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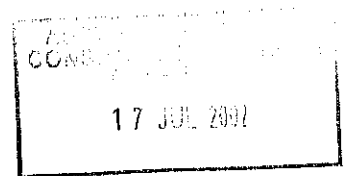
Mr. Tim Grimwade
General Manager
Adjudication Branch
Australian Competition & Consumer Commission
PO Box 1199
DICKSON ACT 2602

FILE No:
DOC: D02/39439

16 JULY 2002

Dear Sir,

AUSTRALIAN HOTELS ASSOCIATION (NSW)



I represent the Australian Hotels Association (NSW)

In accordance with the attached application, the AHA-NSW seeks authorisation to conduct collective negotiations with TAB Ltd in relation to the provision of totalisator(wagering) [PUBTAB]and racing broadcast services [SKY CHANNEL] to AHA (NSW) members.

It is proposed that the AHA (NSW) would have the responsibility for collective negotiations in NSW, on behalf of its members.

The AHA (NSW) wish to immediately commence negotiations on behalf of its members.

It is clearly acknowledged by the AHA (NSW) that the negotiations cannot bind individual AHA members who wish to negotiate separate terms and conditions with TAB/SKY CHANNEL.

This application also seeks authorisation for primary boycott activity in the form of a collective decision to withdraw services to TAB/SKY CHANNEL, should negotiations break down and are not be recommenced within 7 days.

Authorisation is sought for a period of five (5) years.

BACK GROUND AND ESSENTIAL ISSUES.

TAB LTD.

TAB Ltd is the owner of SKY CHANNEL in NSW. A situation where the exclusive provider of totalisator services also owns the sole source of racing broadcasts. This is unique to NSW.

TAB Ltd has been given, by NSW law, the exclusive right to provide totalisator services in NSW. That exclusive right has been exempted from the TPA by NSW legislation. This was done at the time of the privatisation of, the previously State owned, TAB.

Not only does TAB Ltd own SKY CHANNEL but it owns the only source of radio racing broadcasts in NSW, namely Radio 2KY.

SKY CHANNEL has the sole rights to televise racing in NSW, through an exclusive agreement with the NSW racing clubs. SKY CHANNEL provides racing broadcasts to FOXTEL and there appears to be an arrangement between SKY CHANNEL and FOXTEL whereby FOXTEL is not allowed to provide racing broadcasts to AHA members who have a contract with TAB. Ironically most such members would have FOXTEL broadcast services in their public premises to show football and other sports.

The essential issue is the power TAB/SKY CHANNEL has over NSW hotels and taverns and how that power is used [or misused] by Sky Channel. Natural efficiencies and freedoms that flow out of a free market are simply suppressed.

Hotels and taverns, especially those in regional NSW, are in a captive position in relation to both TAB services and televised racing services. The situation in NSW is worse than in other States as the TAB and Sky Channel are under the same ownership. Hotels and taverns need the TAB/SKY CHANNEL services otherwise they will loose out to others such as their hotel and tavern competitors and/or licensed clubs.

The manifestations of this use of market power by TAB/SKY CHANNEL in NSW include,

- A take it or leave attitude to contracts.
- Standard form contracts.
- Refusal to negotiate.
- Refusal to take into account the different commercial circumstance between small and large customers and in particular small customers in regional NSW.
- Use of an inappropriate basis for charging, namely literage.
- High charges, which have no relationship to commercial reality.
- Forcing the customer to meet all establishment and running costs , with the result that many make a loss on their gaming operations
- Different terms and conditions between States reflecting different market power relationships rather than different commercial circumstances.
- Threats to take away the services, without any compensation for the establishment costs.
- Generally using the TAB service as a commercial lever.

Recently Sky Channel announced a claimed price reduction of 5% in its charges in NSW. Further, it announced that it will not change its charges until at least 2003 and that it will not change any other terms and conditions in that period. This announcement is somewhat misleading as the so called price reduction was actually a cut in the price rise that was already proposed.

This latest move highlights Sky Channels ability to act as it wishes .Sky Channel states that it is passing on reductions in the prices the racing clubs charge Sky Channel .The AHA would be surprised if all the cost reductions were passed on.

EFFECT ON COMPETITION.

The current situation is such that TAB/SKY CHANNEL unilaterally imposes conditions on AHA members, there is no negotiation on terms and hence any competition between members for the rights. It is one fits all.

Having said that there is limited competition between members except those in close proximity. For instance a member in Bourke does not compete with one in Harbord .However if there were differing terms there may be a ripple effect that will influence different deals with different members.

AHA members would prefer a situation where there is choice of providers of wagering and /or racing broadcast services but have a no choice situation imposed on them.

NSW LEGISLATION.

There are the following relevant NSW Statutes.

1. Racing Administration Act 1998- general legislation for the administration of racing in NSW.
2. Totaliser Legislation Amendment Act 1997- this enables express exemptions to national competition law i.e. the Trade Practices Act 1974.Relevant section is attached.

The exemption contained in section 17A is very broad .Under the section the Minister can issue directions to exempt other conduct. I am informed that no such directions have been issued.

3. Liquor and Registered Clubs Legislation Further Amendment Act 1999- same as above.
4. Liquor and Registered Clubs Amendment (Community Partnership) act 1998- same as above.

THE AHA (NSW.)

The AHA NSW is an industry association representing the vast majority of hotels and taverns in NSW.

There are approximately 1635 members in NSW.

The break up is,

- City-586
- Regional cities-220
- Country- 829.

Most members would have PUBTAB and hence SKY CHANNEL .If one member in a town has PUBTAB it is essential that others have it

PUBTAB/SKYCHANNEL has become an essential element of members business, even though in very many cases it is not profitable

TAB has, in recent years, actively moved away from its own outlets into hotels and no doubt has saved a lot of expense.

In terms of size of AHA members, 137 would be classified as large, 84 as medium and 1414 as small. The latter being mainly in country centres but a significant number being suburban.

Generally, AHA members are recognised in the community as small businesses engaged in the provision of hospitality services and gaming and gambling services.

In rural and regional areas members are an especially important part of the community.

AHA MEMBER TAB/SKY DEALINGS.

Most AHA members have contracts with TAB /SKY for the provision of wagering services and racing broadcasts. Sample contracts and TAB/SKY CHANNEL fee Schedule are attached.

As part of these contracts the AHA member provides, at their expense, the premises and maintenance thereof and all labour costs involved in the running of the relevant part of the premises.

The member gets a commission out of the TAB turnover but this is normally more than offset by the SKY CHANNEL fees.

TRADE PRACTICES ACT-STATUTORY TESTS

The application is made under section 88(1) of the Act in respect of a proposed arrangement which might substantially lessen competition within the meaning of section 45 of the Act. Accordingly, to grant the Authorisation sought the Commission must be satisfied that, in all the circumstances, the proposed arrangement will result, or be likely to result, in a benefit to the public and that that benefit would outweigh the detriment to the public constituted by any lessening of competition that would result or be likely to result, from the arrangements.

It is submitted that the proposed arrangements will give rise to significant public benefit which would outweigh the anticompetitive detriment (if any).

Those public benefits are:

- Ensuring the continued viability of small business operations, particularly in rural and regional areas, thus ensuring competition in those areas;
- Assistance to the efficiency and competitiveness of small business, by:
 - Facilitating the availability of information on operational and pricing issues.
 - Limiting transaction costs in negotiation of supply agreements
 - Freeing up small business operators to focus on increasing the competitiveness of their businesses
 - Fostering industry harmony
 - Promotion of equitable dealings in the market;
- Providing countervailing/bargaining power to small business in dealing with large and powerful suppliers;
- Promotion of industry cost savings, potentially resulting in contained or lower prices at all levels in the supply chain; and
- Supply of better information to suppliers to permit more informed choices in their dealings with small business.
- Equity in the market.

In granting an authorisation, the Commission may be concerned that there will be associated anti-competitive detriment. It is to be made clear that members will not be forced to be part of any collective negotiations and will be free to deal with the TAB/SKY CHANNEL separately.

However it is expected that having regard to the history of TAB/SKY CHANNEL relations in NSW and for that matter most States it is doubted that many members will go it alone. Attached is a survey done in Victoria of AHA members views of the dealings with SKY CHANNEL. A similar survey is being done amongst NSW members now. We will forward the results to the ACCC as soon as they are available.

