Funding Deed

The Crown in Right of Tasmania
Government

Tasmanian Racing Board
TRB

Contents

Funding Deed dated

Parties **The Crown in the Right of Tasmania** (**Government**)

Tasmanian Racing Board, a statutory authority established under the *Racing Regulation Act* 2004 (**TRB**)

Background

A. The TRB is responsible for the corporate governance, strategic direction and funding of the Tasmanian thoroughbred, harness and greyhound racing and breeding industries.

B. The Government has agreed to provide operational and capital funding to the TRB to be expended in accordance with the TRB's proper performance of its functions under the *Racing Regulation Act* (2004).

C. This deed represents the terms and conditions on which funding is granted.

Operative provisions

1. Definitions and interpretation

1.1 Definitions

In this deed:

Accounting Standards means the AASB Accounting Standards as issued by the Australian Accounting Standards Board;

Business Day means a day that is not a Saturday, Sunday or public holiday and on which banks are open for business generally in Hobart;

Capital Amount means $40 million;

Capital Funding Condition means each condition specified in clause 2.2;

Capital Funding End Date means 30 June 2010 or such later date as may be notified by the Government to the TRB;

Commencement Date means the latter of 1 July 2009 and the first Business Day after all Operational Funding Conditions are satisfied or waived;

CPI figure means the Consumer Price Index: All Groups: Weighted Average of Eight Capital Cities (ABS Category No. 6401 Table 1) published by the Australian Bureau of Statistics or any other Australian government body that publishes that index or, if the index is no longer published, an alternative index reflecting the average cost of living in all capital cities of Australia as determined by the Government;

Financial Year means the 12 calendar months commencing on 1 July in any year and ending on 30 June of the following year;

Funding Term means the period commencing on 1 July 2009 and ending on the earlier of 30 June 2029 and the date this deed is terminated;

Indexation Factor means:

$IF = CPI^{n}/CPI^{(n-1)} - 0.01$

Where

IF = Indexation Factor

CPI^{n} means CPI figure for the Quarter ending 31 March in the Financial Year (year n) immediately preceding the Financial Year in which the Operational Amount is to be paid (year n+1);

$CPI^{(n-1)}$ means the CPI figure for the Quarter ending 31 March in the Financial Year immediately preceding the Financial Year to which CPI^{n} relates.

Insolvency Event means in respect of the TRB, the occurrence of any of the following:

(a) the TRB, or any person for or on its behalf, disposes of all, or substantially all, of its assets and/or undertakings;

(b) the TRB ceases to carry on business;

(c) an administrator is appointed or a resolution is passed or any steps are taken to appoint, or to pass a resolution to appoint, an administrator to the TRB;

(d) a receiver, receiver and manager, official manager, trustee, administrator, other controller, as defined in the Corporations Act, or similar officer is appointed, or steps are taken for such appointment, over any of the assets or undertaking of the TRB;

(e) the TRB proposes or takes steps to implement a scheme of arrangement or other compromise or arrangement with its creditors or any class of them;

(f) the TRB is or becomes unable to pay its debts when they are due, or is otherwise insolvent;

(g) the TRB suspends payment of its debts generally;

(h) an application or order is made for the winding-up, dissolution or deregistration of the TRB or a resolution is passed or any steps are taken, including to pass a resolution in connection with, the winding-up or dissolution of the TRB;

(i) the TRB is declared or taken under any applicable law to be insolvent;

(j) a notice under section 601AB of the Corporations Act is given to, or an application under section 601AA is made by, or in respect of the TRB or, where the TRB is an incorporated association, any steps are taken in connection with the cancellation of its incorporation; or

(k) a person appointed under a power of attorney or other instrument or arrangement with the TRB or the TRB's financiers becomes entitled to manage the business or affairs of the TRB or to perform obligations of the TRB;

Minister means the Minister for Racing in Tasmania;

Operational Amount means, subject to clause 4.3:

(a) in respect of the first Financial Year occurring during the Funding Term, $27 million;

(b) for each subsequent Financial Year during the Funding Term, the amount paid by the Government in respect of the immediately preceding Financial Year in accordance with clause 4.1(a) multiplied by the Indexation Factor;

Operational Funding Condition means each condition specified in clause 2.1;

Operational Funding End Date means 30 September 2009 or such later date as may be notified by the Government to the TRB;

