Dear Dr. Rosen:

Included for your review are Treasury’s responses to the questions posed at the Assembly Budget Committee’s April 25, 2013 hearing.

Q1) Please provide a copy of the final contract with Northstar New Jersey for management services for the sales and marketing operations of the New Jersey State Lottery.

At present, there is no final contract. As you are aware, the AFL-CIO and the Communications Workers of America, New Jersey filed a protest of the Intent to Award the Lottery marketing and sales operations to Northstar, which precluded any final contract award. The advertised Request for Proposal included a Services Agreement; a copy of that draft agreement and its related schedules are attached.

Q2) Please explain the rationale as to why the Administration anticipates that “the need for further funding for NJSEA operations cannot be determined at this time and therefore none is recommended in the FY 2014,” when supplemental funding for NJSEA operations has been appropriated over the past three fiscal years? What sources of funds provide core operating support to the NJSEA? Does the Administration anticipate a new source of funding for operations that will negate the need for State appropriations? Are NJSEA operations being supported by the Business Action Center appropriation in the DOS budget? If the State provides no funding to the NJSEA for operations, how does it support itself?

The New Jersey Sports and Exposition Authority (NJSEA) has been working to reshape its mission and to right-size spending to available resources. Opportunities to reduce or eliminate legacy costs, which are obligations resulting from prior contractual agreements including, but not limited to, racetrack lease grants and loans, retiree pension and medical and Workers’ Compensation are being pursued. General and administrative expenses are expected to be significantly reduced. Revenues generated from events at the Izod Center and other NJSEA venues are increasing. Highly publicized, successful events are bringing new revenue generating opportunities. FY 2014 could be another transition year that could require state financial assistance to maintain NJSEA core functions. These obligations remain somewhat fluid given the uncertainty of revenue performance associated with the Izod Center and other NJSEA venues.

The NJSEA works in collaboration with, but is not supported by, the Department of State and its Division of Travel and Tourism and the Motion Picture and Television Commission to implement the repositioning of the NJSEA, as set forth in P.L. 2012, c. 15.
Q3) Please specify the types of facilities that are aggregated in the “other facilities” category. In addition, please describe the Division of Elder Advocacy’s policy regarding the selection of nursing homes for division visits and the frequency of such visits. How does the division determine which nursing homes it visits and how often? What is the minimum number of visits to a given nursing home in a given year? Why does the division not conduct more nursing homes visits?

The New Jersey Office of the Ombudsman for the Institutionalized Elderly (OOIE) accepts complaints from any source and advocates on behalf of individuals over age 60 living in long-term care facilities such as: nursing homes, assisted living facilities, residential health care facilities, residential class “C” boarding homes and state developmental centers. The “other facilities” category includes state and private psychiatric hospitals, rehabilitation hospitals, and adult medical day care centers.

The OOIE receives complaints via email, fax and through its toll-free intake line at: 1-877-582-6995. In state fiscal year 2012, the office’s intake line fielded 6,922 calls. Complaints and incidents are received from: residents themselves, friends and family members, other service providers and from staff at the long-term care facility. Note: under state law, long-term care facilities must report incidents of potential abuse or exploitation to the OOIE and also to the New Jersey Department of Health, Division of Health Facilities Evaluation and Licensing.

Under OOIE policy, complaints are entered into a case management system and assigned to one of nine full-time or two part-time OOIE investigators. For this reason, the frequency of OOIE visits by investigative staff is determined by the number of complaints received. The OOIE is also bolstered in its efforts by 210 highly trained volunteer advocates, who are required to spend four hours a week in their assigned facilities. Over the last 18 months, the OOIE has increased the number of volunteers in the program from 145 to 210 with a goal of having 80 percent of the state’s nursing homes assigned a volunteer advocate by the end of calendar 2013.

These volunteers receive 32 hours of intensive training, are required to “shadow” a volunteer mentor for two days and receive quarterly re-trainings. Volunteer advocates are considered an extension of the OOIE program and are very effective at addressing minor concerns before they become major problems. All incidents of serious abuse or exploitation, however, are directed to the OOIE investigative staff.

In state fiscal year 2012, OOIE volunteers made more than 7,000 visits to nursing homes and were a presence in more than 200 different facilities. These volunteer visits are in addition to the visits to nursing homes, assisted living facilities and other facilities referenced in the evaluation data. The use of the volunteer network enables the agency to better deploy resources.

The OOIE has not established a minimum number of visits for nursing homes; however, with the anticipated increase in volunteer recruitment and placement, the number of OOIE visits to nursing homes will continue to increase.

Sincerely,

Andrew P. Sidamon-Eristoff
State Treasurer
SERVICES AGREEMENT

by and among

THE NEW JERSEY DEPARTMENT OF THE TREASURY,
DIVISION OF PURCHASE AND PROPERTY,

on behalf of the STATE OF NEW JERSEY,

THE NEW JERSEY DEPARTMENT OF THE TREASURY,
DIVISION OF STATE LOTTERY

and

[NAME OF BIDDER]
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SERVICES AGREEMENT

This Services Agreement (together with the Schedules hereto (and any appendix or exhibit to any Schedule) and other documents incorporated herein or in any Schedule by reference, as the same may be amended, revised or otherwise modified from time to time, the “Agreement”) is entered into as of this ____ day of __________, 20___ (the “Agreement Effective Date”), by and among the New Jersey Department of the Treasury, Division of Purchase and Property (the “DPP”), on behalf of the State of New Jersey (the “State”) and the New Jersey Department of the Treasury, Division of State Lottery (the “Division of Lottery”), and [BIDDER’S NAME], a [LEGAL FORM AND JURISDICTION OF FORMATION] whose principal office is located at [ADDRESS] (the “Manager”). The DPP, the Division of Lottery and Manager are sometimes individually referred to herein each as a “Party,” and collectively, as the “Parties.” Definitions of certain terms, in addition to those provided in this preamble and the recitals below, are set forth in Section 1.2 and Schedule 1.2 hereof.

RECITALS

WHEREAS, the State established the Lottery (as defined in this Agreement) in 1969 under the New Jersey State Lottery Law, P.L. 1970, c.13, as amended, codified as N.J.S.A. 5:9-1, et seq. (“Existing Lottery Law”), which has been continuously operated and maintained as a government enterprise of the State since its inception;

WHEREAS, pursuant to the Existing Lottery Law, P.L. 1970 c.13, as amended, N.J.S.A. 52:34-6 et seq., and N.J.S.A. 52:25-1 et seq. and the Constitution of the State of New Jersey, the Director of the DPP, on behalf of the State, and the Division of Lottery is authorized to enter into a Services Agreement with a vendor to provide the Services (as defined in Section 4.1) in connection with the Lottery;

WHEREAS, on [_____], 2012, the Director of the DPP issued a Request for Proposal seeking a Person to assist in the management and operation of the Lottery (the “RFP”);

WHEREAS, Manager submitted to the DPP an initial response dated [_____], 20__ to the RFP, which included information concerning Manager’s experience, organization, financial reports, references, and financial resources, as well as information needed to comply with certain State requirements, including but not limited to probity and procurement requirements (such initial response, as modified by any amendments thereto agreed to by the DPP, and together with all related documents, the “Manager Proposal”);

WHEREAS, based on the Manager Proposal, the DPP selected Manager to provide the State with the Services;

WHEREAS, the provision of the Services by Manager pursuant to this Agreement is subject to oversight and control and regulatory and step-in powers of the Division of Lottery; and

WHEREAS, the Parties wish to specify the terms and conditions under which Manager shall provide such Services to the Division of Lottery.

NOW, THEREFORE, in consideration of the representations, warranties, promises and covenants contained herein, and other good and valuable consideration, the receipt, sufficiency and adequacy of which are hereby acknowledged, the Parties, intending to be legally bound, agree to the foregoing and as follows:
SECTION 1

AGREEMENT FRAMEWORK AND STRUCTURE

1.1 Purpose of Agreement. The State and the Division of Lottery, while continuing to conduct and maintain oversight and control over the Lottery, desire to engage Manager to provide the Services described herein, increase sales and Net Income from the Lottery and increase funds for State institutions and State aid to education while maintaining the highest levels of integrity and responsibility. This Agreement establishes the framework and terms and conditions of the relationship between the Division of Lottery and Manager pursuant to which Manager shall coordinate and manage certain Lottery operations as described herein and, to a broad extent, propose opportunities for innovation, agility and market responsiveness for the Lottery.

1.2 Definitions. Capitalized terms used in this Agreement, including in any schedules, exhibits, attachments, addenda and other documents attached to or otherwise made a part of this Agreement, shall have the meanings ascribed to them in Schedule 1.2. Other capitalized terms used in this Agreement are defined in the context in which they are used and shall have the meanings ascribed to them therein. The terms defined in Schedule 1.2 include the plural as well as the singular.

1.3 Construction

1.3.1 Captions and References. Captions, titles and headings to sections of this Agreement are inserted for convenience of reference only and are not intended to affect the interpretation or construction of this Agreement. Any reference herein to a particular section number (e.g., “Section 2”) shall be deemed a reference to all sections of this Agreement that bear sub-section numbers to the number of the referenced section (e.g., Sections 2.1, 2.1.1, etc.). The terms “this Agreement,” “herein,” “hereof,” “hereunder” and similar expressions refer to this Agreement and not to any particular section or other portion hereof. Unless otherwise specified, “days” means calendar days and the word “dollar” and the symbol “$” refer to United States Dollars. Any use of the term “including” in this Agreement shall be construed as if followed by the phrase “without limitation” or “but not limited to.” The word “may” denotes that which is permissible, not mandatory. The words “shall” and “must” shall be construed to have the same meaning and effect and denotes that which is a mandatory requirement. The word “should” means that which is recommended, not mandatory.

1.3.2 Plurality. Words importing the singular number mean and include the plural number and vice versa.

1.3.3 References to Manager.

(a) As used in this Agreement relating to the provision of Services hereunder, references to “Manager” also shall apply to Subcontractors, Affiliates of Manager and Manager Personnel in accordance with the following: (i) a reference to Manager shall mean at all times that Manager is responsible for ensuring and causing the compliance of Subcontractors, Affiliates of Manager and Manager Personnel with the terms and conditions of this Agreement; (ii) with regard to complying with the terms and conditions of this Agreement, references to Manager include Affiliates of Manager and Subcontractors to the extent that such Affiliates of Manager and/or Subcontractors are providing the Services; and (iii) with regard to complying with the terms and conditions of this Agreement, references to Manager include the applicable Manager Personnel who are providing the Services.

(b) Notwithstanding the foregoing, under no circumstances shall Affiliates of Manager, Subcontractors or Manager Personnel be eligible for or exercise, use or enjoy any rights or
benefits of Manager under the terms and conditions of this Agreement, unless otherwise explicitly stated in the applicable term or condition of this Agreement.

1.3.4 References to Statutes. Each reference to a statute or statutory provision includes any statute or statutory provision which amends, extends, consolidates or replaces the statute or statutory provision or which has been amended, extended, consolidated or replaced by the statute or statutory provision and includes any orders, regulations, by-laws, ordinances, codes of practice or instruments made under the relevant statute.

1.3.5 Interpolation. If any calculation hereunder is to be made by reference to a chart or table of values, and the reference calculation falls between two stated values, the calculation shall be made on the basis of linear interpolation.

1.3.6 Accounting and Financial Terms. All accounting and financial terms used herein are, unless otherwise indicated, to be interpreted and applied in accordance with GAAP.

1.3.7 Imputation of Knowledge to the State. The State, the DPP and the Division of Lottery will not be imputed with knowledge of any fact, matter or thing unless that fact, matter or thing is within the actual knowledge of those of its employees or agents (including the Lottery Commission, but excluding any retail establishments, and their principals or agents, that may be considered agents of the Lottery) who have responsibilities in connection with the conduct of the performance of this Agreement.

1.3.8 Knowledge Deemed Held by Manager. Without limiting the extent of its actual knowledge, Manager shall for all purposes of this Agreement be deemed to have such knowledge with respect to the Services as is held (or ought reasonably to be held) by all persons involved in carrying out the Services including Manager, the Affiliates of Manager, Subcontractors, and the agents, employees or workers of any of them.

1.3.9 Order of Precedence. It is the intent of the Parties that the language in the various documents making up this Agreement (this Agreement, the Operating Standards and the Schedules, and any other exhibits, appendices and other documents attached to any such documents or incorporated by reference within this Agreement or which incorporate this Agreement, collectively, the “Contract Documents”) be construed to the maximum extent possible so as not to create a conflict among or between such Contract Documents, and to the extent the conflicting terms can reasonably be interpreted so that such terms are consistent with each other, such consistent interpretation shall prevail. If there is a conflict among the terms in the various Contract Documents the following order of precedence shall prevail: (a) any subsequent addendum or amendment to this Agreement shall prevail over a conflicting term in this Agreement or any previous addendum or amendment to this Agreement; (b) this Agreement (including its Schedules) shall prevail over a conflicting term in the Operating Standards; (c) the terms set forth in the body of this Agreement shall prevail over a conflicting term in the Schedules; and (d) the terms in Schedule 2.1 shall prevail over a conflicting term in the other Schedules and in any documents attached to Schedule 2.1.

1.3.10 Statutory Rights. Nothing in this Agreement affects any rights granted or terms required, in either case, by law that cannot be waived or limited by contract. If there is a conflict between the terms in this Agreement and applicable law, the latter shall prevail.

1.3.11 Neither Party Considered Drafter. Despite the fact that the DPP and the Division of Lottery prepared the initial draft of this Agreement and played a greater role in the preparation of subsequent drafts, the Parties agree that no Party shall be deemed the drafter of this Agreement, and
that, in construing this Agreement in case of any claim that any provision hereof may be ambiguous, no such provision shall be construed in favor of one Party on the ground that such provision was drafted by another Party.

1.4 Due Diligence Complete. Manager hereby acknowledges that it has reviewed and understands its obligations and the requirements set forth in this Agreement, reviewed and understands the State Policies and Rules, and has completed all due diligence Manager deems necessary to proceed with and perform the Services in conformance with the terms of this Agreement. Manager hereby acknowledges that Manager has obtained, through the DPP, the Division of Lottery or otherwise, all information and documents that Manager deems necessary for Manager to negotiate the terms and conditions of this Agreement and to enter into and perform its obligations under this Agreement in accordance with its terms (collectively, the “Due Diligence Information”). Manager shall not be relieved of any of its obligations under this Agreement nor shall the Payments, Services or Service Levels, or any other terms and conditions of this Agreement be adjusted, as a result of: (a) Manager’s failure to review the Due Diligence Information; (b) any inaccuracies, errors, or omissions contained in the Due Diligence Information, except for, and to the extent of, any material inaccuracies in audited and interim financials of the Division of Lottery posted to the Data Room; and/or (c) Manager’s failure to request any information or documents from the State, the DPP or the Division of Lottery.

SECTION 2
GENERAL RESPONSIBILITIES OF THE PARTIES

2.1 Manager. Manager shall, subject to the actual control and oversight of the conduct of the Lottery by the Division of Lottery, and in accordance with the terms and conditions of this Agreement, the State Policies and Rules, the Operating Standards and the Annual Business Plan and subject to all existing agreements between the Division of Lottery and Third Parties applicable to Manager’s functions and responsibilities, provide all equipment, goods and services and perform all functions necessary to operate the Lottery for the Division of Lottery, except for those functions or services specifically retained by the Division of Lottery, as more fully described in Section 2.2 below. Manager’s functions and responsibilities shall include those functions and responsibilities set forth in Schedule 2.1 and Section 4.1. Notwithstanding the foregoing, (i) the State and/or the Division of Lottery reserves the right to separately procure a Service, or new services, goods or equipment, in connection with the operation of the Lottery during the Term, when deemed by the State and/or the Division of Lottery to be in the State’s best interests, and (ii) the Director of DPP may, at any time for any valid reason, issue a stop order directing Manager to suspend the provision of any or all of the Services for a period of time until directed by the Director of DPP to resume the provision of such Services.

2.2 The Division of Lottery. The Division of Lottery shall, subject to the terms and conditions of this Agreement, perform the specific functions and services described in Schedule 2.2 and shall continue to have actual control and oversight over the conduct of all Lottery operations by retaining the authority to direct or countermand Manager’s operating decisions, maintaining ready access to information regarding all aspects of Lottery operations, and retaining ownership of all Lottery assets including all State Intellectual Property (collectively, the “Retained Services”).
SECTION 3

TRANSITION SERVICES AND RESOURCE RESPONSIBILITIES

3.1 Transition.

3.1.1 Transition Services. The Parties acknowledge that it is essential that they move forward quickly to have Manager provide the Services by the Scheduled Base Services Commencement Date. Concurrently with the Manager Proposal, Manager submitted a plan to transition the performance of the Services to Manager on the Scheduled Base Services Commencement Date. The final plan agreed to by the Parties for the transition of performance of the Services to Manager (the “Transition”) is attached hereto as Exhibit 3.1 (the “Transition Plan”). During the Transition, which shall commence on the Agreement Effective Date and end on the Transition Completion Date, Manager shall perform the services, functions and responsibilities and provide the deliverables associated with the Transition (other than the State Transition Activities) (collectively, the “Transition Services”) as specified in the Transition Plan. During the Transition, the Division of Lottery shall, at its sole cost and expense and subject to Section 3.1.2, perform the services and functions specified as Division of Lottery responsibilities in the Transition Plan (the “State Transition Activities”). Manager and the Division of Lottery shall each reasonably cooperate with the other in connection with its performance of its respective activities during the Transition. Without limiting the foregoing, subject to the terms of this Agreement and State Policies and Rules, the Division of Lottery will cooperate with Manager to implement Manager recommendations during the Transition.

3.1.2 Transition Expenses. Manager shall perform the Transition Services in accordance with the timetable and the Transition Milestones set forth in the Transition Plan. Except as set forth in Section 3.1.6(h) hereof or as may be otherwise provided in the Transition Plan, the State and the Division of Lottery shall not be responsible for any charges, fees or expenses of Manager or any Person engaged by Manager in connection with the Transition Services. The Division of Lottery shall be responsible for all charges, fees or expenses in connection with State Transition Activities, unless Manager has explicitly agreed herein or in the Transition Plan or the Manager Proposal that Manager shall bear all or a portion of such charges, fees or expenses.

3.1.3 Status Reports; Notice of Inability to Perform Transition. Manager shall provide the Transition Reports in accordance with the format and medium of transmission, schedule and frequency specified and approved by the Division of Lottery in the Transition Plan. In addition, Manager shall promptly provide such additional Transition Reports as the Division of Lottery may reasonably require regarding the performance of Manager’s responsibilities and the then current status with respect to the Transition Milestones and other timetables set forth in the Transition Plan. Promptly upon receiving any information indicating that Manager may be unable to perform its responsibilities or meet the timetable set forth in the Transition Plan, which may result in a material delay, Manager shall notify the Division of Lottery in writing of such material delay and identify for the Division of Lottery’s consideration and approval specific measures to address such nonperformance and delay and mitigate the risks associated therewith. Promptly upon the Division of Lottery’s receipt of any information indicating that the Division of Lottery is unable to timely perform the State Transition Activities and such inability to perform would be reasonably likely to result in a material delay, the Division of Lottery shall notify the Manager in writing of such material delay and shall work with Manager to identify and implement specific measures to address such material delay and mitigate the risks associated therewith, which may include the performance of certain State Transition Activities by Manager.
3.1.4 Failure to Meet Transition and Transition Milestones.

(a) If Manager fails to (i) complete the Transition by the Scheduled Base Services Commencement Date or (ii) during the Transition, fails to complete any Transition Milestone, in each case for causes other than causes attributable to (1) the fault of the Division of Lottery (including the failure of the Division of Lottery to timely perform the State Transition Activities), (2) a Force Majeure Event or (3) the Division of Lottery’s exercise of its right under Section 3.1.5(a) to require that Manager cease, suspend or delay all or any part of the Transition Services (other than where the exercise of such right is attributable to the failure of Manager to timely perform its obligations contemplated by this Section 3 that is not attributable to the reasons contemplated by clauses (1) or (2) above) (collectively, a “Non-Manager Transition Delay Event”), then the State and the Division of Lottery shall have the right to (A) require Manager to reimburse the Division of Lottery, within a period of time determined by the Division of Lottery in its sole discretion, for any retained (internal and external Third Party) costs and expenses incurred by the State or the Division of Lottery as a result of such failure, (B) collect Transition Credits, to the extent entitled thereto under Section 3.1.4(b), and (C) modify the Transition Plan and all associated dates and Transition Milestones (including any dates reasonably required to be modified in the Initial Annual Business Plan and adjustments to the Net Income Targets and Budget to be made in accordance with Schedule 10.2).

(b) In addition, should Manager fail to achieve any Transition Milestone or complete the Transition by the Scheduled Base Services Commencement Date, in each case for causes other than a Non-Manager Transition Delay Event, then the State and Division of Lottery shall have the right to all or any combination of the following for each such failure: (i) receive from Manager the applicable Transition Credits (as damages for the failure to achieve Transition by the Scheduled Base Services Commencement Date or the Transition Milestone, as the case may be, and not as a penalty); (ii) delay Manager, for a length of time deemed necessary by the Division of Lottery based on the business functions and/or processes impacted, from proceeding with any part of the Transition; and (iii) alter the timing for implementation of all or any portion of the Services, all without any increase in the Payments payable by the State or the Division of Lottery or any additional costs or expenses charged to the State or the Division of Lottery. Subject to any costs payable to Manager pursuant to Section 3.1.5(b), under no circumstance shall Manager be entitled to recover any additional costs or lost profits incurred by Manager as a result of any such State or Division of Lottery delay or alteration. Manager recognizes that the Division of Lottery has engaged Manager, in part, to complete the Transition by the Scheduled Base Services Commencement Date and achieve the Transition Milestones, and the Parties agree that it would be extremely difficult and impractical to ascertain and fix the actual damages the State and/or the Division of Lottery would incur, including with respect to reputational matters such as the Lottery brand and public image, should Manager fail to achieve either the Transition by the Scheduled Base Services Commencement Date or a Transition Milestone. Accordingly, the Transition Credits represent the Parties’ good faith estimate of the actual damages that the State would suffer as a result of the Manager’s failure to complete the Transition by the Scheduled Base Services Commencement Date or a Transition Milestone, as the case may be (the Parties agreeing that such actual damages would be exceedingly difficult or prohibitively expensive to calculate), and the Division of Lottery agrees that its rights to the Transition Credits described herein shall be its sole and exclusive financial remedy as a result of such a failure on the part of the Manager, and the Division of Lottery shall not be entitled to recover other damages, credits, reimbursements or other payments except in the case of fraud, willful misconduct or gross negligence by Manager. However, State’s and the Division of Lottery’s rights to the Transition Credits described herein shall not limit the State’s and the Division of Lottery’s rights to pursue other non-financial rights and remedies as a result of such failure, including terminating this Agreement in whole or in part in accordance with Section 13.
3.1.5 Extension of Transition.

(a) Subject to Section 3.1.5(b) below, at any time and from time to time during the Transition, the Division of Lottery shall have the right to require that Manager cease, suspend or delay all or any part of the Transition or alter the timing for all or any part of the Transition if the State or the Division of Lottery determines that any part of the Transition Services may cause a material adverse effect to the State’s or Division of Lottery’s business interests, all without any increase in the Payments payable by the State or Division of Lottery or any additional costs or expenses charged to the State or Division of Lottery.

(b) If any such extension period referred to in Section 3.1.5(a) above has delayed the date for completion of Transition past the Scheduled Base Services Commencement Date for longer than a six (6) month period, then Manager may, after such six (6) month period, require the Division of Lottery to reimburse Manager for any additional costs reasonably incurred by Manager as a result of such delay, but only if, and to the extent, Manager notifies the Division of Lottery in advance of Manager’s intention to incur such additional costs, obtains the State’s prior written Approval to incur such additional costs and, after obtaining the State’s written Approval, uses commercially reasonable efforts to minimize such costs. Notwithstanding the foregoing, if such extension was initiated by the State or the Division of Lottery as a result of: (i) delays, risks or hazards to the State’s or the Division of Lottery’s business interests created by Manager (other than, for the avoidance of doubt, any failure attributable to a Non-Manager Transition Delay Event); (ii) Manager’s failure to perform in accordance with this Agreement (other than, for the avoidance of doubt, any failure attributable to a Non-Manager Transition Delay Event), or (iii) a court injunction against the State or the Division of Lottery that causes a material adverse effect on the Transition, then Manager shall not be entitled to recover any such additional costs. In the event of a State-initiated Transition extension, the Transition Plan and all associated dates and milestones (including any dates reasonably required to be modified in the Initial Annual Business Plan and adjustments to the Net Income Targets and Budget to be made in accordance with Schedule 10.2) shall be modified as appropriate and as mutually agreed upon by the Parties.

3.1.6 Completion of Transition. Except as otherwise expressly provided in this Agreement or in the Transition Plan, the Division of Lottery shall retain responsibility for all Lottery operations until the Base Services Commencement Date. The date on which the Transition has been fully achieved shall be referred to herein as the “Transition Completion Date”. The Transition Completion Date shall be established as follows:

(a) Upon completion of all Transition Milestones, Manager shall certify to the Division of Lottery in writing, including supporting documentation as required by the Division of Lottery (the “Manager Transition Notice”), that it has achieved each of the Transition Milestones. Commencing the first Business Day after the Division of Lottery’s receipt of the Manager Transition Notice, the Division of Lottery shall conduct such investigations and inquiries as it deems appropriate to confirm that all of the Transition Milestones have been achieved and respond to such Manager Transition Notice within the time period described in paragraph (g) of this Section 3.1.6.

(b) If the Division of Lottery is satisfied that the Transition Milestones have been achieved in all material respects, the Division of Lottery shall notify Manager in writing accordingly and Manager and the Division of Lottery shall execute a “Certificate of Transition” establishing and identifying the Transition Completion Date. For the avoidance of doubt, the Certificate of Transition shall not constitute a continuing certification of compliance by Manager with the terms of this Agreement and Manager shall be responsible for its continued compliance with the terms of this Agreement.
(c) If the Division of Lottery determines that the Transition Milestones have not been achieved in all material respects, the Division of Lottery shall notify Manager in writing accordingly and state with reasonable specificity the reasons why the Transition Milestones have not been achieved in all material respects.

(d) If the Division of Lottery determines that the conditions causing the failure to achieve all of the Transition Milestones are due to conditions that are the responsibility of Manager under this Agreement (other than any conditions attributable to a Non-Manager Transition Delay Event), Manager shall, in addition to any other right or remedy of the State or the Division of Lottery, at its sole cost and expense and within a period of time determined by the Division of Lottery in its sole discretion, correct and/or remedy the deficiencies and other conditions which so prevent completion of the Transition.

(e) If the Division of Lottery determines that the conditions causing the failure to achieve all of the Transition Milestones are not the responsibility of Manager (including any conditions attributable to a Non-Manager Transition Delay Event), then Manager may be entitled to additional time, as determined by the Division of Lottery in its sole discretion, to effectuate the Transition in accordance with Section 3.1.5 to complete the modifications and tasks necessary to achieve the Transition.

(f) Upon completion of the corrective and/or remedial actions referred to in Sections 3.1.5(d) or (e), as the case may be, Manager shall resubmit the Manager Transition Notice, stating that it believes all of the Transition Milestones have been achieved in all material respects, and the foregoing procedures shall be repeated until the complete Transition has in fact been achieved.

(g) The Division of Lottery shall use commercially reasonable efforts to respond to the Manager Transition Notice or to issue a Certificate of Transition within ten (10) Business Days after its receipt of the Manager Transition Notice. The Certificate of Transition shall not be unreasonably withheld or delayed by the Division of Lottery. For the avoidance of doubt, the Certificate of Transition shall not constitute a continuing certification of compliance by Manager with the terms of this Agreement and Manager shall be responsible for its continued compliance with the terms of this Agreement.

(h) If the Manager is able to complete Transition prior to the Scheduled Base Services Commencement Date, and the Division of Lottery has issued or otherwise determined that all requirements for issuance of a Certificate of Transition have been satisfied (the “Transition Ready Date”), then the Division of Lottery may, in its sole discretion, elect to change the Scheduled Base Services Commencement Date to an earlier date; provided however, that if the Division of Lottery does not use a Scheduled Base Services Commencement Date that is within thirty days of the Transition Ready Date, then the Division of Lottery shall promptly reimburse the Manager for that portion of such fees, charges and expenses incurred by the Manager during the Transition (to the extent contemplated by the Transition Plan), which is equal to one minus a fraction the numerator of which is the number of days between the Agreement Effective Date and the Transition Ready Date and the denominator of which is the number of days between the Agreement Effective Date and the Scheduled Base Services Commencement Date.
3.2 Existing Contracts.

3.2.1 Existing State Contracts. As of the Agreement Effective Date, the Division of Lottery is a party to the contracts set forth on Schedule 3.2, which contracts relate solely to the operation of the Lottery (collectively, the “Existing State Contracts”).

3.2.2 Assignment of Existing Contracts. With respect to any Existing State Contract with a term extending beyond the Scheduled Base Services Commencement Date, the Division of Lottery shall assign, and Manager shall, subject to any required consent of the Third Party to the Existing State Contract, assume, each Existing State Contract. Any such assignment shall require that the Manager may only exercise the right to terminate for convenience in the Existing State Contract with the written prior approval of the Executive Director of the Lottery. If the consent of any Third Party to an Existing State Contract is not obtained, then (i) such Existing State Contract shall remain in place in accordance with its terms and (ii) the Division of Lottery shall jointly administer such Existing State Contract with the Manager and, during the term thereof, Manager shall not be responsible for the Services being provided under such Existing State Contract. Whether or not any such Existing State Contract is assigned to Manager, the costs thereunder shall be deemed to be Operating Expenses. At the expiration or other termination of any such Existing State Contract, Manager shall enter into a replacement contract, to the extent Manager determines that entering into such replacement contract is necessary or advisable for the provision of the related Services (each a “Replacement Contracts”). For the avoidance of doubt, Manager shall be responsible for providing, or causing the provision of, the Services provided pursuant to any Existing State Contract at all times after assumption of such Existing State Contract by Manager and/or after the expiration or termination of such Existing State Contract. Each Replacement Contract, and the engagement process relating thereto, shall comply with the terms governing Subcontracts set forth in Section 7 hereof.

SECTION 4

SERVICES

4.1 Scope of Services. From the Agreement Effective Date or such later date as may be specified in this Agreement, Manager shall provide the following services to the Division of Lottery:

(a) the services, equipment, goods, functions, responsibilities and tasks set forth in (i) Schedule 2.1, (ii) the Operating Standards and (iii) such other services as may be specifically set forth elsewhere in this Agreement;

(b) the Transition Services;

(c) the Disentanglement Services; and

(d) any related or incidental services, equipment, functions, responsibilities or tasks not specifically described in this Agreement, but which are an inherent, necessary or customary part of the Services or that are required or reasonably necessary for the proper performance and provision of the services, functions, responsibilities or tasks set forth in subsections (a) through (c) above.

The items set forth in subsections (a) through (d) shall collectively be referred to as the “Services.”
4.2 Services Generally. Manager shall at all times operate the Lottery in accordance with the requirements of Schedule 2.1, Schedule 5.5, the Operating Standards, the Annual Business Plan, Regulatory Requirements and as otherwise set forth in this Agreement.

4.3 Party Bearing Cost of Performance. All obligations undertaken by each Party hereto shall be performed at the cost of the Party undertaking the obligation or responsibility, unless the other Party has explicitly agreed herein to bear all or a portion of the cost either directly, by reimbursement to the other Party or through an adjustment to the Manager Expenses.

4.4 New Multi-State Lottery Games. In the event that the Division of Lottery decides to participate in a new lottery game offered by a multi-state association, the Division of Lottery shall provide notice to Manager of its decision within ten (10) Business Days after making such decision. Within thirty (30) days after its receipt of such notice, Manager shall submit to the Division of Lottery an Updated Annual Business Plan (as defined below), reflecting the impact of the new lottery game offered by the multi-state association on the overall operations of the Lottery. The Division of Lottery shall, within sixty (60) days after its receipt of such updated Annual Business Plan, at its reasonable discretion either Approve such Updated Annual Business Plan or communicate to Manager the Division of Lottery’s requirement to modify such Updated Annual Business Plan. If Manager does not accept any proposed modifications requested by the Division of Lottery within ten (10) days after receipt of the communication expressing the Division of Lottery’s requirement to modify such Updated Annual Business Plan, then the Division of Lottery shall be entitled to either (i) contract with a Third Party to provide the services necessary to conduct the new lottery game offered by the multi-state association, and Manager shall cooperate with the Division of Lottery and such Third Party in connection with the preparation for and operation and conduct of such new lottery game or (ii) address such disagreement in accordance with the dispute resolution procedures set forth in Section 20. For the avoidance of doubt, the Net Income Levels and/or the Net Income Targets set forth in Schedule 10.2 may not be adjusted except in accordance with Schedule 10.2.

4.5 New Internet Games. The Division of Lottery is exploring the utilization of the Internet to expand the reach of its lottery offerings, and, over time, to create new gaming entertainment experiences. In the event that the Division of Lottery decides to create new Lottery Game offerings on the Internet, the Division of Lottery shall provide notice to Manager of its decision within ten (10) Business Days after making such decision. Within thirty (30) days after its receipt of such notice, Manager shall submit to the Division of Lottery an Updated Annual Business Plan, reflecting the impact of the new Internet Lottery Game offerings on the overall operations of the Lottery. The Division of Lottery shall, within sixty (60) days after its receipt of such plan, at its reasonable discretion either Approve such Updated Annual Business Plan or communicate to Manager the Division of Lottery’s requirement to modify such Updated Annual Business Plan. If Manager reasonably disagrees with any modification required by the Division of Lottery, then Manager shall, within thirty (30) days of its receipt of the Division of Lottery’s modification requirement, provide written notice to the Division of Lottery (i) identifying the modification(s) at issue and (ii) stating Manager’s reasons why the modification is not necessary or appropriate. The Division of Lottery and Manager shall address any such disagreement in accordance with the dispute resolution procedures set forth in Section 20. For the avoidance of doubt, the Net Income Levels and/or the Net Income Targets set forth in Schedule 10.2 may not be adjusted except in accordance with Schedule 10.2.

4.6 Additional Work. If the Division of Lottery desires Manager to provide a service, good or equipment that is not a Service set forth on Schedule 2.1 (each such service being referred to herein as “Additional Work”), then the Manager shall provide such Additional Work and the Parties shall follow the procedure set forth below to determine the scope of the Additional Work and to update the Annual Business Plan.
4.6.1 The Division of Lottery shall provide notice to Manager of its desire for Manager to provide the Additional Work. Within thirty (30) days after its receipt of such notice, Manager must:

(a) Present a written proposal to the Division of Lottery to perform the Additional Work. The written proposal should provide a detailed description of the work to be performed broken down by task and subtask. The proposal should also contain details on any increase in the Operating Expenses that would result from the Additional Work; and

(b) Submit to the Division of Lottery an Updated Annual Business Plan with new Operating Expenses, reflecting the impact of the Additional Work to the overall operations of the Lottery.