We also contend that the anti competitive effect is limited and would argue that the current system prevents any competitive dynamics in the industry.

Withdrawal of Services

An application is made under section 88(1) of the Act in respect of a proposed contract, arrangement or understanding which might be an exclusionary provision within the meaning of section 45 of the Act. Accordingly, to grant the Authorisation sought the Commission must be satisfied that, in all the circumstances, the proposed contract, arrangement or understanding will result, or be likely to result, in such a benefit to the public that the proposed conduct, arrangement or understanding should be allowed to be made.

AHA (members) seeks the right to determine, collectively, that they should refuse to supply services to TAB/SKY CHANNEL, where negotiations break down and are not re-commenced within 7 days.

In support of that aspect of the application, the applicants rely on the submissions made below.

If AHA (NSW) members have no effective right of redress where they are unable to overcome the imbalance in bargaining power with publishers to obtain appropriate commercial terms, then the public benefits outlined in this submission will be lost.

An individual AHA (NSW) member who exercised a unilateral choice to refuse to deal with TAB is likely to suffer significant commercial consequences, and unlikely to be in a position to negotiate a re-commencement of services. AHA (NSW) members are only in a position to address the imbalance of power held by TAB where they can make a collective decision which might give rise to a willingness to negotiate on the part of TAB/SKY CHANNEL.

PUBLIC BENEFITS

The applicants' detailed submissions in relation to public benefit are as follows.

□ Collective Negotiation for a common system.

It is the general practice of TAB/SKY CHANNEL to adopt standard contracts across the industry in NSW and to some extent similar contracts in other jurisdictions. However the NSW contract is more onerous and less flexible those elsewhere.

The approach adopted by TAB/SKY CHANNEL clearly demonstrates two points:

- that there are increased business efficiencies arising from a consistent approach; and
- that SKY /CHANNEL is not disposed to negotiate individually with a large number of small businesses.

It is inequitable for a small business in the position of AHA members to be faced with circumstances where only one party to the transaction can negotiate on that wider basis.

In fact in relation to some TAB/SKYCHANNEL products, it insists on dealing with the AHA (NSW) and on a 'one in all in or one out all out' basis.

**□ Promotion of Equitable Dealings in the Market –
Countervailing Power**

TAB/. SKY CHANNEL is increasingly dependent on AHA members for the delivery of their products throughout NSW.

AHA members remain to a large extent commercially dependent upon continued supply by TAB.SKY CHANNEL of totalisator and racing broadcast service.

Commercially, AHA members have no choice but to continue to take TAB/SKY CHANNEL services largely in order to attract customers who will also purchase other hotel products such as food and beverages.

The fact is that individual AHA members are not in a position to negotiate effectively with TAB/SKY CHANNEL. Many members feel totally disempowered. The individual members lack of confidence in dealing with TAB/SKY CHANNEL must impact negatively on their bargaining position and hence on the prospective outcome of such a process. Individual members fear TAB/SKYCHANNEL.

It is the practice of TAB/SKY CHANNEL to present a standard form contract to all members. The AHA (NSW) is unaware of any case where an individual member has successfully sought amendment to a standard contract. Copies of the standard PUBTAB and SKY CHANNEL contracts and fees schedule are attached.

Permitting collective negotiation has the public benefit of providing countervailing bargaining power to small business in negotiations with an unusually powerful supplier.

This power is highlighted by the information that TAB/SKY CHANNEL demands from AHA members, information having little to do with the wagering or broadcasting business, such as total literate sales and related commercial information.

Providing members with the opportunity to have negotiations conducted by an industry body will (both in reality and in the view of the small business operators concerned) “level the playing field” by, to some extent, balancing the market power of TAB/SKY CHANNEL.

The AHA member’s inability to collectively negotiate, through their industry body, places them in an inadequate position in a marketplace dominated by TAB/SKY CHANNEL or in other States TAB or its equivalent plus SKY CHANNEL.

The ability to negotiate collectively with TAB /SKY CHANNEL will not have an anticompetitive effect by putting AHA members in an advantageous position, but will simply ‘level the playing field’. If the Commission thought that there was an anticompetitive effect, we submit that it is clear that it is more than outweighed by the public benefits that flow set out above.

□ **Small Business Efficiency/Viability**

Hotels are widely acknowledged as an important small business sector in Australia, especially in regional and rural Australia

Facilitating the conduct of joint negotiations on TAB/SKY CHANNEL services will assist in small business efficiency by increasing the availability to members of information, including information about income trends and operating expenses, which will give them an improved understanding of the effect of wider trends upon their businesses, and improve their ability to make better business decisions.

To conduct negotiations individually, assuming that negotiations were realistic, members would be required to obtain financial and accounting advice to formulate the necessary submissions about income and operating expenses, and legal advice to assist in conducting negotiations. Obtaining this advice separately will lead to increased transaction costs for individual small businesses.

Individual members are not in a position to obtain or provide detailed data to support their claim for changes to fees and commissions. Generally, individual members will lack the knowledge and sophistication to articulate those factors which impact on the viability. Further, collective negotiation facilitates a mechanism for gathering and

collating information relating to income trends and operating expenses, which would otherwise not be available.

In undertaking collective bargaining, the AHA (NSW) would be in a position to obtain legal, accounting and financial advice with regard to contractual provisions, which would minimise costs to individual members.

This process also would assist individual members in identifying areas where efficiencies and cost savings could be obtained.

The most important public benefit to flow from the authorisation applied for is the opportunity to increase efficient small business. More than 50% per cent of the AHA (NSW) membership operate in rural and regional areas, and the public benefit of promoting efficiency of small business in those areas is clear.

As an Industry body, the AHA (NSW) has the benefit of national information and support.

□ **Supplier Efficiency**

It is not only AHA members which will benefit from the increased efficiency of a collective bargaining process.

TAB/SKY CHANNEL will also be assisted by the provision of industry wide information to provide guidance on realistic pricing. This improved supply of information will assist in increasing supplier efficiency by permitting informed decisions.

As indicated earlier this submission TAB/SKY CHANNEL already expect some things to be done on an Association- wide basis.

Collective representation will also remove the need for TAB/SKY CHANNEL to allocate significant resources to conducting, what are sham, individual negotiations, particularly in regional areas. Collective negotiations will increase the amount and quality of information available to all involved allowing them to make more informed choices about their business arrangements. The provision of information by the AHA about operating costs will assist TAB /SKY CHANNEL to identify a sustainable price, particularly in regional areas.

The grant of authorisation for negotiations by the AHA would obviously be of assistance to SKY CHANNEL in its often expressed wish to adopt a national approach to their dealings with the industry. SKY CHANNEL operates nationally and whilst there are State differences, it seeks to adopt a national stance.

□ **Equity issues**

In 1998 the Federal government amended the Trade Practices Act 1974 to specifically prohibit unconscionable conduct in small business transactions.

This is predominantly assessed on the relative weight of negotiating power between the parties as well as the ability of parties to obtain proper adequate legal representation on the issues governing intended relations between the parties.

We submit that having regard to the entirety of the Trade Practices Act 1974 the ACCC must accept as a public benefit the issues of fairness and avoiding or eliminating situations where breaches of the unconscionable conduct provisions may occur.

Public benefit is not only about economics but also fairness. The Parliament, the ultimate representative of the public and its interests, has passed the unconscionable conduct law and has put it into the TPA. We submit that the ACCC must take that into account in any public benefit assessment.

It is contended that just as the Commission saw the merit in providing assistance to dairy producers, poultry growers, private hospitals, lorry owner drivers and others in granting an authorisation, the granting of one in this case is an appropriate case to make the relations between the parties more equitable and conscionable and hence produce an outcome more likely to be in the interests of the parties themselves and of the public.

We are aware that the issue of collective negotiation by dairy farmers is currently before the Australian Competition Tribunal. We trust that that will not delay applications such as this one or the by the Australian Newsagents Federation.

OTHER ISSUES

We also note the ACCC submission to the DAWSON REVIEW OF THE TRADE PRACTICES ACT 1974 and the ACCC support for a fast track mechanism in the Act to facilitate collective negotiation by small business when dealing with large suppliers or customers.

A relevant factor in any collective negotiation application will be whether the granting of the application will lead to higher prices to the consumer.

That is clearly important. In this application we can say that, should the application be successful, the price to the consumer of the services provided by AHA members will not rise, as a direct result of the authorisation. We expect more a redistribution of costs and perhaps other efficiencies in the industry.