Previous Funding Arrangement means any funding or other financial arrangement in relation to the TRB or any thoroughbred, harness and greyhound racing or breeding organisation or part of an organisation under any legislation or any arrangement with TOTE Tasmania Pty Ltd or the Government in existence before the Commencement Date, consisting of the following arrangements:

(a) Payments from the Government under section 152 of the *Gaming Control Act 1993;*

(b) Payments from TOTE Tasmania, including payments under Division 3 of Part 2 of the *TOTE Tasmania (Racing Regulation) Act 2004* and payments that do not relate to commercial agreements; and

(c) Administered payments from the Department of Infrastructure, Energy and Resources, including $60 000 per annum in relation to reduced corporate bookmaker's commission, and $1 million in compensation for the Tasmanian Racing Industry (TRI) not having access to poker machines.

Quarter means a period of 3 months ending on 31 March, 30 June, 30 September or 31 December of any calendar year;

Sale means the sale of the shares in and/or the assets of TOTE Tasmania Pty Ltd to a private interest.

1.2 Interpretation

In this deed:

(a) headings are for convenience only and do not affect interpretation;

and unless the context indicates a contrary intention:

(b) an obligation or a liability assumed by, or a right conferred on, 2 or more persons binds or benefits them jointly and severally;

(c) "**person**" includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;

(d) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation;

(e) a reference to a document (including this deed and the Treasurer's Instruction *GBE 07-44-01 Investments*) is to that document as varied, novated, ratified or replaced from time to time;

(f) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;

(g) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;

(h) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this deed, and a reference to this deed includes all schedules, exhibits, attachments and annexures to it;

(i) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;

(j) "**includes**" in any form is not a word of limitation; and

(k) a reference to "**$**" or "**dollar**" is to Australian currency.

2. Conditions Precedent

2.1 Conditions relating to Operational Amount

Clauses, 3.1, 3.3, 4.1(a), 6 and 7 do not become binding on the parties and have no force or effect unless and until each of the conditions listed below has either been satisfied or waived in accordance with clause 2.4:

(a) all assets and liabilities which the Minister proposes to transfer to the TRB from TOTE Tasmania Pty Ltd under the *Racing Regulation Amendment (Governance Reform) Act 2008* (Tas) have been transferred by the Minister's Orders published in the *Tasmanian Government Gazette*; and

(b) the repeal or amendment of any legislation in existence as at the date of this deed which effectively removes the requirement for the Treasurer or TOTE Tasmania Pty Ltd to make payments to the Tasmanian racing industry including under section 152 of the *Gaming Control Act 1993* and Division 3 of Part 2 of the *TOTE Tasmania (Racing Regulation) Act 2004*.

2.2 Conditions relating to Capital Amount

Clauses 3.2 and 4.1(b) of this deed do not become binding on the parties and have no force or effect unless and until:

(a) each Operational Funding Condition is satisfied or waived in accordance with clause 2.4; and

(b) the Government receives the funds which are due and payable on the completion of the Sale.

2.3 Notice in relation to satisfaction of Conditions

Each party must within 1 Business Day after becoming aware of the satisfaction of any Operational Funding Condition or any Capital Funding Condition, notify the other party of the satisfaction of that condition and provide reasonable evidence that the condition has been satisfied.

2.4 Waiver of Conditions

The Government may in its absolute discretion waive an Operational Funding Condition and/or a Capital Funding Condition by giving notice to the TRB.

2.5 Failure of Operational Funding Conditions

(a) The Government is entitled to terminate this deed by notice to the TRB:

(i) any time before the Operational Funding End Date if any Operational Funding Condition has become incapable of satisfaction and is not waived in accordance with clause 2.4 within 10 Business Days of the date the incapacity became evident; or

(ii) any time after the Operational Funding End Date if any Operational Funding Condition has not been satisfied or waived in accordance with clause 2.4.

(b) If the Government terminates this deed in accordance with clause 2.5(a), the parties will negotiate in good faith an alternative funding arrangement.

2.6 Failure of Capital Funding Condition

If:

(a) at any time before the Capital Funding End Date the Capital Funding Condition has become incapable of satisfaction and is not waived in accordance with clause 2.4;

(b) at any time after the Capital Funding End Date the Capital Funding Condition has not been satisfied or waived in accordance with clause 2.4; or

(c) the Government gives notice to the TRB that it is no longer pursuing the Sale;

clauses 3.2 and 4.1(b) shall be deemed severed from this deed and this deed shall be read as though clauses 3.2 and 4.1(b) did not exist.