4.6.2 The Division of Lottery shall, within sixty (60) days after its receipt of such plan, at its reasonable discretion either Approve such Updated Annual Business Plan or communicate to Manager the Division of Lottery’s requirement to modify such Updated Annual Business Plan. If Manager reasonably disagrees with any modification required by the Division of Lottery, then Manager shall, within thirty (30) days of its receipt of the Division of Lottery’s modification requirement, provide written notice to the Division of Lottery (i) identifying the modification(s) at issue and (ii) stating Manager’s reasons why the modification is not necessary or appropriate. The Division of Lottery and Manager shall address any such disagreement in accordance with Section 20. For the avoidance of doubt, the Net Income Levels and/or the Net Income Targets set forth in Schedule 10.2 may not be adjusted except in accordance with Schedule 10.2.

4.6.3 Any Additional Work is subject to the Approval of the Division of Lottery and any necessary State Approvals, including the Approval of the DPP. The State Contract Manager shall be responsible for seeking all necessary State Approvals for Additional Work and shall forward Manager’s written proposal to the Director of the DPP, and any other required agency, for consideration. If any Additional Work is Approved, Schedules 2.1 and 2.2 shall be amended as necessary to reflect such Additional Work.

4.6.4 Without the Approval of the Director of the DPP, Manager shall not provide to the Division of Lottery any services and/or equipment, including any Additional Work, that is outside of the scope of the Services as described in Section 4.1. In the event Manager provides services and/or equipment that are outside of the scope of the Services without the approval of the Director of the DPP, Manager shall provide such services and/or equipment at its own risk and neither the State nor the Division of Lottery shall have any obligation to pay Manager for such services and/or equipment.

4.6.5 For the avoidance of doubt, Additional Work shall not include any functions or responsibilities which are an inherent, necessary or customary part of the functions and responsibilities associated with the Lottery and to be performed by the Manager in accordance with this Agreement.

4.7 Continuity of Services. Concurrently with the Manager Proposal, Manager submitted a draft of its proposed disaster recovery and business continuity plans. The final disaster recovery and business continuity plan is attached as an appendix to the Annual Business Plan (the “Continuity Plans”). The Continuity Plans are a part of the Overall Business Plan, shall be updated by Manager annually pursuant to Section 5.3 and must address, at a minimum, the strategic framework for the mitigation of risks that might cause any one of the following events:

4.7.1 business process failure;

4.7.2 asset loss;
4.7.3 liability under any State Policies and Rules;
4.7.4 customer service failure;
4.7.5 disruptions due to labor disputes, unrest or actions; or
4.7.6 damages to reputation or brand.

The Continuity Plans also must (i) include provisions regarding planning for disaster recovery, business interruption and resumption, business recovery, and contingencies and (ii) take into account (x) the Division of Lottery’s existing Business Continuity Site and (y) the disaster recovery and business continuity requirements of any Existing State Contracts with a term extending beyond the Scheduled Base Services Commencement Date.

4.7.7 Disaster Recovery Execution. In the event of an emergency, Service interruption or Force Majeure Event, Manager shall implement, to the extent necessary, the Continuity Plans, subject to consultation with the Division of Lottery.

4.7.8 Force Majeure Events.

(a) General. Subject to subsection (b) below, no Party shall be liable for any default or delay in the performance of its obligations under this Agreement if and to the extent such default or delay is caused by a Force Majeure Event.

(b) Duration and Notification. If the Party claiming the benefit of the Force Majeure Event (the “Non-Performing Party”) is not at fault for the default or delay in the performance of its obligations under this Agreement in accordance with subsection (a) above due to a Force Majeure Event, then the Non-Performing Party shall be excused from performance or observance of the obligation(s) so affected for as long as such circumstances prevail and such Party continues to use all commercially reasonable efforts to recommence performance or observance whenever and to whatever extent reasonably possible without delay. Any Party so prevented, hindered or delayed in its further performance shall, as quickly as practicable under the circumstances, notify the Party to whom performance is due by telephone (and use commercially reasonable efforts to confirm in writing within one (1) day of the inception of such delay) and describe at a reasonable level of detail the circumstances of the Force Majeure Event, the steps being taken to address such Force Majeure Event and the expected duration of such Force Majeure Event. The occurrence of a Force Majeure Event shall not relieve Manager of its obligation to implement Continuity Plans, except to the extent such Force Majeure Event prevents such implementation.

4.8 Sale of Lottery Tickets. If any Service provided by Manager or a Subcontractor includes the sale of Lottery Tickets, Manager or such Subcontractor, as applicable, must be licensed as a lottery agent pursuant to N.J.S.A. 17:40-4.

4.9 Title to Assets. The Division of Lottery shall be the owner of, and shall hold all right, title and interest in and to, all assets and equipment (i) owned by the Division of Lottery prior to the Agreement Effective Date, including pursuant to any Existing State Contract, (ii) acquired by the Division of Lottery other than pursuant to or in connection with this Agreement or (iii) the cost of which is paid for by the Division of Lottery under this Agreement, including pursuant to any Existing State Contract, Replacement Contract or Subcontract.
SECTION 5
GOVERNANCE, SERVICE STANDARDS AND ANNUAL BUSINESS PLAN

5.1 Governance. Schedule 5.1, as amended or supplemented from time to time by the mutual agreement of the Parties, sets forth the guidelines, principles and protocols of the Parties’ communications and relationship, including State and Division of Lottery Approval procedures, during the Term of this Agreement (except during the Transition) (the “Governance Protocols”); provided that, during the Transition, such Governance Protocols shall be supplemented by any guidelines, principles and protocols set forth in the Transition Plan. Notwithstanding anything else in this Agreement, the Division of Lottery Approval shall be required for any material change from those business practices and decisions already Approved by the Division of Lottery and/or the State (for example, those items enumerated and Approved in Annual Business Plans); provided, however, that no changes may be made to the Net Income Targets without the Approval of the DPP. Manager acknowledges that, pursuant to the Existing Lottery Law and the rules and regulations pertaining thereto, the Lottery Commission has certain approval rights with respect to the Lottery and the operation thereof. In the event that Manager seeks Approval from the Division of Lottery and/or the State for any matter that requires Lottery Commission approval, (i) such approval shall be separate from and in addition to any such approval of the Division of Lottery or the State, as applicable, and (ii) the Division of Lottery, if it so approves of such matter, and not Manager, shall request such approval of the Lottery Commission. In addition, if the State and/or Division of Lottery has agreed herein or in the Operating Standards to approve or respond to a request for approval for any such matter within a specific time period, such time period shall be automatically extended as deemed necessary by the Division of Lottery to include any time periods required to present such matter to the Lottery Commission for its review. Without limiting the foregoing, Manager acknowledges and agrees that it shall not communicate with any member of the Lottery Commission without the prior approval of the Executive Director of the Division of Lottery and shall cooperate with the Division of Lottery, at the reasonable request of the Division of Lottery, in connection with any approval sought from the Lottery Commission.

5.2 Operating Standards.

5.2.1 General. The Division of Lottery has provided to Manager the current policies and procedures that govern the operational provisions for the performance of the Services (as amended from time to time, the “Operating Standards”). Manager shall, and shall include a provision in each Subcontract requiring the Subcontractor to, comply in all material respects with the then-current Operating Standards in performing the Services. The Operating Standards shall in no event be interpreted as an amendment to this Agreement or so as to relieve Manager of any of its performance obligations under this Agreement. In the event of a conflict between the provisions of this Agreement and the Operating Standards, the provisions of this Agreement shall control.

5.2.2 Modifications. Either Party may propose a modification to the Operating Standards at any time during the Term. The Division of Lottery may, at its sole discretion, elect to implement any modification or update to the Operating Standards and shall inform Manager in writing of any such modification and provide a copy of the Operating Standards, as modified or updated. Subject to Section 21 hereof, Manager shall comply in all material respects with all such modifications or updates to the Operating Standards. If practicable under the circumstances (as determined by the Division of Lottery), the Division of Lottery shall consult with the Manager prior to its election to implement any modification or update to the Operating Standards.
5.3 Business Plan.

5.3.1 Manager prepared and submitted with the Manager Proposal a proposed Business Plan for the Term. The Business Plan in the final form agreed to by the Parties (the “Initial Annual Business Plan”) is attached hereto as Exhibit 5.3.1 and includes the following three sections: (i) a general business plan for the entire Term covering the details set forth in Section 5.3.2 (the “Overall Business Plan”), (ii) a detailed business plan for the period covering the Base Services Commencement Date through June 30, 2014 and the annual period from July 1, 2014 through June 30, 2015, and covering the details set forth in Section 5.3.3 (the “First Year Plan”), and (iii) a detailed business plan for the five year period of the Term commencing on July 1, 2015 (the “Five Year Plan”).

5.3.2 The Overall Business Plan, which shall be updated annually in accordance with Section 5.3.5, shall include the following:

(a) the projected Operating Expenses (including separate projections for Manager Expenses and Subcontractor Expenses) and Division of Lottery’s Administrative Expenses (to be provided by the Division of Lottery) and any other Third Party expenses for each of the Contract Years during the Term (as thereafter updated in accordance with Section 5.3.5 below, the “Budget”) and the assumptions on which such Budget is based;

(b) a description of Manager’s objectives for each of the Contract Years, including, but not limited to, Manager’s projected Net Income targets for each such Contract Year (as may be adjusted in accordance with Schedule 10.2, the “Net Income Targets”) and the elements or assumptions used to calculate the Net Income Targets;

(c) Manager’s comprehensive business plan for providing the Services during the Term, with particular emphasis on the goals and objectives for the first five Contract Years for each of the activities set forth in Schedule 2.1, including an executive summary of Manager’s overall strategy for managing and growing the Lottery and an explanation of Manager’s rationale for its proposed strategy, as well as its previous experience in implementing the same or similar strategies;

(d) Manager’s strategies for addressing key issues, including the balance between revenue growth and responsible gaming and the balance between State control and oversight and the flexibility afforded to Manager, the rationale, process, timing and financial impacts associated with these strategies and Manager’s previous experience in implementing the same or similar strategies;

(e) A description of Manager’s strategy to ensure that N.J.S.A. 5:9-7(a)(11) will be satisfied in each Contract Year, the rationale, process, timing and financial impacts associated with the strategy and Manager’s previous experience in implementing the same or similar strategies;

(f) Aspects of Manager’s consumer facing strategy, as well as all aspects of its operations strategy, the rationale, process, timing and financial impacts associated with these strategies and Manager’s experience in implementing the same or similar strategies;

(g) Manager’s strategy for growing Net Income, including a description of initiatives that Manager intends to undertake, the rationale, process, timing and financial impact associated with such strategy and each such initiative, and Manager’s previous experience in implementing the same or similar strategies and initiatives;

(h) A description of Manager’s corporate and internal organizational structure, including the names, roles and responsibilities of Manager Key Personnel;
(i) A description of the tools, reports, and processes, including any reports required under this Agreement, Manager plans to utilize to provide transparency of operations and facilitate the Division of Lottery’s exercise of control over the conduct of the operations of the Lottery;

(j) A description of Manager’s strategy for leveraging the Internet consistent with then current Regulatory Requirements, the rationale, process, timing and financial impacts associated with the strategy and Manager’s experience in implementing the same or similar strategies;

(k) A description of any proposal for capital investment(s) equal to or in excess of Fifty Million Dollars ($50,000,000) per investment (a “Significant Investment”), and a description of Manager’s rationale for the Significant Investment, including the anticipated annual increase in Net Income directly resulting from the Significant Investment over the amortization period of such Significant Investment, as well as Manager’s previous experience in implementing the same or similar investments;

(l) Detailed financial projections over the Term, including Operating Expenses and Net Income and a description of the assumptions and factors driving such projections and a discussion of the relative importance of such assumptions and factors;

(m) A detailed analysis of compliance with the financial stability requirements set forth in Section 2.2.4 of the Operating Standards and such other information as the Division of Lottery may deem material or necessary to a showing of financial stability;

(n) the Subcontractor Engagement Plan, as an appendix, which shall also be attached as Exhibit 7.3 hereto; and

(o) the Continuity Plans, as an appendix.

5.3.3 The First Year Plan shall include the following details, and shall be updated annually in accordance with Section 5.3.5 for the following Contract Year (each such annual update, the “Upcoming Year Plan”):

(a) the Budget for the following Contract Year (and, for the First Year Plan, the Stub Contract Year and the Contract Year ending June 30, 2015), and the assumptions on which the Budget is based; and

(b) a description of Manager’s objectives for the following Contract Year (and, for the First Year Plan, the Stub Contract Year and the Contract Year ending June 30, 2015), including Manager’s projected Net Income Targets for each such Contract Year and the elements or assumptions used to calculate the Net Income Targets.

5.3.4 The Five Year Plan, shall be updated annually to cover a rolling five year term in accordance with Section 5.3.5, and shall include the following details:

(a) the Budget for the Stub Contract Year and each of the next five Contract Years during the Term and the assumptions on which such Budget is based; and

(b) Pro forma income statements for the next five Contract Years, based upon Manager’s proposed Operating Expenses, Net Income Targets and plans for operating the Lottery; and
(c) a description of Manager’s objectives for the next five Contract Years, including, but not limited to, Manager’s Net Income Targets for each such Contract Year and the elements or assumptions used to calculate the Net Income Targets;

5.3.5 Manager shall, no later than ninety (90) days prior to the end of each Contract Year during the Term, prepare and submit for Division of Lottery Approval an updated (i) Overall Business Plan covering each of the Contract Years remaining during the Term, (ii) Upcoming Year Plan and (iii) Five Year Plan (each submission of items (i), (ii) and (iii) being collectively referred to as an “Updated Annual Business Plan”), subject to the terms herein, and provided that the Net Income Targets in any Updated Annual Business Plan may not be adjusted except in accordance with Schedule 10.2. Each Updated Annual Business Plan shall be prepared as follows:

(a) Each Updated Annual Business Plan shall update the Overall Business Plan, Upcoming Year Plan and Five Year Plan in accordance with Sections 5.3.2, 5.3.3 and 5.3.4, respectively.

(b) Not later than ninety (90) days prior to the end of each Contract Year, Manager shall submit its Updated Annual Business Plan to the Division of Lottery for the following Contract Year, which plan shall include an estimate of the Division of Lottery’s Administrative Expenses for the following Contract Year provided by the Division of Lottery. The Division of Lottery shall, within sixty (60) days after its receipt of such plan, confirm or modify the amount of the Division of Lottery’s Administrative Expenses included in such plan and, at its reasonable discretion, either Approve such Updated Annual Business Plan or communicate to Manager the Division of Lottery’s requirement to modify such Updated Annual Business Plan (other than Manager’s Net Income Targets for each Contract Year which may be modified from those set forth in Schedule 10.2 only in accordance with Schedule 10.2). If Manager reasonably believes that any modification required by the Division of Lottery will have a material adverse effect on Manager’s ability to meet the Net Income Target(s) set forth on Schedule 10.2, then Manager shall, within thirty (30) days of its receipt of the Division of Lottery’s modification requirement, provide written notice to the Division of Lottery (i) identifying the modification(s) at issue and (ii) demonstrating to the satisfaction of the Division of Lottery the anticipated adverse effect on the Lottery’s Net Income resulting from such modification(s). If the Parties are unable to agree on any such modifications, then the Parties shall address any such dispute in accordance with Section 20; provided, however, that if any such proposed modification, together with any other proposed modifications, do not vary by more than $500,000 in the aggregate, from the total revenue or expense items set forth in the Initial Annual Business Plan for such Contract Year, then neither Party may dispute such modification. If any dispute regarding an Updated Annual Business Plan being addressed pursuant to Section 20 is not resolved prior to the start of the Contract Year for which such plan will take effect, then notwithstanding such dispute Manager shall continue to provide the Services hereunder and the Division of Lottery shall continue to pay Manager Operating Expenses in accordance with Section 10, based on the Operating Expenses agreed upon for the prior year, and such payments shall be reconciled, retroactive to the start of the Contract Year in dispute, upon resolution of the dispute.

5.3.6 Shortfalls. If there is a Contribution Shortfall in any Contract Year, Manager shall pay the Division of Lottery the Contribution Shortfall Payment in accordance with Section 10.3.2 of the Agreement and Section 3 of Schedule 10.2. A “Net Income Shortfall” shall be deemed to have occurred in any Contract Year in which Net Income does not meet or exceed the Net Income Target for such Contract Year determined in accordance with Section 3 of Schedule 10.2. In the event of a Net Income Shortfall, the Division of Lottery shall have the right to collect the “Net Income Shortfall Payments” in accordance with Section 10.3.2 of the Agreement and Section 3 of Schedule 10.2.

5.4 General Performance Standards. At all times after the Transition, Manager shall perform the Services at levels of accuracy, quality, completeness, timeliness, responsiveness, resource efficiency and
productivity that are (i) at least equal to those received or provided by the Division of Lottery prior to such date ("Historic Services Levels"), (ii) equal to or higher than the accepted industry standards of first tier providers of services similar to the Services ("Industry Standard Service Levels") and (iii) equal to or higher than any applicable Service Levels set forth in Schedule 5.5. In addition, regardless of whether Manager is in compliance with any specified Service Levels, Manager shall at all times perform the Services in accordance with this Agreement, Schedule 2.1, the Operating Standards, and the Annual Business Plan, and shall, in addition to any other rights and remedies of the State and the Division of Lottery, correct any non-compliance therewith. The approval of, or payment for, Services furnished under this Agreement by the Division of Lottery shall not in any way relieve Manager of its responsibility to provide the Services in accordance with this Agreement, Schedule 2.1, the Operating Standards and the Annual Business Plan. Manager shall ensure that all agreements with its Subcontractors require the Subcontractors to meet all applicable Service Levels.

5.5 Service Levels. Manager shall perform the Services so as to meet or exceed the Service Levels applicable to those Services, as set forth in Schedule 5.5 and the Historic Service Levels and the Industry Standard Service Levels; provided, however, that with respect to any Services provided by Manager pursuant to an Existing State Contract assigned by the Division of Lottery to Manager, Manager shall perform such Services so as to meet or exceed the service level requirements set forth in such Existing State Contract. To the extent that the service level requirements set forth in an Existing State Contract conflict with, and provide for a higher level of service than, a Service Level in Schedule 5.5, the service level requirements in the Existing State Contract shall prevail over the conflicting term in Schedule 5.5 while the Existing State Contract is in full force and effect. Manager shall be responsible for meeting or exceeding the applicable Service Levels even where doing so is dependent on the provision of Services by Subcontractors. From time to time, the Parties agree to review the Service Levels to address any changes in industry standards or applicable technological advancements that may require an adjustment to Schedule 5.5. In addition to the foregoing, the Division of Lottery may, at its sole discretion, elect to implement any modification to Schedule 5.5 (including the modification of any Service Level Credit) that is reasonable and consistent with industry standards, in each case in the sole discretion of the Division of Lottery, and shall inform Manager in writing of any such modification. Without limiting the generality of the foregoing, the Division of Lottery may, at its sole discretion, elect to implement any modification to Schedule 5.5 (including modification of any Service Level Credit) in connection with the expiration or termination of the Existing Technology Contract. Subject to Section 21 hereof, Manager shall comply in all material respects with all such modifications to Schedule 5.5.

5.6 Service Level Credits. Manager recognizes that the Division of Lottery is paying Manager to deliver the Services at specified Service Levels and the Parties agree that it would be extremely difficult and impractical to ascertain and fix the actual damages the State and/or the Division of Lottery would incur, including with respect to reputational matters such as the Lottery brand and public image, should Manager or any Subcontractor fail to deliver the Services at such specified Service Levels. Accordingly, if Manager or any Subcontractor fails to meet any of the Service Levels, Manager shall, in addition to other remedies available to the State and/or the Division of Lottery, pay or credit to the Division of Lottery, as liquidated damages, the service level credits ("Service Level Credits") specified in Schedule 5.5, if applicable to a particular Service, subject to the remaining provisions of this Section 5.6. The Parties agree that the Service Level Credits reflect the diminished value of the Services and loss of Net Income as a result of any failure by Manager or a Subcontractor to provide the Services in accordance with the Service Levels, and accordingly do not constitute nor shall be construed or interpreted as penalties.

5.6.1 Except and to the extent expressly provided in Schedule 5.5, and subject to Section 5.7, the Division of Lottery shall be entitled to recover Service Level Credits under each section of Schedule 5.5 applicable to any given incident.
5.6.2 Upon the Division of Lottery’s determination that Service Level Credits are to or may be assessed, the Division of Lottery shall notify Manager of the assessment in writing. The Division of Lottery, in its sole discretion, may provide for a cure period in such notice to Manager. The continued assessment of Service Level Credits may be terminated by the Division of Lottery if the Division of Lottery determines, in its sole discretion, that all of the following conditions have been met: (i) Manager corrected the condition(s) for which Service Level Credits were imposed; (ii) Manager notified the Division of Lottery in writing that the condition(s) has (have) been corrected; and (iii) the Division of Lottery has verified all correction(s) after system testing or other verification. Manager shall conduct system testing of any correction as the Division of Lottery deems reasonably necessary. Such testing, including the test script, test environment and test results, shall be developed jointly by the Division of Lottery and Manager and must be approved by the Division of Lottery.

5.6.3 Because the Service Level Credits represent the Parties’ good faith estimate of the actual damages that the State and/or the Division of Lottery would suffer as a result of the Manager’s or a Subcontractor’s failure to meet the Service Levels specified in Schedule 5.5 (such actual damages agreed by the Parties to be exceedingly difficult to calculate or incalculable other than at great expense), the Parties agree that the Division of Lottery’s rights to the Service Level Credits described herein shall be its sole and exclusive financial remedy as a result of such specific failures on the part of Manager or a Subcontractor, and the Division of Lottery shall not be entitled to recover other damages, credits, reimbursements or other payments except in the case of fraud, gross negligence or willful misconduct by Manager or a Subcontractor and provided that the State and/or the Division of Lottery shall have the right to exercise any and all other non-monetary rights and remedies of the State and/or the Division of Lottery under this Agreement; provided, that for the avoidance of doubt, Manager acknowledges that the Division of Lottery’s receipt of any Service Level Credits does not affect the right of the Division of Lottery to collect Shortfall Payments. To the extent Manager owes Service Level Credits for failing to meet Service Levels, such Service Level Credits, to the extent not paid by Manager to the Division of Lottery directly, shall be credited on a dollar-for-dollar basis to the next Payment due from the Division of Lottery to Manager; provided, that if the amount of the Payment due to Manager is not sufficient to offset the amount of the Service Level Credits, Manager shall pay the balance of the Service Level Credits to the Division of Lottery within thirty (30) calendar days of written demand therefor. If Manager does not pay the balance of the Service Level Credits in full on or prior to the time that such payment is due, then the balance will be deducted from subsequent Payments to Manager.

5.7 Excused Performance. Manager’s failure to perform its obligations or responsibilities under this Agreement, including meeting or exceeding applicable Service Levels, and the payment of any Service Level Credits in connection with such failure to perform, shall be excused if and only to the extent such non-performance is expressly excused under this Agreement or directly caused by: (a) the fault of the Division of Lottery, (b) a Force Majeure Event or (c) any act or omission by any non-Subcontractor Third Party not under the control of Manager. The preceding sentence shall only be applicable if: (i) with respect to clauses (a) and (b), if Manager notifies the Division of Lottery in writing as soon as is reasonable (under the circumstances) of such action or failure to act or perform and Manager’s consequent inability to perform under such circumstances; (ii) with respect to clauses (a) and (c), if, where applicable, Manager provides the Division of Lottery or such non-Subcontractor Third Party with every reasonable opportunity to correct such action or failure to act or perform and thereby avoid such Manager non-performance; and (iii) with respect to clauses (a), (b) and (c), if Manager uses commercially reasonable efforts to perform, including fully implementing the Continuity Plans, notwithstanding the Division of Lottery’s or such non-Subcontractor Third Party’s, if applicable, action or failure to act or perform.

5.8 Reporting on Performance. Manager shall provide the Division of Lottery with such reports pertaining to the performance of the Services and Manager’s other obligations under this Agreement
sufficient to permit the Division of Lottery to monitor and manage Manager’s performance (collectively, the “Reports”) in the format and at such periodic schedule reasonably requested by the Division of Lottery. Without limiting the generality of the foregoing, within thirty (30) days after the end of each Contract Year, Manager shall provide the Division of Lottery with a variance report, detailing the differences between the Operating Expenses and projected performance of the Lottery for such Contract Year and the actual Operating Expenses and performance of the Lottery for such Contract Year. In addition, from time to time, the Manager shall generate and promptly deliver to the Division of Lottery on an ad hoc or periodic basis such additional Reports as the Division of Lottery may reasonably require. Reports shall comply with the confidentiality requirements set forth in Section 9.3.

5.9 Requirement of Cooperation.

5.9.1 In the event the Division of Lottery contracts with a Third Party to provide any services to the Division of Lottery in connection with the Lottery and the Division of Lottery requires that such Third Party interact with Manager, Manager shall cooperate in accordance with the instructions of the Division of Lottery and of such Third Party. Subject to Manager’s reasonable confidentiality requirements (which shall be no more restrictive that those set forth in Section 9.3), Manager shall: (a) provide reasonable access to the facilities being used by Manager to provide the Services, to the extent necessary for the Third Party to perform its services for the Division of Lottery; (b) provide such information regarding the Services procedures, operating environment, system constraints and other operating parameters as a person with reasonable commercial skills and expertise would find reasonably necessary for the Third Party to perform its services for the Division of Lottery; and (c) reasonably cooperate with the Third Party to diagnose and correct problems and issues related to the Third Party’s services. In addition, Manager shall, if requested by the State or the Division of Lottery, provide access to State Data and/or any other property of the State that is in the possession of Manager to the extent reasonably required for the Third Party to provide services to and on behalf of the Division of Lottery.

5.9.2 If Manager engages a Subcontractor, the Division of Lottery shall, subject to any Regulatory Requirements or confidentiality or other contractual restrictive covenants, cooperate in good faith with Manager and any such Subcontractor to the extent reasonably necessary to facilitate the performance of such contract by such Subcontractor.

5.10 Reporting of Adverse Impacts.

5.10.1 Failure to Comply with Obligations. If Manager becomes aware of any failure by Manager to comply with its obligations under this Agreement, including any of the requirements set forth in the Operating Standards, or any other situation, the occurrence of any event or the existence of any circumstance: (a) that has impacted or reasonably could impact the maintenance of the State’s or the Division of Lottery’s financial integrity or internal controls, the accuracy of the State’s or the Division of Lottery’s financial, accounting, manufacturing quality or records and reports, or compliance with the State Policies and Rules; (b) that has had or reasonably could have any other material adverse impact on the Services in question or the Lottery operations; (c) that would be reasonably likely to result in Manager’s inability to achieve any Service Level, and/or (d) that has impacted or reasonably could impact the State Intellectual Property or the State’s goodwill or public image, then in any such case, Manager shall, in accordance with the Governance Protocols, promptly inform the Division of Lottery in writing of such situation and the impact or potential impact, and Manager and the Division of Lottery shall promptly meet to formulate an action plan to minimize or eliminate the impact of such situation at no cost to the State or the Division of Lottery.
5.10.2 Reporting of Complaints – Manager. In connection with its performance of the Services, Manager shall, in accordance with the Governance Protocols, promptly notify the Division of Lottery in writing of any complaints received by Manager or any Manager Personnel regarding the Services and/or Manager Key Personnel. Manager shall maintain a written (in electronic and printable format) log or other system of record, available for the Division of Lottery’s review and retention of a copy, that identifies the party making such complaint and the party against which such complaint was made and specifies in detail the nature of and circumstances giving rise to such complaint.

SECTION 6

PERSONNEL

6.1 Manager Personnel Are Not State Employees. Nothing in this Agreement shall operate or be construed as making the State, the Division of Lottery or the DPP, on the one hand, and Manager, on the other hand, partners, joint venturers, principals, joint employers, agents or employees of or with the other. No officer, director, employee, agent, Affiliate or Subcontractor retained by Manager to perform work on the Division of Lottery’s behalf or for the Division of Lottery hereunder shall be deemed to be an officer, director, employee, agent, Affiliate, contractor or subcontractor of the State, the Division of Lottery or the DPP for any purpose. Manager, subject to the State’s and the Division of Lottery’s ultimate authority and control as provided hereunder, including in Sections 6.3.2 and 6.3.3, has the right, power, authority and duty to hire, terminate, supervise and direct the activities of Manager Personnel. Manager, and not the State, the Division of Lottery or the DPP, shall be responsible for compensating such Manager Personnel for any work performed by them on the behalf of or for the Division of Lottery pursuant to this Agreement. Manager, not the State, the Division of Lottery or the DPP, shall be responsible and therefore solely liable for all acts and omissions of Manager Personnel with regard to or in connection with this Agreement, including acts or omissions constituting negligence, gross negligence, willful misconduct or fraud. Manager hereby acknowledges that Manager and Manager Personnel are not entitled to indemnification under N.J.S.A. 59:1-1, et seq., or N.J.S.A. 59:10A-1 and 10-1.

6.2 Division of Lottery Employees. The Division of Lottery shall provide to Manager a list of the employees of the Division of Lottery as of the Agreement Effective Date (the “Existing Lottery Employees”). During the Transition, Manager shall (i) provide each Existing Lottery Employee with the opportunity to apply for a position with Manager and (ii) interview and consider for employment any such Existing Lottery Employee who applies for a position with Manager for which such Existing Lottery Employee is qualified.

6.3 Manager Personnel – Designation, Removal and Replacement.

6.3.1 Designation of Manager Key Personnel. Each of the Manager Key Personnel shall be designated in Exhibit 6.3.1, and shall have the functions assigned to him or her therein. Exhibit 6.3.1 designating Manager Key Personnel shall be promptly updated and provided to the Division of Lottery by Manager upon any replacement or substitution of a new employee for any Manager Key Personnel in accordance with this Agreement, and each such update provided to the Division of Lottery shall be deemed to amend Exhibit 6.3.1. In addition, at the time Manager delivers to the Division of Lottery the Updated Annual Business Plan in accordance with Section 5.3.5, Manager shall also deliver to the Division of Lottery a list with the name, title and brief job description of each Manager Personnel.
6.3.2 Removal/Replacement of Manager Key Personnel by Manager.

(a) All Manager Key Personnel shall be assigned to perform the Services on such basis (e.g., full time assignment or otherwise) as needed to ensure that the Services contemplated hereunder are provided in an efficient and timely manner and in accordance with this Agreement.

(b) If any Manager Key Personnel, for any reason, is no longer acting in the role described on Exhibit 6.3.1 for such Manager Key Personnel, then within a reasonable period of time under the circumstances but as soon as practical, Manager shall as promptly as practicable (i) provide written notice to the Division of Lottery of such occurrence, (ii) identify in writing to the Division of Lottery potential suitable replacements, each of whom must satisfy the requirements for a Qualified Person (as defined in the Operating Standards), and (iii) with the prior Approval of the Division of Lottery, in its sole discretion but not to be unreasonably withheld or delayed, replace such person with a person who meets the requirements for a Qualified Person (as defined in the Operating Standards). In the event of any replacement of Manager Key Personnel, if circumstances permit, Manager shall provide for an appropriate transition (overlap) period for the new individual and use commercially reasonable efforts to minimize any disruption such replacement may cause in the performance of Manager’s obligations under this Agreement.

6.3.3 Replacement of Manager Personnel. The Division of Lottery shall have the right to direct Manager to remove any Manager Personnel from providing any Service, including any Manager Key Personnel, whose continued performance the Division of Lottery has determined not to be in its best interest. Manager shall have a reasonable period of time in which to replace any such Manager Personnel directed to be removed from providing any Service. If the Manager Personnel to be replaced is (i) a Manager Key Personnel, then the requirements of Section 6.3.2(b) shall apply or (ii) a Qualified Person (as defined in the Operating Standards), then the applicable requirements of Section 2 of the Operating Standards shall apply. In the event of any replacement of Manager Personnel, if circumstances permit, Manager shall provide for an appropriate transition (overlap) period for the new individual and use commercially reasonable efforts to minimize any disruption such replacement may cause in the performance of Manager’s obligations under this Agreement.

6.4 Supervision and Conduct of Manager Personnel. Manager shall be responsible for the Services-related performance of all Manager Personnel assigned to provide Services under this Agreement, and shall direct the management of such Manager Personnel. With respect to all Manager Personnel, Manager shall comply with all applicable Regulatory Requirements.

6.5 Compliance with State Policies and Rules. In performing the Services, Manager shall, and shall cause the Manager Personnel to, comply with all applicable State Policies and Rules and the provisions of Section 9.3 hereof. Manager shall be responsible for the distribution of the applicable provisions hereof and of the State Policies and Rules directly relating to the Lottery to Manager Personnel, to the extent necessary and appropriate.

6.6 Other State Requirements - Manager Personnel

6.6.1 Probity Investigations by the State or Division of Lottery. Manager hereby acknowledges and agrees that the State and the Division of Lottery shall have the right to require Manager to conduct probity investigations of any Manager Personnel, and to conduct any such probity investigations itself, prior to and during the Term in accordance with the Operating Standards.

6.6.2 Background Checks. Manager shall ensure that Manager Personnel are authorized to work in any jurisdiction in which they are assigned to perform Services and are not otherwise
disqualified from performing the Services under applicable Regulatory Requirements. To the extent allowed by applicable Regulatory Requirements, Manager agrees to conduct thorough background checks (including, for all employees, a New Jersey criminal history background check and, for Manager Key Personnel and Qualified Persons (as defined in the Operating Standards), a criminal history background check covering each jurisdiction in which such Manager Key Personnel or Qualified Person (as defined in the Operating Standards) has lived and/or worked in the prior ten (10 years), through either its standard internal procedures or the services of a Third Party specializing in employment and business background checks, in either case subject to the review by and approval of the Division of Lottery, on each employee (not just Manager Personnel) of Manager. Manager shall review the results of the background check of each Manager employee to verify that such employee meets Manager’s and the State’s standards for employment, and shall provide a copy of each such background check for Manager Personnel to the Division of Lottery promptly after receipt thereof. Manager hereby acknowledges and agrees that, in addition to the foregoing, the State and the Division of Lottery shall have the right to conduct background checks of any Manager Personnel, including Manager Key Personnel and Qualified Persons (as defined in the Operating Standards), prior to and during the Term. Manager shall be responsible for notifying Manager Personnel of the possibility of such background checks.

6.6.3 Operating Standards. Manager shall comply with the Operating Standards with respect to the qualification and employment of Manager Personnel and other employees of Manager.