AHA members would also be happy to explore other avenues for the relevant services but cannot at the moment, due to a mix of NSW law and industry structure and industry agreements. They are totally captive and seek assistance from the Trade Practices Act to overcome that situation.

I would be happy to provide any additional information.

Yours truly,

A handwritten signature in black ink, appearing to read 'Hank Spier', written over a thin horizontal line.

HANK SPIER

Director

FILE No:

DOC:

Form B

Commonwealth of Australia

Trade Practices Act 1974 ---- Sub-section 88(1)

**AGREEMENTS AFFECTING COMPETITION:
APPLICATION FOR AUTHORISATION**

To the Australian Competition and Consumer Commission:

Application is hereby made under sub-section 88(1) of the *Trade Practices Act 1974* for an authorisation under that sub-section

- to make a contact or arrangement, or arrive at an understanding, a provision of which would have the purpose, or would have or might have the effect, of substantially lessening competition within the meaning of section 45 of that Act.
- to give effect to a provision of a contract, arrangement or understanding which provision has the purpose, or has or may have the effect, of substantially lessening competition within the meaning of section 45 of that Act.
- (Strike out whichever is not applicable)
(PLEASE READ DIRECTIONS AND NOTICES ON BACK OF FORM)

1. (a) Name of Applicant... AUSTRALIAN HOTELS ASSOCIATION (NSW).....

(See Direction 2 on the back of this Form)

(b) Short description of business carried on by applicant..... INDUSTRY ASSOCIATION REPRESENTING HOTELS AND TAVERNS.....

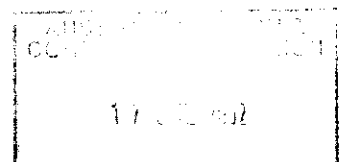
(c) Address in Australia for service of documents on the applicant... SPIER CONSULTING P/L, 92 JERVOIS STREET, DEAKIN ACT 2600 Spierconsulting@bigpond.com

2. (a) Brief description of contract, arrangement or understanding and, where already made, its date

.COLLECTIVE NEGOTIATIONS ON BEHALF OF AHA MEMBERS WITH SUPPLIERS OF TAB AND SKY CHANNEL SERVICES. AS DETAILED IN ATTACHED SUBMISSION.....

.COLLECTIVE BOYCOTT OF TAB/SKY CHANNEL AS DETAILED IN ATTACHED SUBMISSION.....

(b) Names and addresses of other parties or proposed parties to contract, arrangement or understanding



.....NA.....
.....

(See Direction 4 on the back of this Form)

3. Names and addresses (where known) of parties and other persons on whose behalf application is made

.....NA.....
.....

4. (a) Grounds for grant of authorisation

.....SEE ATTACHED SUBMISSION.....
.....

(b) Facts and contentions relied upon in support of those grounds

.....
.....SEE ATTACHED
SUBMISSION.....
.....

(See Notice 1 on the back of this Form)

5. This application for authorisation may be expressed to be made also in relation to other contracts, arrangements or understandings or proposed contracts, arrangements or understandings, that are or will be in similar terms to the above mentioned contract, arrangement or understanding.

(a) Is this application to be so expressed..... NO.....

(b) If so, the following information is to be furnished:

(i) the names of the parties to each other contract, arrangement or understanding.....

(ii) the names of the parties to each other proposed contract, arrangement or understanding which names are known at the date of this application.....

(See Direction 5 and Notice 2 on the back of this Form)

6. (a) Does this application deal with a matter relating to a joint venture (See section 4J of the Trade Practices Act 1974)

..NO.....
.....

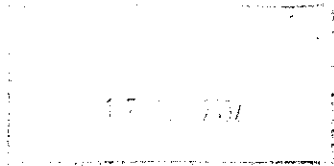
(b) If so, are any other applications being made simultaneously with this application in relation to that joint venture

.....

.....
(c) If so, by whom or on whose behalf are those other applications being made
.....
.....

7. Name and address of person authorised by the applicant to provide additional information
in relation to this application... HANK SPIER 92 JERVOIS STREET, DEAKIN, ACT 2600,
02-62812030

Dated..... 9th JULY 20002 Signed by/on behalf of the
applicant



John Thorpe
.....
JOHN THORPE (Signature)
.....
PRESIDENT (Full Name)
.....
(Description)

DIRECTIONS

1. Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.
2. Where the application is made by or on behalf of a corporation, the name of the corporation is to be inserted in item 1(a), not the name of the person signing the application and the application is to be signed by a person authorised by the corporation to do so.
3. In item 1(b), describe that part of the applicant's business relating to the subject matter of the contract, arrangement or understanding in respect of which the application is made.
4. Furnish with the application particulars of the contract, arrangement or understanding in respect of which the authorisation is sought. Those particulars shall be furnished ---
 - (a) in so far as the particulars or any of them have been reduced to writing --- by lodging a true copy of the writing; and
 - (b) in so far as the particulars or any of them not been reduced to writing --- by lodging a memorandum containing a full and correct statement of the particulars that have not been reduced to writing.
5. Where the application is made also in respect of other contracts, arrangements or understandings, which are or will be in similar terms to the contract, arrangement or understanding referred to in item 2, furnish with the application details of the matter in which those contracts, arrangements or understandings vary in their terms from the contract, arrangements or understanding referred to in item 2.

NOTICES

1. In relation to item 4, your attention is drawn to sub-sections 90(6) and (7) of the *Trade Practices Act 1974* which provide as follows: --“(6) The commission shall not make a determination granting an authorisation under sub-sections 88(1), (5) or (8) in respect of a provision (not being a provision that is or may be an exclusionary provision) of a proposed contract, arrangement or understanding, in respect of a proposed covenant, or in respect of proposed conduct, unless it is satisfied in all the circumstances that the provision of the proposed contract, arrangement or understanding, the proposed covenant, or the proposed conduct, as the case may be, would result, or be likely to result, in a benefit to the public and that that benefit would outweigh the detriment to the public constituted by any lessening of competition that would result, or be likely to result, if
 - (a) the proposed contract or arrangement were made, or the proposed understanding were arrived at, and the provision concerned were given effect to;
 - (b) the proposed covenant were given, and were complied with; or
 - (c) the proposed conduct were engaged in, as the case may be.“(7) The Commission shall not make a determination granting an authorisation under sub-section 88(1) or (5) in respect of a provision (not being a provision that is or may be an exclusionary provision) of a contract, arrangement or understanding, or, in respect of a covenant, unless it is satisfied in all the circumstances that the provision of the contract, arrangement or understanding, or the covenant, as the case may be, has resulted, or is likely to result, in a benefit to the public and that that benefit outweighs or

would outweigh the detriment to the public constituted by any lessening of competition that has resulted, or is likely to result, from giving effect to the provision or complying with the covenant.”

2. If an authorisation is granted in respect of a proposed contract, arrangement or understanding the names of the parties to which

are not known at the date of this application, the authorisation shall, by sub-section 88(14) of the *Trade Practices Act 1974*, be

deemed to be expressed to be subject to a condition that any party to the contract, arrangement or understanding will, when so

required by the Commission, furnish to the Commission the names of all the parties to the contract, arrangement or understanding.



New South Wales Consolidated Acts

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TOTALIZATOR ACT 1997 - SECT 17A

17A Trade Practices exemption

(1) The following conduct is specifically authorised by this Act for the purposes of the Trade Practices Act 1974 of the Commonwealth and the Competition Code of New South Wales:

- (a) the grant of the TAB off-course licence, the TAB on-course licence and a club on-course licence referred to in sections 14 and 15 of this Act,
- (b) conduct authorised or required by or under the terms or conditions of a licence referred to in paragraph (a),
- (c) entering into an arrangement or proposed arrangement approved under this section,
- (d) giving effect to an arrangement approved under this section,
- (e) the giving of a direction pursuant to clause 15 (Power of controlling bodies to give directions) of Schedule 2 and any conduct engaged in in compliance with any such direction.

(2) The Minister may by order published in the Gazette approve of the following for the purposes of this section:

- (a) any arrangement or proposed arrangement entered into or to be entered into for the purposes of section 21A (Commercial arrangements with the racing industry) or 43 (2),
- (b) any arrangement or proposed arrangement that in the opinion of the Minister is associated with and necessary or convenient for giving effect to a licence referred to in subsection (1) or an arrangement or proposed arrangement referred to in paragraph (a).

