<i>Tabcorp Investments</i>).</li></ol>
<b>Recitals</b>	<p>A The parties have entered into this Deed for the purposes of amending the COCOA Agreement on and from the Effective Date.</p> <p>B This Deed has been approved by the Minister and is entered into by the Authority pursuant to section 142 of the Act.</p>

**It is agreed** as follows.

## 1. Definitions and interpretation

### 1.1 Definitions

In this Deed:

**ASIC** means the Australian Securities and Investments Commission.

**COCOA Agreement** means the document entitled "Continuity and Co-operation Agreement" dated 14 December 1994 (as amended and restated) between the parties to this Deed.

**Deed of Cross Guarantee** means the deed of cross guarantee dated 11 May 2001 between (among others) Tabcorp Investments, Star City, the Licensee, SHC Properties and Showboat Australia Pty Ltd (ACN 061 299 625) entered into pursuant to ASIC Class Order CO 98/1418.



**Effective Date** means the date on which all of the conditions precedent in clause 4 have been satisfied or waived by the Authority.

**Minister's Approval and Consent Acknowledgement** means the acknowledgement of the Minister dated 11 May 2011.

**Revocation Deeds** means:

- (a) the revocation deed (substantially in the form of ASIC Pro Forma 26) between Tabcorp Investments, Star City, the Licensee, SHC Properties, Sydney Harbour Apartments Pty Ltd (ACN 075 423 666), Star City Entertainment Pty Ltd (080 574 732), Star City Investments Pty Ltd (ACN 060 507 888), Star City Share Plan Company Pty Ltd (ACN 087 774 178), Showboat Australia Pty Ltd (ACN 061 299 625) and Star City Superannuation Fund Pty Ltd (ACN 071 304 062) dated on or about 12 April 2011; and
- (b) the revocation deed (substantially in the form of ASIC Pro Forma 26) between Tabcorp Investments, Star City, the Licensee, SHC Properties, Sydney Harbour Apartments Pty Ltd (ACN 075 423 666), Star City Entertainment Pty Ltd (080 574 732), Star City Investments Pty Ltd (ACN 060 507 888), Star City Share Plan Company Pty Ltd (ACN 087 774 178), Showboat Australia Pty Ltd (ACN 061 299 625), Star City Superannuation Fund Pty Ltd (ACN 071 304 062) and Tabcorp dated on or about 12 April 2011.

**Tabcorp** means Tabcorp Holdings Limited (ACN 063 780 709).

## 1.2 Incorporated provisions

Clauses 1.2, 1.3, 1.4 and 21 (other than clauses 21.5 and 21.18) of the COCOA Agreement apply to, and are incorporated in, this Deed as if they were set out in full as if each reference in those clauses to 'this Agreement' was a reference to this Deed.

## 1.3 COCOA Agreement definitions

Unless the context indicates a contrary intention or unless otherwise defined in this Deed, words and expressions which are defined in the COCOA Agreement have the same meaning where used in this Deed.

## 1.4 CCA Project Document

This Deed is a CCA Project Document for the purposes of the COCOA Agreement.

## 2. Consideration

Each party acknowledges to each other party that it enters into this Deed and incurs obligations and gives rights under it for valuable consideration from each other party.

## 3. Minister's consent

The Authority warrants that it has full power and authority to enter into, execute and comply with this Deed on behalf of the State and that, pursuant to section 142 of the Act,

the Minister has approved of both the Authority entering into this Deed and its terms as evidenced by the Minister's Approval and Consent Acknowledgement.

#### 4. Conditions precedent

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- (a) The amendments set out in clause 5 will take effect and will be taken to have been made on the date the following items have been received by the Authority, in a form and substance satisfactory to the Authority:
  - (i) a certified copy of the duly executed Revocation Deeds; and
  - (ii) evidence that the Revocation Deeds have been lodged with ASIC.
- (b) For the purposes of this clause 4, "certified" means certified by a director of Star City in the form required by the Authority.