6.7 Equal Employment.

6.7.1 During the performance of this Agreement, Manager agrees, and shall cause each Subcontractor to agree, as follows:

(a) Manager will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex or any other protected category set forth in N.J.S.A. 10:5-12(a). Manager will ensure that equal employment opportunity is afforded to such applicants in recruitment and employment, and that all employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex or any other protected category set forth in N.J.S.A. 10:5-12(a). Such equal employment opportunity shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Manager agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the public agency compliance officer setting forth provisions of this nondiscrimination clause;

(b) Manager will, in all solicitations or advertisements for employees placed by or on behalf of Manager, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex or any other protected category set forth in N.J.S.A. 10:5-12(a);

(c) Manager will send to each labor union, with which it has a collective bargaining agreement, a notice, to be provided by the agency contracting officer, advising the labor union of Manager’s commitments under N.J.A.C. 17:27-3.5 and shall post copies of the notice in conspicuous places available to employees and applicants for employment;
(d) Manager will comply with all provisions of the Americans with Disabilities Act, P.L 101-336, in accordance with 42 U.S.C. 12101, et seq.;

(e) Manager will comply with any regulations promulgated by the Treasurer of the State of New Jersey pursuant to N.J.S.A. 10:5-31 et seq., as amended and supplemented from time to time;

(f) Manager will make good faith efforts to meet targeted county employment goals established in accordance with N.J.A.C. 17:27-5.2;

(g) Manager will inform in writing its appropriate recruitment agencies including, but not limited to, employment agencies, placement bureaus, colleges, universities, and labor unions, that it does not discriminate on the basis of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex or any other protected category set forth in N.J.S.A. 10:5-12(a), and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices;

(h) Manager will revise any of its testing procedures, if necessary, to assure that all personnel testing conforms with the principles of job-relating testing, as established by the statutes and court decisions of the State of New Jersey and as established by applicable Federal law and applicable Federal court decisions; and

(i) In conforming with the targeted employment goals, Manager will review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex or any other protected category set forth in N.J.S.A. 10:5-12(a), consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.

SECTION 7

SUBCONTRACTORS AND SUBCONTRACTS

7.1 Use of Subcontractors. Manager may purchase, lease, or lease-purchase such products or services as are necessary for Manager’s operations and the fulfillment of Manager’s responsibilities. Manager may, subject to the terms of this Section 7 and the Subcontractor Engagement Plan, use its Affiliates and Subcontractors to provide products or services as Manager deems are necessary for the operation of the Lottery. In contracting with Subcontractors, Manager shall at all times consider the sensitive nature of a state-conducted lottery, its public image and social implications, and shall act to promote and ensure security, honesty, fairness and integrity in the engagement of Subcontractors and the operation of the Lottery.

7.1.1 At all times at which a Subcontractor is serving as a Subcontractor, such Subcontractor must:

(a) not be debarred or prohibited by any public entity in the State of New Jersey;

(b) be qualified and registered to transact business in the State of New Jersey pursuant to N.J.S.A. 52:32-44(b);
and must cause its Affiliates to, collect and remit to the Director of the Division of Taxation in the Department of the Treasury the use tax due pursuant to the “Sales and Use Tax Act, P.L. 1966, c. 30 (N.J.S.A. 54:32B-1 et seq http://www.state.nj.us/treasury/revenue/busregcert.shtml.) on all their sales of tangible personal property delivered into the State;

when performing a Service, comply with the provisions of the Prevailing Wage Act and Public Works Contractor Registration Acts, where required;

pursuant to N.J.S.A. 34:11-56.58 et seq., in any contract for building services, as defined in N.J.S.A. 34:11-56.59, pay its employees the prevailing wage for building services rates, as defined in N.J.S.A. 34:11.56.59, and adjust the prevailing wage annually during the term of the contract;

if engaged for public work as defined in N.J.S.A. 34:11-56.26, be first registered with the New Jersey Department of Labor and Workforce Development (any questions regarding the registration process should be directed to the Division of Wage and Hour Compliance at (609) 292-9464;

comply with section 6.7.1 of this Agreement concerning equal employment; and

comply with N.J.S.A. 52:34-13.2, perform all services within the United States, except when the Director certifies in writing a finding that a required service cannot be provided by a contractor or subcontractor within the United States and the certification is approved by the State Treasurer.

7.2 Engagement, Substitution or Elimination of Subcontractors.

7.2.1 Except for the Subcontracts identified in the Manager Proposal and listed on Exhibit 7.2 Manager shall provide thirty (30) days written notice to the Division of Lottery of Manager’s intent to substitute, eliminate or engage a Subcontractor.

7.2.2 Except for (i) the Substantial Subcontracts identified in the Manager Proposal and listed on Exhibit 7.2 and (ii) Substantial Subcontracts for Lottery advertising or information technology for Manager’s back-office operations, in addition to the notice requirement in Section 7.2.1, the Approval of the Division of Lottery is required for any written request to substitute or engage a Substantial Subcontract and the award of such Substantial Subcontract to a Substantial Subcontractor. As part of its engagement process for a Substantial Subcontract, Manager must submit the following to the Division of Lottery:

(a) a detailed description of the scope of work, specifications relating to the work, the proposed engagement method, and any pricing information;

(b) for each bidder, Third Party or Affiliate of Manager that either has submitted to Manager a price quote, bid or proposal or that Manager is otherwise considering for such Substantial Subcontract, the results of any probity and/or background checks that the Division of Lottery may require under Section 7.5; and

(c) such other documentation or information that the Division of Lottery may reasonably request.

7.2.3 If the Division of Lottery Approves the award of a Substantial Subcontract to a Substantial Subcontractor, the Division of Lottery will forward the award to the Director of the DPP for
final approval. No Subcontractor for any substituted or additional Substantial Subcontract is authorized to begin work until Manager has received written approval from the Director of the DPP.

7.2.4 Requests for approval for Substantial Subcontracts required by an exigency or emergency not caused by the Manager, its personnel, or its Affiliates or Subcontractors or personnel thereof, and that if not immediately met will result in the cessation of Lottery operations, or a threat or harm to the public health, welfare or safety, shall be made in any manner practicable in light of the exigency or emergency and the Division of Lottery’s approval shall not be unreasonably withheld.

7.3 Engagement of Subcontractors. Except for the Subcontracts identified in the Manager Proposal and listed on Exhibit 7.2, Manager shall comply with the Subcontractor Engagement Plan for engaging Subcontractors.

7.4 Requirement For Written Agreement with Subcontractors. Subcontracts, and any amendments, modifications or supplements thereto, must be in writing and memorialize the complete and total agreement between the parties. Notwithstanding any other provision herein, Manager shall keep and maintain a record of all Subcontracts, including the engagement process therefor, and Manager shall make said record available to the Division of Lottery upon request at any time. Upon the Division of Lottery’s request, Manager shall provide copies of any Subcontract, which shall not be unreasonably delayed or denied.

7.5 Probity Investigation of Subcontractors. Within ten (10) days after receipt of notice from Manager under Section 7.2.1, the Division of Lottery shall inform Manager whether (i) probity and background investigations are required for the potential Subcontractor and/or any of its employees and (ii) the potential Subcontractor and/or any of its employees must execute a confidentiality agreement in the form of Schedule 9.3.2. To the extent allowed by applicable Regulatory Requirements and required by the Division of Lottery, Manager agrees to conduct thorough background checks, through either its standard internal procedures or the services of a Third Party specializing in employment and business background checks, in either case subject to the review by and approval of the Division of Lottery, on such Subcontractor and, if required by the Division of Lottery, any or all of such Subcontractor’s employees. Manager shall review the results of the background check of (i) each Subcontractor employee to verify that such employee meets Manager’s and the State’s standards for employment and (ii) each Subcontractor to verify that they are not subject to legal, credit or other constraints on providing services. Manager shall provide copies of all such background checks to the Division of Lottery promptly following receipt thereof. Manager hereby acknowledges and agrees that, in addition to the foregoing, the State and the Division of Lottery shall have the right to conduct background checks of any Subcontractor prior to and during the term of its Subcontract with Manager. Manager shall be responsible for notifying Subcontractors of the possibility of such background checks.

7.6 Subcontractor Agreements. In addition to any other requirements in this Agreement, Manager shall include in its Subcontracts:

7.6.1 a provision stating that such Subcontract shall terminate without liability on the part of Manager or the State in the event that the Division of Lottery disapproves the agreement pursuant to Section 7.2, or requires its termination pursuant to Section 7.10;

7.6.2 a provision that the Services to be provided by the Subcontractor are for the benefit of the State and the Division of Lottery,

7.6.3 provisions permitting the assignment of the Subcontract to the State and/or the Division of Lottery and requiring the Subcontractor to comply with all of the terms hereof and of the Operating
Standards, in each case that are applicable to Manager, to the extent not being complied with by Manager, and/or a Subcontractor. Assignment shall be without cost or penalty (it being understood and agreed that in the event the State or the Division of Lottery elects to have the rights and benefits under such Subcontracts assigned to it, it shall assume the obligations and liabilities arising under such Subcontracts on or after the date of assignment to the State or Division of Lottery);

7.6.4 terms and conditions that are consistent in all material respects with the provisions of this Agreement to the extent applicable, including those provisions relating to termination, personnel requirements, Service Levels, the State Intellectual Property, the State’s audit rights, privacy and data safeguards, representations and warranties, certifications, indemnification obligations and insurance and other obligations included herein. Without limiting the foregoing, Manager shall require all of its Subcontractors to carry insurance of the types set forth in Section 17 at levels customary and appropriate for the types and volumes of services provided by the Subcontractors. Subject to Section 9, Manager shall provide the Division of Lottery with access, in electronic format, to all Subcontracts and other documents relating to the Subcontractors’ performance of the Services and amounts charged to the Division of Lottery under the Agreement as reasonably necessary to satisfy the State’s and/or the Division of Lottery’s internal control requirements;

7.6.5 a provision whereby the Subcontractor covenants and agrees that no person shall be (i) excluded from participation in, or be denied benefits of, this Agreement where such participation or benefits are obligated by this Agreement or Regulatory Requirements, or (ii) excluded from employment, denied any of the benefits of employment or otherwise be subjected to discrimination on the grounds of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex or any other protected category set forth in N.J.S.A. 10:5-12(a). The Subcontractor shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination;

7.6.6 a provision whereby the Subcontractor shall maintain documentation for all fees or charges incurred by Manager under this Agreement or any modifications or amendments thereto. The books, documents, papers, accounting records and other evidence pertaining to products and/or services to be provided or performed or money received under this Agreement shall be (i) maintained for a period of five (5) full years from the date of the final payment and (ii) subject to audit or inspection at any reasonable time and upon reasonable notice by the Division of Lottery or its duly appointed representatives. The Subcontractor shall make such materials available at its offices, and copies thereof shall be furnished to the Division of Lottery or its duly appointed representative by the Subcontractor, at no cost to the Division of Lottery or its duly appointed representative, if so requested. Such records shall be maintained in accordance with GAAP or IFRS, as applicable, and any other applicable procedures established by the Division of Lottery from time to time.

7.7 Responsibility for Subcontractors.

7.7.1 In no event shall Manager be relieved of its obligations under this Agreement as a result of its use of any Subcontractors, including any failure by a Subcontractor to perform its obligations to Manager. Manager shall supervise the activities and performance of each Subcontractor and shall remain wholly and fully responsible and liable for the actions and omissions of each Subcontractor and/or for any act or failure to act by such Subcontractor. Manager shall ensure that each Subcontractor has obtained and maintains all Governmental Approvals and other Third Party licenses, authorizations, approvals and consents required in connection with the Services for which such Subcontractor is responsible. Manager shall be the Division of Lottery’s primary point of contact regarding the Services that are subcontracted, including with respect to payment, subject to the State
and the Division of Lottery preserving its right to contact any Subcontractor directly, at its discretion and for any reason.

7.7.2 In performing the Services, Manager shall cause all Subcontractors to comply with all applicable State Policies and Rules. Manager shall be responsible for the distribution of the applicable State Policies and Rules directly relating to the Lottery to each Subcontractor, to the extent necessary and appropriate.

7.7.3 After the termination of this Agreement, Manager shall be solely responsible for any costs or obligations that arise under or with respect to any Subcontract, entered into by Manager to provide the Services, including any termination costs, unless such contract has been expressly assumed by the Division of Lottery and/or the Replacement Manager in accordance with the terms hereof, including Section 14.3.2.

7.8 Ordinary Course Payments to Subcontractors. Manager covenants to the State that it shall directly pay to all Subcontractors when due all amounts due in accordance with their respective Subcontracts.

7.9 No State Responsibility. The State and the Division of Lottery shall not pay any Subcontractor any amount due under its respective Subcontracts, including amounts arising out of indemnity claims for which Manager is responsible. No Subcontractor shall have any contractual relationship with the State or Division of Lottery or right against the State or Division of Lottery for labor, services, materials or equipment furnished for the Services, unless its Subcontract has been assigned to the State and/or the Division of Lottery as contemplated hereunder, or the State, the Division of Lottery and/or its Replacement Manager has assumed the use and benefit thereof pursuant to Section 14.3.2. Manager acknowledges that its indemnity obligations to its Subcontractors under this Section 7.9 shall include all claims for payment or damages by any Subcontractor who furnishes or claims to have furnished any labor, services, materials or equipment in connection with the Services, except to the extent its Subcontract has been assigned to the State and/or the Division of Lottery as contemplated hereunder, or the State, the Division of Lottery and/or its Replacement Manager has assumed the use and benefit thereof pursuant to Section 14.3.2.

7.10 Removal / Replacement of Subcontractors. The State and Division of Lottery shall have the right to require Manager to replace a Subcontractor for any reason, including: (a) material non-performance of the Services performed by such Subcontractor that, in the State’s or Division of Lottery’s reasonable determination, is not cured within a period of time deemed reasonable by the State or the Division of Lottery; (b) engagement by such Subcontractor in illegal activity or a material violation of State Policies and Rules, or (c) a material violation of this Agreement attributable to such Subcontractor that is not cured within a period of time deemed reasonable by the State or the Division of Lottery. Upon any occurrence of any of the preceding events, the Division of Lottery or Manager, as applicable, shall promptly notify the other Party of such occurrence in writing, and, if required by the Division of Lottery, Manager shall replace such Subcontractor (at no penalties, fees or damages to the State or the Division of Lottery) with another Third Party or with Manager Personnel as soon as reasonably possible after receipt of such notice from the State or the Division of Lottery. If the State or the Division of Lottery delivers a notice contemplated by the immediately preceding sentence and Manager does not replace the offending Subcontractor within thirty (30) days after receipt of such notice from the State or the Division of Lottery, then the Division of Lottery shall not be obligated to pay to Manager any portion of the Operating Expenses incurred after such thirty (30) day period that are attributable to such Subcontractor. At all times, notwithstanding the removal of the Subcontractor, Manager shall continue to perform all of its obligations under this Agreement in compliance with all of the terms and conditions of this Agreement.
7.11 **List of Subcontractors.** Manager shall provide to the Division of Lottery a written list, in electronic readable and printable format, of all Subcontractors used, or to be used, by Manager to perform any portion of the Services provided by Manager. Such list shall be provided within thirty (30) days prior to the Scheduled Base Services Commencement Date and updated quarterly thereafter. In addition, except for the Subcontracts set forth in Exhibit 7.2, in the event Manager later determines at any time during the Term to engage a Third Party to provide any part of the Services, Manager will submit a Subcontractor Utilization Form or revised Subcontractor Utilization Form, as applicable, for approval to the DPP in advance of any such engagement of Subcontractors.

7.12 **Subcontract Internal Controls Submission.** Manager shall submit for Approval by the Division of Lottery a description of its internal controls concerning compliance with the requirements of Section 7 and the Subcontractor Engagement Plan no later than sixty (60) days following the Agreement Effective Date and may take no actions pursuant to this Section 7 until such internal controls have been approved by the Division of Lottery.

**SECTION 8**

**INTELLECTUAL PROPERTY RIGHTS**

8.1 **State Intellectual Property.**

8.1.1 **Ownership.** As between the Parties, all worldwide right, title and interest in and to all State Intellectual Property is and shall be owned by the State.

8.1.2 **State Intellectual Property.** Subject to obtaining the applicable Third Party consents, the State hereby grants to Manager, solely to the extent necessary to provide the Services, a royalty-free, non-exclusive, non-transferable limited license to use State Intellectual Property during the Term and any Disentanglement Services Period. Manager may sublicense, subject to any applicable Third Party consents, to Affiliates of Manager and Subcontractors the royalty-free right to access and use State Intellectual Property during the Term and any Disentanglement Services Period solely to the extent necessary to provide those Services that such Affiliates of Manager and Subcontractors are responsible for providing under this Agreement, if such Affiliates of Manager and Subcontractors are subject to a written agreement with Manager consistent with the applicable terms set forth in this Agreement protecting State Intellectual Property, including all confidentiality, non-disclosure, non-use and non-compete obligations pertaining thereto. A listing of State Intellectual Property to be used in connection with the Services is set forth in Schedule 8.1.2.

8.1.3 **No Post-Termination Rights.** After the expiration of the Term or the Disentanglement Services Period, whichever occurs later, Manager and any Manager Affiliate and Subcontractor shall have no right to use any State Intellectual Property, and Manager shall promptly return to the State all State Intellectual Property and/or items embodying such State Intellectual Property in Manager’s possession or in the possession of any Manager Affiliate or Subcontractor or, upon the State’s request, destroy any copies of such items remaining in Manager’s or any Manager Affiliate’s or Subcontractor’s possession and certify such destruction to the satisfaction of the State.

8.2 **Manager Intellectual Property.**

8.2.1 **Ownership.** As between the Parties, all worldwide right, title and interest in and to all Manager Intellectual Property is and shall be owned by Manager. The material Manager Intellectual Property to be used in connection with providing the Services is listed on Exhibit 8.2.1.
8.2.2 License to the State. Manager hereby grants, and shall cause to be granted, to the State and the Division of Lottery, a royalty-free, non-transferable (except as transferable under Section 22.1), non-exclusive license to access and use Manager Intellectual Property during the Term and any Disentanglement Services Period, to the extent that such access and use is reasonably required for the State or the Division of Lottery to receive the Services, and such license shall be irrevocable during the Term and any Disentanglement Services Period.

8.2.3 Post-Termination Rights. After the expiration of the Term or the Disentanglement Services Period, whichever occurs later, the State and the Division of Lottery shall have no rights in or to Manager Intellectual Property, and the State and the Division of Lottery shall promptly return to Manager all Manager Intellectual Property and/or items embodying such Manager Intellectual Property in the State’s or the Division of Lottery’s possession or in the possession of any State employees, representatives or agents or, upon Manager’s request, destroy any copies of such items remaining in the State’s or the Division of Lottery’s possession and certify such destruction to Manager; provided, however, that if requested by the State or the Division of Lottery, Manager shall provide a sublicense to the State and/or the Division of Lottery to use such Manager Intellectual Property post-termination on mutually acceptable terms.

8.3 New Intellectual Property.

8.3.1 State New Intellectual Property and Work Product. As between the Parties, the State owns all worldwide right, title and interest in and to any and all Work Product and State New Intellectual Property. The State New Intellectual Property and Work Product shall be considered to be works made for hire (as that term is used in Section 91 of the United States Copyright Act, 17 U.S.C. § 101, or in analogous provisions of other applicable State Policies and Rules) and the State, and not Manager or any Subcontractor, shall have full and complete ownership of all such State New Intellectual Property and Work Product. If any such Work Product or State New Intellectual Property may not, by operation of law, be considered a work made for hire in accordance with this Agreement, Manager hereby irrevocably assigns, and shall assign, to the State, without further consideration, all of Manager’s right, title and interest in and to such Work Product or State New Intellectual Property, including United States and foreign patent, copyright and other intellectual property rights. Manager acknowledges that the State and the successors and assigns of the State have the right to obtain and hold in their own name any patent, copyright and other intellectual property rights in and to such Work Product and State New Intellectual Property. The State hereby grants Manager certain license and other rights with respect to such Work Product and State New Intellectual Property as described, with respect to State Intellectual Property, in Section 8.1.2, subject to Section 8.1.3.

8.3.2 Manager New Intellectual Property. As between the Parties, Manager shall own all worldwide right, title and interest in and to all Manager New Intellectual Property. Manager hereby grants to the State and the Division of Lottery certain license and other rights with respect to such Manager New Intellectual Property, as described, with respect to Manager Intellectual Property, in Section 8.2.2, subject to Section 8.2.3.

8.3.3 Notice of Development. Manager shall promptly notify the Division of Lottery upon the completion of the earliest of conception, creation or reduction to practice of any and all Work Product or State New Intellectual Property.

8.4 Embedded Manager Intellectual Property. To the extent that Manager Intellectual Property or Manager New Intellectual Property is either: (a) embedded in; (b) incorporated into; or (c) necessary for the access and use of any State Intellectual Property, Manager shall not be deemed to have assigned its or any Third Party’s intellectual property rights in such materials to the State, but Manager hereby grants
(subject to the following sentence) to the State and the Division of Lottery a perpetual, irrevocable, non-exclusive, fully paid-up license, with the right to grant sublicense, to access, use, modify and create derivative works of such materials (including all modifications, replacements, upgrades, enhancements, methodologies, tools, documentation, materials and media related thereto). If, prior to embedding or incorporating Third Party Intellectual Property into State Intellectual Property, Manager describes to the Division of Lottery such Third Party Intellectual Property and any limitations and restrictions associated with such Third Party Intellectual Property and obtains the Division of Lottery Approval to use such Third Party Intellectual Property notwithstanding such limitations and restrictions, then such Third Party Intellectual Property shall be subject to such limitations and restrictions.

8.5 Post-Termination Rights in Manager Proprietary Intellectual Property. As part of the Disentanglement Services, with respect to Manager Proprietary Intellectual Property used to provide the Services (and any modifications, substitutions, upgrades, methodologies, tools, Related Documentation, materials and media related thereto):

8.5.1 License Grant. Manager hereby grants to the State and the Division of Lottery (or, at their election, to their designee(s)) a non-exclusive, non-transferable, irrevocable, fully paid-up license to access and use and to permit a Third Party to access, use, modify and create derivative works of such Manager Proprietary Intellectual Property for the benefit or use of the State and the Division of Lottery until the expiration or termination of the Term and any Disentanglement Services Period, to the extent that such access and use is reasonably required for the State and the Division of Lottery to receive the Services; provided, however, that (a) to the extent any of such licensed Manager Proprietary Intellectual Property constitutes Software, only the object code version of such Software shall be licensed; and (b) the rights of any Third Party shall be conditioned upon Manager’s right to protect such Intellectual Property.

8.5.2 Delivery of Code. Manager shall deliver to the State and the Division of Lottery (or, at their election, to their designee(s)) the source and object code for such Manager Proprietary Intellectual Property to the extent such code is reasonably necessary to permit the State and the Division of Lottery to access, use, modify and create derivative works of such Manager Proprietary Intellectual Property, in each case to the extent reasonably required for the State and the Division of Lottery to receive the Services during the Term and any Disentanglement Services Period.

8.5.3 Provision of Support. Manager shall offer to provide to the State and the Division of Lottery (or, at their election, to their designee(s)), to the extent requested by the State and the Division of Lottery to receive the Services during any Disentanglement Services Period, upgrades, maintenance, support and other services for commercial off-the-shelf Manager Proprietary Intellectual Property on mutually acceptable fair, reasonable and non-discriminatory terms and conditions for such services. Notwithstanding the foregoing, if the Manager Proprietary Intellectual Property and Manager New Intellectual Property is deemed by the State and the Division of Lottery to be essential to Lottery operations and is not otherwise available to the State and the Division of Lottery, due to (i) the unavailability of or prohibitive expense of acquiring substitute Intellectual Property or (ii) contractual restrictions, then Manager agrees to license to the State and the Division of Lottery such Manager Proprietary Intellectual Property and Manager New Intellectual Property together with upgrades, maintenance, support and other services, past the expiration of the Term and any Disentanglement Services Period on mutually acceptable fair, reasonable and non-discriminatory terms and conditions until the State and the Division of Lottery can procure substitute Intellectual Property for a reasonable cost in the State’s sole discretion, provided that, if no mutually acceptable fair, reasonable and non-discriminatory terms and conditions are agreed upon by Manager and the State and the Division of Lottery (or, at their election, to their designee(s)) then Manager agrees to provide such support at the
same level of care until a resolution is reached between the Manager and the State and the Division of Lottery.

**8.5.4 No Obligation to Pay.** Unless the State and the Division of Lottery have otherwise agreed in advance, the State and the Division of Lottery (and, to the extent applicable, their designee(s)) shall not be obligated to pay any license or transfer fees in connection with the receipt of the licenses and other rights granted under this Section 8.5. Without the Approval of the Division of Lottery, Manager shall not use any Manager Proprietary Intellectual Property for which it is unable to legally offer to the State and the Division of Lottery such license or other rights and, absent such Approval of the Division of Lottery, Manager’s use of any such Manager Proprietary Intellectual Property shall obligate Manager to provide, at no additional cost, such license and other rights to the State and the Division of Lottery.

**8.6 Post-Termination Rights in Manager Third Party Intellectual Property.** As part of the Disentanglement Services, with respect to Manager Third Party Intellectual Property licensed by Manager and used to provide the Services:

**8.6.1 Grant to the State.** Manager hereby grants to the State and the Division of Lottery (or, at their election, to their approved designee(s)) a sublicense offering the same rights and warranties with respect to such Manager Third Party Intellectual Property available to Manager (or its Affiliates or Subcontractors), on the same terms and conditions, for the benefit and use of the State and the Division of Lottery until the expiration or termination of the Term and any Disentanglement Services Period; provided, however, that, in lieu of such license, Manager may, with the Approval of the Division of Lottery, substitute one of the following for such sublicense:

(a) the assignment to the State and the Division of Lottery (or, at their election, to their designee(s)) of the underlying license for such Manager Third Party Intellectual Property;

(b) the procurement for the State and the Division of Lottery (or, at their election, to their designee(s)) of a new license (with terms at least as favorable as those in the license held by Manager or its Affiliates or Subcontractors) to such Manager Third Party Intellectual Property for the benefit or use of the State and the Division of Lottery until the expiration or termination of the Term and any Disentanglement Services Period; or

(c) the procurement for the State and the Division of Lottery (or, at their election, to their designee(s)) of a substitute license for Manager Third Party Intellectual Property sufficient to perform, without additional cost, support or resources and at the levels of performance and efficiency required by this Agreement, the functions of Manager Third Party Intellectual Property necessary to enable the State and the Division of Lottery or their designee(s) to provide the related Services until the expiration or termination of the Term and any Disentanglement Services Period.

**8.6.2 Other Obligations.** Following the expiration of the Term and any Disentanglement Services Period, and unless otherwise agreed upon by the Parties, Manager shall not be obligated to provide access to Manager’s Third Party Intellectual Property, including but not limited to the source code to such Third Party Intellectual Property. Nor shall Manager be obligated, absent the mutual agreement of the Parties, to cause maintenance, support or other services to be available to the Division of Lottery.

**8.7 Software.** For Software that is Manager Intellectual Property and used in connection with the provision of Services and State Data, Manager must provide full rights to modify all software, interfaces, databases, data structures, data marts, data definition language (DDL), design documents, entity-
relationship diagrams, other documentation, web services, XML schemas, code, and any other materials associated with the identified VIIS component. Manager and each Subcontractor, as the case may be, is subject to an escrow agreement in which Manager or the Subcontractor, as the case may be, and the State will establish an escrow with an independent agent, who will provide for the retention, administration, and controlled access of the original and derivative work. Any fees associated with the deposit of proprietary software with an independent agent shall be Manager’s sole responsibility. This agreement shall be supplementary to all license agreements and shall be subject to the review and approval by the State. Under the following circumstances, the State shall automatically be permitted access to the source code of any proprietary Software and/or derivative work of Manager or any Subcontractor:

8.7.1 Any Event of Default under Section 13.3;

8.7.2 Any of the following occurs with respect to the applicable Subcontractor: (i) institution of bankruptcy, receivership, insolvency, reorganization or other similar proceedings by or against the Subcontractor under any section or chapter of the Bankruptcy Code, as amended, or under any similar laws or statutes of the United States (or any state thereof), if such proceedings have not been dismissed or discharged within forty five (45) days after they are instituted; (ii) insolvency or the admittance by the Subcontractor of any involuntary debts as they mature; (iii) the institution of any reorganization arrangement or other readjustment of debt plan of the Subcontractor not involving the Bankruptcy Code; (iv) assignment by the Subcontractor of all or substantially all of its assets for the benefit of creditors; or (v) initiation of any corporate action taken by the Board of Directors of the Subcontractor in furtherance of any of the above actions;

8.7.3 Manager or the applicable Subcontractor ceases to do business and/or ceases to perform the Services being provided by Manager or the applicable Subcontractor;

8.7.4 This Agreement is terminated for any reason prior to the end of the Term;

8.7.5 Manager fails to pay any fee of the escrow agent; or

8.7.6 Manager or the applicable Subcontractor takes any corporate or other action to authorize or in furtherance of any of the foregoing.

Manager and each Subcontractor grants the State and the Division of Lottery, and their successors and assigns, an irrevocable, nonexclusive, paid-up right and license to use, execute, reproduce, display, perform, maintain, support, upgrade and modify the Software utilized in connection with the provision of the Services, and distribute the same internally, and to prepare derivative works based on such Software, exclusively for the operation of the New Jersey I/M Program or what is otherwise necessary for the fulfillment of Manager’s obligations under this Agreement, following the occurrence of an event of default. Manager or the State may engage the services of Third Parties to enable its access to the benefits of the licenses granted herein. The provisions of the section shall survive the termination of the escrow agreement referred to in this Section 8.7 following the occurrence of an event of default.

8.8 General Rights.

8.8.1 Copyright Legends. Each Party agrees to reproduce copyright and trademark legends which appear on any portion of the Intellectual Property and/or copies or materials embodying the Intellectual Property which may be owned by the other Party or Third Parties.

8.8.2 Cooperation on Enforcement of Intellectual Property Rights. Each Party agrees to reasonably cooperate with and reasonably assist the other Party in connection with the investigation or
pursuit of a Party in enforcing and/or investigating violations of the Intellectual Property rights of such Party with regard to the Intellectual Property that is owned by such Party and used in connection with the operation of the Lottery or the provision of Services under this Agreement.

8.8.3 Assistance in Perfecting Intellectual Property Rights. Each Party agrees to execute any documents or take any other actions as may reasonably be necessary, or as the other Party may reasonably request, to perfect such other Party’s ownership of, as applicable, any State Intellectual Property and Manager Intellectual Property used in connection with the operation of the Lottery or the provision of Services under this Agreement.

8.8.4 Residual Knowledge. Nothing in this Agreement shall restrict a Party from using the generic data processing or business process ideas, concepts, or know-how developed by or disclosed to a Party in connection with this Agreement and inadvertently retained in the unaided memory of the receiving Party’s employees and representatives (and not intentionally memorized for the purpose of later recording or use) who have rightful access to such information under the terms of this Agreement, provided that such use does not infringe or misappropriate the Intellectual Property rights of a Party or breach any confidentiality obligations or other obligations under this Agreement.

8.8.5 No Implied Rights. Except as expressly specified in this Agreement, nothing in this Agreement shall be deemed to grant to one Party, by implication, estoppel or otherwise, license rights, ownership rights or any other Intellectual Property rights in any Intellectual Property owned by the other Party.

SECTION 9

DATA PROTECTION, SECURITY AND CONFIDENTIALITY

9.1 Ownership of State Data. As between the State, the Division of Lottery and the DPP, on the one hand, and Manager, on the other hand, the State Data is and shall remain the property of the Division of Lottery or such other assignee designated by the State. Except as provided in Section 9.3.6 or to the extent prohibited by applicable Regulatory Requirements, and to the extent that Manager has control over the State Data required under the Services, Manager shall promptly deliver the State Data (or the portion of such State Data specified by the Division of Lottery) to the Division of Lottery in the format and on the media mutually agreed upon by the Parties: (a) at any time upon reasonable notice and at the Division of Lottery’s reasonable request; and (b) at the end of the Term after the completion of all Disentanglement Services (except Contract Records, which shall be retained by Manager for the Record Retention Period, unless otherwise agreed in writing by the Division of Lottery). Thereafter, except as provided in Section 9.3.6, to the extent that Manager has control over the State Data required under the Services, Manager shall return or destroy (and shall cause Manager Personnel to return or destroy), as requested and directed by the Division of Lottery, all copies of State Data in the possession of or under the control of Manager or Manager Personnel as soon as possible, but in no event later than thirty (30) Business Days following a request by the Division of Lottery, and shall upon the Division of Lottery’s written request, deliver to the Division of Lottery written certification of such return or destruction signed by an authorized representative of Manager or the applicable Manager Personnel. Manager shall not withhold any of the State Data as a means of resolving any Dispute or as a condition of resolving any Dispute. The State Data shall not be utilized by Manager for any purpose other than the performance of Services under this Agreement and Manager shall at all times comply with the Division of Lottery’s privacy policies set forth herein and in the Operating Standards as may be amended by the Division of Lottery from time to time in accordance with this Agreement; provided however that if compliance by the Manager with an amendment to the privacy policies by the Division of Lottery results in additional costs and expenses not reasonably anticipated in the Budget for the year such additional costs and expenses are incurred, the
Division of Lottery will cooperate with the Manager in approving an increase to the Budget for such year. The State Data shall not be sold, assigned, leased, encumbered, commercially exploited or otherwise provided to Third Parties by or on behalf of Manager or any Manager Personnel without Division of Lottery Approval. Manager shall promptly notify the Division of Lottery in writing if it believes that the State Data has been used in a manner inconsistent with the foregoing.

9.2 Security.

9.2.1 Safeguarding Procedures. Manager shall establish and maintain physical, environmental, virtual/logical, safety and facility procedures, data security procedures and other safeguards consistent with the requirements of the State’s Office of Information Technology and the Operating Standards against the destruction, loss, unauthorized access or alteration of the State Data in the possession and/or control of Manager or Manager Personnel which are: (a) no less rigorous than those maintained by the State prior to the Agreement Effective Date; (b) no less rigorous than those maintained by the State for its own information of a similar nature or for other customers of Manager with respect to information of a similar nature; (c) adequate to meet the requirements of the State’s privacy, security and records retention policies and applicable State Policies and Rules; and (d) no less rigorous than the standards generally accepted within the industry. With respect to the State Data in Manager’s possession or direct or indirect control, Manager shall provide the Division of Lottery with downloads of the State Data in Manager’s possession, as requested by the Division of Lottery, to enable the Division of Lottery to maintain backup security or backup copies of the State Data. Manager shall remove all the State Data from any media taken out of service and shall destroy or securely erase such media in accordance with the Operating Standards or if not specified therein, applicable industry standards. No media on which the State Data is stored may be used or re-used to store data of any other customer of Manager or to deliver data to a Third Party, including another Manager customer, unless securely erased. In the event Manager discovers or is notified of a breach or potential breach of security relating to the State Data in Manager’s possession or direct or indirect control, Manager shall: (i) expeditiously notify the Division of Lottery in writing of such breach or potential breach in sufficient time to allow the State to comply with any applicable notification or other State Policies and Rules; (ii) investigate such breach or potential breach and perform a Root Cause Analysis thereon and provide such Root Cause Analysis report to the Division of Lottery; (iii) remediate the effects of such breach or potential breach of security, provided that the State, its Third Parties or its Affiliates are not the direct cause of the breach or potential breach; (iv) provide the Division of Lottery with such assurances as the Division of Lottery shall request that such breach or potential breach shall not recur, provided that the State, its Third Parties or its Affiliates are not the direct cause of the breach or potential breach; (v) provide periodic updates of any investigations to the Division of Lottery; and (vi) cooperate with the Division of Lottery with respect to any investigation by the State or the Division of Lottery. Prior to permitting State Data outside of an environment that encompasses all of the safeguards provided for in this Section 9.2.1, Manager shall first notify the Division of Lottery and shall obtain Division of Lottery Approval of any safeguards proposed by Manager to protect such State Data.