(3) An approval under this section must identify the parties to the arrangements concerned.

(4) Conduct authorised by this section is authorised only to the extent (if any) that it would otherwise contravene Part IV of the Trade Practices Act 1974 of the Commonwealth and the Competition Code of New South Wales.

(5) In this section:
arrangement includes agreement and understanding.
giving effect to an arrangement includes:

- (a) complying with any obligation under the arrangement, and
- (b) exercising or enforcing any right or power under the arrangement.

Note. Section 51 of the Trade Practices Act 1974 of the Commonwealth and the Competition Code of New South Wales provide that anything that is authorised by an Act is to be disregarded in deciding whether a person has contravened Part IV of the Trade Practices Act 1974 and the Competition Code (which relates to restrictive trade practices).

Division 2 Applications for and grant of licences _

AHA SURVEY RESULTS – 652 RESPONSES

If you have a PubTAB

SKYCHANNEL FEES

- Are you satisfied with your current Skychannel fee?

Yes	No	Unsure
0%	100%	0%
- If Skychannel fees go up in July, would you consider withdrawing?

Yes	No	Unsure
45%	12%	43%
- Do you approve giving Skychannel access to your literage to determine your Skychannel fee?

Yes	No	Unsure
6%	90%	4%

COMMISSION

- Has your commission **increased** compared to last year?

Yes	No	N/A*
5%	92%	3%

(*N/A - pubs with new TABs cannot compare with last year)
- Is TAB currently worthwhile at your hotel?

Yes	No	Unsure
38%	44%	18%
- Has there been closure of a TAB street agency in your area?
Response: not enough answers given to accurately give percentage answers.
- If there has been a closure, has there been an **increase** in your sales?
Response: as with previous question, most hotels did not answer.
- With the expansion of ClubTABS and PubTABs, do you consider this will impact on your sales?

Yes	No	Unsure
73%	2%	25%

CONSUMABLES

- Do you agree to pay for the toner and paper?

Yes	No	Unsure
0%	78%	22%
- Do you consider there is any cost saving with DFS, compared to the traditional race parcels?

Yes	No	Unsure
6%	70%	24%
- Do your patrons like the new system?

Yes	No	Unsure
23%	34%	43%

STAFF COSTS

- Do you consider there is any labour saving with DFS?

Yes	No	Unsure
5%	74%	21%

Conclusions in brief

- Skychannel fee – 100 pc of hoteliers think it is too high
- However, only 45 pc of members would definitely consider withdrawing from TAB if Sky fees got worse.
- Commission – has not improved over past year for 92 pc of hoteliers – however, only 44 pc of hoteliers say TAB is currently not worthwhile.
- Access to beer figures – 90 pc opposed TAB getting access.

In addition to the survey, numerous members have written in or telephoned with further comments.

There was a general view that hoteliers would be happy to continue having TAB even if it doesn't make much money, because they see it as something that patrons would always like to have around.

These hoteliers said they could live with minimal commissions if their major outlay – Sky – could be slashed back.

**AGREEMENT TO APPOINT AGENT TO PROVIDE WAGERING SERVICES
IN LICENSED PREMISES**

DATE OF THIS AGREEMENT:

THE PARTIES TO THIS AGREEMENT:

TAB LIMITED (ABN 17 081 765 308)

of 495 Harris Street, ULTIMO, NSW 2007 ("TAB")

And

of

("Agent")

NAME AND ADDRESS OF LICENSED PREMISES AT WHICH AGENCY WILL BE
CONDUCTED:

("Premises")

LIQUOR ADMINISTRATION BOARD LICENCE NUMBER:

BACKGROUND:

1. TAB holds an off-course totalizator licence under section 14 of the Totalizator Act 1997 ("**Act**") ("**Off-Course Totalizator Licence**") and an approval to conduct sports betting under section 13 of the Act ("**Sports Betting Licence**").
2. TAB is authorised to engage agents to conduct the activities or to exercise the functions authorised under the Off-course Totalizator Licence and the Sports Betting Licence and to provide Account Betting Services ("**Wagering Services**").
3. The Agent wishes to be appointed by TAB as an agent of TAB to provide Wagering Services in the Premises ("**Agency**").
4. This Agreement sets out the terms and conditions of the Agency.

AGREEMENT:

TAB appoints the Agent and the Agent accepts the Agency in consideration of the mutual promises of the parties for the Period and upon and subject to the terms and conditions set out in the Attachment.

EXECUTION:

Executed as an agreement.

Signed for and on behalf of TAB:

Signature of Witness

Signature of Authorised Officer

Name of Witness

Name and Title of Authorised Officer

Signed by the Agent /for and on behalf of the Agent:

Signature of Witness

Signature of Agent/Authorised Officer

Name of Witness

Name and Title of Authorised Officer (if applicable)

Signature of Witness

Signature of Agent/Authorised Officer

Name of Witness

Name and Title of Authorised Officer (if applicable)

(If the Agent is a company and must sign under seal, the seal should be affixed and witnessed in accordance with the constitution of the company.)

ATTACHMENT

TERMS AND CONDITIONS

1. PERIOD AND TERMINATION:

The Period will commence on the date of this Agreement and will terminate:

- a. on the expiry of not less than one (1) month's notice given by either Party to the other Party;
- b. at such time as TAB in its absolute discretion determines, with or without notice, in any of the following events:
 - i. if the Agent fails to perform fully any of the Agent's obligations under this Agreement or TAB determines there has been a breach of the warranty under clause 12.4;
 - ii. if the liquor licence relating to the Premises is suspended, revoked or withdrawn for any reason whatsoever;
 - iii. if continuation of this Agreement may in the opinion of TAB threaten or be likely to threaten TAB's ability to continue to hold the Off-Course Totalizator Licence, the Sports Betting Licence or any other licence or authority held by TAB from time to time;
 - iv. if in relation to an Agent who is an individual person or any Personnel, a Disqualifying Event occurs;
 - v. if TAB terminates any other agreement, deed or arrangement between TAB and the Agent relating to the operation of any other Totalizator Off-Course Betting Agency;
 - vi. if the Agent is a partnership, the death, retirement or withdrawal of a partner, or dissolution of the partnership, or the occurrence, in relation to any partner, of a Disqualifying Event;
 - vii. if the Agent is a company:
 - the making of an order to wind up the company (other than for the purpose of a reconstruction approved, in its absolute discretion, by TAB);
 - presentation of a petition to wind up the company;
 - the company enters into any scheme of arrangement with its creditors;
 - a receiver or official manager or administrator is appointed in respect of the company;
 - the occurrence of a Disqualifying Event in relation to any director or other person having any responsibility for management of the company;
 - any change in the shareholding in the company or in any company which is a holding company.
 - viii. if the weekly average of Investments over the six (6) month period preceding termination is less than \$7,500 (or such other amount as TAB may from time to time determine).

2. OBLIGATIONS OF TAB

During the Period, TAB will:

a) TAB EQUIPMENT AND SUPPLIES:

Provide to the Agent, for the Agent's use in the conduct of the Agency during the Period, TAB Equipment and Supplies which TAB considers necessary for that purpose.

b) MAINTENANCE AND REPLACEMENT OF TAB EQUIPMENT AND SUPPLIES:

Within a reasonable time after receipt of notification by the Agent of a requirement arising and subject to clause 3(a)(v) to the extent TAB considers necessary, rectify, repair, maintain or replace TAB Equipment and Supplies. The Agent will bear all costs incurred by TAB in

delivering any replacement Supplies to the Agent if TAB has to arrange special delivery because the Agent has not complied with ordering procedures prescribed in Instructions and Procedures.

c) INFORMATION AND TECHNICAL ASSISTANCE:

Provide such information and technical assistance to the Agent as TAB considers necessary for the conduct of the Agency from time to time.

d) COMMISSION:

Pay Commission to the Agent on such terms and frequency as TAB may from time to time determine.

e) SETTLEMENT AMOUNT:

Pay the Settlement Amount on such terms and frequency as TAB may from time to time determine.

f) SKY CHANNEL:

Pay the Sky Channel Fee in addition to Commission where weekly average sales are greater than \$12,500.