3. Funding

3.1 Operational Funding

The Government will, for the purpose of funding the TRB's expenses, as that term is defined in the Accounting Standards, pay to the TRB the Operational Amount in respect of each Financial Year during the Funding Term in accordance with clause 4.1(a).

3.2 Capital Funding

In addition to the amount payable under clause 3.1, the Government will, for the purpose of funding investment by the TRB in assets, as that term is defined by the Accounting Standards, pay to the TRB the Capital Amount in accordance with clause 4.1(b).

3.3 No other funding

The TRB acknowledges that in respect of the Funding Term, the amounts payable by the Government under this deed are the only amounts that the Government will contribute to the TRB and the Tasmanian thoroughbred, harness and greyhound racing and breeding industries and the TRB will not seek any additional funding or financial assistance from the Government.

4. Payment of Operational Amount and Capital Amount

4.1 Payment of Operational Amount and Capital Amount

(a) The Government will pay to the TRB the Operational Amount within 10 Business Days of the beginning of each Financial Year occurring in whole or in part during the Funding Term, or in respect of the first payment within 10 Business Days of the Commencement Date; and

(b) The Government will pay to the TRB the Capital Amount on the day that is 10 Business Days after the date on which the Government receives the funds due and payable to it on the completion of the Sale.

4.2 Withholding Payment

Notwithstanding clause 4.1, the Government may without liability withhold the whole or part of any payment due to the TRB under this deed:

(a) whilst ever the TRB:

(i) is in breach of any material provision of any Tasmanian legislation; or

(ii) is in breach of any other provision of any Tasmanian legislation and fails to remedy the same to the satisfaction of Government within 10 Business Days of becoming aware of that breach; or

(b) if the TRB does not maintain the level of stakes money paid to the industry each year, in real terms, using the level of stakes money paid in 2008-09 as the base year.

4.3 Reduction/Set-Off of Double Payment Amounts

If the TRB receives any amount of funding or financial assistance under a Previous Funding Arrangement which relates in whole or part to any period occurring during the Funding Term (or in the case of capital funding or assistance, which relates to projects or purposes to which the Capital Amount would otherwise relate) the amounts which would be otherwise payable by the Government to the TRB under this deed shall be reduced by the amount of such funding.

5. Self Generated Funding

5.1 Self Generated Funding

Nothing in this deed shall be taken as preventing or restricting the TRB from generating through its own activities income from sources other than Government.

6. Distribution and Reporting

6.1 Distribution

Subject to clause 7, the Operational Amount and Capital Amount must only be distributed or used by the TRB for the purposes for which such amounts were provided under clauses 3.1 and 3.2 respectively and in accordance with the proper performance of the TRB's functions under the *Racing Regulation Act 2004*.

6.2 Reporting

The TRB must report to the Minister the amount of the Capital Amount spent on capital expenditure projects undertaken in each Financial Year or part thereof during the Funding Term in the applicable annual report of the TRB.

7. Investment of Funds

To the extent that the TRB is not obliged to distribute or expend funds received which comprise the Operational Amount and/or the Capital Amount immediately, the TRB may invest such funds, provided that it does so through the Tasmanian Public Finance Corporation (Tascorp) and in doing so must comply with Treasurer's Instruction *GBE 07-44-01 Investments*.

8. Termination

8.1 Termination by Government

The Government may terminate this deed:

(a) if the TRB breaches any provision of this deed and fails within 30 Business Days of receiving notice of the breach to remedy the same;

(b) if the TRB fails to comply with its obligations under the *Racing Regulation Act 2004* (Tas) and fails within 10 Business Days of becoming aware of such failure to remedy same to the satisfaction of Government;

(c) the TRB ceases to exist or its functions are substantially changed;

(d) the TRB ceases to be the controlling body for all three codes of racing (thoroughbred harness and greyhound); or

(e) if an Insolvency Event occurs in relation to the TRB.

8.2 Effect of Termination

If this deed is terminated then:

(a) the provisions of this deed shall cease to have effect except for the provisions of clauses 8 and 9; and

(b) each party retains the rights it has against the other in respect of any breach of this deed occurring before the termination.