9.2.2 Reconstruction Procedures. As part of the Services, Manager shall be responsible for developing and maintaining procedures for data backup and restoration to the last back-up and/or restoration of lost State Data using other generally accepted data restoration techniques which are no less rigorous than those maintained by Manager, as modified by Manager from time to time, for its own information of a similar nature, and no less rigorous than accepted industry standards.

9.2.3 Corrections. Manager shall at all times adhere to the procedures and safeguards promulgated by the State or the Division of Lottery specified in the Operating Standards, and shall correct (including data backup and restoration from scheduled backups or, if not available on such backups, using other generally accepted data restoration techniques), at no charge to the State or the
Division of Lottery any unauthorized destruction, loss or alteration of any the State Data in Manager’s possession or direct or indirect control, attributable to the failure of Manager or Manager Personnel.

9.2.4 Data Access. Upon the Division of Lottery’s request after no less than two (2) Business Days notice, the State shall have the right to access all computer or other files to the extent such computer or other files contain the State Data, as well as all systems and network logs, system parameters and documentation to the extent such systems, logs, parameters and documentation contain the State Data (collectively “State Data Files”). At no time shall any of such files or other materials or information be stored or held in a form or manner not readily accessible to the State. Manager shall provide to the State and the Division of Lottery all passwords, codes, comments, keys, documentation and the locations of any such files and other materials promptly upon the request of the State or the Division of Lottery, including Equipment and Software keys and such information as to format, encryption (if any) and any other specification or information necessary for the State or the Division of Lottery to retrieve, read, revise and/or maintain such files and information. Upon the request of the Division of Lottery, Manager shall confirm in writing that, to the best of its knowledge, all the State Data Files provided to the State or the Division of Lottery are materially complete and that no material element, amount or other fraction of such the State Data Files has been deleted, withheld, disguised and/or encoded in a manner inconsistent with the purpose and intent of providing the access to the State and the Division of Lottery as contemplated by this Agreement.

9.2.5 Advice on Best Practices. Manager and the Division of Lottery shall discuss, as appropriate at applicable meetings, data security practices, standards, procedures and safeguards in effect in the industry, where such practices, standards, procedures and safeguards are of a higher standard than those contemplated under this Agreement.

9.3 Confidentiality.

9.3.1 Confidential Information. Manager, the Division of Lottery, the DPP each acknowledge that the other possesses and shall continue to possess Confidential Information that has been developed or received by it, has commercial value in its or its customers’ business, and is not generally available to the public. The Parties hereto acknowledge and agree that for purposes of the New Jersey Open Public Records Act (N.J.S.A. 47:1A-1, et seq.) which, for purposes of this Agreement, shall also include the common law right to know as established under New Jersey case law (the “OPRA”), information requiring confidential treatment by the Receiving Party shall be designated by the Disclosing Party as Confidential Information at the time of delivery of such information to the Receiving Party; provided, however, that the failure to designate any information as Confidential Information at the time of delivery of such information shall not prohibit the Disclosing Party from designating such information as Confidential Information at any time subsequent to delivery.

9.3.2 Confidentiality Obligations.

(a) Except as otherwise required by law (including the OPRA), during the Term and at all times thereafter, Manager, on the one hand, and the Division of Lottery and the State, on the other hand, shall not disclose, and shall maintain the confidentiality of, all Confidential Information of the other. The Division of Lottery and Manager shall each use at least the same degree of care to safeguard and to prevent disclosing to Third Parties the Confidential Information of the other as it employs to avoid unauthorized disclosure, publication, dissemination, destruction, loss or alteration of its own information (or information of its customers) of a similar nature, but not less than reasonable care. Manager shall require all Subcontractors and Manager Personnel having access to the Confidential Information of the State and/or the Division of Lottery to be subject to a written agreement (which may be that Manager Personnel’s employment agreement) of confidentiality and non-disclosure that contains terms and
conditions substantially similar to those set forth in this Section 9 protecting the Confidential Information of the State and/or the Division of Lottery, a form of which is set forth in Schedule 9.3.2. Upon the State’s or the Division of Lottery’s reasonable request, Manager shall cooperate with, and enforce, such terms and conditions. Manager shall ensure that Manager Personnel shall have access to the Confidential Information of the State and/or the Division of Lottery only to the extent necessary for such Manager Personnel to perform his or her obligations under or with respect to this Agreement or as otherwise naturally occurs in such Manager Personnel’s scope of responsibility, provided that such access is not in violation of any State Policies and Rules.

(b) The Parties may disclose Confidential Information to their Affiliates, auditors, attorneys, accountants, consultants, contractors and subcontractors (collectively, “Representatives”), where: (i) use by such Person is authorized under this Agreement; (ii) such disclosure is necessary for the performance of such Person’s obligations under or with respect to this Agreement or otherwise naturally occurs in such Person’s scope of responsibility; and (iii) such Person (and its applicable officers and employees) agrees to confidentiality obligations that meet the requirements of Section 9.3 or by the nature of the relationship, such Person is subject to a duty of confidentiality. Each Party hereby assumes full responsibility for the acts or omissions of its Representatives and shall ensure that the Confidential Information is not disclosed or used in contravention of this Agreement. Any disclosure to such Person shall be under the terms and conditions as provided herein. Each Party’s Confidential Information shall remain the property of such Party.

(c) Neither Party shall: (i) make any use or copies of the Confidential Information of the other Party except as contemplated by this Agreement; (ii) acquire any right in or assert any lien against the Confidential Information of the other Party; (iii) sell, assign, transfer, lease or otherwise dispose of Confidential Information to Third Parties or commercially exploit such information; or (iv) refuse for any reason (including a default or material breach of this Agreement by the other Party) to promptly provide the other Party’s Confidential Information (including copies thereof) to the other Party if requested to do so.

9.3.3 Exclusions. Section 9.3.2 shall not apply to any particular information which the Receiving Party can demonstrate: (a) is, at the time of disclosure to it, generally available to the public other than through a breach of the Receiving Party’s or a Third Party’s confidentiality obligations; (b) after disclosure to it, is published by the Disclosing Party or otherwise becomes generally available to the public other than through a breach of the Receiving Party’s or a Third Party’s confidentiality obligations; (c) is lawfully in the possession of the Receiving Party at the time of disclosure to it; (d) is received from a Third Party having a lawful right to disclose such information without any restriction on further disclosure; or (e) is independently developed by the Receiving Party without reference to or use of Confidential Information of the Disclosing Party; provided however, that the exclusions in the foregoing subsections (a), (b) and (c) shall not be applicable to the extent that the disclosure or sharing of such information by one or both Parties is subject to any limitation, restriction, consent or notification requirement under any applicable Data Privacy Laws then in effect. The Parties acknowledge and agree that Confidential Information that is not generally available to the public shall not be deemed public or subject to this exclusion merely because it is combined with information that is generally available to the public.

9.3.4 Legally Required Disclosures.

(a) The Receiving Party may disclose the Confidential Information of the Disclosing Party to the extent disclosure is based on the good faith written advice of the Receiving Party’s legal counsel that disclosure is required by Regulatory Requirement; provided, however, that the Receiving Party shall give advance notice of such requested disclosure (subject to the State’s and/or the Division of
Lottery’s obligations under the OPRA, including the obligation to comply with required timeframes) and when Manager is the Receiving Party, Manager shall use commercially reasonable efforts to obtain a protective order or otherwise protect the confidentiality of the Disclosing Party’s Confidential Information. When the Receiving Party is any portion of the State and/or the Division of Lottery, the State shall assert confidentiality to the extent the State and/or the Division of Lottery reasonably determines that Manager’s assertion of confidentiality is appropriate and consistent with the OPRA, but the State shall not be required to seek, and instead Manager may seek, a protective order for Manager’s Confidential Information. Notwithstanding the foregoing, the Disclosing Party reserves the right to obtain a protective order or otherwise protect the confidentiality of such Confidential Information. For purposes of this Section 9.3.4, the Parties’ in-house counsel or law department or the Office of the Attorney General (or counsel designated thereby) may act as their respective legal counsel.

(b) Manager acknowledges that Confidential Information disclosed by Manager to the State or Division of Lottery can be released to the public under the OPRA or, with respect to the Manager Proposal, during the protest period established pursuant to N.J.A.C. 17:12-3.3. In accordance with the OPRA N.J.S.A. 47:1A-1.1, Manager shall have the opportunity to designate specific Confidential Information as not subject to disclosure because Manager has a good faith legal and/or factual basis for such assertion. The State reserves the right to make the determination as to what information is Confidential Information, and advise Manager accordingly. In the event of any challenge by any party to Manager’s assertion of confidentiality with respect to Confidential Information with which the State does not concur, Manager shall be solely responsible for defending its designation.

9.3.5 Notification, Mitigation and Remedy.

(a) In the event of any impermissible disclosure, loss or destruction of Confidential Information, the Receiving Party shall immediately notify the Disclosing Party and take all reasonable steps to mitigate any potential harm or further disclosure, loss or destruction of such Confidential Information.

(b) In the event that there is a breach of Manager’s obligations contained in this Section 9.3, or otherwise, involving Personal Information in the possession of Manager, a Subcontractor or Manager Personnel, and such breach is the direct cause of an unauthorized disclosure of such Personal Information, then the cost of the notifications in N.J.S.A. 56:8-163 shall be borne in full by Manager and Manager shall fully indemnify the State, the Division of Lottery and the DPP against any third party claims as a result of such unauthorized disclosure. Any amounts that Manager must pay to meet the obligations in this Section 9.3 with respect to Personal Information shall not be subject to the limitations set forth in Section 16.2 or 16.3.

9.3.6 Return/Destruction of Confidential Information. Upon the expiration or termination of the Term, and at any other time upon written request by the Disclosing Party, to the extent permitted by law and consistent with any applicable document retention policies, the Receiving Party shall return to the Disclosing Party all applicable Confidential Information (including all documentation in any medium to the extent it contains, refers to, or relates to the Confidential Information) of the Disclosing Party then in its possession or control, in whatever form, or, in the case of a written request by the Disclosing Party, the Confidential Information specified in such request as then in the Receiving Party’s possession or control, in whatever form, in any case within thirty (30) days following such expiration, termination or request (except Contract Records, which shall be retained by Manager for the Record Retention Period unless and to the extent Manager is directed by the State or the Division of Lottery to deliver such Contract Records to the State or the Division of Lottery prior to the expiration of such Record Retention Period). In addition, unless the Disclosing Party otherwise consents in writing, the Receiving Party also shall deliver to the Disclosing Party or, if requested by the Disclosing Party, shall
delete or destroy and provide a certification as to the deletion or destruction of, any copies, duplicates, summaries, abstracts or other representations of any such Confidential Information or any part thereof, in whatever form, then in the possession or control of the Receiving Party to the extent permitted by applicable law and consistent with any applicable document retention policies. Notwithstanding the foregoing: (a) Manager may retain a reasonable number copies of documentation and data, excluding the State Data, for archival purposes or warranty support; provided, however, that any subsequent disclosure of such archived data shall comply with this Section 9; and (b) the State and/or the Division of Lottery may retain copies of Manager Confidential Information to the extent required by any Regulatory Requirement, to the extent otherwise permitted under this Agreement and for audit or legal archival purposes; provided, however, that any subsequent disclosure of such archived data shall comply with this Section 9. Each Party shall deliver to the other Party written certification of its compliance with this Section 9.3.6 signed by an authorized representative of such Party.

9.4 Injunctive Relief. If the Receiving Party or anyone acting on its behalf or operating under its control, publishes, transmits, releases, discloses or uses any Confidential Information of the Disclosing Party in violation of this Section 9, or if the Disclosing Party anticipates that the Receiving Party may violate or continue to violate any restriction set forth in this Section 9, then the Disclosing Party shall have the right, in addition to any other rights and remedies available to it, to have the provisions of this Section 9 specifically enforced by any court having equity jurisdiction, without being required to post bond or other security and without having to prove the inadequacy of available remedies at law, it being acknowledged and agreed that any such violation shall cause irreparable injury to the Disclosing Party and that monetary damages shall not provide an adequate remedy.

SECTION 10

COMPENSATION AND PAYMENT TERMS

10.1 Accelerated Guarantee Payment. In consideration of the benefits to be received by Manager under this Agreement, on the Agreement Effective Date, Manager shall pay to an account designated by the Division of Lottery $120,000,000 in cash by wire transfer of immediately available funds (the “Accelerated Guarantee Payment”). The Accelerated Guarantee Payment is solely for the benefit of the Division of Lottery and the State and is not refundable except to the extent provided in Section 13.2.2(c) and Section 13.5.2 hereof, if applicable.

10.2 Manager Compensation. Manager submitted a proposed Appendix A to Schedule 10.2 with the Manager Proposal. Schedule 10.2 attached hereto reflects the final form of Schedule 10.2 agreed to by the Parties. During the Term, as the only payments for all of the Services and other tasks and obligations to be performed by Manager hereunder, the Division of Lottery shall pay to Manager (i) the Operating Expenses and certain Incentive Compensation set forth in Schedule 10.2, (ii) if applicable, the expenses of Manager as specified in the Transition Plan, (iii) amounts due pursuant to the Disentanglement Services Plan and (iv) such additional amounts specifically called for in this Agreement to be paid by the Division of Lottery to Manager (together, the “Payments”). Neither the State nor the Division of Lottery shall be liable for or pay any additional fees, amounts or charges other than as specifically set forth in this Agreement or Approved by the State or the Division of Lottery. Except as otherwise expressly provided in this Agreement (including the Transition Plan and the Disentanglement Services Plan) or separately Approved by the State or the Division of Lottery, neither the State nor the Division of Lottery shall pay Manager any additional fees, assessments, reimbursements or expenses for labor and general business expenses (including travel, meals and overhead expenses) for the Services and other tasks, services and obligations of Manager hereunder, or any costs incurred by Manager prior to the Base Services Commencement Date.
10.3 Invoices.

10.3.1 General Requirements. On the first Business Day of each calendar month during the Term, beginning with the first month following the Base Services Commencement Date, Manager shall deliver to the Division of Lottery or its designee an invoice in the form and format set forth in Schedule 10.3 (or in such other form or format requested by the Division of Lottery from time to time) for payment of the percentage equal to one-twelfth (1/12) of the aggregate Operating Expenses payable to Manager during such Contract Year (or pro-rated, as applicable, for the Stub Contract Year) (in each case, the “Monthly Expense Allowance”). Each monthly invoice shall be accompanied by detailed backup data and information sufficient to demonstrate to the Division of Lottery’s review and approval based on the requirements of this Section 10.3.1 prior to payment, and any Dispute shall be raised in accordance with Section 10.4.2. Invoices for Operating Expenses incurred through June 30 of any year must be submitted to the State no later than July 31 of that year. In addition to the rights of the Division of Lottery under Section 10.5, all invoices are subject to statutory offset (N.J.S.A. 52:18-36) and, if applicable, appropriations.

10.3.2 Annual Invoice for Incentive Compensation; Shortfall Payments.

(a) Within forty-five (45) days after the end of each Contract Year, Manager shall provide the Division of Lottery with final data and information sufficient to demonstrate to the Division of Lottery (i) any increase in Net Income that exceeds the Base Level Income, and (ii) the amount of any Shortfall Payments; in each case for the applicable Contract Year, together with a final statement setting forth the amount of any Incentive Compensation and any Shortfall Payments, as applicable, and including any applicable back-up data and information supporting the calculations set forth in such statement (such final statement and data and information, the “Final Annual Statement”). The Final Annual Statement must be submitted to the Division of Lottery within forty-five (45) days of the end of the Contract Year which is the subject of such statement, otherwise (i) Manager’s right to receive any Incentive Compensation for such Contract Year shall be deemed to be waived by Manager and (ii) the Division of Lottery shall be entitled to determine the amount of any Shortfall Payments.

(b) Within ten (10) Business Days after the Division of Lottery’s receipt of the Final Annual Statement, the Division of Lottery shall pay to Manager an amount equal to eighty percent (80%) of the Incentive Compensation amount, less any applicable Shortfall Payments, set forth on such Final Annual Statement (the “Initial Incentive Compensation Payment”), unless the Division of Lottery disputes such amount (any such Dispute to be resolved in accordance with Section 20). Within thirty (30) days after the completion of the Division of Lottery Annual Audit for the Contract Year to which such Incentive Compensation relates (other than for final payments), the Division of Lottery shall pay to Manager the difference between (i) the amount of Incentive Compensation calculated based on the information in the Division of Lottery’s audited accounts for such Contract Year (the “Final Incentive Compensation Amount”) and (ii) the Initial Incentive Compensation Payment; provided, however, that if the Final Incentive Compensation Amount is less than the Initial Incentive Compensation Payment,
then Manager shall pay to the Division of Lottery within ten (10) days after its written demand therefor the amount by which the Initial Incentive Compensation Payment exceeds the Final Incentive Compensation Amount. Manager must notify the Division of Lottery within ten (10) Business Days of its receipt of any Division of Lottery Annual Audit if it disputes the amount of any Incentive Compensation and Shortfall Payments as determined in such Division of Lottery Annual Audit (any such Dispute to be resolved in accordance with Section 20); provided however that Manager may not dispute any amount that was the subject of a prior dispute and which was resolved.

(c) If the Final Annual Statement sets forth that the Division of Lottery is entitled to receive Shortfall Payments for such Contract Year, or, if Manager has not submitted such Final Annual Statement, the Division of Lottery determines that it is entitled to Shortfall Payments, then the Division of Lottery may set-off such Shortfall Payments against any funds or monies due to Manager, including the Incentive Compensation. If, within thirty (30) days after Manager’s delivery of a Final Annual Statement indicating that the Division of Lottery is entitled to receive Shortfall Payments or the Division of Lottery’s determination thereof, either (i) the Division of Lottery has not exercised its set-off right or (ii) the Division of Lottery has exercised its set-off right but the amount of the Shortfall Payments was greater than the amount of funds or monies due to Manager against which the Division of Lottery set-off (such amount due to Manager, the “Set-Off Amount”), then Manager shall pay to the Division of Lottery on demand an amount equal to the Shortfall Payment less the Set-Off Amount.

(d) Notwithstanding anything else in this Agreement, Manager hereby acknowledges and agrees that any Incentive Compensation payable to Manager in any Contract Year shall be limited as set forth in Section 10.6 hereof and in Sections 2(b) and 5 of Schedule 10.2.

10.3.3 Payment Due Date; Late Payment. Unless subject to a Dispute or otherwise provided (e.g., in the Transition Plan or the Disentanglement Services Plan), undisputed invoices for Payments are payable within sixty (60) days after the Division of Lottery’s receipt of an invoice that complies with the requirements of this Agreement. All Payments, including late payment charges, shall be paid in accordance with the New Jersey Prompt Payment Act (N.J.S.A. 52:32-32, et. seq.) when applicable.

10.3.4 Electronic Payments. Upon the request of the Division of Lottery, Manager shall receive payments under this Agreement via wire transfer.

10.4 Budget Overruns and Surpluses.

10.4.1 Budget Overruns.

(a) Except as described in Section 10.4.1(b) with respect to a Sales-Based Budget Overrun, Manager shall be solely responsible for all operating costs and expenses that are in excess of the line items for Operating Expenses set forth in the Budget, unless such additional costs and expenses are Approved in writing by the Division of Lottery. If any such additional expenses are Approved by the Division of Lottery during a Contract Year, then (i) the applicable Annual Business Plan shall be adjusted to include such additional expenses in the calculations of the Operating Expenses, as applicable, to be paid corresponding to such adjusted Annual Business Plan, and (ii) the Monthly Expense Allowance for such Contract Year shall be adjusted proportionately. Notwithstanding the foregoing, at any time during a Contract Year, Manager shall be permitted to adjust, upward or downward, any individual line item for Operating Expenses set forth in the Budget, provided that (i) any such adjustment does not increase the aggregate amount of Operating Expenses set forth in the Budget for such Contract Year, and (ii) any such adjustment shall be subject to the prior written Approval of the Division of Lottery, which Approval shall not be unreasonably withheld.
(b) To the extent that the actual expense for a Sales-Based Subcontract in a Contract Year exceeds the amount budgeted for such Sales-Based Subcontract in the Approved Budget for such Contract Year (a “Sales-Based Budget Overrun”) by reason of an increase in Lottery sales above the amount projected for such Sales-Based Subcontract in the Approved Budget, the Division of Lottery shall reimburse Manager for any such Sales-Based Budget Overrun, provided that (i) such reimbursement will be made only to the extent that the actual total Operating Expenses for such Contract Year exceeded the amount set forth in the Approved Budget for such Contract Year, (ii) the Sales-Based Subcontract is an Existing State Contract or the Sales-Based Contract and the terms of the Sales-Based Fee were Approved by the Division of Lottery and the Director of the DPP in accordance with Section 7.2, and (iii) Manager provides an invoice for such Sales-Based Budget Overrun, within forty-five days after the end of the Contract Year for which such Sales-Based Budget Overrun is applicable. In the event that at any time during a Contract Year Manager reasonably determines that a Sales-Based Budget Overrun will occur for such Contract Year, Manager may request, each month during the Contract Year, an increase to the Monthly Expense Allowance as an advance against the reimbursement contemplated by this Section 10.4.1(b); provided that (x) such increase shall be subject to Approval of the Division of Lottery each month, which Approval shall not be unreasonably withheld, and (y) Manager shall be obligated to return any such increase to the extent that at the end of such Contract Year the Division of Lottery determines that the actual total Operating Expenses for such Contract Year did not exceed the amount set forth in the Approved Budget for such Contract Year.

10.4.2 Budget Surpluses. If at the end of any Contract Year any portion of the Operating Expenses allocated for such Contract Year have not been used to pay the Operating Expenses in the respective amounts set forth in the Budget for such Contract Year, then the balance of Payments in respect of any such Operating Expenses for such Contract Year shall be returned (to the extent previously paid to Manager) to the Division of Lottery within forty-five (45) days of the end of such Contract Year.

10.4.3 Carry Over of Budget Overruns and Surpluses. Any overages or shortages of a Budget in a Contract Year shall not be carried over to the following Contract Year.

10.5 Right to Apply Monies. The Division of Lottery shall have the right to offset and deduct, from any funds or monies due to Manager, any amounts due or to become due to the State or Division of Lottery from Manager as a result of any losses, costs, expenses, damages, obligations or liabilities for which Manager is responsible pursuant to the terms and provisions of this Agreement. In the event it is determined after the dispute resolution process in Section 20 that any of such monies were improperly withheld, the Division of Lottery shall pay such sums to Manager, with interest accruing from the date such monies were first due to be paid to Manager, at the then applicable rate prescribed by the New Jersey Prompt Payment Act (N.J.S.A. 52:32-32, et. seq.) when applicable.

10.6 Payments Subject to Appropriations and Statutory Restrictions. Notwithstanding anything to the contrary elsewhere in this Agreement, the State’s and the Division of Lottery’s obligation to pay any amount owed to Manager under this Agreement, including the Payments and Termination Fee and with respect to any claims by Manager, shall be subject to appropriations and availability of funds, the New Jersey Prompt Payment Act (N.J.S.A. 52:32-32, et. seq.) and N.J.S.A. 5:9-7(a)(11). Manager hereby acknowledges that N.J.S.A. 5:9-7(a)(11) provides, in general, that “no less than 30% of the total revenues accruing from the sale of lottery tickets or shares. . . shall be dedicated to the general fund for State institutions and State aid for education.”

10.7 Taxes.
10.7.1 Each Party shall be responsible for its own taxes arising under or in connection with this Agreement. The State of New Jersey is exempt from State sales or use taxes and Federal excise taxes. Therefore, invoices must not include such taxes and the State will not pay any such taxes which are included in an invoice. The State’s Federal Excise Tax Exemption number is 22-75-0050K. Consistent with law, Manager, its Affiliates, and its Subcontractors may qualify for a derivative exemption. Each of Manager, its Affiliates and Subcontractors shall bear all responsibility for any claim of a derivative exemption each of them may make.

10.7.2 Pursuant to L 1995, c. 159, effective January 1, 1996, and notwithstanding any provision of the law to the contrary, whenever any taxpayer, partnership or S-corporation under contract to provide goods or services or construction projects to the State or its agencies or instrumentalities, including the legislative and judicial branches of State government, is entitled to payment for those goods or services at the same time a taxpayer, partner or shareholder of that entity is indebted for any State tax, the Director of the Division of Taxation shall seek to set off that taxpayer’s or shareholder’s share of the payment due the taxpayer, partnership, or S-corporation. The amount set off shall not allow for the deduction of any expenses or other deductions which might be attributable to the taxpayer, partner or shareholder subject to set-off under this act. The Director of the Division of Taxation shall give notice to the set-off to the taxpayer and provide an opportunity for a hearing within thirty (30) days of such notice under the procedures for protests established under R.S. 54:49-18. No requests for conference, protest, or subsequent appeal to the Tax Court from any protest under this section shall stay the collection of the indebtedness. Interest that may be payable by the State, pursuant to P.L. 1987, c.184 (c.52:32-32 et seq.), to the taxpayer shall be stayed.

10.8 Treatment of Unclaimed Prizes.

10.8.1 The Existing Lottery Law requires that prizes not claimed within one year from the date of the drawing for Online Games and within one year from the date of the game’s closing for Instant Games (collectively, “Unclaimed Prizes”) be forfeited. Effective November 21, 1991, the Lottery Commission authorized that seventy percent (70%) of forfeited prizes are to be maintained in a reserve (the “Unclaimed Prize Reserve”) for prize awards and are available to augment future prize awards or, at the discretion of the Executive Director of the Division of Lottery, to augment the Division of Lottery’s contribution for State aid for education and State institutions consistent with N.J.S.A. 5:9-7(a)(11).

10.8.2 Net Income shall be deemed to include thirty percent (30%) of Unclaimed Prizes. Of the remaining seventy percent (70%) of Unclaimed Prizes, twenty percent (20%) shall be allocated to the Division of Lottery, and shall not be included as revenue of the Lottery in the calculation of Net Income. At the Division of Lottery’s discretion, these funds may only be used to increase its financial reserves or to supplement State aid for education and State institutions. With the remaining funds from Unclaimed Prizes, Manager must fund the “Million Dollar Replay” or any successor second chance program for Instant Games (cost in fiscal year 2012 $1.25 million). Any amount of the balance of Unclaimed Prizes in excess of what is needed to fund the “Million Dollar Replay” or any successor second chance program may be used for State aid for education and State institutions or for promotions that augment future prize awards and included within the revenue of the Lottery in the calculation of Net Income. The Division of Lottery’s Executive Director must approve the use of any Unclaimed Prize funds used for promotions.

10.8.3 The Division of Lottery will allocate 30% of total Unclaimed Prizes to revenue each Contract Year for purposes of determining Net Income. Of the remaining seventy percent (70%), the Division of Lottery shall allocate twenty percent (20%) to the Unclaimed Prize Reserve to, at its discretion, increase the Division of Lottery financial reserves or supplement contribution to State aid for
ed
ucation and institutions. Amounts allocated to the Unclaimed Prize Reserve shall not be included as revenue toward the calculation of Net Income. Annual funding of the “Million Dollar Replay” or successor program shall be allocated from remaining Unclaimed Prizes and the amount of such funding shall not be included as revenue toward the calculation of Net Income. Any balance of Unclaimed Prizes shall be deemed to be revenue for purposes of determining Net Income.

<table>
<thead>
<tr>
<th>Treatment of Unclaimed Prizes Example</th>
<th>Amount</th>
<th>Remaining Balance</th>
<th>% of Total Unclaimed</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Total Unclaimed Prizes for Contract Year</td>
<td>$25,000,000</td>
<td>$25,000,000</td>
<td>100%</td>
</tr>
<tr>
<td>2. 30% Minimum Contribution Requirement</td>
<td>$7,500,000</td>
<td>$17,500,000</td>
<td>30%</td>
</tr>
<tr>
<td>3. 20% of Remaining Balance Allocated to Division of Lottery (Unclaimed Prize Reserves)</td>
<td>$3,500,000</td>
<td>$14,000,000</td>
<td>14%</td>
</tr>
<tr>
<td>4. Estimated Cost for Million Dollar Replay Program/Year</td>
<td>$1,250,000</td>
<td>$12,750,000</td>
<td>5%</td>
</tr>
<tr>
<td>5. Balance of Unclaimed Prizes for determining Net Income</td>
<td>$12,750,000</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total Unclaimed Prizes used for determining Net Income (Total of lines 2 &amp; 5)</td>
<td>$20,250,000</td>
<td></td>
<td>81%</td>
</tr>
</tbody>
</table>

10.9 Lottery Administrative Expenses. The Division of Lottery provided an initial estimate of the Division of Lottery’s Administrative Expenses for each Contract Year in the RFP, and thereafter shall provide an estimate of Division of Lottery’s Administrative Expenses each year in accordance with Section 5.3.5. Notwithstanding anything to the contrary herein, Manager acknowledges that the actual Division of Lottery’s Administrative Expenses may vary from any such estimates, and Manager has no approval right over the amount of such Division of Lottery’s Administrative Expenses. To the extent that the actual amount of Division of Lottery’s Administrative Expenses in a given Contract Year exceed the amount agreed upon at the outset of such year by more than three percent (3%), then, solely for purposes of calculating any Incentive Payment or Shortfall Payments, any excess over the agreed upon amount shall be excluded for purposes of calculating Net Income for such Contract Year.

SECTION 11
RECORDKEEPING AND AUDIT RIGHTS

11.1 Contract Records. With respect to the performance of Services and as reasonably needed to validate Manager’s compliance with this Agreement, Manager shall maintain complete and accurate records of and supporting documentation for all Manager Expenses, Subcontractor Expenses, Payments, all State Data and all transactions, authorizations, changes, implementations, soft document accesses, reports, filings, returns, analyses, procedures, controls, records, data or information created, generated, collected, processed or stored by Manager during the course of the performance of its obligations under this Agreement (“Contract Records”).

11.2 Recordkeeping. Subject to Sections 9.1 and 9.3, Manager shall maintain Confidential Information, State Data and Contract Records in accordance with applicable State Policies and Rules and in accordance with the Division of Lottery’s record retention policy set forth in the Operating Standards as modified from time to time in accordance hereunder (the “Record Retention Period”).
11.3 Division of Lottery Audit Rights.

11.3.1 Audit Procedures. In connection with any and all audits conducted by the Division of Lottery or a Permitted Auditor (as defined below) under this Section 11.3, the Parties shall follow the procedures set forth below in subsections (a) – (h) during the Term and the Record Retention Period, as required in the Operating Standards. The provisions of Sections 11.3, 11.4 and 11.5 shall survive the expiration or termination of the Agreement during the Record Retention Period.

(a) The Division of Lottery and the Division of Lottery’s Permitted Auditors shall have the right to conduct audits of Manager, Manager Affiliates and Subcontractors pursuant to this Section 11.3, provided that such Permitted Auditors have agreed in writing to be bound by the confidentiality terms that are substantially similar to those in this Agreement.

(b) Manager shall provide such cooperation and assistance as may be reasonably requested by the Division of Lottery and/or its Permitted Auditors in conducting any audit, and shall make requested Manager Personnel and Contract Records available. In performing audits, the Division of Lottery shall give Manager five (5) Business Days advance notice of audits.

(c) Upon the Division of Lottery’s request, Manager shall assist the Division of Lottery, in conducting and/or responding to any audit or audit request, including assisting in the Division of Lottery’s attempts to obtain certifications or other confirmations required by the State’s Policies and Rules.

(d) Notwithstanding any provision of this Section 11.3 or this Agreement to the contrary, the Division of Lottery and its Permitted Auditors shall be given access to any requested information, documentation, personnel, locations or facilities of Manager, other than: (i) the proprietary information of other Manager customers; (ii) Manager locations or facilities, or areas within locations or facilities, that are not involved in, directly or indirectly in whole or part, the provision of Services to the Division of Lottery; or (iii) Manager’s internal costs or pricing models, except to the extent such costs are the basis upon which the Division of Lottery is charged and/or are necessary to calculate the applicable variable Payments.

(e) In performing any audits, the Division of Lottery and its Permitted Auditors shall use commercially reasonable efforts to avoid unnecessary disruption of Manager’s operations and unnecessary interference with Manager’s ability to perform the Services in accordance with this Agreement. Access for such audits shall be provided during normal business hours, except as may reasonably be required on an emergency basis or by Regulatory Requirement.

(f) Manager shall provide to the Division of Lottery and its Permitted Auditors reasonable private workspace in which to perform an audit, plus access to photocopiers, telephones, facsimile machines, computer hook-ups and any other facilities or equipment reasonably requested for the performance of the audit.

(g) Manager acknowledges that the Division of Lottery may engage in unannounced physical or electronic audits, inspections and visitations of Manager Service Locations if required by applicable Regulatory Requirement, or if the Division of Lottery determines in good faith that Manager is not performing in compliance with this Agreement, then upon one (1) day advance notice.

(h) The Division of Lottery and its Permitted Auditors shall not audit Manager more than three (3) times per Contract Year, including the Division of Lottery Annual Audit. The foregoing limitation on the number of audits shall not apply: (i) if additional audits are required by applicable
Regulatory Requirements; or (ii) if additional audits are required as a result of Manager’s non-compliance with this Agreement.

The Parties acknowledge and agree (i) that this Section 11.3 shall not apply to an examination or audit by a Governmental Authority or standards organization (including the Multi-State Lottery Association) and (ii) Section 11.5 shall govern any examination or audit by a Governmental Authority or standards organization (including the Multi-State Lottery Association).

11.3.2 Operational Audits. The Division of Lottery and its Permitted Auditors shall have the right to conduct any reasonable type of operational audit to verify that the performance of the Services is in compliance with this Agreement. Such audit may, among other things and as determined by the Division of Lottery: (a) verify the integrity of the State Data; (b) examine the systems that process, store, support and transmit that data; (c) examine the internal controls (e.g., information technology, finance and accounting, procurement, organizational controls, input/output controls, system modification controls, processing controls, system design controls and access controls) and the security, disaster recovery, business continuity and back-up practices and procedures; (d) examine Manager’s performance of the Services; (e) verify Manager’s reported performance against the applicable Service Levels; (f) examine Manager’s measurement, monitoring and management tools; and (g) enable the Division of Lottery to meet applicable legal, regulatory and contractual requirements (including those associated with the Sarbanes-Oxley Act of 2002 and the implementing regulations promulgated by the United States Securities and Exchange Commission and Public Company Accounting Oversight Board), in each case to the extent applicable to the Services.