3. OBLIGATIONS OF THE AGENT

During the Period, the Agent will:

a) OPERATE THE AGENCY:

operate the Agency in a proper, orderly and efficient manner consistent with the standards of presentation and service prescribed in Instructions and Procedures. Without limiting the extent of this provision, the Agent will:

i. HOURS OF BUSINESS OF THE AGENCY:

ensure the Agency is open and operates at such times during the normal trading hours of the Agent as TAB makes its on-line Wagering Services available to the Agent or at such other times as the Agent and TAB agree in writing.

ii. INFORMATION:

open promptly or access and read carefully information and other material delivered by TAB to the Agency by whatever means, including electronically, and promptly carry out or cause to be carried out, any actions or functions required to be carried out to comply with that information and material, including without limitation, conveying relevant information to Personnel.

iii. COMPLIANCE WITH INSTRUCTIONS AND PROCEDURES:

comply with, and ensure that Personnel comply with, Instructions and Procedures including, without limitation, Instructions and Procedures for:

- display of signage in the Agency;
- payment of Dividends;
- display of race/sports betting events
- display of race/sports betting events results;
- scratchings from races;
- providing Account Betting Services;

- security procedures including in relation to staff, internal cash security, and TAB Equipment;
 - maintenance and retention of documents, records and accounts relating to the conduct of the Agency;
 - maintenance of TAB Equipment;
 - ordering procedures for Supplies.
- iv. **PROMOTION:**
participate, at its own cost, in promotional and marketing activities to promote the products offered from time to time by TAB.
- v. **BETTING TICKETS:**
be required to pay for betting tickets provided to the Agent which are in excess of actual quarterly usage by the Agent. Quarterly usage will be determined by TAB through a comparison of betting tickets which are ordered and betting tickets which pass through the TAB Equipment. Where the betting tickets ordered by the Agent exceed the betting tickets passing through the TAB Equipment the Agent will be invoiced quarterly in arrears for the cost of the excess betting tickets.
- vi. **SECURITY GUARANTEE:**
before the commencement of the Period lodge with TAB a Security Guarantee. In lieu of a cash Security Guarantee TAB may accept such other form of security as TAB may determine. The Agent must if called upon by the giving of one (1) month's notice in writing by TAB increase the amount of the Security Guarantee to such other amount as TAB shall specify in that notice. Subject to this Agreement, the Security Guarantee must be held by TAB and may immediately, subsequent to or upon the termination of this Agreement be applied by TAB at its sole discretion for the purpose of discharging any liability of the Agent to TAB or to any person to which TAB has a legal liability arising from the conduct of the Agency by the Agent.
- vii. **TAB EQUIPMENT:**
ensure at all times that TAB Equipment is in proper working condition and is used at all times in the Agency for the purpose for which it was provided. The Agent will take reasonable care to prevent damage or loss occurring to TAB Equipment and comply with any TAB requirements relating to routine preventative maintenance. The Agent will immediately notify TAB by telephone of any failure, malfunction, damage or breakdown of any TAB Equipment. If the Agent fails to comply with this sub-clause and TAB suffers loss as a result, TAB is entitled to deduct the amount of the loss from the Security Guarantee immediately after that loss is incurred. The Agent will pay to TAB any amount by which the loss exceeds the Security Guarantee.
- viii. **NOTICE OF SALE:**
in the case of the Premises being a Hotel, give the TAB not less than four (4) weeks notice in writing of the Agent's intention to complete the sale of the Hotel. If the Agent fails to provide four (4) weeks notice in writing TAB is entitled to retain the Security Guarantee by way of compensation for costs, expenses and losses incurred.
- ix. **NOTIFICATION:**
immediately notify TAB by telephone or in writing of any attempted or actual fraud or robbery.

b) CONTROL OF THE AGENCY:

ensure at all times the Agency is under suitable control and supervision.

c) PERSONNEL:

- i employ or engage such number of competent Personnel as will be necessary for the proper, orderly and efficient operation of the Agency;
- ii be responsible for and indemnify TAB against every act or omission of the Agent and Personnel;
- iii submit on request to TAB the names and such other details as TAB reasonably requires with respect to all Personnel involved in the conduct of the Agency;
- iv exclude from any involvement in the conduct of the Agency any person whom TAB at any time requires to be excluded. TAB need not give any reason for any such exclusion;
- v not knowingly employ at the Premises any person who has been convicted of any offence relating to illegal gambling or wagering;
- vi not employ nor engage Personnel who are under the age of 18;
- vii make all Personnel responsible for or involved in conduct of the Agency available at the expense of the Agent for training at such times as TAB may reasonably require; and
- viii ensure that the Agent and Personnel do not participate in gambling or wagering whilst they are on duty at the Premises.

d) COMPLIANCE:

comply strictly with, and ensure all Personnel comply strictly with, all applicable acts, regulations, statutory rules, other legal requirements, codes of conduct and policies for the conduct of the Agency and immediately notify TAB by telephone or in writing of any breaches of any such acts, etc. Without limiting the generality of this requirement, the Agent and Personnel will:

- comply with all procedures and systems which TAB may require from time to time for the purposes of the Financial Transaction Reports Act 1988;
- not conduct or participate in, nor permit or suffer any Personnel or invitees nor any other person to conduct or participate in any illegal gambling or wagering, including credit betting, on or from the Premises;
- not accept bets from minors or from persons placing bets on behalf of minors;
- not accept bets on a race or sports betting event after the closing time for acceptance of bets on that race or sports betting event; and
- conduct the Agency in accordance with responsible gambling codes of conduct or policies.

e) FITTINGS AND AGENT'S EQUIPMENT:

subject to this Agreement, install and maintain all fittings which TAB may from time to time require for the conduct of the Agency and Agent's Equipment at the expense of the Agent.

f) RECEIPT OF MONIES:

keep all monies received by the Agent from customers in the conduct of the Agency (which for the sake of clarity will at all times belong to TAB) separate from other monies received by the Agent. The Agent will promptly pay all Settlement Amounts to TAB by depositing those Settlement Amounts into an account approved by TAB conducted with a financial institution. This obligation to make payment to TAB will apply strictly against the Agent whether or not:

- i the actual monies received by the Agent may have been lost, destroyed or stolen; and
- ii there may have been no willful or negligent act or omission on the part of the Agent or Personnel in relation to the loss, destruction or theft.

g) ACCESS TO PREMISES:

permit any person nominated by TAB to enter the Premises at any time and inspect all documents, records, monies and accounts relating to the conduct of the Agency. The Agent

and Personnel will provide to any person nominated by TAB all such information and explanation relating to the conduct of the Agency as that person reasonably requires.

h) EXPENSES:

meet all costs and expenses of conducting the Agency other than those costs and expenses (if any) which TAB expressly agrees with the Agent TAB will meet.

i) NOT DAMAGE THE REPUTATION OF TAB:

refrain from acting, and not permit or allow Personnel to act, in any manner so as to depreciate or disparage TAB or the Wagering Services or to damage TAB Equipment or Supplies. This clause will survive termination of this Agreement.

4. SUSPENSION OF AGENT:

TAB may at any time suspend the Agent forthwith where TAB in its absolute discretion determines that it has grounds for suspecting the occurrence of an event specified in clause 1(b). On Suspension, the Agent will immediately surrender control of the Agency to TAB or to such person as TAB may nominate. During Suspension, TAB or its nominee may at the absolute discretion of TAB, conduct the Agency at the Premises. TAB will account to the Agent for net fees and commission (if any) earned by TAB from conduct of the Agency during the Suspension, after deducting all costs incurred by TAB, including costs of employing persons to conduct the Agency during the Suspension.

5. AGENT'S OBLIGATIONS ON TERMINATION:

On termination of this Agreement, the Agent will immediately:

- a. account for and pay to TAB all money held by or under the control of the Agent which belongs to the TAB and all other amounts for which the Agent may be liable to the TAB under this Agreement; and
- b. hand TAB Equipment and Supplies and all other property of TAB then in the possession, or under the control of the Agent, to TAB;
- c. permit TAB to remove from the Premises all TAB Equipment and Supplies; and
- d. ensure that all signs and other material referring to 'TAB' or in relation to the Agency are promptly removed and that no further advertisements are published indicating any relationship between the Agent and TAB.

6. TAB'S OBLIGATIONS ON TERMINATION:

On termination of this Agreement, TAB will account to the Agent for the Security Guarantee and return the balance (if any) of the Security Guarantee to the Agent less any remaining amount owing or which TAB reasonably anticipates will become owing by the Agent to TAB in accordance with this Agreement.