#### 5. Amendments to the COCOA Agreement

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##### 5.1 Amendments

On and from the Effective Date, the COCOA Agreement will be amended as follows.

- (a) **(Recital B)** Recital B is deleted and replaced as follows:
  - "B. Tabcorp Investments has provided, and may continue to provide, Intercompany Loans to the Project Companies."
- (b) **(Clause 1.1 Definitions)** The definition of "CCA Projects Documents" is deleted and replaced with the following
  - "CCA Project Documents" means:
    - (a) this Agreement;
    - (b) the First Amendment Deed;
    - (c) the Second Deed of Amendment and Restatement (Continuity and Co-operation Agreement);
    - (d) the Third Amendment Deed;
    - (e) any New Intercompany Loan Creditor Acknowledgement;
    - (f) the Casino Exclusivity Agreement;
    - (g) the Permanent Site Freehold Lease;
    - (h) the Switching Station Construction Lease;
    - (i) the Switching Station Leases;
    - (j) the Copyright Assignment Deed;
    - (k) the Original Casino Operations Agreement;
    - (l) the Casino Duty and Community Benefit Levy Agreement;
    - (m) the CCA Securities;

- (n) the Casino Taxes Agreement;
  - (o) the Confidentiality and Disclaimer Deed;
  - (p) the Umbrella Deed; and
  - (q) each other document which is agreed between Star City and the Authority in writing to be a CCA Project Document for the purposes of this Agreement."
- (c) **(Clause 1.1 Definitions)** The definition of "Debt Balance Amount" is amended by replacing both references to "Shareholder Loan" in paragraph (b) of that definition with references to "Intercompany Loan".
- (d) **(Clause 1.1 Definitions)** A new definition of "Deed of Cross Guarantee" is inserted as follows:
- "**Deed of Cross Guarantee**" means the deed of cross guarantee, dated 11 May 2001, between (among others) Tabcorp Investments, Star City, the Licensee and SHC Properties entered into pursuant to ASIC Class Order CO 98/1418."
- (e) **(Clause 1.1 Definitions)** A new definition of "Excluded Financial Debt" is inserted as follows:
- "**Excluded Financial Debt**" means Financial Debt:
- (a) owed or incurred by a member of the Star City Group to another member of the Star City Group;
  - (b) owed or incurred under or in respect of any trade credit arrangement extended to a member of the Star City Group on normal commercial terms in the ordinary course of their trading activities;
  - (c) owing in connection with or as a result of the Deed of Cross Guarantee, until such time as the Deed of Cross Guarantee has been revoked in accordance with the Revocation Deeds; or
  - (d) arising from indemnities granted in favour of a bank or financial institution in respect of claims made under bank guarantees, letters of credit, performance bonds or other contingent liability instruments issued by that bank or financial institution in connection with the Project, with the face amount of those contingent liabilities not exceeding 10% of the contract sum for the Project,
- and includes a guarantee or a guarantee and indemnity in respect of any Financial Debt as referred to in paragraphs (a), (b), (c) or (d) above."
- (f) **(Clause 1.1 Definitions)** A new definition of "Financial Debt" is inserted as follows:
- "**Financial Debt**" means any indebtedness or other monetary liability, present or future, actual or contingent in relation to money borrowed or raised or any other financing. For the avoidance of doubt, it includes:
- (a) a guarantee or a guarantee and indemnity of Financial Debt; and

(b) Intercompany Loans."

- (g) (Clause 1.1 Definitions) A new definition of "First Amendment Deed" is inserted as follows:

"**First Amendment Deed**" means the deed entitled "Deed of Amendment and Restatement (Continuity and Co-operation Agreement)", dated 29 June 2005, between the Authority, Star City, SHC Properties, the Licensee, Tabcorp Investments and Commonwealth Bank of Australia."

- (h) (Clause 1.1 Definitions) A new definition of "Intercompany Loan" is inserted as follows:

"**Intercompany Loan**" means a loan made or advanced to any Project Company by an Intercompany Loan Creditor."