11.3.3 Financial Audits. The Division of Lottery will be audited by an independent external accounting firm on an annual basis. In addition, the Division of Lottery and its Permitted Auditors shall have the right to conduct any type of reasonable financial audit to verify that the Manager’s invoices have been calculated in compliance with the terms and conditions of this Agreement, including, but not limited to, any invoicing and pricing terms and conditions. Such audit may, in addition, as determined by the Division of Lottery: (a) verify the accuracy and completeness of Contract Records; (b) verify the accuracy and completeness of the Incentive Compensation and Operating Expenses and any other approved expenses; (c) examine the financial controls, processes and procedures utilized by Manager; and (d) enable the Division of Lottery to meet applicable legal, regulatory and contractual requirements, in each case to the extent applicable to the Services and/or the Payments for such Services.

11.4 Audit Results.

11.4.1 Results of Operational Audits. If an operational audit under Section 11.3.2 reveals that Manager is not in compliance with any Regulatory Requirement, State Policy or Rule or any other term of this Agreement, Manager shall be responsible for and liable for, at Manager’s sole cost and expense, promptly taking any and all actions necessary to comply with such Regulatory Requirement, State Policies and Rules or term of this Agreement. In addition, Manager shall promptly reimburse the Division of Lottery for the actual cost of such audit and any damages, fees, fines or penalties assessed against or incurred by the Division of Lottery as a result thereof.

11.4.2 Results of Financial Audits. If the Division of Lottery Annual Audit or any other financial audit under Section 11.3.3 reveals an overcharge by Manager, Manager shall promptly pay to the Division of Lottery the amount of such overcharge, together with interest from the date of Manager’s receipt of such overcharge at the same rate of interest then applicable to late payments by the Division of Lottery prescribed by the New Jersey Prompt Payment Act (N.J.S.A. 52:32-32, et. seq.). In addition, if any such audit reveals an overcharge of more than three percent (3%) of the audited Payments in any Payment category, Manager shall promptly reimburse the Division of Lottery for the
actual cost of such audit (including all fees of any Permitted Auditors) and any damages, fees, fines or penalties assessed against or incurred by the Division of Lottery as a result thereof. If the Division of Lottery Annual Audit reveals that Manager was underpaid any Incentive Compensation or paid a Shortfall Payment in an amount in excess of the Shortfall Payment determined to be due by such audit, then, within thirty (30) days of its receipt of such audit, the Manager shall present an invoice to the Division of Lottery for the amount of such underpayment of the Incentive Compensation or overcharge of the Shortfall Payment, as applicable, and the Division of Lottery, unless it Dispute such invoice or the results of such audit in accordance with Section 20 hereof, shall promptly pay to the Manager the amount set forth in such invoice, subject to and in accordance with all applicable payment provisions hereof.

11.4.3 Audit Follow-Up. Manager and the Division of Lottery shall meet promptly upon the completion of a Division of Lottery audit (but in no event more than fifteen (15) days after completion) conducted pursuant to this Section 11 (i.e., an exit interview) and/or the issuance of an interim or final report to Manager and the Division of Lottery following an audit. Manager shall develop for Division of Lottery Approval an action plan for Manager to take (within thirty (30) days, unless a shorter resolution time is mutually agreed to by the Parties in writing) any and all actions necessary for Manager to rectify, at its own cost and expense, its non-compliance with the applicable Regulatory Requirement, State Policies and Rules or term of this Agreement, or otherwise resolve any deficiencies, problems, concerns and/or recommendations identified in such exit interview and/or audit report.

11.5 Governmental Audits of the State and/or Division of Lottery. The State and/ or the Division of Lottery may be subject to regulation and audit by Governmental Authorities or standards organizations (including the Multi-State Lottery Association) under applicable State Policies and Rules or contract provisions. If a Governmental Authority or standards organization (including the Multi-State Lottery Association) exercises its right to examine or audit the State’s and/or the Division of Lottery’s books, records, documents or accounting practices and procedures pursuant to such State Policies and Rules or contract provisions, Manager shall provide all assistance reasonably requested by the State or the Division of Lottery, as the case may be, or such Governmental Authority or standard organization in responding to such audits or requests for information (including allowing the State or Division of Lottery, as the case may be, to conduct an audit), and shall do so in an expeditious manner to facilitate the prompt closure of such audit or request.

11.6 Manager Response to Governmental Audits. If an audit by a Governmental Authority other than the Division of Lottery or by a standards organization having jurisdiction over the State or Manager results in a finding that Manager is not in compliance with any applicable Regulatory Requirement, including any generally accepted accounting principle or other audit requirement relating to the performance of its obligations under this Agreement, Manager shall, at its own expense and within the time period specified by such auditor, address and resolve the deficiency(ies) identified by such Governmental Authority or standards organization.

11.7 Manager Internal Audits.

11.7.1 Manager shall conduct a complete and thorough financial and operational audit annually during the Term, with the first audit commencing promptly following the end of the Stub Contract Year. Manager shall conduct such audit in accordance with the Operating Standards. Manager shall provide the results of any such audit to the Division of Lottery within a reasonable time after the conclusion of such audit.

11.7.2 Within forty-five (45) days following the end of each Contract Year, Manager shall cause an independent certified public accountant to complete, and submit to the Division of Lottery the
final results of, an audit under Statement on Standards for Attestation Engagements (SSAE) No. 16 (or any successor statement or standard thereto).

11.8 Manager Response to Internal Audit. If Manager determines as a result of its own internal audit or investigation, including any audit required under Section 11.7, that it has: (a) overcharged the Division of Lottery, then Manager shall (i) promptly pay to the Division of Lottery the amount of such overcharge, plus interest from the date of Manager’s receipt of such overcharge at the same rate of interest then applicable to late payments by the State prescribed by the New Jersey Prompt Payment Act (N.J.S.A. 52:32-32, et. seq.), and (ii) investigate why such overcharge occurred and identify in writing to the Division of Lottery what actions Manager is taking to ensure that such overcharge shall not occur again; and/or (b) failed to perform a task, activity or process in compliance with the applicable Regulatory Requirement, State Policies and Rules or term of this Agreement, then Manager shall (i) investigate why such failure occurred and identify in writing to the Division of Lottery what actions Manager is taking to ensure that such failure shall not occur again, (ii) work with the Division of Lottery to identify the portion of the Services that may have been impacted and the Division of Lottery personnel affected by such failure, (iii) be responsible for and liable for, at Manager’s sole cost and expense, promptly taking any and all actions necessary to comply with such Regulatory Requirement, State Policies and Rules or term of this Agreement and (iv) promptly reimburse the Division of Lottery for any damages, fees, fines or penalties assessed against or incurred by the Division of Lottery as a result thereof. In any case, Manager shall comply with the requirements of Section 11.4.3 to address the issues, deficiencies or problems.

11.9 Audit Costs. Manager shall provide the audit-related Services and the audit assistance and compliance described in this Section 11 at no additional charge to the State or the Division of Lottery.

SECTION 12

REPRESENTATIONS, WARRANTIES AND COVENANTS

12.1 Manager Representations, Warranties and Covenants.

12.1.1 Legal and Corporate Authority. Manager represents and warrants to the State and the Division of Lottery that: (a) Manager is (i) duly organized, validly existing and in good standing in the jurisdiction of its formation, (ii) a special purpose entity which is solely controlled by and majority-owned by the Guarantor, and (iii) qualified and registered to transact business in the State of New Jersey, pursuant to N.J.S.A. 52:32-44, and in all other locations where the performance of its obligations hereunder would require such qualification and registration; (b) Manager has all necessary powers and authority to enter into and perform this Agreement, and the execution, delivery and performance of this Agreement by Manager have been duly authorized by all necessary corporate action; (c) the execution and performance of this Agreement by Manager shall not breach any agreement, court order, judgment or decree to which Manager is a party or by which it is bound; (d) Manager has, and promises that it shall maintain in effect, all Governmental Approvals necessary for it to provide the Services contemplated by this Agreement, except to the extent the failure to obtain any such Governmental Approvals is, in the aggregate, immaterial; and (e) Manager is in compliance in all material respects with all State Policies and Rules. Manager covenants to the State and the Division of Lottery that it shall maintain its business registration with the New Jersey Division of Revenue at all times during the Term. Manager covenants to the State that it shall submit to the Division of Lottery copies of any original filings, amendments to, restatements of, or superseding versions of the governing documents of Manager, within seven (7) days of their formal adoption (the governing documents include, but are not limited to: (1) if a corporation, articles of incorporation, charter, and by-laws; (2) if

1 To be conformed as necessary to reflect facts specific to the Final Offeror.
a partnership, partnership agreements, and certificates of limited partnership, if applicable; and (3) if a limited liability company, then certificates of formation, amendments, and cancellations, and operating agreements.

12.1.2 Performance of the Services. Manager represents and warrants to the State and the Division of Lottery that Manager, directly or through its Affiliates and/or Subcontractors, has the skills, resources and expertise to provide and covenants that it shall provide all Services in accordance with the terms of this Agreement. Without limiting the generality of the foregoing, Manager represents and warrants to the State and the Division of Lottery that all Services provided under this Agreement shall be provided in a timely, professional and workmanlike manner consistent with the industry standards of quality and integrity; provided, however, that where this Agreement specifies a particular standard or criteria for performance, including applicable Service Levels, this warranty is not intended to and does not diminish that standard or criteria for performance. Manager covenants to the State that the Services shall be performed only by the Manager Personnel listed in the record required to be maintained by Manager and each Subcontractor in accordance with Section 6.3.1.

12.1.3 Contributions to State Institutions and State Aid to Education. Manager acknowledges that, pursuant to N.J.S.A. 5:9-7(a)(11), no less than 30% of the total revenues accruing from the sale of Lottery Tickets shall be available for contribution to State institutions and State aid for education. Manager covenants to the State that Manager shall provide the Services at all times in compliance with N.J.S.A. 5:9-7(a)(11), and shall ensure that for each Contract Year no less than 30% of the total revenues accruing from the sale of Lottery Tickets shall be available for contribution to State institutions and State aid for education. In accordance with Section 3 of Schedule 10.2, the amount of the Contribution Shortfall for any Contract Year shall be added to the amount of the Shortfall Payments for such Contract Year. In accordance with Section 10.3.2 of this Agreement and Section 3 of Schedule 10.2, the Shortfall Payments for such Contract Year will be netted against the Incentive Compensation payable to Manager for such Contract Year and the remainder, if any, by which the Shortfall Payments exceed the Incentive Compensation payable to Manager for such Contract Year shall be paid by Manager to the Division of Lottery in accordance with Section 10.3.2.

12.1.4 Efficiency and Cost Effectiveness. Manager covenants to the State and the Division of Lottery that Manager shall use commercially reasonable efforts to provide the Services in a cost-effective manner consistent with the required levels of quality and performance. Without limiting the generality of the foregoing, such actions shall include: (a) making adjustments in the timing of actions and the performance of non-critical functions (consistent with the Division of Lottery priorities and schedules for the Services and Manager’s obligation to meet the Service Levels); (b) scheduling usage of Division of Lottery system resources to low utilization periods where practicable and in Manager’s control; and (c) efficiently using the processes and resources for which the Division of Lottery is charged hereunder, consistent with industry norms.

12.1.5 Non-Collusion. Manager certifies it has not paid any money or given any valuable thing to induce any Person to refrain from bidding on a State contract, nor has Manager accepted any money or other valuable thing, or acted upon the promise of same, for not bidding on a State contract. Manager certifies that it has not retained a Person to attempt to influence the outcome of a procurement decision for compensation contingent in whole or in part upon the decision or procurement.

12.1.6 Standard Prohibiting Conflicts of Interest. Manager covenants to the State and the Division of Lottery that, consistent with Executive Order No. 189 (1988):

(a) Neither Manager nor any Subcontractor shall pay, offer to pay, or agree to pay, either directly or indirectly, any fee, commission, compensation, gift, gratuity, or other thing of value of
any kind to any State officer or employee or special State officer or employee, as defined by N.J.S.A. 52:13D-13b and e., in the Department of the Treasury or any other agency with which Manager or such Subcontractor transacts or offers or proposes to transact business, or to any member of the immediate family, as defined by N.J.S.A. 52:13D-13i., of any such officer or employee, or partnership, firm or corporation with which they are employed or associated, or in which such officer or employee has an interest within the meaning of N.J.S.A. 52: 13D-13g.

(b) The solicitation of any fee, commission, compensation, gift, gratuity or other thing of value by any State officer or employee or special State officer or employee from Manager or any Subcontractor shall be reported in writing forthwith by the vendor to the Office of the Attorney General of the State of New Jersey and the Executive Commission on Ethical Standards.

(c) Neither Manager nor any Subcontractor may, directly or indirectly, undertake any private business, commercial or entrepreneurial relationship with, whether or not pursuant to employment, contract or other agreement, express or implied, or sell any interest in Manager or such Subcontractor to, any State officer or employee or special State officer or employee having any duties or responsibilities in connection with the purchase, acquisition or sale of any property or services by or to any State agency or any instrumentality thereof, or with any person, firm or entity with which he is employed or associated or in which he has an interest within the meaning of N.J.S.A. 52: 130-13g. Any relationships subject to this provision shall be reported in writing forthwith to the Executive Commission on Ethical Standards, which may grant a waiver of this restriction upon application of the State officer or employee or special State officer or employee upon a finding that the present or proposed relationship does not present the potential, actuality or appearance of a conflict of interest.

(d) Neither Manager nor any Subcontractor shall influence, or attempt to influence or cause to be influenced, any State officer or employee or special State officer or employee in his official capacity in any manner which might tend to impair the objectivity or independence of judgment of said officer or employee.

(e) Neither Manager nor any Subcontractor shall cause or influence, or attempt to cause or influence, any State officer or employee or special State officer or employee to use, or attempt to use, his official position to secure unwarranted privileges or advantages for the vendor or any other person.

The provisions cited above in Sections 12.1.6(a) through (e) shall not be construed to prohibit a State officer or employee or Special State officer or employee from receiving gifts from or contracting with Manager or any Subcontractor under the same terms and conditions as are offered or made available to members of the general public subject to any guidelines the Executive Commission on Ethical Standards may promulgate under Section 12.1.6(c).

For a violation of this Section 12.1.6, the Division of Lottery may terminate this Agreement, receive restitution from, debar, or take any other appropriate actions against Manager.

12.1.7 Manager Ethics and Integrity. Manager acknowledges that it and its Subcontractors are obligated to meet high standards for ethics and integrity under this Agreement. Manager covenants to the State and the Division of Lottery that it and its Subcontractors and Manager Personnel:

(a) Shall accept no pay, remuneration, or gratuity of any value for performance on or information derived from this project from any party other than the State and the Division of Lottery as described in this Agreement, or from any party under contract to the State or the Division of Lottery or seeking to contract with the State or the Division of Lottery with respect to this Agreement.
(b) Shall not disclose any business sensitive or confidential information gained by virtue of this Agreement to any party without the consent of the State and/or the Division of Lottery.

(c) Shall take no action in the performance of this Agreement to create an unfair, unethical, or illegal competitive advantage for itself, its Affiliates or others.

(d) Shall not have any financial or personal interests relating to this project (other than this Agreement) without the explicit written consent of the State and/or the Division of Lottery.

For a violation of this Section 12.1.7, the Division of Lottery may terminate this Agreement, receive restitution from, debar, or take any other appropriate actions against Manager.

12.1.8 New Jersey State Lottery Vendors’ Code of Ethics. Manager covenants to the State and the Division of Lottery that it and its Subcontractors will abide by the New Jersey State Lottery Vendor’s Code of Ethics, which is attached hereto as Schedule 12.1.8, and any successor code of ethics thereto, as the same may be supplemented, amended, revised or otherwise modified from time to time.

12.1.9 Financial Condition and Financial Information.

(a) Manager represents and warrants to the State and the Division of Lottery that Manager now possesses, and covenants that it shall maintain throughout the Term, sufficient financial resources to comply with all of the requirements of Manager under this Agreement, including any contingent obligations under any Subcontract. If Manager experiences a change in its financial condition that may affect its ability to perform under this Agreement, then it immediately shall notify the Division of Lottery of such change. Manager further represents and warrants to the State and the Division of Lottery that all financial statements, reports and other information furnished by Manager to the State, the Division of Lottery and the DPP as part of the Manager Proposal or otherwise in connection with the award of this Agreement were prepared in accordance with GAAP or IFRS, as applicable, and fairly and accurately represent in all material respects the business, properties, financial condition and results of operations of Manager as of the respective dates, or for the respective periods, covered by such financial statements, reports or other information. Since the respective dates or periods covered by such financial statements, reports or other information, there has been no material adverse change in the business, properties, financial condition or results of operations of Manager.

(b) Manager covenants to the State and the Division of Lottery that, during the Term, it shall deliver to the Division of Lottery: (i) as soon as available and in any event within one hundred twenty (120) days following the end of each fiscal year of Manager, an audited consolidated balance sheet of Manager as of the last day of such fiscal year and the related audited consolidated statements of income, stockholders’ equity and cash flows for such fiscal year and (ii) as soon as available and in any event within forty-five (45) days following the end of each fiscal quarter of Manager, an unaudited consolidated balance sheet of Manager as of the last day of such fiscal quarter and the related unaudited consolidated statements of income, stockholders’ equity and cash flows for such fiscal quarter, in each case prepared in accordance with GAAP or IFRS, as applicable. With respect to its annual audited financial statements, Manager covenants to the State that it shall cause its annual financial statements to be audited by an independent certified public accountant that (i) is licensed to practice in the State, (ii) is a member of the American Institute of Certified Public Accountants, (iii) has at least five (5) years of auditing experience, as a firm, (iv) has a minimum staff of twenty-five (25) partners, managers, or professional accountants, and (v) submits with its audit report a certification that it meets the requirements of items (i) through (iv).
12.1.10 No Litigation. Manager represents and warrants to the State and the Division of Lottery that as of the Agreement Effective Date there is no pending or, to its knowledge, anticipated claim, suit or proceeding that involves Manager that might affect Manager’s ability to perform its obligations under this Agreement including actions pertaining to the proprietary rights described in Section 12.1.11. At all times during the Term, Manager shall notify the Division of Lottery, within a reasonable period of time after Manager’s knowledge of any such claim, suit or proceeding initiated by or against Manager that may materially adversely affect Manager’s ability to perform under this Agreement.

12.1.11 Non-Infringement; Authority to Grant Rights. Manager represents and warrants to the State and the Division of Lottery that the Work Product, Manager Intellectual Property, Software, Equipment, tools and processes furnished or used by Manager in providing the Services and the Services and the State’s use (in compliance with this Agreement) thereof, shall not infringe, misappropriate or violate any Intellectual Property rights of any Third Party. Manager further represents and warrants to the State and the Division of Lottery that Manager: (a) has the right to grant the rights and/or licenses granted to the State and the Division of Lottery in this Agreement; and (b) is the owner of or authorized to use all Manager Intellectual Property, Software, Equipment, tools, processes and Intellectual Property furnished or used by Manager in providing the Services.

12.1.12 Information Furnished to the State. Manager represents and warrants to the State and the Division of Lottery and the DPP that to the best of its knowledge after due inquiry: (a) the Manager Proposal; (b) all written clarifying responses and other written information submitted by or on behalf of Manager as part of the RFP process; (c) all pricing information and disclosures; and (d) all the information provided by Manager made a part of this Agreement, in each case contains no untrue statement of a material fact or omits any material fact necessary to make such information not misleading.

12.1.13 Compliance with Lottery Game Rules. Manager covenants to the State and the Division of Lottery that it shall comply with all rules for each Lottery Game.

12.1.14 New Releases and Advertisements. Manager covenants and agrees that it shall not (i) issue any news release pertaining to any aspect of this Agreement, other than in the ordinary course of providing a Service or (ii) use the State’s name, logos, images, or any State Data as a part of any commercial advertising, other than in the ordinary course of providing a Service, in either case without the prior written consent of the Division of Lottery.

12.1.15 Office Location. Manager covenants to the State that, at all times during the Term, the office principally responsible for providing and/or managing the Services shall be located in New Jersey and within ten (10) miles of One Lawrence Park Complex, Brunswick Avenue Circle, Lawrenceville, NJ 08648 (which is the headquarters of the Division of Lottery as of the Agreement Effective Date).

12.1.16 Ownership. Manager provided as part of the Manager Proposal the Ownership Disclosure Form required by N.J.S.A. 52:24.2. Manager covenants to the State that it shall inform the State of the transfer, sale, assignment, gift, pledge or exchange of any economic interest, voting interest or other equity interest of Manager within five (5) Business Days of such transfer. Manager also covenants to the State that (i) it shall amend, modify or supplement such Ownership Disclosure Form whenever necessary to ensure that the information on the Ownership Disclosure Form is true, accurate and complete, and (ii) shall provide to the Division of Lottery the amended, modified or supplemented Ownership Disclosure Form within five (5) Business Days of the event that requires the Ownership Disclosure Form to be amended, modified or supplemented. Manager acknowledges and agrees that, in
accordance with Section 2 of the Operating Standards, any Person required to be included on the Ownership Disclosure Form must be qualified by the Division of Lottery.

12.1.17 Accounts. Manager covenants to the State that it shall maintain all operating accounts required by the Division of Lottery in a bank in the State, except that deposit-only accounts may be established in other jurisdictions with the permission of the Division of Lottery.

12.1.18 No Convictions for Bribery. Manager certifies that neither it nor any of its Affiliates has been convicted of bribing or attempting to bribe an officer or employee of the State or any other state, nor has Manager made an admission of guilt of such conduct that is a matter of record.

12.2 Covenant Regarding Malicious Code. Manager shall cooperate with the State and the Division of Lottery and shall take commercially reasonable actions and precautions consistent with Section 9.2.1 to prevent the introduction and proliferation of Malicious Code into the State’s and the Division of Lottery’s networks, environments and/or systems (including all subcomponents thereof) or networks, environments and/or systems (including all subcomponents thereof) used by Manager to provide the Services. Without limiting Manager’s other obligations under this Agreement, in the event Malicious Code is found in any Manager Intellectual Property, Work Product, Equipment, Software, networks, environments and/or systems (including all subcomponents thereof): (a) managed, supported and/or provided by Manager hereunder; (b) used or accessed by Manager to provide the Services; and/or (c) used or accessed by the State or the Division of Lottery to receive the Services, then in any such case Manager shall, at no additional cost or charge to the State or the Division of Lottery, eliminate and reduce the effects of such Malicious Code and, if the Malicious Code causes a loss of operational efficiency or loss of data, to mitigate such losses and restore such data with generally accepted data restoration techniques.

SECTION 13

TERM AND TERMINATION

13.1 Term of Agreement. The term of this Agreement (the “Term”) shall commence on the Agreement Effective Date and shall continue until the earlier of: (a) the end of the period consisting of the Transition, the Stub Contract Year and the fifteen (15) fiscal years of the State following the Stub Contract Year and (b) the date on which the Agreement terminates in accordance with this Section 13 (the “Termination Date”).

13.2 Termination For Convenience.

13.2.1 Division of Lottery’s Rights to Terminate for Convenience. Subject to its payment obligations set forth in Section 13.2.2 below, the Division of Lottery shall have the right to terminate this Agreement for its convenience, without penalty or liability, including any penalty or liability for any future Manager lost revenue or severance costs, by delivering to Manager a Termination Notice no less than ninety (90) days prior to the Termination Date specified in such Termination Notice.

13.2.2 Termination For Convenience Fee. If the Division of Lottery terminates this Agreement for its convenience, then Manager shall (i) take all reasonable measures to mitigate its disentanglement and demobilization costs and expenses and (ii) submit no later than thirty (30) days after Manager’s receipt of the Termination Notice a “Termination Settlement Proposal” to the Division of Lottery which shall set forth Manager’s requested termination fee determined in accordance with the criteria in paragraphs (a) through (e) below. If Manager fails to submit such Termination Settlement Proposal within thirty (30) days after Manager’s receipt of the Termination Notice, the Division of Lottery may determine, on the basis of information available and the criteria set forth
below, the amount, if any, due to Manager and shall pay Manager such amount. If the Parties cannot agree on the Termination Settlement Proposal, then the termination fee shall be determined in accordance with the dispute resolution process set forth in Section 20 and shall be based on the aggregate of the following (any such sum paid by the Division of Lottery in accordance with this Section 13.2.2, the “Termination Fees”):

(a) unpaid Payments due and owing to Manager pro-rated for the applicable portion of the Contract Year until the Termination Date, including the present value of unamortized capital expenditures incurred by Manager which are accounted for in Operating Expenses and Approved by the Division of Lottery prior to the incurrence of such obligation and which are not assumed by the Division of Lottery in connection with such termination, excluding any costs which arose due to a breach by Manager of this Agreement; provided that title to all materials associated with such Payments is transferred back to the Division of Lottery; plus

(b) reasonable documented expenses of Manager which are Operating Expenses incurred in the disentanglement and demobilization of Manager which are not included in subsection (a) above, including reasonable expenses relating to the termination and settlement of Subcontracts, accounting, legal, clerical and other expenses reasonably necessary for preparation of the Termination Settlement Proposal and supporting data thereto, and storage, transportation and other incurred expenses reasonably necessary for the preservation, protection or disposition of the Lottery’s assets; plus

(c) if the Termination Notice relating to a termination for convenience is dated prior to the fifteenth anniversary of the Agreement Effective Date, an amount, which shall be referred to as the “AGP Termination Amount”, equal to (i) a pro-rated portion of the Accelerated Guarantee Payment, net of any Income Shortfall Credit Amounts Utilized, (based on a fraction the numerator of which is the number of days between the date of the Termination Notice and the fifteenth anniversary of the Agreement Effective Date and the denominator of which is 5,475) minus (ii) the present value of the aggregate amount of Incentive Compensation paid to Manager on or prior to the Termination Date (including any Incentive Compensation due to Manager under item (a) above) plus (iii) interest compounded annually at the interest rate set by the Treasurer of the State pursuant to N.J.S.A. 52:32-35 applied on the difference between (i) and (ii) for the period beginning on the Agreement Effective Date and ending on the Termination Date; provided, that for purposes of this calculation, the present value shall be calculated using a discount rate of seven percent (7%); plus

(d) a sum equal to ten percent (10%) of the aggregate amount of the expenses described in paragraph (b) above; less

(e) any unpaid amounts owing to the State or the Division of Lottery from Manager under this Agreement.

The Termination Fee shall be the State’s and the Division of Lottery’s sole and exclusive liability to Manager, and Manager’s sole and exclusive remedy from the State and the Division of Lottery, resulting from the Division of Lottery’s exercise of its rights under this Section 13.2. Payment of the Termination Fee shall be subject to and limited by appropriations and any other applicable statutory restrictions, including N.J.S.A. 5:9-7(a)(11) or any successor provision thereto, as amended or supplemented from time to time. For the avoidance of doubt, payment of the Termination Fees shall only apply to a termination for convenience by the Division of Lottery as set forth in this Section 13.2, and under no other circumstances shall the State or the Division of Lottery be liable for the payment of the Termination Fees or any other liabilities, costs, fees and expenses in connection with the Division of Lottery’s exercise of any of its other termination rights under this Section 13. Any disputes with respect to the calculation of the Termination Fees shall be resolved in accordance with Section 20 of this
Agreement. A termination of this Agreement pursuant to **Section 13.2** shall not terminate any provisions of this Agreement relating to Termination Fees, including their calculation and Manager’s right to payment thereof, and all such provision shall continue in full force and effect until Manager has received full payment of such Termination Fees.

### 13.3 Termination for Event of Default.

13.3.1 The following events shall constitute “Events of Default,” and the occurrence of any one (1) or more of such Events of Default shall constitute a material breach of this Agreement by Manager, and the Division of Lottery may, in its sole discretion, terminate this Agreement and/or the impacted portion of the Services, without payment of any Termination Fees (including, for the avoidance of doubt, any reimbursement of any portion of the Accelerated Guarantee Payment):

- **(a)** Subject to any adjustments contemplated by **Schedule 10.2**, if Net Income Shortfalls that are equal to more than ten percent (10%) of the applicable Net Income Targets occur for (i) any consecutive two Contract Year period or (ii) any three Contract Years in a five Contract Year period;

- **(b)** A Change in Control of Manager occurs that is not Approved by the Division of Lottery, in its sole discretion;

- **(c)** Manager: (i) fails to comply with or materially breaches its obligations with respect to the provision of Transition Services; or (ii) fails to meet a Transition Milestone set forth in the Transition Plan, **provided** that such failure or material breach is not solely attributable to the Division of Lottery’s material failure to perform any of its responsibilities under this Agreement that were identified to the Division of Lottery in writing in advance as a pre-condition to Manager’s ability to perform its obligations and that such failures (a) cause or shall cause a material disruption to or otherwise has or shall have a material adverse impact on the Lottery or businesses of the State or the Division of Lottery and (b) is not cured by Manager within thirty (30) days following receipt of written notice of such failure;

- **(d)** Manager’s failure or inability to achieve recovery in accordance with the Continuity Plans;

- **(e)** Manager fails to obtain any Governmental Approval as set forth in **Section 19.1** and such failure is not cured by Manager within ten (10) days following receipt of written notice of such failure, except in the event that such failure does not have a material adverse impact on the Lottery;

- **(f)** Manager’s failure to implement a Division of Lottery-required Manager Personnel replacement as set forth in **Section 6.3.3**, and such failure is not cured by Manager within thirty (30) days following receipt of written notice of such failure;

- **(g)** Manager’s material breach of any representation or warranty if such breach is not curable, or if such breach is curable, is not cured within the time frames, if any, specified in this Agreement, by the Parties in writing, or, if not otherwise specified, then within thirty (30) days, in each case following receipt of written notice of such breach;

- **(h)** Manager fails to maintain all of the insurance coverages as specified in **Section 17**, and such failure is not cured within ten (10) days following receipt of written notice of such failure;

- **(i)** The Guarantor fails to either satisfy the Liquidity Conditions (as defined in **Section 18.1.2**) or maintain the Guarantor’s Security (as defined in **Section 18.1.3**), and such failure is not cured within ten (10) days following receipt of written notice of such failure;
(j) The: (i) institution of bankruptcy, receivership, insolvency, reorganization or other similar proceedings by or against Manager under any section or chapter of the Bankruptcy Code, as amended, or under any similar laws or statutes of the United States (or any state thereof), if such proceedings have not been dismissed or discharged within forty five (45) days after they are instituted; (ii) insolvency or the admittance by Manager of any involuntary debts as they mature; (iii) the institution of any reorganization arrangement or other readjustment of debt plan of Manager not involving the Bankruptcy Code; (iv) assignment by Manager of all or substantially all of its assets for the benefit of creditors; or (v) initiation of any corporate action taken by the Board of Directors of Manager in furtherance of any of the above actions;

(k) Manager’s breach of any of the terms, conditions or requirements of Section 9, except in the event that such breach does not have a material adverse impact on the Lottery;

(l) Manager’s breach of any of the terms, conditions or requirements of Section 19, except in the event that such breach does not have a material adverse impact on the Lottery;

(m) Manager’s breach or violation of Section 22.1;

(n) Manager’s breach of any of its other material duties, responsibilities and/or obligations under this Agreement, including a failure to pay any amount due to the Division of Lottery, that is not cured within thirty (30) days following receipt of written notice of such breach; and

(o) Except with respect to a Force Majeure Event, Manager fails to operate the Central Gaming System for a period of longer than two (2) consecutive days or four (4) days in the aggregate for any Contract Year (for the avoidance of doubt, any day on which the Division of Lottery is exercising its Step-In Rights to enable to continued operation of the Central Gaming System shall be considered to be a day on which Manager fails to operate the Central Gaming System).

13.3.2 Termination Notice. Upon the occurrence of an Event of Default by or with respect to Manager with respect to which the State exercises its termination rights, the State shall effectuate such termination by delivering to Manager a Termination Notice specifying the Termination Date; provided, however, that Manager shall remain obligated to perform its Disentanglement Services obligations as set forth in Section 14 until they are fulfilled.

13.3.3 Rights Following Termination. If the State terminates this Agreement following an Event of Default, then Manager shall take all reasonable measures to mitigate its disentanglement and demobilization costs and expenses and the State and/or the Division of Lottery shall be entitled to exercise any of its rights and remedies hereunder, or as provided by law or equity. For the avoidance of doubt, under no circumstances shall the State or the Division of Lottery be liable for the payment of any liabilities, costs, fees and expenses in connection with the State’s exercise of its termination rights under Section 13.3.

13.4 Step-In Rights. The Division of Lottery may assign State staff or Third Parties to step in and perform all or any element of the Services in accordance with this Section 13.4 until such time as Manager can demonstrate the ability to resume provision of such Services to the satisfaction of the Division of Lottery (“Step-In Rights”).

13.4.1 Step-In Notice. The Division of Lottery may exercise its Step-In Rights by giving Manager notice (the “Step-In Notice”) if: (a) if Manager commits a breach of this Agreement that the Division of Lottery reasonably believes will have a material adverse impact on the Lottery operations or Services and Manager is unable to cure such breach within seventy-two (72) hours after receipt of
notice of such breach from the Division of Lottery; (b) the Division of Lottery has reasonable suspicion that acts of fraud are being committed in relation to the Services; or (c) in the event of a bankruptcy of Manager. The Step-In Notice must specify in reasonable detail the basis on which the Division of Lottery is entitled to exercise its Step-In Rights and the affected Services.

13.4.2 Exercise of Step-In Rights.

(a) As soon as possible, but not longer than twenty-four (24) hours, following Manager’s receipt of the Step-In Notice, the Division of Lottery and Manager shall discuss any alternative course of action which Manager may undertake to remedy the event giving rise to the Step-In Rights, and the manner in which the Division of Lottery shall exercise its Step-In Rights, including how the Division of Lottery may engage any Third Party to act on its behalf. If Manager and the Division of Lottery fail to reach agreement on an appropriate remedy within three (3) Business Days after Manager’s receipt of the Step-In Notice, the Division of Lottery may exercise its Step-In Rights. The Division of Lottery’s exercise of its Step-In Rights shall not prejudice any other rights of the State or the Division of Lottery under this Agreement.

(b) In exercising its Step-In Rights, the Division of Lottery may itself provide, or may employ a replacement Third Party provider to provide, the affected Services in whole or in part. Manager shall cooperate fully with and provide all necessary assistance to the Division of Lottery and any replacement Third Party provider to enable the affected Services to resume. Manager’s assistance shall include: (i) granting the Division of Lottery or the replacement Third Party provider management control over relevant Manager employees; (ii) granting the Division of Lottery or the replacement Third Party provider access to Manager’s premises and materials as needed to provide the Services; (iii) granting the Division of Lottery or the replacement Third Party provider access to management records and systems which relate to the affected Services as needed to provide the Services; and (iv) if the Division of Lottery requests, providing written confirmation that the Division of Lottery may give to Third Parties confirming that the Division of Lottery is exercising its rights in compliance with this Agreement.