7. GST:

Unless otherwise expressly stated, Commission and all other sums payable or consideration (whether monetary or non-monetary) to be provided under this Agreement are exclusive of GST.

If GST is imposed on any supply made under, in connection or in association with, or in respect of this Agreement, the Party making the supply may recover an amount equal to the GST payable on the taxable supply, in addition to Commission and any other sums payable or consideration (whether monetary or non-monetary) at the time the Commission and such other sums or consideration is paid. TAB will provide to the Agent a Recipient Created Tax Invoice in relation to Commission or such other sums or consideration it pays to the Agent.

8. NO COMPENSATION ON TERMINATION:

The asset value of the Agency, including any goodwill, is and will remain the sole property of TAB. Without limiting any other rights of either Party under this Agreement, neither Party will be liable to pay compensation to the other Party by reason only of the Period terminating.

9. DISPUTE RESOLUTION:

If any dispute arises in relation to this Agreement, the Parties will endeavour to settle the dispute by discussions conducted in good faith between the Agent (or a person nominated by the Agent) and TAB (or a person nominated by TAB).

If the dispute is not resolved within seven (7) days (or such other period as agreed in writing by the Parties) the Parties must refer the dispute to mediation to be conducted in accordance with the Australian Commercial Disputes Centre ("ACDC") Mediation Guidelines, to a mediator agreed by the Parties, or if the Parties do not agree on a mediator, a mediator nominated by the then current Chief Executive Officer of ACDC or the Chief Executive Officer's nominee. The mediator's costs will be shared equally by the Parties.

If the dispute has not been settled within twenty-eight (28) days after the appointment of a mediator then, either Party may take whatever action it chooses to enforce its rights provided that nothing in this clause will affect the rights of a Party to terminate this Agreement.

10. LIABILITY OF TAB

TAB will not be liable to the Agent for any loss of the Agent caused by the TAB's failure to observe the terms and conditions of this Agreement and on its part to be observed and performed where such failure is occasioned and caused by events beyond the TAB's reasonable control including and without limiting the generality of the foregoing, by way of insurrection, fires, floods, strikes, lock-outs, delays in transport, breakdowns in machinery, restrictions or prohibitions, or other action by any Government or semi-Government authorities or embargoes.

TAB will only be liable for any loss suffered by the Agent by reason of its failure or inability to rectify, repair, maintain or replace any of TAB Equipment or Supplies if such loss could have been avoided by the exercise of reasonable care by TAB (the onus of proving which shall lie on the Agent) and to the extent to which such loss could not have been avoided or mitigated by the exercise of reasonable care by the Agent.

11. LIABILITY OF THE AGENT

The Agent assumes sole and entire responsibility for and indemnifies and will hold harmless TAB from any and all claims, liabilities, losses, expenses and damages by reason of any claim, proceeding, action, liability or injury arising out of the Agent's operation of the Agency or as a result of the Agent's relations with customers and other third parties or because of any breach of this Agreement by the Agent. The Agent agrees to immediately give notice to TAB of any action or claim or pending proceedings brought or likely to be brought against the Agent in relation to the Agency.

Without limiting the generality of the foregoing, the indemnity shall relate to any event arising out of or by reference to or in respect of:

- the Agency;
- any act, neglect, default or omission of the Agent or Personnel or invitees;
- any business or activity undertaken or carried on by the Agent;
- any event occurring on the Premises whether of a business character or not;

whether or not such matters arise out of fraud or negligence of the Agent or Personnel or invitees.

TAB may in its sole discretion waive the whole or any part of any liability of the Agent arising out of the operation of this clause.

12. GENERAL:

12.1 WHOLE AGREEMENT:

The Parties acknowledge this Agreement constitutes the whole agreement between them and it supersedes all prior deeds and agreements between TAB and the Agent with respect to the Agency and any such agreements are hereby terminated.

12.2 GOVERNING LAW:

This Agreement is governed by the laws applicable for the time being in the State of New South Wales and the courts exercising jurisdiction in that State shall have jurisdiction with respect to this Agreement.

12.3 VARIATION:

This Agreement, including without limitation, the Commission, may be varied by TAB at any time without the consent of the Agent by TAB providing not less than one month's notice to the Agent.

12.4 INFORMATION PROVIDED TO TAB:

The Agent warrants that all the information provided to TAB by the Agent before signing this Agreement is, to the best of the Agent's knowledge, correct and acknowledges that TAB has entered into this Agreement in reliance on that information.

12.5 NOTICES:

Any notice or other commitment for the purposes of this Agreement must be signed by the Party giving the notice or communication and delivered by personal service or prepaid post or facsimile to the other Party at the address of that Party as set out in the first part of this Agreement or as subsequently notified in writing to the other Party;

The Agent must deliver or post to TAB the original of any bank guarantee, bond or other document required under this Agreement and not seek to provide any such document by facsimile or other form of copy.

12.6 RECEIPT OF NOTICES:

A notice given by facsimile shall be deemed to have been given on receipt of a satisfactory transmission report to the dispatching Party and if sent by prepaid registered or certified post shall be deemed to have been given on the third business day following the day on which it was posted.

12.7 ASSIGNMENT:

The Agent may not sell, transfer or assign the benefit of this Agreement (or any part thereof) to any person.

12.8 CONFIDENTIALITY:

The Parties will keep confidential the terms of this Agreement and information provided to each other under the terms of this Agreement. The Agent will keep confidential all information provided by TAB to the Agent including, without limitation, financial information, marketing information, technical information, trade secrets and confidential know-how and all software, instructions and Procedures, manuals, applications, maps, diagrams, charts, documentation and notes relating to any TAB systems, except information that is public knowledge or is lawfully obtained by the Agent from a third person. The Agent will ensure all Personnel comply with this clause as if they were each a party to this Agreement. This clause will survive termination of this Agreement.

12.9 LIMITATION OF AUTHORITY OF AGENT:

The Agent will not act on behalf of TAB nor incur any liability on behalf of TAB except in the manner and to the extent expressly authorised by this Agreement.

13. DEFINITIONS AND INTERPRETATION:

13.1 In this Agreement, unless the context otherwise requires, the following words and expressions shall have the meanings attributed to them:

'Account Betting' means facilities conducted by TAB to allow Wagering Services to be offered by any electronic means including without limitation, by telephone, the internet or interactive technology.

'Account Betting Services' includes opening and closing Betting Accounts, receipt of deposits to Betting Accounts, payment of withdrawals on Betting Accounts, responding to enquiries in relation to Betting Accounts and Account Betting and other related services nominated by TAB from Time to time.

'Agency' means the provision of a betting service to the public on or from the Premises in respect of those events and forms of betting in respect of which the TAB provides that service at any time during the Period.

'Agent' means the Party specified as Agent in the Background section of this Agreement.

'Agents Equipment' means any equipment nominated by TAB from time to time for use in the conduct of the Agency including, television receiving equipment, Austext receiving equipment, radio equipment (including, without limitation, the receiving dish and decoder box) and radio antennae.

'Agreement' means this agreement between TAB and the Agent of which this Attachment forms part.

'Attachment' means this attachment to and forming part of this Agreement.

'Betting Account' means an account opened and conducted by an individual with TAB for the purpose of that individual conducting Account Betting.

'Commission' means the sum of:

- an amount equivalent to 1.08% (or such other amount as TAB may from time to time determine) of Account Betting deposits received at the Agency;
- an amount equivalent to 1% (or such other amount as TAB may from time to time determine) of all Totalizator Investments ("**Amount**") where the weekly average sales (i.e. not including cancellations) is less than \$7,500;
- an amount equivalent to 2% (or such other amount as TAB may from time to time determine) of all Amounts where the weekly average sales is greater than \$7,500-00; and
- an amount equivalent to 1.35% (or such other amount as TAB may from time to time determine) of all Sports Betting Investments.

All commissions are calculated and paid on a monthly basis and will become effective upon the date of signing of this Agreement irrespective of any previous arrangements between the parties.

'Disqualifying Event' means in relation to any relevant person, the death, mental illness, mental incapacity, bankruptcy, commission of any act of bankruptcy, entry into any arrangement with creditors generally, failure to carry out TAB instructions, commission of any criminal offence involving dishonesty, theft or fraud, or any circumstances arising which in the opinion of TAB reflects adversely on the capability or trustworthiness of that person.