- (i) (Clause 1.1 Definitions) A new definition of "Intercompany Loan Creditor" is inserted as follows:

"**Intercompany Loan Creditor**" means:

- (a) Tabcorp Investments; or  
(b) any other Subsidiary of Tabcorp Holdings Limited (ACN 063 780 709) (excluding any member of the Star City Group) that has executed a New Intercompany Loan Creditor Acknowledgement."

- (j) (Clause 1.1 Definitions) A new definition of "New Intercompany Loan Creditor Acknowledgement" is inserted as follows:

"**New Intercompany Loan Creditor Acknowledgement**" means the deed poll substantially in the form set out in Schedule 3."

- (k) (Clause 1.1 Definitions) A new definition of "Project" is inserted as follows:

"**Project**" means the redevelopment of the Star City casino situated at 80 Pyrmont Street, Pyrmont, NSW, 2009, with completion scheduled for December 2011."

- (l) (Clause 1.1 Definitions) A new definition of "Revocation Deeds" is inserted as follows:

"**Revocation Deeds**" has the meaning given in clause 1.1 of the Third Amendment Deed."

- (m) (Clause 1.1 Definitions) The definition of "Shareholder Loan" is deleted.

- (n) (Clause 1.1 Definitions) The definition of "Second Deed of Amendment and Restatement (Continuity and Co-operation Agreement)" is deleted and replaced with the following:

"**Second Deed of Amendment and Restatement (Continuity and Co-operation Agreement)**" means the deed of that name dated 5 June 2009 between the Authority, Star City, SHC Properties, the Licensee and Tabcorp Investments."

- (o) (Clause 1.1 Definitions) A new definition of "Star City Group" is inserted as follows:

"**Star City Group**" means Star City and its Subsidiaries."

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- (p) (Clause 1.1 Definitions) A new definition of "Subsidiary" is inserted as follows:

"Subsidiary" has the meaning given in section 9 of the Corporations Act."

- (q) (Clause 1.1 Definitions) A new definition of "Tabcorp Group" is inserted as follows:

"Tabcorp Group" means Tabcorp Holdings Limited (ACN 063 780 709) and its Subsidiaries."

- (r) (Clause 1.1 Definitions) A new definition of "Third Amendment Deed" is inserted as follows:

"Third Amendment Deed" means the deed entitled "Third Deed of Amendment (Continuity and Co-operation Agreement)", dated 20 May 2011 between the Authority, Star City, SHC Properties, the Licensee and Tabcorp Investments."

- (s) (Clause 6 Shareholder Loan) Clause 6 "Shareholder Loan" is deleted and replaced as follows:

## "6. Intercompany Loans

Until the CCA Charge has been discharged and all moneys due or owing by the Project Companies to the Authority have been fully and finally repaid, an Intercompany Loan Creditor may make or advance an Intercompany Loan, provided that an Intercompany Loan Creditor must not, except with the prior written consent of the Authority:

- (a) require, demand or accept payment of the whole or any part of an Intercompany Loan where to do so would, or be likely to, give rise to an Event of Insolvency in relation to a Project Company;
- (b) exercise any right of set-off, counterclaim or combination or similar right or procedure against or in respect of a Project Company where to do so would, or be likely to, give rise to an Event of Insolvency in relation to that Project Company;
- (c) advance or maintain Intercompany Loans if to do so would result in the aggregate principal amount of all outstanding Financial Debt (other than Excluded Financial Debt) owed or incurred by the Star City Group exceeding \$500,000,000; or
- (d) commence, take any steps towards, or otherwise participate in, any winding up proceedings against any Project Company in respect of an Intercompany Loan."

- (t) The heading in clause 14 is deleted and replaced with "General undertakings".

- (u) The heading in clause 14.1 is deleted and replaced with "SHC Properties - Payments".