(c) So long as the Division of Lottery exercises its Step-In Rights for reasons set forth in Section 13.4.1 above: (i) the Division of Lottery shall not be obliged to pay or make any payments (whether Payments or otherwise) to Manager for Services that the Division of Lottery or a Third Party is providing and any Incentive Compensation due to Manager for any Contract Year in which the Division of Lottery has exercised its Step-In Rights shall be reduced, pro-rata based on the ratio of the number of days the Division of Lottery exercised its Step-In Rights in such Contract Year to 365 days; and (ii) Manager shall be liable to pay any additional costs directly incurred by the State and the Division of Lottery as a result of the exercise of the Step-In Rights. The Division of Lottery’s exercise of its Step-In Rights shall not constitute a waiver by the State or the Division of Lottery of any termination rights or rights to pursue a claim for damages arising out of the failure that led to its exercise of the Step-In Rights. Step-In Rights exercised by the Division of Lottery not in accordance with this Section 13.4 shall be a potential Adverse Action.

13.4.3 Step-Out Notice. The Division of Lottery’s Step-In Rights shall end when the event giving rise to the Step-In Rights is resolved to the Division of Lottery’s reasonable satisfaction. The Division of Lottery shall deliver a sufficiently prior written notice to Manager specifying the date the Division of Lottery plans to conclude its Step-In Rights (the “Step-Out Notice”). Manager shall, following receipt of a Step-Out Notice, meet with the Division of Lottery to discuss the Division of Lottery’s findings as a result of the exercise of its Step-in Rights. Within ten (10) Business Days after the meeting, Manager shall develop and deliver to the Division of Lottery a plan to implement the Division of Lottery’s reasonable recommendations to improve the Services.
13.5 Termination by Manager.

13.5.1 Subject to Sections 10.5, 10.6 and 10.7, Manager shall have the right to terminate this Agreement, by notice to the Division of Lottery, if the Division of Lottery fails to pay any undisputed amount due and owing to Manager under this Agreement, as specified in an accurate invoice, within ninety (90) days of the due date for such amount or within ninety (90) days of the effective date of such appropriation, whichever is later. Manager may, by giving written notice to the Division of Lottery, terminate this Agreement as of the Termination Date specified in the Termination Notice (which date must be within twelve (12) months of the Division of Lottery’s failure to pay the amounts in question but no earlier then six (6) months after the date the Termination Notice is provided to the Division of Lottery). For the avoidance of doubt, this Section 13.5.1 provides Manager’s only termination right under this Agreement.

13.5.2 In the event of a termination by Manager under Section 13.5.1, the Division of Lottery shall pay to Manager an amount equal to the sum of (i) any unpaid Payments due and owing to Manager pro-rated for the applicable portion of the Contract Year until the Termination Date, including the present value of unamortized capital expenditures incurred by Manager which are Operating Expenses which are not assumed by the Division of Lottery in connection with such termination, excluding any expenses which arose due to a breach by Manager of this Agreement (provided that title to all materials associated with such Payments is transferred back to the Division of Lottery), plus (ii) to the extent not included in subsection (i) above, the fees and charges to provide Disentanglement Services either agreed to in the Disentanglement Services Plan or, if not specified therein, as set forth in Section 13.2.2(b), plus (iii) if the Termination Date is prior to the fifteenth anniversary of the Agreement Effective Date, the AGP Termination Amount determined as of the Termination Date, minus (iv) any unpaid amounts owing to the State or the Division of Lottery from Manager under this Agreement. The payment described in the immediately preceding sentence shall be the State’s and the Division of Lottery’s sole and exclusive liability to Manager, and Manager’s sole and exclusive remedy from the State and the Division of Lottery, resulting from the Manager’s exercise of its rights under Section 13.5.1; provided, that such payment shall be subject to and limited by appropriations and any other applicable statutory restrictions, including N.J.S.A. 5:9-7(a)(11) or any successor provision thereto, as amended or supplemented from time to time. For the avoidance of doubt, except as set forth in this Section 13.5.2, under no circumstances shall the State or the Division of Lottery be liable for the payment of any other liabilities, costs, fees and expenses in connection with Manager’s exercise of its termination rights under Section 13.5.1.

13.6 Non-Exclusive Remedies. The remedies provided in this Section 13 and elsewhere in this Agreement are neither exclusive nor mutually exclusive, and the Parties shall be entitled to any and all such remedies, and any and all other remedies that may be available to the Parties at law or in equity, by statute or otherwise, individually or in any combination thereof. The election by a Party of any remedy provided for in this Agreement or otherwise available to such Party shall not preclude such Party from pursuing any other remedies available to such Party at law, in equity, by contract or otherwise.

13.7 Survival.

13.7.1 General. The provisions of Sections 9, 14, 15, 16, 17, 20 and 22 and Sections 8.1.1, 8.2.1, 8.2.3, 8.3.1, 8.5, 8.6, 8.7, 11.1, 11.2, 11.3, 12.1, 13.2.2, 13.3.3 and 13.7 and any other Sections, Schedules or Attachments of this Agreement that by their nature may reasonably be presumed to survive any termination or expiration of this Agreement, shall so survive.

13.7.2 Confidentiality Requirements Survival. Manager’s obligations with respect to State Personal Data shall survive the expiration or termination of this Agreement for any reason and shall be
perpetual. The Parties’ obligations of non-disclosure and confidentiality with respect to all other Confidential Information shall survive the expiration or termination of this Agreement for a period of ten (10) years from the expiration or termination of this Agreement; provided, however, that: (a) the passage of this ten (10) year period shall not absolve either Party of responsibility for any breach of Section 9 occurring prior to the expiration of such ten (10) year period; and (b) with respect to any Confidential Information that constitutes a trade secret (as determined under applicable Regulatory Requirement), such restrictions on disclosure and/or use shall survive the termination, expiration or non-renewal of this Agreement for as long as such Confidential Information remains a trade secret but, in no event, shall such restrictions on disclosure and/or use cease prior to the expiration of ten (10) years following the expiration or termination of this Agreement.

13.8 Emergency. In cases of emergency, the Division of Lottery may shorten the time periods of notification and/or cure set forth in this Section 13.

SECTION 14

DISENTANGLEMENT OBLIGATIONS

14.1 General Obligations. Manager shall, with the Division of Lottery’s cooperation, accomplish a complete transition from Manager to the Division of Lottery, its Affiliates, another State agency or to any replacement provider designated by the State or the Division of Lottery (the “Replacement Manager”) as directed by the Division of Lottery, of the Services being provided by Manager as of the Termination Date, without any material interruption of, or material adverse impact on, the Services being provided, except as mutually agreed by the Parties and set forth in the applicable Disentanglement Services Plan. As part of the Services, Manager shall perform the obligations set forth in this Section 14 and the Disentanglement Services Plan (collectively, the “Disentanglement Services”).

14.2 Disentanglement Process and Performance.

14.2.1 Disentanglement Services Period. The Disentanglement Services shall (i) begin on any of the following dates, as applicable: (a) the date designated by the Division of Lottery in connection with the expiration of the Term, which date shall not be earlier than one hundred eighty (180) days prior to the Termination Date; (b) the Termination Date specified in any Termination Notice delivered by the Division of Lottery to Manager pursuant to and in compliance with the Division of Lottery’s termination rights as set forth in Section 13; or (c) the Termination Date specified in any Termination Notice delivered by Manager to the Division of Lottery pursuant to and in compliance with Section 13.5; and (ii) continue for the period designated by the Division of Lottery which shall be no longer than twelve (12) months after the Termination Date, subject to any extension of the Disentanglement Services as set forth in Section 14.2.6 (such time period, the “Disentanglement Services Period”).

14.2.2 Disentanglement Services Plan. On or before the Base Services Commencement Date, Manager shall provide for the Division of Lottery’s review, comment and Approval a plan (the “Disentanglement Services Plan”) for implementing the provision of the Disentanglement Services set forth in Section 14 which plan shall include an estimate of costs to be incurred by Manager in connection with such disentanglement as described in Section 13.2.2(b). Once the Disentanglement Services Plan has received the Division of Lottery Approval, such Disentanglement Services Plan shall be attached hereto as Exhibit 14.2.2. Such Disentanglement Services Plan shall be updated annually by Manager with the Approval of the Division of Lottery, in its sole discretion.
14.2.3 Charges for the Disentanglement Services. Manager’s Disentanglement Services obligations prior to the beginning of the Disentanglement Services Period shall be provided at no additional cost as part of the Payments payable for all of the Services under Section 10.2. During the Disentanglement Services Period for the period starting on the Termination Date specified in the Termination Notice, Manager shall perform Manager’s Disentanglement Services for the fees and charges either agreed to in the Disentanglement Services Plan or, if not specified therein, as set forth in Section 13.2.2(b).

14.2.4 Firm Commitment. Manager shall provide the Disentanglement Services to the Division of Lottery, its Affiliates, another designated State agency and/or the Replacement Manager regardless of the reason for the expiration or termination of this Agreement; provided, however, that if this Agreement is terminated by Manager pursuant to Section 13.5, Manager may require payment by the Division of Lottery in advance for such Disentanglement Services. At the Division of Lottery’s request, Manager shall provide the Disentanglement Services directly to a Replacement Manager.

14.2.5 Performance. All Disentanglement Services shall be provided subject to and in accordance with the terms and conditions of this Agreement which shall continue in full force and effect, to the extent applicable, until the end of the Disentanglement Services Period. After the expiration or termination of the Term, Manager shall perform the Disentanglement Services with at least the same degree of accuracy, quality, completeness, timeliness, responsiveness and resource efficiency as it provided and was required to provide with respect to the Services during the Term. The quality and level of performance of the Disentanglement Services provided by Manager following the expiration or termination of this Agreement shall continue to meet the Service Levels and shall not be degraded or deficient in any respect. Manager Personnel (including all Manager Key Personnel) reasonably considered by the Division of Lottery to be critical to the performance of the Services and Disentanglement Services shall be retained on the Division of Lottery account through the completion of all relevant Disentanglement Services.

14.2.6 Extension of Disentanglement Services. The Division of Lottery shall have the right to extend the period for the provision of the Disentanglement Services for two (2) additional periods of up to six (6) months each after the initial proposed expiration of the Disentanglement Services Period. To the extent the Division of Lottery requires such extension(s) of the Disentanglement Services, the Division of Lottery shall pay Manager the fees and charges set forth in the Disentanglement Services Plan for such extension period(s). To the extent the Division of Lottery requests the extension of a portion (but not all) of the Disentanglement Services, the fees and charges to be paid by the Division of Lottery shall be equitably adjusted in proportion to the portion of the Disentanglement Services actually provided.

14.3 Specific Disentanglement Services Obligations. The Disentanglement Services shall include the performance of the specific obligations described in this Section 14.3 and in Schedule 2.1. In connection with the initiation of the Disentanglement Services, but in no event longer than ten (10) Business Days after such initiation of the Disentanglement Services, Manager shall provide to the Division of Lottery in writing a complete and accurate list of all items that shall be subject to conveyance or re-conveyance to the Division of Lottery, its Affiliates, another designated State agency and/or the Replacement Manager, as the case may be, as provided in this Section 14.3.

14.3.1 Full Cooperation, Information and Knowledge Transfer. During the provision of the Disentanglement Services, the Parties shall reasonably cooperate with one another to facilitate a smooth transition of the terminated/expired Services from Manager to the Division of Lottery, its Affiliates, another designated State agency and/or the Replacement Manager. Without limiting the generality of the foregoing, Manager shall: (a) cooperate with the Division of Lottery, its Affiliates,
another designated State agency and/or the Replacement Manager and otherwise promptly take all steps reasonably required to assist the State in effectuating the Disentanglement Services; (b) provide to the Division of Lottery, its Affiliates, another designated State agency and/or the Replacement Manager full, complete, detailed and sufficient information (including all information then being utilized by Manager with respect to data conversions, interface specification, programs, tools, utilities and other resources used to provide the Services) and knowledge transfer with respect to all such information in order to enable the Division of Lottery’s, its Affiliate’s, such other designated State agency’s and/or the Replacement Manager’s personnel (or that of Third Parties) to fully assume, become self-reliant with respect to and continue without interruption the provision of the Services; (c) provide for the prompt and orderly conclusion of all work, as the State may reasonably direct, including completion or partial completion of Services, documentation of work in progress, and other measures to assure an orderly transition to the Division of Lottery, its Affiliates, another designated State agency and/or the Replacement Manager; and (d) accomplish the other specific obligations described in this Section 14 and the Disentanglement Services Plan. In addition to the foregoing requirements, as directed by the State, Manager shall deliver to the Division of Lottery, its Affiliates, another designated State agency and/or the Replacement Manager all documentation and data related to the State and the Lottery, including State Data, as well as all procedures, standards and operating schedules (including the Operating Standards), held by Manager.

14.3.2 Third Party Contracts and Manager Subcontracts. Without limiting the obligations of Manager elsewhere set forth in this Agreement, if reasonably requested by the Division of Lottery as part of the Disentanglement Services, Manager shall procure at no charge to the Division of Lottery any Third Party consent necessary to grant the Division of Lottery, its Affiliates, another designated State agency and/or the Replacement Manager the use and benefit of any Subcontracts used by Manager to provide the Services. Manager shall, at the Division of Lottery’s reasonable request, cause any such Subcontractors to permit the Division of Lottery, its Affiliates, another designated State agency and/or the Replacement Manager to assume prospectively any or all such contracts or to enter into new contracts with the Division of Lottery, its Affiliates, another designated State agency and/or the Replacement Manager on substantially the same terms and conditions, including price (except where Manager’s price is based on volume-based discounts). There shall be no charge or fee imposed on the Division of Lottery, its Affiliates, another designated State agency and/or the Replacement Manager by Manager or its Subcontractors, Affiliates or Third Party contractors for any such assumption of a contract. Manager shall: (a) represent and warrant that it is not in default under such subcontracts and Third Party contracts; (b) represent and warrant that all payments thereunder through the date of assignment are current; and (c) notify the Division of Lottery of any Subcontractor’s or Third Party contractor’s default with respect to such subcontracts and Third Party contracts of which it is aware at the time.

14.3.3 Manager Intellectual Property. Manager shall comply with the post-termination license rights and obligation with regard to Manager Intellectual Property set forth in Section 8.

14.4 Increased Disentanglement Payment. Manager shall have an opportunity to recover Incentive Compensation as a result of any pre-Approved Significant Investment where the opportunity to earn such Incentive Compensation would otherwise extend beyond the Term (an “Increased Disentanglement Payment”). Manager shall be responsible for identifying and proposing an Increased Disentanglement Payment during the Disentanglement Services Period; provided, however, that any Increased Disentanglement Payment shall be calculated according to a formula mutually agreed upon by the Parties at the time of Approval by the Division of Lottery of the Significant Investment. Notwithstanding the foregoing, Manager acknowledges that the Division of Lottery has no obligation to approve a Significant Investment or any Increased Disentanglement Payment.
SECTION 15

INDEMNIFICATION

15.1 Indemnifications By Manager.

15.1.1 Manager General Indemnifications. Manager agrees that neither Manager nor any Manager Personnel are an “employee” with respect to the indemnification provisions of N.J.S.A. 59:1-1, and that Manager, Manager Personnel and Manager Affiliates shall not apply for indemnification under N.J.S.A. 59:10-1 or N.J.S.A. 59:10A-1 for any and all Claims that are Manager’s responsibility in accordance with this Agreement. Manager or Guarantor, on behalf of Manager, (the “Indemnifying Parties”) shall indemnify, defend and hold harmless the State Indemnitees from and against, and shall pay any and all Losses sustained or incurred by any of the State Indemnitees, based upon, relating to or arising from, any and all Claims related to Manager’s provision of the Services hereunder, including those in connection with any of the following:

(a) Any actual or alleged bodily injury or death, damage to tangible personal or real property, notwithstanding the form in which any such action is brought (e.g., contract, tort or otherwise), to the extent such injuries or damages arise in whole or in part, directly or indirectly, from acts, errors or omissions that constitute negligence, willful misconduct or violations of Regulatory Requirements, by Manager and/or any Manager Personnel;

(b) Manager’s breach of any of the representations and warranties set forth in Section 12.1;

(c) Manager’s breach of any of its obligations under any Third Party contract to which Manager is a party and is used by Manager to provide the Services or otherwise perform its obligations under this Agreement;

(d) Any actual or alleged breach by Manager of a Subcontract or Existing State Contract, to the extent the claim, suit or proceeding accrues after the date of assignment and assumption to Manager of such Existing State Contract, and is a result of (i) Manager’s failure to fulfill its obligations under the Subcontract or Existing State Contract, and/or (ii) Manager’s breach of any term or condition of this Agreement;

(e) Any aspect of the employment of Manager Personnel or any other employees of Manager or a Subcontractor or the termination of such employment. Without limiting the generality of the foregoing, claims relating to the employment or termination of Manager Personnel includes claims relating to (i) any violation by Manager or its officers, directors, employees, representatives and/or agents of State Policies and Rules protecting persons or members of protected classes or categories and/or prohibiting discrimination or harassment on the basis of a protected characteristic, (ii) payment or failure to pay any salary, wages or other compensation due and owing to any Manager Personnel, (iii) payment or failure to pay any pension or other benefits of any Manager Personnel, (iv) liability for (A) any social security or other employment taxes for Manager Personnel, (B) workers’ compensation claims and premium payments for Manager Personnel, and (C) contributions applicable to the wages and salaries of such Manager Personnel, (v) claims by Manager Personnel for wages, benefits, discrimination or harassment of any kind, wrongful termination and/or denial of severance or termination payments upon leaving their applicable place of employment, (vi) claims relating to work related injuries, and (vii) wrongful discharge of such Manager Personnel, claims for breach of express or implied employment contract of such Manager Personnel and claims that the State is an employer, co-employer or joint
employer of any Manager Personnel, or that such Manager Personnel are “employees” within the meaning of N.J.S.A. 59:1-1;

(f) Any improper disclosure, misuse or theft of State Data by Manager, a Subcontractor or Manager Personnel, or any other breach of Section 9 by Manager or a Subcontractor;

(g) Any introduction by Manager or Manager Personnel of Malicious Code in the State’s or the Division of Lottery’s environment, network or systems, to the extent Losses caused by such introduction arise from acts, errors or omissions of Manager or Manager Personnel;

(h) Manager’s breach of or failure to perform or comply with any of Manager obligations set forth in Section 19 or 20;

(i) Manager’s breach of or failure to obtain, maintain or comply with any Governmental Approvals required to be maintained by Manager under this Agreement;

(j) Manager’s breach of or failure to obtain, maintain or comply with any Third Party consent or to comply with any Third Party consent;

(k) Manager’s breach of or failure to comply with any of its obligations set forth in Section 10, including any failure by Manager to pay applicable taxes, together with any interest and penalties, assessed or imposed against the State for which Manager has responsibility pursuant to Section 10.7 or applicable State Policies and Rules; and

(l) A Manager Affiliate or Subcontractor asserting rights under this Agreement, or any entity to which Manager assigned, transferred, pledged, hypothecated or otherwise encumbered its rights to receive payments from the Division of Lottery under this Agreement.

15.1.2 Manager Infringement Indemnification.

(a) The Indemnifying Parties shall indemnify, defend and hold harmless the State Indemnitees from and against, and shall pay any and all Losses sustained or incurred by any of the State Indemnitees, based upon, relating to or arising from, any and all actual, threatened and/or alleged Claims that the: (i) Services, Manager Intellectual Property, and any other Manager and/or Manager Third Party services, technologies, techniques or products used by Manager to provide the Services; (ii) the Work Product or any other deliverables provided by Manager; and/or (iii) the receipt or use by the State or the Division of Lottery of any of the foregoing items referenced in subsections (i) and (ii) (collectively referred to as “Manager Items”), infringes, misappropriates and/or violates any patent, copyright, trademark, trade secret and/or other intellectual property, proprietary, moral or privacy rights of any Third Party.

(b) If the State’s or the Division of Lottery’s right to use, receive or enjoy the Manager Items is enjoined or appears likely to be enjoined, or a Claim of the type referred to in Section 15.1.2(a) is brought or appears likely to be brought, Manager promptly shall, at Manager’s sole cost and expense and in such a manner as to minimize the disturbance to the State’s and the Division of Lottery’s business activities and rights under this Agreement, do one of the following: (i) obtain for the State and the Division of Lottery the right to continue receiving and using such Manager Items free of claims of infringement, misappropriation and/or violation; (ii) modify the Manager Items so that they no longer infringe, misappropriate and/or violate (provided that such modification does not degrade the performance or quality of the Services or adversely affect the State’s or the Division of Lottery’s intended use as contemplated by this Agreement); or (iii) replace Manager Items with non-infringing, non-
misappropriating and non-violating functional equivalents acceptable to the Division of Lottery. If Manager finds that none of the foregoing alternatives is available to it on commercially reasonable terms, Manager may require the Division of Lottery to return the allegedly infringing item(s), in which case, for the first five years from date of acceptance of the infringing item (or such shorter period if the infringing item was accepted less than five years prior to the Claim), the Division of Lottery will receive a full refund of the amounts paid by it for the returned item(s) during such five year period, and, for the period after the end of the first five years from date of acceptance of the infringing item (if the infringing item was accepted more than five years prior to the Claim), a refund of the amounts paid by the Division of Lottery for the returned item(s) less a reasonable adjustment for depreciation of the returned item(s).

15.2 Indemnification Procedures.

15.2.1 General. If any Claim governed by this Section 15 is brought against a State Indemnitee, such State Indemnitee shall give written notice thereof to Manager promptly after such legal action is commenced; provided, however, that failure to give prompt notice shall not reduce the Manager’s obligations under this Section 15, except to the extent the Manager can demonstrate that it is prejudiced thereby. After such notice, within twenty (20) days or sooner, if necessary light of the nature of the Claim, the Indemnifying Party shall acknowledge in writing to the State Indemnitee whether it agrees that the right of indemnification under this Agreement applies with respect to such Claim. If the Indemnifying Party agrees that the right of indemnification under this Agreement applies with respect to such Claim, Manager shall not less than ten (10) Business Days prior to the date on which a response to such Claim is due, to take control of the defense and investigation of such Claim and to employ and engage attorneys of its choice, that are reasonably satisfactory to the State Indemnitee, to handle and defend same, at the Indemnifying Party’s expense. If the Indemnifying Party does not agree that the right of indemnification under this Agreement applies with respect to such Claim, then Manager shall promptly provide the State Indemnitee with written notice of the reason therefor. If the State Indemnitee does not agree, it shall promptly notify Manager and Manager shall nonetheless not less than ten (10) Business Days prior to the date on which a response to such Claim is due, to take control of the defense and investigation of such Claim and to employ and engage attorneys of its choice, that are reasonably satisfactory to the State Indemnitee, to handle and defend same, at the Indemnifying Party’s expense. Manager may institute the Dispute Resolution in Section 20 to resolve the issue. In the event that the Parties ultimately agree or a court of competent jurisdiction determines that there was no right to indemnification under this Agreement, the Manager shall be entitled to payment for all reasonable costs, expenses and attorney fees incurred by Manager in connection with the defense of such Claim. Notwithstanding the foregoing, the State may, at any time, assume or take over the defense of any Claim at the cost and expense of Manager. Notwithstanding the provisions of this Section 15.2.1, the obligation of the Indemnifying Party to defend any and all Claims against the State Indemnitees, shall not require a determination of the fault, if any, of the Indemnifying Party. The Indemnifying Party shall defend any and all Claims arising out of, or related to, this Agreement from the inception of such Claims.

15.2.2 Defense Accepted. Notwithstanding anything contained herein to the contrary, if the Indemnifying Party accepts defense of a Claim as provided in this Section, the State Indemnitee shall have the right to engage, at its own expense, independent counsel to monitor and participate in the defense of the matter as such counsel or the State Indemnitee deems fit to protect its interests. The Indemnifying Party and its counsel must reasonably cooperate with the State Indemnitee’s counsel at the State Indemnitee’s expense to enable such counsel to adequately represent the interests of the State Indemnitee.

15.2.3 Settlement of Claims. No settlement of a Claim that involves a remedy other than the payment of money by the Indemnifying Party along with standard settlement terms, specifically
including a dismissal of all Claims with prejudice in favor of the State Indemnitee as well as a non-admission of liability or other wrongdoing by the State Indemnitee, shall be entered into by the Indemnifying Party without the prior written consent of the State Indemnitee, which consent shall not be unreasonably withheld. In no event shall an adverse judgment be entered against the State Indemnitee as part of a settlement without its express written consent, which consent shall not be unreasonably withheld.

15.2.4 Waiver of Subrogation. Each Party hereby waives its respective rights to subrogation against the other Party with respect to any claims or defenses as to which any indemnification relates.

SECTION 16

LIMITATIONS ON LIABILITY


16.2 Cap on Manager’s Liability for Direct Damages. SUBJECT TO SECTION 16.3 AND EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN SECTION 16.4.2, THE AGGREGATE CUMULATIVE MONETARY LIABILITY OF MANAGER FOR ANY AND ALL DIRECT DAMAGES FOR ANY AND ALL CLAIMS, EVENTS OR OCCURRENCES ARISING UNDER OR RELATING TO THIS AGREEMENT, NOTWITHSTANDING THE FORM IN WHICH ANY ACTION IS BROUGHT, WHETHER IN CONTRACT, TORT OR OTHERWISE, SHALL BE LIMITED TO AMOUNTS EQUAL TO ONE HUNDRED MILLION DOLLARS IN THE AGGREGATE PER YEAR AND FIVE HUNDRED MILLION DOLLARS IN THE AGGREGATE FOR THE TERM (THE “MANAGER CAP”). FOR THE AVOIDANCE OF DOUBT, THE ACCELERATED GUARANTEE PAYMENT, THE TRANSITION CREDITS, THE SERVICE LEVEL CREDITS AND THE SHORTFALL PAYMENTS SHALL BE EXCLUDED FROM ANY CALCULATION OF THE MANAGER CAP.

16.3 Limitation on Non-Direct Damages. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN SECTION 16.4 AND FOR CLAIMS BY A THIRD PARTY IN WHICH A PARTY IS FOUND TO BE LIABLE FOR ANY OF THE FOLLOWING DAMAGES, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, EXEMPLARY AND/OR PUNITIVE DAMAGES, INCLUDING LOST PROFITS OR LOSS OF BUSINESS, REGARDLESS OF THE FORM OF THE ACTION OR THE THEORY OF RECOVERY, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF THE FORM IN WHICH ANY ACTION IS BROUGHT.

16.4 Exclusions from Limitations on Liability.

16.4.1 State Exclusions. As to the State’s and the Division of Lottery’s liability, the State Cap for direct damages liability and the Section 16.3 limitation on non-direct damages shall not apply
to: (a) Losses arising under or relating to the State’s or the Division of Lottery’s failure to comply with Section 8, (b) Losses arising under or relating to the gross negligence, willful misconduct or fraud of the State or Division of Lottery, (c) payment of Operating Expenses and Incentive Compensation due and owing to the Manager by the Division of Lottery in accordance with the terms hereof, except to the extent disputed by the Division of Lottery, and subject to the limitations set forth in Section 10.6 hereof and Sections 2(b) and 5 of Schedule 10.2, or (d) any Termination Fee, if applicable, paid by the Division of Lottery in accordance with Section 13.2.2, subject to the limitations set forth in Section 10.6 hereof.

16.4.2 Manager Exclusions. As to Manager’s liability, the Manager Cap for direct damages liability and the Section 16.3 limitation on non-direct damages shall not apply to: (a) Losses arising under or relating to Manager’s failure to comply with Section 8 or Section 9; (b) Losses arising under or relating to Manager’s failure to comply with Section 19 or any Regulatory Requirement; (c) Losses arising under or relating to the gross negligence, willful misconduct or fraud of Manager, a Subcontractor or Manager Personnel; (d) any introduction by Manager or Manager Personnel of Malicious Code in the State’s or the Division of Lottery’s environment, network or systems, to the extent Losses caused by such introduction arise from acts, errors or omissions of Manager or Manager Personnel that constitute gross negligence or willful misconduct; (e) personal injury, including death, and damage to tangible personal or real property caused by the negligent, willful or intentional acts of a Manager or Manager Personnel; (f) amounts owed by Manager under this Agreement, including in connection with Transition Credits, Service Level Credits or the Shortfall Payments under Section 5.3.6; (f) Manager’s wrongful termination of this Agreement or repudiation or wrongful abandonment of all or any part of the Services; or (g) Manager’s indemnification obligations under Section 15 and costs and expenses associated with defending any Claim.

16.5 Indemnification Payments. Notwithstanding anything to the contrary contained in this Agreement (including in Section 15.1), all Loss payments made by Manager (including Service Level Credits and Transition Credits) in respect of Claims that are indemnified pursuant to Section 15 shall be considered direct damages, not consequential, incidential, indirect, special, exemplary and/or punitive damages, without regard to the nature of the Claim which gave rise to such obligation to indemnify.

16.6 Acknowledged Direct Damages. The following shall be considered direct damages and neither Party shall assert that they are indirect, incidental, collateral, consequential, exemplary or special damages or lost profits to the extent they result directly from either Party’s failure to perform in accordance with this Agreement:

(a) Costs and expenses of restoring any lost, stolen or damaged State Data as a result of Manager’s failure to provide the Services or any part thereof in accordance with this Agreement;

(b) Costs and expenses of implementing a Workaround in respect of a failure to provide the Services or any part thereof in accordance with this Agreement;

(c) Costs and expenses incurred by the State or the Division of Lottery as a result of Manager’s breach of or failure to comply with Section 9.2.1;

(d) Costs and expenses of replacing lost, stolen or damaged State, Division of Lottery and/or Manager Equipment, Software or other materials;

(e) Cover damages, including the reasonable expenses incurred by the State or the Division of Lottery to procure the Services or corrected Services from an alternate source, to the extent in excess of the Payments that the Division of Lottery is obligated to pay Manager under this Agreement; and
(f) Straight time, overtime, or related expenses incurred by the State or the Division of Lottery, including overhead allocations of the State or the Division of Lottery for the State’s or the Division of Lottery’s employees, wages and salaries of additional employees, travel expenses, overtime expenses, telecommunication charges, and similar charges, due to the failure of Manager to provide the Services or incurred in connection with subsections (a) through (e) above.

16.7 Duty to Mitigate. Each Party shall have a duty to mitigate damages for which the other Party is liable.

SECTION 17

INSURANCE AND RISK OF LOSS

17.1 Required Insurance Coverages. During the Term and for a minimum of one (1) year after the expiration or termination of this Agreement, at its sole expense, Manager shall provide and maintain insurance consistent with acceptable and prudent business practices including, at a minimum, the following types of insurance and amounts:

17.1.1 Commercial General Liability Insurance covering bodily injury, death and property damage with combined single limits not less than $10 million per occurrence and $10 million annual aggregate. The Commercial General Liability insurance shall be written on an occurrence form basis or its equivalent with coverages that are satisfactory to the Division of Lottery, including but not limited to personal injury, products and completed operations. The coverage shall name the State, its officers, and employees as “Additional Insureds” and include the blanket additional insured endorsement or its equivalent.

17.1.2 Automobile Liability Insurance covering bodily injury, death and property damage, including all owned, non-owned, or hired autos, with combined single limits not less than $10 million per occurrence and $10 million annual aggregate. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits for “Commercial General Liability” and “Automobile Liability”). The coverage shall name the State, its officers, and employees as “Additional Insureds” and include the blanket additional insured endorsement or its equivalent.

17.1.3 Worker’s Compensation Insurance applicable to the laws of the State and Employers Liability Insurance with limits not less than:

(a) $1,000,000 bodily injury, each occurrence;

(b) $1,000,000 disease each employee; and

(c) $1,000,000 disease aggregate limit.

Manager shall require and ensure that each of its subcontractors complies with these statutory requirements.

17.1.4 Professional Liability Insurance with a combined single limit of not less than $20 million per claim and $20 million annual aggregate. Such insurance shall cover any and all errors, omissions or negligent acts in the delivery of the Services under this Agreement. Such errors and omissions insurance shall include coverage for claims and losses with respect to network risks (such as data breaches, unauthorized access/use, ID theft, invasion of privacy, damage/loss/theft of data, degradation, downtime, loss of business income and expense due to inability to access systems, media
liability arising from material on websites or off-line publications etc.). The Professional Liability Insurance retroactive coverage date shall be no later than the Agreement Effective Date. Manager shall maintain an extended reporting period providing that claims first made and reported to the insurance company within two (2) years after termination of the Agreement will be deemed to have been made during the policy period.

17.1.5 Manager shall obtain crime insurance with minimum limits not less than $20 million per occurrence covering any financial loss to the State due to any fraudulent or dishonest acts on the part of Manager’s officers, employees, agents or Subcontractors, including coverage for third party theft of property in Manager’s care, custody or control or while in transit, loss due to forgery or alteration of negotiable instruments or loss due to electronic funds transfer fraud. If Manager’s crime insurance does not cover Subcontractors, Manager must ensure that these entities have equivalent insurance in place. This crime insurance is not in lieu of any other actions deemed appropriate by the State.

17.1.6 Such other types and amounts of insurance that are reasonably required and are mutually agreed upon by the Division of Lottery and the Manager in writing after consultation with their respective insurance brokers.

The fact that Manager has obtained the insurance required in this Section 17 shall in no manner lessen nor otherwise affect Manager’s other obligations or liabilities set forth in this Agreement including its obligations to defend, indemnify and hold the State Indemnities harmless in accordance with Section 15. If Manager retains any Subcontractors, Manager shall require all such Subcontractors to carry the coverages that are commensurate with the services being performed by each such Subcontractor.

17.2 General Provisions.

17.2.1 Satisfaction of Insurance Requirements. Manager may satisfy the minimum limits requirements of Section 17.1 by any combination of primary liability and umbrella and/or excess liability coverage that result in the same protection to Manager and the State Indemnities. To satisfy this insurance requirement for non-owned and hired vehicles, Manager may extend its commercial general liability insurance to provide insurance for such vehicles. Any annual aggregate limit must be stated separately as to the Services or twice the required limit. The policies required under Section 17.1 must be on a per occurrence basis except for professional liability insurance which is on a per claim basis.

17.2.2 Failure to Procure. Should any policy expire or be canceled during the Term and Manager fails to immediately procure replacement insurance as specified, the Division of Lottery reserves the right (but not the obligation) to procure such insurance. Prior to the Division of Lottery procuring such insurance, the Division of Lottery shall provide Manager with prior written notice of its intent to procure such insurance, and if Manager shall fail to procure such insurance within five (5) days of receipt of the Division of Lottery’s written notice, the Division of Lottery shall have the right to procure such insurance and to deduct the cost thereof from any sums due Manager under this Agreement. All insurance required under Section 17 shall be primary insurance and any other valid insurance existing for the State’s or the Division of Lottery’s benefit shall be excess of such primary insurance. Manager shall obtain such agreements within its policy or policies of insurance as are necessary to cause the policy or policies to comply with the requirements stated in this Agreement.

17.2.3 Evidence of Insurance. On or before the Agreement Effective Date and thereafter at the Division of Lottery’s reasonable request, Manager shall deliver to the Division of Lottery certificates of insurance evidencing the insurance required hereunder, together with appropriate separate endorsements. Certificates of renewals shall be provided within thirty (30) days of the expiration of
any insurance. The certificates of insurance shall indicate the title of this Agreement, State contract number and name of the State Contract Manager in the “Description of Operations” box and shall list the State of New Jersey, Department of the Treasury, Division of Purchase & Property, Contract Compliance & Audit Unit, PO Box 236, Trenton, New Jersey 08625 in the “Certificate Holder” box.