'Dividends' means monies paid by the Agent on winning bets claimed at the Agency.

'GST' has the same meaning given in A New Tax System (Goods and Services) Tax Act.

'Hotel' means Premises for which the Agent holds a hoteliers licence under the Liquor Act 1982.

'Instructions and Procedures' means any operations manual, policy manual, communications manual, training material or any other manuals or instructions or directives issued by TAB to the Agent from time to time.

'Investments' means the sum of Sports Betting Investments and Totalizator Investments;

'Off-Course Totalizator Licence' means the off-course totalizator licence specified in the Background section of this Agreement.

'Party' means either TAB or the Agent.

'Personnel' includes employees, contractors, licencees or agents of the Agent.

'Period' means the period commencing from and including the date of this Agreement and concluding on the date of termination of this Agreement.

'Premises' means the premises so specified in this Agreement.

'Receipts' means all monies received by the Agent in relation to the conduct of the Agency.

'Recipient Created Tax Invoice' has the same meaning given in A New Tax System (Goods and Services) Tax Act.

'Security Guarantee' means the payment, guarantee or transfer of property which the Agent is required to provide to the TAB as security for performance by the Agent of the Agent's obligations under this Agreement.

'Settlement Amount' means the sum of Receipts less any Dividends and Account Betting withdrawals.

'Sports Betting Investments' means bets made at the Agency in relation to betting offered under the Sports Betting Licence excluding cancelled bets and bets on abandoned sports betting events, which are transmitted by the Agent and accepted by TAB.

'Sports Betting Licence' means the sports betting licence specified in the Background section of this Agreement.

'Supplies' means consumable items nominated by TAB from time to time for use in the Agency including, betting slips, betting tickets, race meeting information, stationery and promotional material.

'Suspension' means suspension in accordance with this Agreement, by TAB, of the appointment of the Agent.

'TAB Equipment' means equipment and fittings including wall display boards, PCs, printers, benches, signage, ticket bins and data processing terminals for providing Wagering Services at the Agency but does not include Agents Equipment.

'Totalizator Investments' mean bets made at the Agency in relation to betting offered under the Off-Course Totalizator Licence excluding cancelled bets and bets on scratchings, which are transmitted by the Agent and accepted by TAB.

'Wagering Services' means activities and functions TAB is authorised to conduct and exercise under the Off-Course Totalizator Licence and the Sports Betting Licence and Account Betting Services.

13.2 Headings are for convenience only and do not affect the interpretation of this Agreement;

13.3 Any reference to money is to the lawful currency for the time being of the Commonwealth of Australia;

13.4 Any reference to a statute includes all subordinate legislation made thereunder and any amendment, consolidation, replacement or re-enactment thereof;

13.5 Where any obligation of this Agreement fails to be performed on a day other than a business day, this Agreement shall be construed as requiring that obligation to be performed on the next business day;

13.6 Where any time period is required to be calculated from a specified day, that day shall be included in the calculation;

13.7 The singular includes the plural and vice versa, each gender includes the other gender and any reference to a person includes a corporation.

TERMS AND CONDITIONS OF PUBLIC PERFORMANCE LICENCE

WHEREAS:

- A. The Licensor is and will be the licensee in Australia in respect of the copyright subsisting in various cinematograph films, television broadcasts and sound broadcasts ("the Works") and has the right in Australia to authorise the Works to be seen and heard in public.
- B. The Licensee desires that the Works be seen and heard in the Premises for the purposes of and in connection with its business and the Licensor has agreed to authorise such performance as provided herein.
- C. The Licensor agrees to cause the transmission of the Works to the Licensee by satellite, for reception by the Licensee by encoded receiver.

NOW IT IS AGREED

1. Grant of Licence

The Licensor hereby licenses the Licensee to perform the Works within the Premises for a period of five years from the date of completion of installation of the radio communication receiver and decoding device pursuant to Clause 2 or otherwise from the date hereof ("Effective Date") subject to earlier termination. The licensee acknowledges that the Works licensed pursuant to this Agreement do not necessarily include all programmes transmitted by the Licensor and that the Licensor may transmit programmes at times or with content that the Licensor deems special and outside of the licence envisaged by this Agreement.

2. Provision of Equipment

The Licensor agrees, subject to any special agreement to the contrary, and solely for the purposes of the Licensee receiving and exhibiting the Works as transmitted by the Licensor by satellite pursuant to this Agreement to provide the Licensee:

- (a) a decoding device, and
- (b) a radio-communication receiver (a "receiver dish") for installation at the Premises for the Initial Term; and
- (c) all other ancillary equipment including but not limited to L.N.C.'s, cabling, splitters and line amps ("the Equipment").

The Licensee warrants it will not use the Equipment for any other purpose other than receiving and exhibiting the Works in accordance with the terms of this Agreement. The Equipment will be held by the Licensee as bailee at will of the Licensor.

The Licensor warrants that all reasonable efforts shall be made so as to ensure that the Works are received upon transmission in a clear and comprehensible state and the Licensee acknowledges that from time to time technical problems may arise (whether or not caused by the Licensor or its agents) such as to interfere with such transmission, the occurrence of which shall not give rise to any cause of action or reduction of fees or permit termination of this Agreement. The Licensor expressly limits any liability for loss or damage arising in connection with or resulting from the failure or non-performance of the Equipment provided hereunder, to the repair or replacement thereof.

3. Subscription Fees

In consideration of the licence pursuant to Clause 1 and the supply of the Equipment pursuant to Clause 2, the Licensee agrees to pay the fees specified as from the Effective Date. Fees shall be payable within fourteen (14) days of presentation of an invoice by the Licensor in advance in respect of each quarter year or shorter period (ending 30 June, 30 September, 31 December and 31 March in each year) by remittance to the address specified hereinbefore or such other address or in such manner as is from time to time notified by the Licensor. Fees for shorter periods will be apportioned. The fees payable may be adjusted by the Licensor in its entire discretion from time to time, and any increase shall include the percentage by which the charge of Optus for the financial year current at the time of each such review, and levied under the Customer Service Agreement between Optus and Nine Network Australia Limited (or its related companies) which regulates the use of the transponder of the Optus Space Satellite used for transmission hereunder, has increased against the same charge of Optus for the preceding financial year. Unpaid moneys shall bear interest at a rate of 2% per annum above the prime rate quoted by the bankers to Licensor accrued ~~from~~ **NOT APPLICABLE** the start of each week during the period of default.

4. Security Bond

A \$500 bond is payable and must be attached to the signed licence agreement. The bond will be refunded upon completion of the first twelve months from the effective date. No interest is payable on the bond.

5. Conditional Agreement

This agreement is conditional upon:

- (a) the grant to the Licensor or a related corporation and the continuance of a licence under the Radio-Communications Act in respect of the transmission of the Works by satellite; and
- (b) the erection of a receiver dish at the Premises in accordance with any applicable planning permission or authority (the issue and maintenance of which the Licensee warrants shall occur and at all times be complied with) and in conformity with any licence or exemption in respect of such receiver under the Radio-Communications Act.

6. Maintenance and Repair

The Licensor shall use all reasonable efforts to maintain and keep the Equipment in good and substantial order and repair and make good all such parts thereof that may be broken or damaged. The Licensee undertakes not to adjust, interfere or tamper with the Equipment at any time for any purpose.

7. Conditions of Licence

It is a condition of the continuation of the licence of the Works hereunder that the Licensee shall:

- (a) obtain and keep in force any licence or permit necessary under the Radio-Communications Act in respect of the installation and operation of a receiver dish of a kind necessary to receive the Works as transmitted from time to time by the Licensor;
- (b) comply with any conditions to such licence or permit, or to any exemption as may have been granted in relation thereto, as may be granted to the Licensee pursuant to the Radio-Communications Act, in respect of the operation of any receiver dish used by the Licensee in connection with this Agreement;
- (c) not permit or suffer any abridgement, alteration or editing of the programme of the Works as compiled by the Licensor (including any sponsored programmes, advertisements or endorsements), without the prior approval of the Licensor;
- (d) unless otherwise agreed by the Licensor, at all times ensure that the exhibition of the Works is in a manner compatible to the enjoyment of the Works and in a manner which will enhance the reputation of the Licensor, by the provision of adequate and comfortable seating, the control of background noise or interruption, the provision of appropriate services and the availability of refreshments;
- (e) at all times comply with the spirit and intent of the Broadcasting Services Act, 1992, as amended from time to time and shall not do, permit, suffer, or allow any act or omission which would or may result in the Licensor breaching or participating in or facilitating arrangements which are inconsistent with spirit and intent of the Broadcasting Services Act, 1992; and
- (f) permit the Licensor and its servants and agents to enter at any time upon the Premises for the purposes of inspecting and testing the condition of and servicing and maintaining the Equipment and further shall permit the Licensor to remove such Equipment or any part thereof from the Premises; and
- (g) use the Equipment solely for the reception and exhibition of the Works in accordance with this Agreement.