- (v) (Clause 14.2 Information undertakings) A new clause 14.2 "Information undertakings" is inserted as follows:

## "14.2 Information undertakings



Each Project Company shall within 4 months (or such longer period as the Authority may agree in writing) after the end of each half year ending 30 June and each half year ending 31 December after the date of this Deed, provide the Authority with information and documents relating to the Financial Debt of the Star City Group as at the end of the relevant half year.

Satisfaction of this clause 14.2 by one Project Company will be taken to be satisfaction by all Project Companies."

- (w) **(Clause 14.3 Star City Group – Financial Debt)** A new clause 14.3 "Star City Group – Financial Debt" is inserted as follows:

**"14.3 Star City Group – Financial Debt**

- (a) Without the prior written approval of the Authority, each Project Company must not, and shall procure that each other member of the Star City Group does not:
- (i) incur any Financial Debt (other than Excluded Financial Debt) which when aggregated with all Financial Debt (other than Excluded Financial Debt) owed or incurred by the Star City Group, would exceed \$500,000,000; or
  - (ii) incur any Financial Debt (other than Excluded Financial Debt) from a person other than an Intercompany Loan Creditor if to do so would result in the aggregate amount of all Financial Debt (other than Excluded Financial Debt) owed by the Star City Group to persons (other than an Intercompany Loan Creditor) exceeding \$30 million; or
  - (iii) grant any guarantee or indemnity, or provide any other form of surety, in respect of any Financial Debt other than:
    - (A) Excluded Financial Debt; or
    - (B) in respect of another Star City Group member's Financial Debt which it is permitted to incur in accordance with this clause 14.3(a).

For the purposes of this clause 14.3(a), each Project Company acknowledges that it will not incur any secured Financial Debt where to do so would be in breach of its obligations under clause 6.1(a) ("No Encumbrances") of the CCA Charge.

- (b) Each Project Company shall notify the Authority in writing, within 10 Business Days after it becomes so aware, when the aggregate Financial Debt (other than Excluded Financial Debt) of the Star City Group has reached or exceeded \$450,000,000.

Satisfaction of this clause 14.3(b) by one Project Company will be taken to be satisfaction by all Project Companies."

- (x) **(Clause 14.4 Intercompany Loan Creditor)** A new clause 14.4 "Intercompany Loan Creditor" is inserted as follows:

**"14.4 Intercompany Loan Creditor**

Each Project Company must not incur any Financial Debt (other than Excluded Financial Debt) from a member of the Tabcorp Group (excluding any other member of the Star City Group) unless such member of the Tabcorp Group is also an Intercompany Loan Creditor."

- (y) (Schedule 3) A new "Schedule 3 New Intercompany Loan Creditor Acknowledgement" is inserted in the form set out in Schedule 1 of this Deed.

**5.2 Affirmation**

- (a) Except as amended by clause 5.1, in all other respects the terms of the COCOA Agreement are affirmed by each party and the parties confirm that the COCOA Agreement remains in full force and effect.
- (b) Nothing in this Deed prejudices or adversely affects any right, power, authority, discretion or remedy of the Authority arising under the COCOA Agreement before the date of this Deed.

**6. Representations and warranties**

Each Project Company represents and warrants for the benefit of the Authority that:

- (a) **(No violation)**: the execution, delivery and performance of this Deed does not violate its constitution or any law applying to it;
- (b) **(Due authority)**: it has the power, and has taken all corporate and other action required, to enter into this Deed and to authorise the execution and delivery thereof and the performance of its obligations thereunder;
- (c) **(Legally binding obligations)**: this Deed constitutes a valid and legally binding obligation of it in accordance with its terms subject to:
- (i) any statute of limitations;
  - (ii) any laws of bankruptcy, insolvency, liquidation, re-organisation or other laws affecting creditor's rights generally; and
  - (iii) any defences of set off or counterclaim; and
- (d) **(No reliance)**: it has not entered into this Deed in reliance on or as a result of any representation, warranty, promise, statement, conduct or inducement by or on behalf of the Authority otherwise than as embodied in this Deed.