8.3 Adjustment on Termination

The TRB must repay within 10 Business Days of termination that part of any amounts paid to it under this deed prior to the date of termination which:

(a) have not been actually expended as at the date of termination; or

(b) are amounts the TRB used, distributed or expended otherwise than in accordance with this deed.

9. General

9.1 Damages

The Government will have no liability in respect of any claim or action for any indirect or consequential loss or damage arising from or in connection with any breach of this deed by the Government.

9.2 Notices

Each communication (including each notice, consent, approval, request and demand) under or in connection with this deed:

(a) must be in writing;

(b) must be addressed as follows (or as otherwise notified by that party to each other party from time to time):

Government

Name:	**Department of Infrastructure, Energy and Resources**
Address:	10 Murray Street, Hobart, TAS, 7000
Fax:	61 3 6233 3441
For the attention of:	Secretary

TRB

Name:	**Tasmanian Racing Board**
Address:	6 Goodwood Road, Elwick, TAS, 7010
Fax:	61 3 6272 9739
For the attention of:	Chief Executive Officer

(c) must be signed by the party making it or (on that party's behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that party;

(d) must be delivered by hand or posted by prepaid post to the address, or sent by fax to the number, of the addressee, in accordance with clause 9.2(b); and

(e) is taken to be received by the addressee:

(i) (in the case of prepaid post) on the third day after the date of posting;

(ii) (in the case of fax) at the time in the place to which it is sent equivalent to the time shown on the transmission confirmation report produced by the fax machine from which it was sent; and

(iii) (in the case of delivery by hand) on delivery,

but if the communication is taken to be received on a day that is not a working day or after 5.00 pm, it is taken to be received at 9.00 am on the next working day ("working day" meaning 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).

9.3 Governing law

This deed is governed by and must be construed according to the law applying in Tasmania.

9.4 Jurisdiction

Each party irrevocably:

(a) submits to the non-exclusive jurisdiction of the courts of Tasmania, and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this deed; and

(b) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 9.4(a).

9.5 Taxes, Charges, Rates, etc

The TRB:

(a) must pay all relevant state and local taxes, duties, levies, rates, charges and the like and any related fines and penalties in respect of this deed, the performance of this deed and each transaction effected by or made under this deed; and

(b) indemnifies the Government against any liability arising from failure to comply with clause 9.5(a).

9.6 Variation

This deed may be varied by a deed executed by or on behalf of each party.

9.7 Waiver

(a) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by law or under this deed by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under this deed.

(b) A waiver or consent given by a party under this deed is only effective and binding on that party if it is given or confirmed in writing by that party.

(c) No waiver of a breach of a term of this deed operates as a waiver of another breach of that term or of a breach of any other term of this deed.

9.8 Further acts and documents

Each party must promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that party) required by law or reasonably requested by another party to give effect to this deed.

9.9 Assignment

A party cannot assign, novate or otherwise transfer any of its rights or obligations under this deed without the prior consent of the other party.

9.10 Counterparts

This deed may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes the deed of each party who has executed and delivered that counterpart.

9.11 No representation or reliance

(a) Each party acknowledges that no party (nor any person acting on a party's behalf) has made any representation or other inducement to it to enter into this deed, except for representations or inducements expressly set out in this deed.

(b) Each party acknowledges and confirms that it does not enter into this deed in reliance on any representation or other inducement by or on behalf of any other party, except for representations or inducements expressly set out in this deed.

9.12 Entire deed

To the extent permitted by law, in relation to its subject matter, this deed:

(a) embodies the entire understanding of the parties, and constitutes the entire terms agreed by the parties; and

(b) supersedes any prior written or other deed of the parties.

Executed as a Deed

Signed, Sealed and Delivered by the Minister for Racing for and on behalf of **The Crown in the Right of Tasmania** in the presence of:

Section 36

Signature of witness

Section 36

Name of witness in full

Section 36

Signature of Minister ~~for Racing~~

HON MICHAEL AIRD MLC

Name of ~~Minister~~ for Racing

Signed, Sealed and Delivered for and on behalf of **The Tasmanian Racing Board** by its authorised signatory in the presence of:

TASMANIAN RACING BOARD
Common Seal

Section 36

Signature of Witness

Section 36 1/6/09.

Name of Witness in full

Section 36

Signature of Authorised Signatory

DONALD K. ABELL

Name of Authorised Signatory