8. Promotion

The Licensor may provide to the Licensee a schedule of the Works to be available for public performance pursuant to this Agreement and the Licensee may:

- (a) at the cost of the Licensee, advertise the scheduled Works, in a manner approved by the Licensor;
- (b) join in any promotion nominated by the Licensor, including the display of any promotional posters, materials or advertisements and the distribution of any printed brochures, pamphlets or advertisements, as provided by the Licensor to the Licensee; and
- (c) promote and participate in (without cost to the Licensee) any promotional campaigns, games, lotteries or competitions conducted in connection with such scheduled programmes (subject to any necessary licence or permit pursuant to applicable gaming legislation)

The Licensee acknowledges that the Works will be transmitted in conjunction with advertisements (and that the Licensor will be entitled to all revenue therefrom) and agrees to participate (without cost to it) in any campaign agreed between the Licensor and any advertiser. The promotion of any programme by the Licensor does not create an obligation upon the Licensor to transmit or continue to transmit such a programme.

9. No Disparagement

The Licensee acknowledges and agrees that:

- (a) the Works may be transmitted in connection with, and for the purpose of, promoting various products, including products supplied by the Licensor or related corporations; and
- (b) the Licensee shall not act in any manner, nor suffer or permit any employee of the Licensee to so act so as to deprecate or disparage such products

10. Extension of Term

This Agreement and the licence granted hereunder shall continue for further successive periods of one year after the initial term, if:

- (a) the Licensee has complied with all provisions of this Agreement; and
- (b) the Licensor has not given notice to the Licensee requiring termination of the Agreement.

The Licensor may nominate an increased fee in respect of each such extended term, which fee shall be paid by the Licensee in accordance with Clause 3 hereof, provided that the Licensee may terminate this Agreement within thirty (30) days of notice of such increased fee.

11. Assignment

The Licensor shall be entitled to assign the benefit of this Agreement without consent by the Licensee. The Licensee shall not transfer, assign or set over the benefit of this Agreement to any other person without the prior consent of the Licensor, which consent shall not be unreasonably withheld by the Licensor if such assignment is to occur upon the transfer of the business of the Licensee and the Licensor is reasonably satisfied that the assignee is a person of financial standing and good reputation. The Licensee agrees that it shall not, nor shall it attempt or purport to, assign transfer or sell the business conducted by the Licensee at the Premises unless as a condition of any such assignment, transfer or sale, the assignee thereof enters into an agreement on the same terms mutatis mutandi as this Agreement.

12. Termination

This Agreement shall continue in force until terminated by six months notice in writing by either party, provided that the Licensor may terminate this Agreement by notice in writing to the Licensee immediately:

- (a) upon breach of any provision of this Agreement by the Licensee.
- (b) upon the presentation of any petition for the bankruptcy of the Licensee or, in the case of any Licensee which is a corporation, any petition for the winding up of such corporation or the appointment of any liquidator, provisional liquidator, receiver or receiver and manager;
- (c) if the Licensee creates or purports to create any mortgage, charge, lien or other encumbrance in respect of the encoding device or receiver dish provided by the Licensor hereunder; and
- (d) if the Licensee does anything or fails to do anything which would entitle a receiver to take possession of any assets of the Licensee.

13. Force Majeure

The Licensor and the Licensee will be released from their respective obligations in the event of national emergency, war, prohibitive government regulations or if any other cause beyond the reasonable control of the parties or either of them renders the performance of this Agreement impossible, whereupon all moneys due under this Agreement shall be paid immediately and the Licensee shall forthwith return cause to be returned to the Licensor the decoding device and receiver dish provided by the Licensor hereunder, provided that this Clause shall only have effect at the discretion of the Licensor except when such event renders performance impossible for a continuous period of not less than 6 calendar months.

14. Severance

If any provision of this Agreement is declared by any judicial or other competent authority to be void, voidable, illegal or otherwise unenforceable, it shall be severed from this Agreement and the remaining provisions of this Agreement shall remain in full force and effect, unless the Licensor in its absolute discretion decides that the effect of such declaration is to defeat the original intention of the parties, in which event the Licensor shall be entitled to terminate this Agreement by notice in writing to the Licensee.

15. Procedure on Termination

Upon termination of this Agreement, the Licensor may take delivery of and remove the Equipment. The costs of such removal shall be to the account of the Licensee. The Licensor shall be under no liability to repair or reinstate the Premises (or any part thereof) damaged or disrupted in connection therewith. The Licensee authorises the Licensor or its representative to enter any premises of the Licensee in which such Equipment is located or installed, during normal business hours, to remove or collect the same.

16. Whole Agreement

This Agreement contains the whole agreement between the parties and the Licensee acknowledges that it has not relied upon oral or written representation made to it by the Licensor or its employees or agents and has made its own enquiries in to all matters relevant to this Agreement and the Licence hereunder.

17. Notices

Any notice given pursuant to this Agreement shall be given in writing signed by any Director, Manager or Secretary of the Party giving notice and such notice shall, if sent by prepaid mail, be deemed to be received by the party to whom it is addressed four days after the date of posting thereof and, if sent by telex, on receipt of the answerback of the recipient.

18. Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of N.S.W



SKY CHANNEL

Sky Channel Pty Ltd
 ACN 009 136 010
 79 Frenchs Forest Road
 Frenchs Forest NSW Australia 2086

**SUBSCRIPTION FEES
 PUB/CLUB TAB**

Effective 1 July 2001
 (Prices subject to change without notice)

Annual Bulk Beer Litres	Weekly Fee (excludes GST)	Quarterly Fee (exclusive of GST)	GST Amount	Total Quarterly Fee (inclusive of GST)
0 - 14,999	\$165.921	\$2,157.00	\$215.70	\$2372.70
15,000 - 29,999	\$174.23	\$2,265.00	\$226.50	\$2,491.50
30,000 - 49,999	\$207.46	\$2,697.00	\$269.70	\$2966.70
50,000 - 69,999	\$239.30	\$3,111.00	\$311.10	\$3,422.10
70,000 - 89,999	\$292.46	\$3,802.00	\$380.20	\$4182.20
90,000 - 109,999	\$328.00	\$4,264.00	\$426.40	\$4690.40
110,000 - 129,999	\$356.76	\$4,638.00	\$463.80	\$5101.80
130,000 - 149,999	\$391.38	\$5,088.00	\$508.80	\$5596.80
150,000 - 169,999	\$412.07	\$5,357.00	\$535.70	\$5892.70
170,000 - Plus	\$422.30	\$5,490.00	\$549.00	\$6,039.00

TAB TURNOVER CALCULATION

Average Weekly TAB Turnover	Weekly Fee (excludes GST)	Quarterly Fee (exclusive of GST)	GST Amount	Total Quarterly Fee (inclusive of GST)
0 - \$5,999	\$65.30	\$849.00	\$84.90	\$933.90
\$6,000 - \$9,999	\$73.84	\$960.00	\$96.00	\$1056.00
\$10,000 - \$29,999	\$82.92	\$1,078.00	\$107.80	\$1,185.80
\$30,000 - \$49,999	\$124.38	\$1,617.00	\$161.70	\$1,778.70
\$50,000 - \$69,999	\$165.92	\$2,157.00	\$215.70	\$2,372.70
\$70,000 - \$99,999	\$226.53	\$2,945.00	\$294.50	\$3,239.50
\$100,000 - Plus	\$323.61	\$4,207.00	\$420.70	\$4627.70

Note * Total Quarterly Fee inclusive of GST.
 Sky Channel subscription fees are calculated by adding Annual Bulk Beer Litres and TAB turnover together.
 Subscriptions are calculated on a daily basis but your current annual rate remains unchanged

Approved for Public Register and
to be published on the Internet

YES / NO

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17 / 7 / 02

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