**7. Entire agreement**

This Deed contains the entire agreement between the parties with respect to its subject matter and supersedes all prior agreements and understandings between the parties in connection with it.

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**8. Further assurances**

Each party (other than the Authority) will at the entire cost and expense of such party perform all such acts and execute all such agreements, assurances and other documents and instruments as the Authority reasonably requires to perfect or improve the rights and powers afforded or created, or intended to be afforded or created, by this Deed.

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**9. Expenses**

**9.1 General**

Subject to clause 9.2, each party must bear its own costs arising out of the negotiation, preparation and execution of this Deed.

**9.2 Expenses**

Tabcorp Investments must on demand reimburse the Authority for and keep the Authority indemnified against all expenses, including all legal fees, costs and disbursements on a solicitor/own client basis and without the need for taxation, incurred by the Authority in connection with the negotiation, preparation and execution of this Deed.

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**10. Governing law**

This Deed is governed by the laws of New South Wales. Each party submits to the non-exclusive jurisdiction of courts exercising jurisdiction there in connection with matters concerning this Deed.

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**11. Counterparts**

This Deed may be executed in any number of counterparts. All counterparts together will be taken to constitute one instrument.

**Schedule 1**

**New Intercompany Loan Creditor Acknowledgement**

<b>Date</b>	[*]
<b>Parties</b>	<b>Deed Poll by:</b>  [*] (ACN [*]) incorporated in [*] of [*] (the <i>New Intercompany Loan Creditor</i> ).
<b>Recitals</b>	
A	The Casino Liquor and Gaming Control Authority, Star City Pty Limited, Sydney Harbour Casino Properties Pty Limited, Star City Holdings Limited and Tabcorp Investments Pty Limited are party to the Continuity and Co-operation Agreement dated 14 December 1994 (as amended and restated) (the <i>COCOA Agreement</i> ).
B	The New Intercompany Loan Creditor wishes to be bound by the terms set out in Clause 6 of the COCOA Agreement.

**It is agreed and declared** as follows.

**1. Definitions**

Unless the context indicates a contrary intention or unless otherwise defined in this Deed Poll, words and expressions which are defined in the COCOA Agreement have the same meaning where used in this Deed Poll.

**2. Incorporated Provisions**

Clauses 1.2, 1.3, 1.4 and 18 of the COCOA Agreement apply to, and are incorporated in, this Deed Poll as if they were set out in full.

**3. CCA Project Document**

This Deed is a CCA Project Document for the purposes of the COCOA Agreement.

**4. Deed Poll**

This is a Deed Poll. It may be relied on and enforced by the Authority.

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## 5. New Intercompany Loan Creditor Acknowledgment

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With effect from and including the date of this Deed Poll, the New Intercompany Loan Creditor:

- (a) will be an "Intercompany Loan Creditor" under the COCOA Agreement;
- (b) assumes the obligations of an Intercompany Loan Creditor under clause 6 of the COCOA Agreement; and
- (c) agrees to be bound by the terms of clause 6 of the COCOA Agreement as an Intercompany Loan Creditor.

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## 6. Notices

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### 6.1 Notices

All communications (including notices, consents, approvals, requests and demands) under or in connection with this Deed Poll:

- (a) must be in writing;
- (b) must be signed by the person making the communication or (on its behalf) by an authorised officer of that person;
- (c) must be delivered or posted by prepaid post to the address, or sent by fax to the number of the New Intercompany Loan Creditor set out in clause 6.2; and
- (d) are taken to be received by the New Intercompany Loan Creditor:
  - (i) (in the case of prepaid post being sent and received within Australia) on the third working day after the date of posting;
  - (ii) (in the case of prepaid post being sent or received outside Australia or sent from outside Australia to an address in Australia) on the fifth working day after the date of posting by airmail;
  - (iii) (in the case of delivery by hand) on delivery at the address of the addressee as provided in clause 6.2, unless that delivery is made outside working hours, when that communication is taken to be received at 9.00 am on the next working day;
  - (iv) (in the case of fax) at the local time in the place to which that communication is sent equivalent to the transmission time shown on the transmission confirmation report produced by the fax machine from which that communication is sent, unless that local time is outside working hours, when that communication is taken to be received at 9.00 am on the next working day,

and where "working day" means a day that is not a Saturday, Sunday or public holiday and on which banks are open for business generally, in the place to which the communication is posted, sent or delivered and "working hours" means between 9.00 am and 5.00 pm on a working day.