17.2.4 Claims-Made Coverage. If coverage is written on a “claims-made” basis, the certificate of insurance shall clearly so state. In addition to the coverage requirements specified above, Manager shall make commercially reasonable efforts to provide that:

(a) the policy’s retroactive date shall coincide with or precede Manager’s commencement of the performance of Services (including subsequent policies purchased as renewals or replacements);

(b) equivalent policies are maintained for at least two (2) years after the expiration or termination of this Agreement;

(c) if insurance is terminated for any reason, Manager shall purchase a replacement claims-made policy with the same or an earlier retroactive date or shall purchase an extended reporting provision to report claims arising in connection with this Agreement to the extent such insurance is commercially and reasonably available; and

(d) all claims-made policies shall allow the reporting of circumstances or incidents that might give rise to future claims.

17.2.5 Notice of Cancellation or Change of Coverage. All certificates of insurance provided by Manager must evidence that the insurance provide shall give the Division of Lottery thirty (30) days’ written notice in advance of any cancellation, lapse, material reduction or other material adverse change in respect of such insurance.

17.2.6 Insurance Subrogation. With respect to worker’s compensation and employer’s liability coverage to be provided by Manager, the insurance policies shall provide that the insurance companies waive all rights of subrogation against the State and the Division of Lottery and its respective employees, excepting without limit claims caused by the State’s or the Division of Lottery’s willful misconduct. Manager waives its rights to recover against the State and the Division of Lottery and their respective employees, excepting without limit claims caused by the State’s or the Division of Lottery’s willful misconduct.

17.2.7 Qualifying Insurers. All policies of insurance required hereby (excepting professional liability insurance) shall be issued by companies that have been authorized to do business in the State of New Jersey, unless a company lacking such authority is otherwise Approved by the Division of Lottery. All providers of insurance shall have an A.M. Best Financial Strength Rating (FSR) rating of A or better and Financial Size Category (FSC) VIII or better.

17.3 No Implied Limitation. The obligation of Manager and its Subcontractors to provide the insurance specified in this Agreement shall not limit in any way any obligation or liability of Manager provided elsewhere in this Agreement.

17.4 Risk of Loss.

17.4.1 General. Each Party shall be responsible for risk of loss of, and damage to, any Equipment or Software in its possession or control, and such Party shall be responsible for the cost of
any necessary repair or replacement of such Equipment or Software due to an Event of Loss (defined below). Each Party shall promptly notify the other Party of any damage (except normal wear and tear), destruction, loss, theft or Governmental Authority taking of any item of the other Party’s Equipment or Software (“Event of Loss”) in its possession or control. For Events of Loss for which the Division of Lottery is responsible, such repair or replacement shall not be considered part of Manager’s Service obligations, but Manager shall, if requested by the Division of Lottery, coordinate and oversee repair or replacement performed by a Third Party as a Lottery Expense.

17.4.2 Waiver. Each Party waives all rights to recover against the other Party for damage, destruction, loss, theft or Governmental Authority taking of their respective real or tangible personal property (whether owned or leased) from any cause to the extent: (a) covered by insurance required to be maintained by such Party under this Agreement, including their respective deductibles or self-insured retentions; and (b) insurance proceeds are actually received by such Party for such loss. Manager and the Division of Lottery shall cause their respective insurers to issue appropriate waivers of subrogation rights endorsements to all property insurance policies required to be maintained by each Party.

SECTION 18
PERFORMANCE SECURITY

18.1 Guaranty.

18.1.1 On or before the date hereof, Manager shall have delivered to the Division of Lottery an executed copy of a guaranty issued by a Person identified in the Manager Proposal and otherwise acceptable to the Division of Lottery in its sole discretion (the “Guarantor”), covering the full and faithful performance and completion of the Services and payment obligations of Manager under this Agreement, substantially in the form of Schedule 18.1.1 or in such other form reasonably satisfactory to the Division of Lottery (the “Guaranty”).

18.1.2 In support of the Guaranty, on the Agreement Effective Date, Manager, on behalf of the Guarantor, shall provide evidence to the Division of Lottery that the Division of Lottery, in its sole discretion, deems sufficient to demonstrate that either (i) the Guarantor has a credit rating issued by Standard & Poor’s equal to or higher than B- and a credit rating issued by Moody’s Investors Service equal to or higher than B3 or (ii) the Guarantor has sufficient financial liquidity (in the form of cash or debt availability) to fulfill its obligations under the Guaranty (each of items (i) and (ii) being referred to as a “Liquidity Condition”). Within thirty (30) days following the end of each Contract Year (other than the final Contract Year), and at any time within thirty (30) days of the request of the Division of Lottery, Manager, on behalf of the Guarantor, shall provide evidence to the Division of Lottery that the Division of Lottery, in its sole discretion, deems sufficient to demonstrate that the Guarantor meets either of the Liquidity Conditions.

18.1.3 If the Guarantor is unable to satisfy either of the Liquidity Conditions as of the Agreement Effective Date, or at any time during the Term of the Agreement, then on the Agreement Effective Date, or within ten (10) days following the date on which the Guarantor has failed to satisfy either of the Liquidity Conditions, as the case may be, the Guarantor shall furnish and deliver to the Division of Lottery an irrevocable, stand-by letter of credit substantially in the form included in Schedule 18.1.3 or such other form acceptable to the Division of Lottery, in its sole discretion, or, subject to the Division of Lottery’s sole discretion, a payment and performance bond or similar instrument in the form included in Schedule 18.1.3 or such other form acceptable to the Division of Lottery, in its sole discretion, in the amount of ONE HUNDRED MILLION DOLLARS
($100,000,000) and valid for a period extending until the end of the Term for such amount (the “Guarantor’s Security”). The Guarantor’s Security shall be issued by an Eligible Institution and shall name the Division of Lottery as co-obligee. The Guarantor’s Security shall at all times be in the amount of ONE HUNDRED MILLION DOLLARS ($100,000,000). Accordingly, in the event that the Guarantor’s Security is drawn upon as provided for in Section 18.1.4, Guarantor shall, within ten (10) days following the date on which the Division of Lottery draws upon the Guarantor’s Security, increase the amount of the Guarantor’s Security by the amount it was drawn upon. If, subsequent to providing the Guarantor’s Security, (i) Manager provides to the Division of Lottery evidence that the Division of Lottery, in its sole discretion, deems sufficient to demonstrate that the Guarantor meets either of the Liquidity Conditions, and (ii) the Division of Lottery confirms in writing to Manager that it deems such evidence to be sufficient, then, following receipt of such confirmation from the Division of Lottery, the Guarantor may terminate the outstanding Guarantor’s Security. For the avoidance of doubt, following such termination of the Guarantor’s Security all of the provisions of Section 18.1 shall continue to be applicable and in full force and effect and, therefore, (a) in accordance with Section 18.1.2, Manager must continue to provide evidence that the Guarantor satisfies the Liquidity Conditions and (b) if the Guarantor fails to satisfy the Liquidity Conditions then the Guarantor would be required to provide the Guarantor’s Security.

18.1.4 The Division of Lottery and the Guarantor agree that the Guarantor’s Security, if provided, shall serve as collateral and security in the hands of the Division of Lottery to be drawn upon to satisfy any unpaid claim of the State and/or the Division of Lottery against Manager or the Guarantor.

SECTION 19

LEGAL COMPLIANCE

19.1 Governmental Approvals. Manager shall obtain or provide, at Manager’s sole cost and expense, all Governmental Approvals applicable to Manager that are necessary for Manager to commence and complete the Transition Services and to provide the Services, and shall provide the Division of Lottery with evidence, reasonably satisfactory to the Division of Lottery, of such Governmental Approvals.

19.2 Compliance with State Policies and Rules. Manager shall comply with the State Policies and Rules and shall be responsible for any fines or penalties imposed on Manager or the State or the Division of Lottery resulting from Manager’s failure to comply with the State Policies and Rules.

19.3 State Compliance Directives. Subject to Section 21, from time to time the State or the Division of Lottery may instruct Manager in writing as to (i) the manner in which Manager should implement compliance with any State Policies and Rules and changes in Manager’s policies, procedures and processes relating to such compliance or (ii) operational and procedural matters with respect to the operation of the Lottery. Manager shall promptly implement and comply with each such instruction in the performance and delivery of the Services. The Division of Lottery shall notify Manager in writing of any new State Policies and Rules or changes in the State Policies and Rules that are applicable to the Services, and Manager shall work with the Division of Lottery to the extent necessary to identify the impact of such new State Policies and Rules and changes in the State Policies and Rules on Manager’s performance and the Division of Lottery’s receipt and use of the Services. Manager shall promptly notify the Division of Lottery of any new State Policies and Rules or changes in the State Policies and Rules that are applicable to the Services of which Manager becomes aware.
19.4 **Prevailing Wage Act.** The New Jersey Prevailing Wage Act, N.J.S.A. 34:11-56.26 et seq. is hereby made part of this Agreement. Manager’s execution of this Agreement is its guarantee that neither it nor any Subcontractors it might employ to perform the work covered by this Agreement has been suspended or debarred by the Commissioner, Department of Labor of the State of New Jersey for violation of the provisions of the Prevailing Wage Act and/or the Public Works Contractor Registration Acts. Manager’s execution of this Agreement is also its guarantee that it and any Subcontractors it might employ to perform the work covered by this Agreement shall comply with the provisions of the Prevailing Wage Act and Public Works Contractor Registration Acts, where required.

19.5 **MacBride Principles.** Manager hereby certifies pursuant to N.J.S.A. 52:34-12.2 that it either has no ongoing business activities in Northern Ireland and does not maintain a physical presence therein or that it will take lawful steps in good faith to conduct any business operations it has in Northern Ireland in accordance with the MacBride principles of nondiscrimination in employment as set forth in N.J.S.A. 52:18A-89.5 and in conformance with the United Kingdom’s Fair Employment (Northern Ireland) Act of 1989, and permit independent monitoring of their compliance with those principles.

19.6 **Pay to Play Prohibitions.** Pursuant to N.J.S.A. 19:44A-20.13 et seq. (L.2005, c. 51) (the “Pay to Play Act”), and specifically, N.J.S.A. 19:44A-20.21, it shall be a breach of the terms of this Agreement for Manager to:

19.6.1 make or solicit a contribution in violation of the Pay to Play Act;

19.6.2 knowingly conceal or misrepresent a contribution given or received;

19.6.3 make or solicit contributions through intermediaries for the purpose of concealing or misrepresenting the source of the contribution;

19.6.4 make or solicit any contribution on the condition or with the agreement that it will be contributed to a campaign committee or any candidate of holder of the public office of Governor, or to any State or county party committee;

19.6.5 engage or employ a lobbyist or consultant with the intent or understanding that such lobbyist or consultant would make or solicit any contribution, which if made or solicited by Manager, would subject Manager to the restrictions of the Pay to Play Act;

19.6.6 fund contributions made by Third Parties, including consultants, attorneys, family members, and employees;

19.6.7 engage in any exchange of contributions to circumvent the intent of the Pay to Play Act; or

19.6.8 directly or indirectly through or by any other person or means, do any act which would subject Manager to the restrictions of the Pay to Play Act.

19.7 **Political Contribution Disclosure.**

19.7.1 Manager is advised of its responsibility to file an annual disclosure statement on political contributions with the New Jersey Election Law Enforcement Commission, pursuant to N.J.S.A. 19:44A-20.27 (L. 2005, c. 271, §3 as amended) if in a calendar year Manager receives one or more contracts valued at $50,000.00 or more. It is Manager’s responsibility to determine if filing is necessary. Failure to file can result in the imposition of penalties by the New Jersey Election Law Enforcement Commission.
19.7.2 Manager is required, on a continuing basis, to report any political contributions it makes during the Term, at the time any such political contribution is made. The required form and instructions are available for review on the Division’s website at: http://www.state.nj.us/treasury/purchase/forms.shtml#eo134.

19.8 The Worker and Community Right to Know Act. The provisions of N.J.S.A. 34:5A-l et seq. which require the labeling of all containers of hazardous substances are applicable to this Agreement. Therefore, all goods offered for purchase to the State must be labeled by Manager in compliance with the provisions of the statute.

19.9 Service Performance Within U.S. Under N.J.S.A. 52:34-13.2, all contracts primarily for services awarded by the Director of the DPP shall be performed within the United States, except when the Director of the DPP certifies in writing a finding that a required service cannot be provided by a contractor or subcontractor within the United States and the certification is approved by the State Treasurer. Manager submitted a Services Source Disclosure Form with the Manager Proposal. Manager represents and warrants to the Division of Lottery that the Services Source Disclosure Form is true, accurate and complete as of the Agreement Effective Date. A shift to performance of services outside the United States during the term of this Agreement shall be deemed a breach of this Agreement. If, during the term of this Agreement, Manager or a Subcontractor proceeds to shift the performance of any of the services outside the United States, Manager shall be deemed to be in breach of this Agreement, unless previously approved by the Director of the DPP and the Treasurer.

19.10 Buy American. Pursuant to N.J.S.A. 52:32-1, if manufactured items will be provided under this Agreement to be used in a public work, they shall be manufactured or produced in the United States and Manager shall be required to so certify.

19.11 Assignment of Antitrust Claims(s). Manager recognizes that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the ultimate purchaser. Therefore, as consideration for executing this contract, Manager, acting herein by and through its duly authorized agent, hereby conveys, sells, assigns and transfers to the State, for itself and on behalf of its political subdivisions and public agencies, all right, title, and interest in and to all claims and causes of action it may now or hereafter acquire under the antitrust laws of the United States or the State, relating to the Services. In connection with this assignment, the following are the express obligations of Manager:

19.11.1 It shall take no action that will in any way diminish the value of the rights conveyed or assigned hereunder;

19.11.2 It shall advise the Attorney General of New Jersey:

(a) In advance of its intention to commence any action on its own behalf regarding any such claim or causes of action;

(b) Immediately upon becoming aware of the fact that an action has been commenced on its behalf by some other Person(s) of the pendency of such action.

19.11.3 It shall notify the defendants in any antitrust suit of the within assignment at the earliest practicable opportunity after Manager has initiated an action on its own behalf or becomes aware that
such an action has been filed on its behalf by another Person. A copy of such notice shall be sent to the Attorney General of New Jersey.

19.11.4 It is understood and agreed that in the event any payment under any such claim or cause of action is made to Manager, Manager shall promptly pay over to the State the allotted share thereof, if any, assigned to the State hereunder.

19.12 Use Tax. Manager is aware that it and all of its Affiliates are required to collect and remit New Jersey Use Tax on all sales of tangible personal property into the State in accordance with the provisions of the New Jersey Sales and Use Tax Act (N.J.S.A. 54:32B-1, et. seq.) and understands that failure to do so can result in this Agreement being declared void.

SECTION 20

DISPUTE RESOLUTION; GOVERNING LAW

20.1 Claims Asserted by Manager. All claims asserted against the State, the Division of Lottery and/or the DPP by Manager, shall be subject to appropriations and the New Jersey Contractual Liability Act (N.J.S.A. 59:13-1, et seq.) and the New Jersey Tort Claims Act (N.J.S.A. 59:1-1, et seq.). Notwithstanding anything in Section 20.2 to the contrary, all claims asserted by Manager against the State, the Division of Lottery and/or the DPP shall be subject to the filing and other requirements (including the required timeframe for the filing of a claim) of the New Jersey Contractual Liability Act (N.J.S.A. 59:13-1, et seq.).

20.2 Dispute Resolution. Any Dispute arising out of or relating to this Agreement, or any breach thereof, which cannot be resolved using the procedures set forth below in Section 20.2.1 and Section 20.2.2 shall be finally resolved exclusively in accordance with the New Jersey Contractual Liability Act (N.J.S.A. 59:13-1, et seq.); provided, however, that without limiting any rights at law or in equity a Party may have because of an improper termination of this Agreement by the other Party, nothing contained in this Agreement shall limit either Party’s right to terminate this Agreement pursuant to Section 13. The State, the Division of Lottery and the DPP shall not enter into binding arbitration to resolve any Dispute arising hereunder; and reserves the right to forego any of the mediation provisions set forth in this Section 20.2.

20.2.1 Internal Escalation. In addition to the process set forth under the New Jersey Contractual Liability Act (N.J.S.A. 59:13-1, et seq.) which shall be applicable if Manager files a claim thereunder, the Parties shall attempt to resolve their Dispute informally in accordance with this Section 20.2.1. Upon the written request of a Party, each Party shall appoint a designated representative whose task it shall be to meet for the purpose of endeavoring to resolve such Dispute. The designated representatives shall meet as often as the Parties reasonably deem necessary in order to gather and furnish to the other all information with respect to the matter in issue that the Parties believe to be reasonably appropriate and germane in connection with its resolution. The representatives shall discuss the Dispute (involving senior-level employees at each Party as deemed appropriate) and attempt to resolve the Dispute without the necessity of any formal proceeding. During the course of discussion, all reasonable requests made by one Party to the other Party for non-privileged information, reasonably related to the Dispute and this Agreement, shall be honored in order that each of the Parties may be fully advised of the other’s position with respect to the Dispute. The specific format for the discussions shall be left to the discretion of the designated representatives.

20.2.2 Non-Binding Mediation. In the event that the Parties fail to resolve a Dispute through discussion pursuant to Section 20.2.1 within forty five (45) days after the initiation of such
discussions (or at any time if one of the Parties refuses to participate in such discussions), the Parties agree that, prior to engaging in litigation or other formal dispute resolution attempts, they shall submit the Dispute to JAMS or its successor for mediation. Such mediation shall be non-binding and, subject to any Regulatory Requirements, shall be conducted in accordance with the mediation procedures of JAMS applicable to commercial disputes as then in effect.

(a) Such mediation shall be initiated by delivery by a Party of a notice to the other Party setting forth a description of the Dispute and the relief requested. If the Parties can agree upon a single qualified mediator listed in the “Neutrals” of JAMS, such individual shall be the sole mediator of the Dispute. In the event that the Parties cannot agree upon a single mediator, the mediation shall be conducted before a panel of three (3) mediators with each Party selecting a mediator and those two (2) mediators selecting the third member of the panel. The Parties covenant that they shall participate in the mediation in good faith. Each Party shall bear its own costs incurred in such mediation, including the fees and expenses of its attorneys, and the Parties shall share equally the other costs of the mediation, including mediators’ fees and expenses and fees charged by the mediation organization.

(b) All offers, promises, conduct and statements, whether oral or written, made in the course of the mediation by any of the Parties, their agents, employees, experts and attorneys, and by the mediator(s) are confidential, privileged and inadmissible for any purpose, including impeachment, in any litigation or other proceeding involving the Parties; provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation. Mediation may continue after the commencement of a civil action, if the Parties so desire.

20.3 Governing Law, Venue and Other Legal Considerations.

20.3.1 Governing Law. This Agreement shall in all respects be interpreted under, and governed by, the laws of the State of New Jersey including as to validity, interpretation and effect, without giving effect to the State of New Jersey conflicts of laws principles. The New Jersey Law Against Discrimination is incorporated by reference.

20.3.2 Venue and Jurisdiction. Any legal action, suit or proceeding brought by a party in any way arising out of or relating to this agreement shall be brought solely and exclusively in the law division of the Superior Court of the State of New Jersey - Mercer Vicinage and each Party irrevocably accepts and submits to the sole and exclusive personal jurisdiction of such court in personam, generally and unconditionally with respect to any action, suit or proceeding brought by or against it by the other Party.

20.3.3 Continued Performance. The Parties agree to continue performing their respective obligations under this Agreement during the pendency of any Dispute, unless and until the Dispute is resolved or until this Agreement expires or is terminated. In addition to the foregoing, under no circumstances shall a Party repudiate this Agreement, in whole or part, or otherwise refuse to perform all or any portion of this Agreement including, with respect to Manager, the Services, except as a Party’s refusal to perform is expressly excused by a contractual provision in this Agreement or a Party is permitted to terminate this Agreement or the Services. Manager expressly acknowledges and agrees that, pending resolution of any Dispute, it shall not deny, withdraw, or restrict Manager’s provision of the Services to the Division of Lottery under this Agreement, except as specifically and expressly agreed in writing by the Division of Lottery and Manager. The time frame for a Party to cure any breach of the terms of this Agreement shall not be tolled by the pendency of any Dispute resolution procedures.
20.4 Sovereign Immunity. The State, the Division of Lottery and the DPP each hereby reserves any and all immunities, defenses, rights or actions arising out of its status as a sovereign entity to which it may be entitled. No provision of this Agreement shall be construed as a waiver or limitation of such immunities, defenses, rights or actions.

SECTION 21

ADVERSE ACTIONS

21.1 Adverse Actions.

21.1.1 Adverse Actions. An “Adverse Action” shall consist of any affirmative action by the State or the Division of Lottery any time during the Term (including enacting or amending any Regulatory Requirements not described in Section 21.1.2 below), the effect of which is reasonably expected to have a material adverse effect on the Lottery’s Net Income and Manager’s ability to earn and collect the Incentive Compensation; except where such action is in response to any act or omission on the part of Manager that is illegal (other than an act or omission rendered illegal by virtue of the Adverse Action) or constitutes a material breach of this Agreement by Manager. To the extent the Division of Lottery exercises its rights to countermand or to revoke Approval for any business practices and decisions of Manager which are materially consistent with a Division of Lottery Approved Annual Business Plan, and such countermand or revocation is reasonably expected to have a material adverse effect on the Lottery’s Net Income and Manager’s ability to earn and collect the Incentive Compensation, such exercise by the Division of Lottery shall give rise to an Adverse Action hereunder.

21.1.2 No Adverse Action. An Adverse Action shall not be deemed to have occurred in the following circumstances: (a) the State enacts or amends a Regulatory Requirement which (i) expands gaming activities at existing gaming facilities or permits gaming activities at new locations in the State that are substantially similar to those activities being conducted in Atlantic City, New Jersey as of the date the Manager Proposal was submitted to the DPP, (ii) expands bingo gaming activities in the State substantially similar to those bingo activities being conducted as of the date the Manager Proposal was submitted to the DPP, (iii) expands pari-mutuel wagering on live races at horse racing facilities or off-track betting parlors in New Jersey, which pari-mutuel wagering is substantially similar to that being conducted at existing horse racing facilities or off-track betting parlors as of the date the Manager Proposal was submitted to the DPP, (iv) permits gaming activities to be operated over the internet or (v) permits gambling on sporting events; (b) the imposition of, or an increase in taxes of general application; (c) any final decision, judgment, opinion or interpretation by the Lottery Commission, any other Governmental Authority or a court of competent jurisdiction interpreting the Existing Lottery Law as it existed as of the date the Manager Proposal was submitted to the DPP; or (d) any action by the State or the Division of Lottery, including the Lottery Commission, reasonably contemplated in an Annual Business Plan.

21.2 Effect of Adverse Action. If Manager believes an Adverse Action has occurred it may, as its sole remedy hereunder with respect to Adverse Actions, within thirty (30) days of the date on which Manager knows of the Adverse Action, initiate the procedures to claim a downward adjustment to “Net Income Levels” as provided in Schedule 10.2.
SECTION 22

MISCELLANEOUS

22.1 Assignment. No Party shall assign, transfer or delegate its rights and duties under this Agreement, in whole or in part, whether by operation of law or otherwise, without the prior written consent of the other Parties, except in the following circumstances: (a) Manager can subcontract certain of its obligations as permitted by Section 7 and (b) the Division of Lottery and the DPP may assign their respective rights or obligations under this Agreement, without approval of Manager, to another New Jersey Governmental Authority or Third Party which expressly assumes the Division of Lottery’s or the DPP’s, as the case may be, obligations and responsibilities hereunder. A Change of Control of Manager shall be deemed to be an assignment, transfer or delegation of Manager’s rights and duties under this Agreement. Any assignment in contravention of this Section 22.1 shall be null and void ab initio. Subject to all other provisions herein contained, this Agreement shall be binding on the Parties and their successors and permitted assigns.

22.2 Third Party Beneficiaries. This Agreement is entered into solely among, and may be enforced only by, the Parties. Except for the State Indemnitees, this Agreement shall not be deemed to create any rights or causes of action in or on behalf of any Third Parties, including employees, agents, representatives, contractors, suppliers or customers of a Party or any other Third Party Entity.

22.3 Notices. Any written notice, request, consent, approval or other communication required or permitted to be given pursuant to this Agreement shall be in writing and shall be deemed to have been given: (a) upon delivery if delivered personally; (b) upon transmission if sent via facsimile (with the original sent by recognized overnight courier); or (c) one (1) Business Day after deposit with a national overnight courier, in each case addressed to the following addresses/telecopier numbers, or to such other addresses/telecopier numbers as may be specified by a Party upon written notice to the other in accordance with the terms of this Section 22.3:
If to the DPP (including on behalf of the State) or the Division of Lottery:

The New Jersey Lottery  
Attn: Executive Director  
One Lawrence Park Complex,  
Brunswick Avenue Circle  
P.O. Box 041  
Lawrenceville, NJ 08648

With copies to:

Director  
Division of Law  
New Jersey Office of the Attorney General  
PO Box 106  
Trenton, NJ 08625-0106

and

Deputy Treasurer  
New Jersey Department of the Treasury  
P.O. Box 002  
Trenton, NJ 08625-0002

and

Director  
Department of the Treasury  
Division of Purchase and Property  
P.O. Box 230  
Trenton, NJ 08625-0230

22.4 Waivers. A delay or omission by either Party hereto to exercise any right or power under this Agreement shall not be construed to be a waiver thereof. A waiver by either of the Parties hereto of any of the covenants to be performed by the other or any breach thereof shall not be construed to be a waiver of any succeeding breach thereof or of any other covenant herein contained. All waivers shall be in writing and signed by the Party waiving its rights.

22.5 Relationship Between the Parties. Neither Party (nor any employee, subcontractor or agent thereof) shall be deemed or otherwise considered a representative, agent, employee, partner or joint venturer of the other Party. Further, neither Party (nor any employee, subcontractor or agent thereof) shall have the authority to enter into any agreement, nor to assume any liability, on behalf of the other Party, nor to bind or commit the other Party in any manner, except as expressly provided in this Agreement. Manager, in furnishing Services to the Division of Lottery hereunder, is acting as an independent contractor, and Manager has the sole obligation to supervise, manage, contract, direct, procure, perform or cause to be performed, all work to be performed by Manager under this Agreement.
22.6 **Third Party Consents.** Each Party shall obtain and maintain all Third Party consents reasonably required for the other Party to fulfill its obligations under this Agreement, including but not limited to any required sub-licensing of State Intellectual Property or Manager Intellectual Property, as the case may be. In connection with any Third Party consent, each Party shall reasonably cooperate with the other Party in obtaining any required Third Party consents. Notwithstanding the foregoing, Manager agrees that the Division of Lottery shall not be required to seek the consent of any Third Party to an Existing State Contract.

22.7 **Severability.** If any provision of this Agreement is determined to be invalid or unenforceable, that provision shall be deemed stricken and the remainder of this Agreement shall continue in full force and effect insofar as it remains a workable instrument to accomplish the original intent and purposes of the Parties, and, if possible, the Parties shall replace the severed provision with a provision that reflects the intention of the Parties with respect to the severed provision but that shall be valid and enforceable.

22.8 **Bankruptcy Protection.** All rights and licenses granted under or pursuant to this Agreement by Manager to the State and the Division of Lottery are, and shall otherwise be deemed to be, for purposes of Section 365(n) of Title 11 of the Bankruptcy Code, licenses to rights to “intellectual property” as defined under the Bankruptcy Code. The Parties agree that the State and the Division of Lottery, as licensee of such rights under this Agreement, shall retain and may fully exercise all of its rights and remedies available to it under the Bankruptcy Code, including Section 365(n) thereof.

22.9 **Counterparts.** This Agreement may be executed in duplicate counterparts, each of which shall be deemed an original and both of which together shall constitute one and the same instrument. A counterpart delivered by facsimile or electronic transmission shall be deemed to be an original counterpart.

22.10 **Further Assurances.** Subsequent to the execution and delivery of this Agreement and without any additional consideration, each Party shall execute and deliver any further legal instruments and perform any acts that are or may become reasonably necessary to effectuate the purposes of this Agreement.

22.11 **Covenant Regarding Pledging.** To the extent permitted by Section 22.1 or by Division of Lottery Approval, if Manager assigns, transfers, pledges, hypothecates or otherwise encumbers its rights to receive payments from the Division of Lottery under this Agreement, Manager shall continue to be the Division of Lottery’s sole point of contact with respect to this Agreement, including with respect to payment. The Person to which such rights are assigned, transferred, pledged, hypothecated or otherwise encumbered shall not be considered a Third Party beneficiary under this Agreement and shall not have any rights or causes of action against the State or the Division of Lottery.

22.12 **Covenant of Good Faith.** Each Party agrees that, in its respective dealings with the other Party under or in connection with this Agreement, it shall act in good faith.

22.13 **Entire Agreement.** This Agreement and all of the Schedules (and any appendix or exhibit to any Schedule) and other documents incorporated herein or in any Schedule by reference are an integral part of the Agreement and shall be read and interpreted together with the Agreement as a single document. This Agreement, consisting of all of the pages of this instrument, together with all Schedules attached to this Agreement and the Schedules or other documents incorporated herein or in any Schedule by reference, sets forth the entire, final and exclusive agreement between the Parties and supersedes the RFP, Manager Proposal and all prior and contemporaneous agreements, understandings, negotiations and discussions, whether oral or written, between the Parties related to the subject matter herein.
22.14 **Amendments.** Except as otherwise provided in this Agreement, neither this Agreement nor any term hereof may be changed, amended, modified or terminated except to the extent that the same is effected and evidenced by the written agreement of all of the Parties.

[END OF PAGE; SIGNATURES ON THE FOLLOWING PAGE]
IN WITNESS WHEREOF, this Services Agreement is effective as of the Agreement Effective Date.

**New Jersey Department of the Treasury, Division of Purchase and Property**

By: __________________________

Name: __________________________

Title: __________________________

[MANAGER]

By: __________________________

Name: __________________________

Title: __________________________

**New Jersey Department of the Treasury, Division of State Lottery**

By: __________________________

Name: __________________________

Title: __________________________

*Approved as to form only:*

**Jeffrey S. Chiesa**
**Attorney General of New Jersey**

By: __________________________

Name: __________________________

Title: __________________________
Schedule 1.2

Definitions

“Accelerated Guarantee Payment” is defined in Section 10.1.

“Additional Work” is defined in Section 4.6.

“Adverse Action” is defined in Section 21.1.1.

“Affiliate” means any Person that, directly or indirectly, through one or more intermediaries, Controls, is Controlled by or is under common Control with the Person specified.

“AGP Termination Amount” is defined in Section 13.2.2(c).

“Agreement” is defined in the recitals hereto.

“Agreement Effective Date” has the meaning set forth in the preamble hereto.

“Annual Business Plan” means either the Initial Annual Business Plan or the then current Updated Annual Business Plan, as the case may be.

“Approval,” “Approved” and similar expressions mean approved or consented to in writing by the State or the Division of Lottery, as applicable, as such Approvals are obtained in accordance with the Governance Protocols.

“Bad Debt Expense” means the bad debt reserve maintained by the Division of Lottery that is funded from a $100 per year license renewal fee (also called bonding fee) paid by Lottery Retailers. Lottery operating expense is charged with an allowance for estimated uncollectible accounts based on past experience and an analysis of current accounts receivable collectability. Accounts deemed uncollectible are charged to the allowance in the year they are deemed uncollectible. Any excess funds are applied to miscellaneous income and used in the calculation of Net Income.


“Base Level Income” is defined in Schedule 10.2.

“Base Services Commencement Date” means the later of (i) the Scheduled Base Services Commencement Date and (ii) the first Business Day following the Transition Completion Date.

“Budget” is defined in Section 5.3.2(a).

“Business Continuity Site” means a location within the State where the Division of Lottery can continue to administer games in the event that the Division of Lottery’s headquarters location cannot serve as the location for this purpose. This site contains a LAPS Backup Site and office space for core Division of Lottery staff.

“Business Days” means any day which is not a Saturday, Sunday or legal holiday on which banking institutions in the State are authorized to close.

“Business Plan” shall mean a business plan for the operation of the Lottery by Manager, prepared by Manager and including the information described in Section 5.3.1.
“Central Gaming System” means the comprehensive gaming system that includes software, hardware and service elements that support the gaming environment in the State. For the avoidance of doubt, as of the Agreement Effective Date, the Central Gaming System is the central gaming system provided pursuant to the Existing Technology Contract.

“Certificate of Transition” is defined in Section 3.1.6(b).

“Change in Control” means: (a) any transaction or combination of transactions as a result of which an Person that presently is in control of a Party ceases to be in control of such Party; (b) the sale, transfer, exchange or other disposition (including disposition in full or partial dissolution) to an Person other than an Excluded Person of fifty percent (50%) or more of the beneficial ownership (as defined in Rule 13(d) of the Securities Exchange Act of 1934) of the voting power of a Party, or of the assets of such Party that constitute a substantial or material business segment of such Party; or (c) with respect to Manager, the unit, division or operating group of Manager that is responsible for providing the Services to the Division of Lottery is sold or transferred to an Person other than an Excluded Person or otherwise experiences a change in ownership or control.

“Claim” means any civil, criminal, administrative or investigative claim, demand, suit, action, recovery, judgment or proceeding including attorneys fees, costs and expenses in connection therewith, brought by a Third Party against a Party.

“Confidential Information” means: (a) all information marked confidential, restricted or proprietary by either Party; and (b) any other information that is treated as confidential by the Disclosing Party and would reasonably be understood to be confidential, whether or not so marked. In the case of the State and the Division of Lottery, Confidential Information also shall include State Intellectual Property, the State Data, attorney-client privileged materials, attorney work product, customer lists, customer contracts, customer information and transaction data, rates and pricing, information with respect to competitors, strategic plans, account information, research information, financial/accounting information (including assets, expenditures, mergers, acquisitions, divestitures, billings collections, revenues and finances), IT and personnel information, marketing/sales information, information regarding businesses, plans, operations, Third Party contracts, licenses, internal or external audits, law suits, regulatory compliance or other information or data obtained, received, transmitted, processed, stored, archived or maintained by Manager under this Agreement.

“Consumables” means playslips, ticket stock, printer paper, printer ribbons, ink supply, toner, and any other operational supplies required by Lottery Retailers to operate their terminals, but does not include point of sale promotional items or instant tickets.

“Continuity Plans” is defined in Section 4.7.

“Contract Records” is defined in Section 11.1.

“Contract Year” means, as applicable, (i) the period from the Base Services Commencement Date to [June 30, 2014], which shall be referred to herein as the “Stub Contract Year” and (ii) each twelve (12) month period beginning on [July 1, 2014] and each anniversary of July 1, 2014 thereafter. [TO BE REVISED AS NECESSARY BASED ON PROJECTED TIMING]

“Contribution Shortfall” means, with respect to any Contract Year, the dollar amount by which (i) thirty percent (30%) of the total revenues accruing from the sale of Lottery Tickets exceeds (ii) the amount available for contribution to State institutions and State aid for education.
“Contribution Shortfall Payment” is defined in Section 3 of Schedule 10.2.