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**6.2 Address for notices**

The addresses and fax numbers of the New Intercompany Loan Creditor for the purposes of this clause 6.2 are:

Address: [\*]

Fax No.: [\*]

Attention: [\*]

**7. Expenses**

The New-Intercompany Loan Creditor must bear its own costs arising out of the negotiation, preparation and execution of this Deed Poll.

**Executed and delivered as a deed poll**

Executed as a deed in accordance with section 127 of the *Corporations Act 2001* by [\*]:


\_\_\_\_\_  
Director Signature

\_\_\_\_\_  
Director/Secretary Signature

\_\_\_\_\_  
Print Name

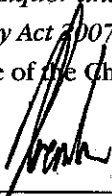
\_\_\_\_\_  
Print Name

Third Deed of Amendment  
(Continuity and Co-operation Agreement)

Allens Arthur Robinson 

**Executed and delivered as a deed**

The Common Seal of Casino, Liquor and Gaming Control Authority was duly affixed hereto in accordance with section 41 of the *Casino, Liquor and Gaming Control Authority Act 2007* (NSW) by and in the presence of the Chief Executive:



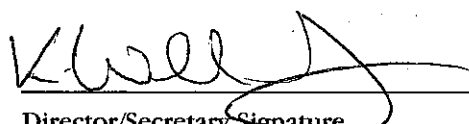
David Greenhouse  
Chief Executive  
Casino, Liquor and Gaming Control  
Authority



Executed as a deed in accordance with section 127 of the *Corporations Act 2001* by **Star City Pty Limited**:


  
Director Signature

ELMER FINKE KUPPER  
Print Name

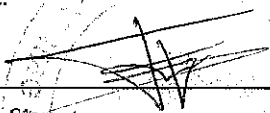
  
Director/Secretary Signature

KERRY LEIGH WILLCOCK  
Print Name

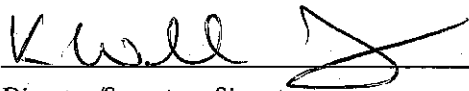
Third Deed of Amendment  
(Continuity and Co-operation Agreement)

Allens Arthur Robinson 

Executed as a deed in accordance with  
section 127 of the *Corporations Act 2001* by  
**Sydney Harbour Casino Properties Pty  
Limited:**

  
\_\_\_\_\_  
Director Signature

ELMER RONKE KOPPER  
\_\_\_\_\_  
Print Name

  
\_\_\_\_\_  
Director/Secretary Signature

KERRY LEIGH WILLCOCK  
\_\_\_\_\_  
Print Name

Executed as a deed in accordance with  
section 127 of the *Corporations Act 2001* by  
**Star City Holdings Limited:**

  
\_\_\_\_\_  
Director Signature

ELMER RONKE KOPPER  
\_\_\_\_\_  
Print Name


  
\_\_\_\_\_  
Director/Secretary Signature

KERRY LEIGH WILLCOCK  
\_\_\_\_\_  
Print Name

Executed as a deed in accordance with  
section 127 of the *Corporations Act 2001* by  
**Tabcorp Investments Pty Limited:**

  
\_\_\_\_\_  
Director Signature

ELMER RONKE KOPPER  
\_\_\_\_\_  
Print Name

  
\_\_\_\_\_  
Director/Secretary Signature

KERRY LEIGH WILLCOCK  
\_\_\_\_\_  
Print Name