“Control” means, with respect to any Person, the possession, directly or indirectly, of the power to direct or cause the direction of management or policies of such Person, whether through the ownership of voting securities (or other ownership interests), by contract or otherwise. For this purpose, and without limiting the foregoing, any Person that owns more than fifty percent (50%) of the outstanding voting securities of any other Person shall be deemed to Control such other Person.

“Data Room” means the online data room established by the Division of Lottery and the DPP in connection with the RFP.

“Data Privacy Laws” means all applicable data and/or privacy State Policies and Rules in connection with all processing of State Personal Data by Manager, including any relevant recommendation issued by the applicable data protection Governmental Authority.

“Disclosing Party” means the Party that has disclosed Confidential Information to the other Party.

“Disentanglement Services” is defined in Section 14.1.

“Disentanglement Services Period” is defined in Section 14.2.1.

“Disentanglement Services Plan” is defined in Section 14.2.2.

“Dispute” means any dispute or problem arising out of or relating to this Agreement, including those that relate to any of the following: (a) an alleged failure by either Party to perform its obligations under this Agreement; (b) an alleged inadequacy or delay of either Party’s performance under this Agreement; (c) a request for products, services or resources, where the Parties disagree whether such products, services or resources are within the scope of the Services (and therefore included in the Payments) or otherwise within the scope of this Agreement; and/or (d) a disagreement as to the responsibilities either Party has under this Agreement.

“Division of Lottery” has the meaning set forth in the preamble hereto.

“Division of Lottery’s Administrative Expenses” means the expenses incurred by the State or Division of Lottery in connection with the performance of the Retained Services, including employee related expenses and allocated overhead costs.

“Division of Lottery Annual Audit” means the audit of, among other things, the financial condition, results of operations and cash flows of the Lottery for the most recently ended fiscal year, which audit is conducted on an annual basis by an external independent accounting firm engaged by the Lottery.

“Downside Cap” is defined in Section 3 of Schedule 10.2.

“DPP” is defined in the recitals hereto.

“Drawing Broadcast Fees” means any fee required to facilitate the transmission of the Division of Lottery’s daily drawings to television media outlets and internet media.

“Due Diligence Information” is defined in Section 1.4.

“Eligible Institution” means a company or financial institution or trust company that is (i) insured by the Federal Deposit Insurance Corporation, the long term unsecured debt obligations of which are rated at
least “AA” by Fitch and Standard & Poor’s, and “Aa2” by Moody’s, and (ii) without any equity interest, directly or indirectly, in Manager.

“Equipment” means all telecommunications, electronic, computing, network, office and facilities equipment and machinery, vehicles and tools owned or leased by a Party, including: (a) mainframe, midrange, server and distributed computing equipment and associated attachments, features, accessories, peripheral devices and cabling; (b) personal computers, laptop computers, workstations and personal data devices and associated attachments, features, accessories, printers, multi-functional printers, peripheral or network devices and cabling; and (c) voice, data, video and wireless telecommunications and network and monitoring equipment and associated attachments, features, accessories, cell phones, peripheral devices and cabling.

“Event of Loss” is defined in Section 17.4.1.

“Events of Default” means any of the events described in Section 13.3.1.

“Excluded Person” means: (a) a Party; (b) any one hundred percent (100%)-owned Affiliate of a Party; or (c) a new corporation owned directly by the shareholders of a Party in the same proportions as their ownership in such Party.

“Existing Lottery Employee” is defined in Section 6.2.

“Existing Lottery Law” is defined in the recitals hereto.

“Existing State Contracts” is defined in Section 3.2.1.

“Existing Technology Contract” means the Lottery Gaming System and Support Services contract with GTECH Corporation (State contract number A73320).

“Final Annual Statement” is defined in Section 10.3.2(a).

“Final Incentive Compensation Amount” is defined in Section 10.3.2(b).

“First Year Plan” is defined in Section 5.3.1.

“Five Year Plan” is defined in Section 5.3.1.

“For Cause” means the applicable employee committed or participated in actions that are or were dishonest, fraudulent, illegal, unethical, involving insubordination or moral turpitude, or involving disclosure or trade secrets, proprietary information or other forms of confidential information, or otherwise violated the State’s or the Division of Lottery’s or Manager’s code of conduct or policies, as applicable.

“Force Majeure Event” means: (a) fire, flood, earthquake, pandemics, elements of nature or acts of God; (b) wars (declared and undeclared), acts of terrorism, sabotage, riots, civil disorders, rebellions or revolutions; or (c) acts of any Governmental Authority with respect to any of the foregoing, except, in each case, to the extent that the non-performing Party is at fault in failing to take reasonable precautions to prevent or causing such default or delay, and provided that such default or delay cannot reasonably be circumvented by the non-performing Party through the use of reasonable alternate sources, work-around plans or other means, including, with respect to Manager, by fully implementing the Continuity Plans and/or recovering under its insurance policies. Notwithstanding the foregoing, “Force Majeure Event”
expressly excludes: (y) a strike, walkout, lockout, labor shortage or labor dispute involving Manager (including Manager Subcontractors or Affiliates) and their respective Manager Personnel; and (z) any non-performance of a Subcontractor or Manager Affiliate, regardless of cause except for a Force Majeure Event affecting such Subcontractor or Manager Affiliate.

“GAAP” means generally accepted accounting principles as in effect from time to time in the United States.

“Governance Protocols” is defined in Section 5.1.

“Governmental Approval” means any license, consent, permit, approval or authorization of any person or entity, or any notice to any person or entity, the granting of which is required by applicable State Policies and Rules for the consummation of the transactions and the performance of the Services contemplated by this Agreement.

“Governmental Authority” means any federal, state, regional or local legislative, executive, judicial or other governmental board, department, agency, authority, commission, administration, court or other body, or political subdivision thereof (including the State, acting its governmental capacity other than as a party to this Agreement), or any official thereof.

“Guarantor” is defined in Section 18.1.1.

“Guarantor’s Security” is defined in Section 18.1.3.

“Guaranty” is defined in Section 18.1.1.

“Historic Service Levels” is defined in Section 5.4.

“ICS” means the Internal Control System, a system that checks the Central Gaming System independently by re-processing transactions, allowing auditing of the daily transactions, winner selection/verification, prize payout calculations, sales summaries, and various inquiry and reconciliation activities.

“IFRS” means the International Financial Reporting Standards in effect from time to time.

“Incentive Compensation” is defined in Schedule 10.2.

“Income Shortfall Credit Amount” is defined in Section 3 of Schedule 10.2.

“Income Shortfall Credit Amounts Utilized” is the actual aggregate amount of the Income Shortfall Credit Amount used to reduce the Net Income Shortfall Payments due from Manager pursuant to Section 3 of Schedule 10.2.

“Increased Disentanglement Payment” is defined in Section 14.4.

“Indemnifying Party” is defined in Section 15.1.1.

“Industry Standard Service Levels” is defined in Section 5.4.

“Initial Annual Business Plan” is defined in Section 5.3.1.

“Initial Incentive Compensation Payment” is defined in Section 10.3.2(b).
“Instant Games” means Lottery Games sold on pre-printed tickets containing play and validation data under a latex coating or such other coating as may be approved by the Division of Lottery.

“Intellectual Property” means any: (a) formulae, algorithms, methodologies, processes, process improvements, procedures, designs, ideas, concepts, research, discoveries, work product, materials, inventions and invention disclosures (whether or not patentable or reduced to practice), know-how, and technology; (b) Software, databases, tools, and machine-readable texts and files; and (c) literary work or other work of authorship, including documentation, reports, drawings, charts, graphics and other written documentation, together with all patents, copyrights, trademarks, service marks, trade secrets, logos, trade dress, and applications for any of the foregoing, and other intellectual property rights in or appurtenant to any of the foregoing.

“LAPS Backup Site” means the location contained within the State where the Division of Lottery’s backup LAPS is located. The LAPS Backup Site is part of the Division of Lottery’s Business Continuity Site.

“LAPS” or “Lottery Administrative Processing System” means the systems, computers, associated peripherals, network appliances, network connections, internal control systems (ICS), software, technical support, and services required to provide the ability for Lottery staff to administer all aspects of the Lottery’s operational, financial, security, and marketing and sales processes for all gaming functions, and fulfill the statutory requirements of the Division of State Lottery.

“Liquidity Condition” is defined in Section 18.1.2.

“Losses” means settlements, judgments, awards, fines, penalties, sanctions, interest, liabilities, losses, costs, damages and expenses, including reasonable attorneys’ fees and disbursements and court costs.

“Lottery” means the New Jersey lottery gaming system as authorized by the Existing Lottery Law and its accompanying rules and regulations, as each of the foregoing may be amended from time to time.

“Lottery Commission” means the New Jersey Lottery Commission established under the Existing Lottery Law or any successor entity that is granted similar powers;

“Lottery Fund” means the account or accounts specified by the State from time to time that will hold the proceeds generated from operation of the Lottery.

“Lottery Game” or “Game” means all games presently offered by the Lottery, together with new games introduced during the Term.

“Lottery Retailer” means a Person who complies with the requirements of the Existing Lottery Law and has entered into an agreement to be an authorized agent for the retail sale of Lottery Tickets to the public.

“Lottery Retailer Bonuses” means bonuses paid to Lottery Retailers pursuant to any applicable Game rules.

“Lottery Retailer Commissions” means any commissions and other incentives payable to Lottery Retailers.

“Lottery Ticket” or “Ticket” means an official Lottery Game ticket, receipt, voucher, token or other acknowledgment capable of being validated on sale through the Lottery.
“Malicious Code” means: (a) any virus, worm, code, program, or sub-program whose knowing or intended purpose is to damage or interfere with the operation of the computer system containing the code, program or sub-program, or to halt, disable or interfere with the operation of the Software, code, program, or sub-program, itself; (b) any device, method, or token that permits the circumvention of the normal security of the Software or the system containing the code; or (c) any adware, spyware, Internet bots, malware, bugs, web bugs or other surreptitious code.

“Manager” has the meaning set forth in the preamble hereto.

“Manager Cap” is defined in Section 16.2.

“Manager Expenses” is defined in Schedule 10.2.

“Manager Intellectual Property” means, collectively, the Manager Proprietary Intellectual Property, the Manager Third Party Intellectual Property and the Manager New Intellectual Property.

“Manager Items” is defined in Section 15.1.2(a).

“Manager Key Personnel” means, initially, those employees of Manager and its Subcontractors who are so designated in Schedule 6.3.1, and any other Manager Personnel at the director level or vice-president level and above.

“Manager New Intellectual Property” means, collectively, subject to the State’s ownership of State Data and State Intellectual Property, all modifications and enhancements to, and derivatives of, Manager Intellectual Property.

“Manager Personnel” shall mean those employees, representatives, contractors, subcontractors and agents of Manager, Subcontractors and Manager Affiliates, who perform any Services under this Agreement.

“Manager Proposal” is defined in the recitals hereto.

“Manager Proprietary Intellectual Property” means, collectively, the Intellectual Property and Related Documentation used in connection with the Services that was owned, acquired or developed by or on behalf of the Manager prior to the Agreement Effective Date, which is set forth on Exhibit 8.2.1.

“Manager Service Locations” means, individually and collectively, the facilities owned or leased by Manager (or its Affiliates or Subcontractors) from which Manager (or its Affiliates or Subcontractors) provides any Services.

“Manager Third Party Intellectual Property” means, collectively, the Intellectual Property and Related Documentation used in connection with the Services that is licensed, leased or otherwise obtained by or on behalf of Manager prior to or after the Agreement Effective Date from a Subcontractor, other than State Intellectual Property.

“Manager Transition Notice” is defined in Section 3.1.6(a).

“Monthly Expense Allowance” is defined in Section 10.3.1.

“Multi-State Fees” means fees charged to the State by any multi-state association or organization in connection with a multi-state lottery game in which the State participates.
“Net Income” means, with respect to any Contract Year, all revenue derived from the Lottery (except for (i) any amounts paid or payable by Manager to the Division of Lottery and/or the State under this Agreement, including the Transition Credits, Service Level Credits, Shortfall Payments and the Accelerated Guarantee Payment and (ii) a percentage of Unclaimed Prizes determined in accordance with Section 10.8 hereof), less all expenses of the Lottery, including, for the avoidance of doubt, Prize Expense, Lottery Retailer Commissions, the Operating Expenses, Division of Lottery’s Administrative Expenses, Bad Debt Expense, Multi-State Fees and Drawing Broadcast Fees (if any).

“Net Income Levels” is defined in Schedule 10.2.

“Net Income Shortfall” is defined in Section 5.3.6.

“Net Income Shortfall Payment” is defined in Section 3 of Schedule 10.2.

“Net Income Targets” is defined in Section 5.3.2(b).

“Non-Manager Transition Delay Event” is defined in Section 3.1.4(a).

“Non-Performing Party” is defined in Section 4.7.2(b).

“Online Games” means number draw Lottery Games sold using computer sales terminals.

“Operating Expenses” is defined in Schedule 10.2.

“Operating Standards” is defined in Section 5.2.1.

“OPRA” is defined in Section 9.3.1.

“Overall Business Plan” is defined in Section 5.3.1.

“Party” or “Parties” means, individually or collectively, the Division of Lottery, the DPP, on behalf of the State, and/or Manager.

“Payments” is defined in Section 10.2.

“Pay to Play Act” is defined in Section 19.6.

“Permitted Auditors” means, collectively, (i) the internal and external auditors and regulators of the Division of Lottery, and (ii) other representatives, including customers, clients, vendors, licensees and other Third Parties, to the extent the Division of Lottery or the State is legally or contractually obligated to submit to audits by such representatives.

“Person” means any individual (including the heirs, beneficiaries, trusts, executors, legal representatives or administrators thereof), corporation, partnership, joint venture, trust, limited liability company, limited partnership, joint stock company, unincorporated association, governmental organization, political sub-division, body politic or other entity.

“Personal Information” means, in accordance with the New Jersey Identity Theft Protection Act, N.J.S.A. 56:8-161, an individual’s first name or first initial and last name linked with any one or more of the following data elements: (1) Social Security number; (2) driver’s license number or State identification card number; or (3) account number or credit or debit card number, in combination with any required security code, access code, or password that would permit access to an individual’s financial
account. Dissociated data that, if linked, would constitute Personal Information is Personal Information if the means to link the dissociated data were accessed in connection with access to the dissociated data.

“Player” means any Person who legally seeks to purchase or purchases a Lottery Ticket.

“Prize Claim” means a claim made to collect on a winning Lottery Ticket.

“Prize Expense” means the amount of prizes recognized as an expense in an applicable Contract Year in accordance with GAAP, plus Lottery Retailer Bonuses paid to Lottery Retailers pursuant to any applicable Game rules.

“Receiving Party” means the Party that has received Confidential Information from the other Party.

“Record Retention Period” is defined in Section 11.2.

“Regulatory Requirements” means all federal, country, state, provincial, regional, territorial, local and other laws, rules and regulations, ordinances, interpretive letters and other official releases of or by any Governmental Authority, decrees, orders and codes (including any requirements for permits, certificates, approvals and inspections), as the same are promulgated, supplemented and/or amended from time to time, including laws that apply directly or indirectly to the delivery or receipt of Services under this Agreement.

“Related Documentation” means, with respect to software, all materials, documentation, specifications, technical manuals, user manuals, flow diagrams, file descriptions and other written information that describe the function and use of such Software.

“Replacement Contracts” is defined in Section 3.2.2.

“Replacement Manager” is defined in Section 14.1.

“Reports” is defined Section 5.8.

“Representatives” is defined in Section 9.3.2(b).

“Retained Services” is defined in Section 2.2; provided, that “Retained Services” shall also include any Service that the State and/or the Division of Lottery separately procures, or new services, goods or equipment, in connection with the operation of the Lottery during the Term, when deemed by the State and/or the Division of Lottery to be in the State’s best interests.

“RFP” is defined in the recitals.

“Root Cause Analysis” means the problem analysis process undertaken to identify and quantify the underlying cause(s) of a Service Level failure or some other failure, and to document the necessary corrective actions to be taken to prevent recurring problems and/or trends which could result in problems.

“Sales-Based Budget Overrun” is defined in Section 10.4.1(b).

“Sales-Based Fee” means compensation due to a Subcontractor that is based on a percentage of sales of either the Lottery or a particular Lottery Game.

“Sales-Based Subcontract” means a Subcontract that has a Sales-Based Fee.
“Scheduled Base Services Commencement Date” means [December 1, 2013], or such other date as may be agreed to by the Division of Lottery.

“Schedules” means all schedules, exhibits, appendices, addenda, documents and other annexes hereto.

“Service Level” means a service level requirement and is a standard for performance for particular Services, each as set forth in Schedule 5.5.

“Service Level Credits” has the meaning set forth in Section 5.6.

“Services” is defined in Section 4.1.

“Set-Off Amount” is defined in Section 10.3.2(c).

“Shortfall Payments” is defined in Section 3 of Schedule 10.2.

“Significant Investment” is defined in Section 5.3.2(k).

“Software” means any and all applications programs, operating system software, computer software languages, utilities and other computer programs (and all modifications, replacements, upgrades, enhancements, documentation, materials and media related thereto) owned, leased or licensed by a Party and used to provide or in connection with the Services, including the following (to the extent owned, leased or licensed by a Party and used to provide or in connection with the Services): (a) all development, testing, deployment, management and maintenance tools used with or for such software programs used to support day-to-day business operations and accomplish specific business objectives; and (b) software programs that perform tasks basic to the functioning of the Equipment and are required to operate the tools and items described in preceding subsection (a), including operating systems, systems utilities, data security software, compilers, performance monitoring and testing tools and database managers used in connection with such programs.

“State” is defined in the preamble hereto.

“State Cap” is defined in Section 16.1.

“State Contract Manager” is defined in Schedule 5.1.

“State Data” means, in or on any media or other form of any kind: (a) all data that is in the possession of the State or the Division of Lottery, as of the Agreement Effective Date, all data updating and/or manipulating such data and all data concerning or indexing such data (regardless of whether or not owned by the State or the Division of Lottery or generated or compiled by or for the State or the Division of Lottery); (b) all other records, data, technical information, sales and performance data, files, materials, reports, audits, surveys, plans, analyses, charts, literature, brochures, mailings, recordings, correspondence, pictures, drawings, graphic representations, written procedures and documents, memoranda, forms and other such items that may be gathered, originated, prepared, obtained, received, computed, developed, used or stored by Manager from, for or on behalf of the State or the Division of Lottery, or in connection with the Services; and (c) State Personal Data.

“State Data Files” is defined in Section 9.2.4.

“State Facilities” means any facility or site owned, leased, or under the control of the State at which the State receives Services and/or is used by Manager to provide the Services.
“State Indemnitees” means the State and its elected officials, directors, officers, employees, attorneys, agents, representatives, consultants, successors and assigns.

“State Intellectual Property” means, collectively: (a) the Intellectual Property (including the State owned and licensed Intellectual Property set forth on Schedule 8.1.2) that is (i) owned, acquired or developed by the State prior to or after the Agreement Effective Date, including any trademarks or other Intellectual Property relating to the identity of the Lottery or any Lottery Game, or (ii) licensed or leased by the State from a Third Party prior to or after the Agreement Effective Date; (b) State New Intellectual Property; and (c) Work Product.


“State Personal Data” shall mean, collectively, all data or information, in any form, that is provided to Manager by or from a Third Party on behalf of the State or the Division of Lottery or any data or information that is collected, generated or processed by Manager for the benefit of the State or the Division of Lottery, that alone, or in combination with other information: (a) is considered Personal Information or “sensitive personal data” defined under any applicable Regulatory Requirements; and/or (b) uniquely identifies (i) a current, former or prospective customer, agent, vendor or contractor of the State or the Division of Lottery, or (ii) any employee of any of the foregoing or an employee of the State or the Division of Lottery, or their respective spouses or families, and includes customer names, addresses, telephone numbers and/or any other personally identifiable information, including copies of such information, and materials derived from such information.

“State Policies and Rules” means (a) the standards, policies, practices, processes, procedures, controls and rules of the State and the Division of Lottery regarding confidentiality, security, record retention, safety and health and personal, professional and ethical conduct (including those contained in Schedule 12.1.8, the Operating Standards and other written policies and procedures) applicable to the provision of the Services and (b) all Regulatory Requirements, policies, and rules applicable to the provision of the Services, including those set forth in the Operating Standards, and all additions and modifications to each of subsections (a) and (b).

“State Transition Activities” is defined in Section 3.1.1.

“Step-In Rights” is defined in Section 13.4.

“Step-In Notice” is defined in Section 13.4.1.

“Step-Out Notice” is defined in Section 13.4.3.

“Stub Contract Year” is defined in the definition of “Contract Year” above.

“Subcontract” means any written agreement between Manager and a Subcontractor for the provision of Services or any goods or equipment related to a Service, including any Existing State Contract assigned by the Division of Lottery to Manager; provided, however, that the following shall not be deemed to be “Subcontracts”: (1) contributions to non-profit charitable corporations or organizations, provided that no consideration is received for the contribution; (2) payments by Manager for travel expenses incurred by an employee in the conduct of the employer's business, which shall include the employee’s lodging, meals, transportation and related expenses; payments to prospective employees for reimbursement of travel expenses incurred as a result of the employment interview; and payments for tuition, training
seminars, publication subscriptions, conference registrations or membership dues for professional associations that will directly contribute to the work performance or professional development of the employee; (3) payments to government agencies for goods or services provided under statutory or other legal mandate, or for taxes, assessments, fines, garnishments or licensing fees and payments to public utilities having legal service monopolies; (4) payments to or from individuals or enterprises pursuant to compliance with state or federal law; (5) payments for freight charges to freight transporters selected by the vendor for delivering goods C.O.D. or freight collect; (6) payments to any Person required to qualify, which are a result of agreements pertaining to such Person’s status as a financial source or qualifier; and, (7) payments to labor organizations, unions and affiliates for employee dues and benefits programs.

“Subcontractor” means, subject to the terms of Section 7, any Third Party that provides a Service, or any goods or equipment related to a Service, to the Division of Lottery pursuant to an agreement (including any Existing State Contract assigned by the Division of Lottery to Manager) or other arrangement with Manager, including any Substantial Subcontractor. An Affiliate of Manager that provides Services, or any goods or equipment related to a Service, to or for the benefit of the Division of Lottery shall be considered a Subcontractor but will be recognized for its Affiliate status and treated accordingly.

“Subcontractor Engagement Plan” means the plan regarding the engagement and management of Subcontractors that is included as an appendix to the Overall Business Plan and is also attached hereto as Exhibit 7.3, and any subsequent change to such plan made pursuant to Section 5.3.2 shall also update Exhibit 7.3 accordingly.

“Subcontractor Expenses” is defined in Schedule 10.2.

“Subcontractor Utilization Form” means the Subcontractor Utilization Plan Form promulgated and in effect from to time by the State of New Jersey Division of Purchase and Property and referenced in Section 7.11.

“Substantial Subcontract” means a Subcontract for performing a Service that is a major and critical activity specific and customized for this Agreement, including (i) ticket printing for Instant Games, (ii) the installment, operation and/or maintenance of the Central Gaming System, (iii) Lottery advertising, (iv) information technology for Manager’s back-office operations, (v) information technology and hardware and Software development, production or support (including for the Central Gaming System), and (vi) retailer servicing. The term “Substantial Subcontract” does not include a Subcontract for the supply of consumer-tariffed communication services, “off the shelf” (available to the general public) hardware or Software when those Subcontracts are only for the performance of these roles under the Agreement, or Subcontracts for routine services such as landscapers or janitorial firms.

“Substantial Subcontractor” means any Person providing goods or services under a Substantial Subcontract.

“Term” has the meaning set forth in Section 13.1.

“Termination Date” has the meaning set forth in Section 13.1.

“Termination Fee” is defined in Section 13.2.2.

“Termination Notice” means a written notice of termination delivered by one Party to the other in accordance with Section 13.

“Termination Settlement Proposal” is defined in Section 13.2.2.
“Third Party” means a Person other than the Parties and an Affiliate of Manager.

“Transition” is defined in Section 3.1.1.

“Transition Completion Date” is defined in Section 3.1.6.

“Transition Credits” shall mean the following amounts, as applicable:

(a) With respect to Manager’s failure to achieve any Transition Milestone, $5,000 per day for each failure to achieve a Transition Milestone; provided, that the Manager shall have a period of five (5) days after the date on which a Transition Milestone was to be achieved to achieve such Transition Milestone without being assessed Transition Credits; provided, further, that if the Manager does not achieve the Transition Milestone by the end of such five (5) day period, Transition Credits shall be assessed and calculated from the date on which the Transition Milestone was to be achieved; and

(b) With respect to Manager’s failure to achieve the Transition by the Schedule Base Services Commencement Date, the amount calculated using the following formula:

(i) (Net Income Target for the Stub Contract Year – Net Income for the Stub Contract Year) / 365 multiplied by (ii) the number of days between the Scheduled Base Services Commencement Date and the Base Services Commencement Date multiplied by (iii) 0.50.

“Transition Milestone” means the Manager activities and deliverables (including timeframes and the required date for completion) that are identified by the Parties in the Transition Plan as “critical” for performance of the Transition Services.

“Transition Plan” is defined in Section 3.1.1.

“Transition Ready Date” is defined in Section 3.1.6(h).

“Transition Report” means the weekly Transition-related reports which, among other things, shall include a certification as to the achievement of any Transition Milestones (as defined below) during the period covered by such report.

“Transition Services” is defined in Section 3.1.1.

“Unclaimed Prize Reserve” is defined in Section 10.8.1.

“Unclaimed Prizes” is defined in Section 10.8.1.

“Upcoming Year Plan” is defined in Section 5.3.3.

“Updated Annual Business Plan” is defined in Section 5.3.5.

“Work Product” means any Intellectual Property or work method, modifications or enhancements to Intellectual Property and Related Documentation or work method developed pursuant to this Agreement by or on behalf of Manager or any Subcontractor or any combination of Manager or any Subcontractor and the State or the Division of Lottery, including any trademarks or other Intellectual Property relating to the identity of the Lottery or any Lottery Game.

“Workaround” means an alternative process, approach or solution designed to address, on a temporary basis, a problem that prevents operation as originally intended (e.g., as necessary to address a change in
State Policies and Rules).
SCHEDULE 2.1
OPERATIONAL RESPONSIBILITIES OF MANAGER

Manager shall, subject to the actual control and oversight over the conduct of the Lottery and regulatory and step-in powers of the Division of Lottery and in accordance with the terms and conditions of the Agreement, State Policies and Rules, the Operating Standards and the Annual Business Plan, provide certain equipment, goods and services, and perform certain functions necessary, to operate the Lottery for the Division of Lottery, as more fully described below. Manager may provide such equipment, goods and services, and perform such functions, either directly or, subject to compliance with all of the requirements of the Services Agreement, through Subcontractors. Except for those functions or services specifically defined in Schedule 2.2 (which are reserved by the Division of Lottery), Manager’s functions and responsibilities shall include, but not be limited to, those functions and responsibilities set forth below and such other functions which are an inherent, necessary or customary part of the functions and responsibilities associated with the Lottery.

<table>
<thead>
<tr>
<th>Area</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Technology</td>
<td></td>
</tr>
<tr>
<td>Central Gaming System</td>
<td>Prior to the expiration or termination of the Existing Technology Contract, (i) maintain and update the existing Central Gaming System provided pursuant to the Existing Technology Contract, which includes hardware, software, communications, network, warehousing and distribution and equipment and a disaster recovery system and other components necessary for the sales, validation, and inventory management of the Lottery and (ii) provide or perform any other requirements of the Existing Technology Contract, in all cases acceptable to the Division of Lottery. Following the expiration or termination of the Existing Technology Contract, (i) provide all of the services covered under the Existing Technology Contract, including provision of a Central Gaming System which includes hardware, software, communications, network, warehousing and distribution and equipment and a disaster recovery system and other components necessary for the sales, validation, and inventory management of the Lottery and including an internal control system and (ii) provide such goods and perform such services required to support, maintain and update the Central Gaming System, in all cases acceptable to the Division of Lottery.</td>
</tr>
<tr>
<td>Area</td>
<td>Description</td>
</tr>
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</tr>
<tr>
<td>Data and Reports</td>
<td>Provide data and reports to enable or facilitate the Division of Lottery’s ability to carry out its obligations, including all data and reports required under the Existing Technology Contract, in each case in form and substance satisfactory to the Division of Lottery. Format of data and reports must be compatible with existing Lottery management systems and access to data and reports by the Division of Lottery must be without restriction. All current data and reports required under the Existing Technology Contract must be maintained and continued, updated or created as necessary.</td>
</tr>
<tr>
<td>Websites; Social Media</td>
<td>Assume maintenance and hosting of current Lottery websites. Support, facilitate and enable existing, or develop, a website devoted to and accessed exclusively by Lottery Retailers. Facilitate the dissemination of Lottery live drawing via streaming Internet service and any other live media outlets including TV. Continue to maintain and enhance Lottery’s presence in social media networks (e.g., Facebook, Twitter, etc.). Assume maintenance, development and enhancements to NJL “VIP Club”. Develop and implement any “loyalty” subscription-based programs.</td>
</tr>
<tr>
<td>Internal Control System</td>
<td>Pay fees associated with Internal Control System as specified in Existing Technology Contract.</td>
</tr>
<tr>
<td>Other Technology</td>
<td>Provide all services, hardware, software and other goods provided under the Existing Technology Contract.</td>
</tr>
</tbody>
</table>

**Sales Channels**

<table>
<thead>
<tr>
<th>Area</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Retail Hardware</td>
<td>Install, maintain and update all retail hardware and peripherals, and software components necessary for the sales, validation and inventory management of Lottery Games and promotions.</td>
</tr>
<tr>
<td>Instant Ticket Vending</td>
<td>Procure, install, maintain, and update as necessary ticket vending machines for Instant Games and ticket dispensers for Instant Games, reasonably acceptable to the Division of Lottery, including distribution channels, networking, and other components necessary for the sale of Instant Games.</td>
</tr>
<tr>
<td>Area</td>
<td>Description</td>
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<td>--------------------------</td>
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</tr>
</tbody>
</table>
| Internet and Mobile      | In the event that the Lottery has an existing Internet gaming portal, or decides to implement or expand its Internet gaming portal in accordance with Section 4.5 of the Agreement, Manager shall assume maintenance and upgrades and hosting of Lottery Internet gaming portal. Prior to the expiration or termination of the Existing Technology Contract, the Internet gaming portal shall be provided pursuant to the Existing Technology Contract.  
  
  The Internet gaming portal shall have the functionality to sell Lottery Tickets via the Internet or mobile devices, which functionality shall include geolocation, age verification, and electronic payment technology; provide and maintain customer relationship management functionalities. |
<p>| Product                  |                                                                                                                                                                                                                                                                                                                                              |
| Lottery Games            | Subject to the review and approval of the Division of Lottery, design, format, and maintain the appearance, mechanics and Central Gaming System modifications and additions of all current and future Lottery Games.                                                                                                                                                  |
| Payout Structure         | Subject to the review and approval of the Division of Lottery, propose payout structures for Lottery Games, meeting in aggregate the statutory requirement of a minimum 30% total revenue return to the State.                                                                                                                                                |
| Managing Product Portfolio | Subject to the review and approval of the Division of Lottery, manage the portfolio of current Lottery Games, including any recommended adjustment to the format and rules of Lottery Games.                                                                                                                                                               |
| Pricing                  | Subject to the review and approval of the Division of Lottery, propose the establishment of the price of each Lottery Game.                                                                                                                                                                                                               |
| Subscriptions            | Subject to the review and approval of the Division of Lottery, develop and propose the implementation of a subscription program for Lottery Games.                                                                                                                                                                                           |
| Platform and Channel Development | Subject to the review and approval of the Division of Lottery, develop and propose new Lottery platforms and channels, as appropriate and consistent with Regulatory Requirements.                                                                                                                                                 |
| Logistics                |                                                                                                                                                                                                                                                                                                                                              |
| Instant Game Printing &amp; Production | Maintain and continue supply of Instant Game products utilizing existing contracts or solicit new Instant Game vendor contracts to print and produce Instant Lottery Game tickets and related programs and services, including non-cash prize fulfillment.                                                                                                                                       |
| Distribution             | Distribute Instant Games, Consumables and collateral items to the retail network including management of Instant Game and inventory retrieval.                                                                                                                                                                                                  |</p>
<table>
<thead>
<tr>
<th>Area</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Lottery Operated Sales Locations</strong></td>
<td>The Division of Lottery currently operates sales locations at the Meadowlands Racetrack, Monmouth Racetrack and Newark Liberty Airport. At Manager’s option, manage and assume responsibility for operating and staffing these locations through a licensed lottery agent.</td>
</tr>
<tr>
<td><strong>Warehousing</strong></td>
<td>Maintain and provide warehouse space to meet the needs of the Lottery at the levels specified in the Existing Technology Contract or such other level as may be approved by the Division of Lottery.</td>
</tr>
<tr>
<td><strong>Inventory Management</strong></td>
<td>Prior to the expiration or termination of the Existing Technology Contract, maintain existing inventory management and predictive ordering system as specified in the Existing Technology Contract. Following the expiration or termination of the Existing Technology Contract, maintain an inventory management and predictive ordering system with a level of functionality and performance equal to or greater than the existing inventory management and predictive ordering system specified in the Existing Technology Contract.</td>
</tr>
<tr>
<td><strong>Lottery Business Continuity Site</strong></td>
<td>Maintain and provide the Division of Lottery’s Business Continuity Site facilities as specified in the Existing Technology Contract or as otherwise specified from time to time by the Division of Lottery.</td>
</tr>
</tbody>
</table>

**Lottery Retailers**

<table>
<thead>
<tr>
<th>Area</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Recruitment</strong></td>
<td>Recruit Lottery Retailers and present them to the Division of Lottery for licensing approvals.</td>
</tr>
<tr>
<td><strong>Training</strong></td>
<td>Maintain training of Lottery Retailers as specified in the Existing Technology Contract or as otherwise approved by the Division of Lottery.</td>
</tr>
<tr>
<td><strong>Supervision</strong></td>
<td>Subject to the control and oversight of the Division of Lottery, supervise merchandising and marketing functions of Lottery Retailers. Cooperate with the Division of Lottery to ensure continuity of Lottery security responsibilities covering sales and financial report audits, spot checks of Lottery Retailers, investigations, licensing etc. Ensure Lottery Retailers remain in compliance with Regulatory Requirements, including any Lottery rules and regulations as a condition to continue as a licensed Lottery Retailer. Any Lottery Retailers suspected of being non-compliant of with Regulatory Requirements shall be reported to the Division of Lottery.</td>
</tr>
<tr>
<td><strong>Commissions and Incentives</strong></td>
<td>Subject to the review and approval of the Division of Lottery and the NJ Lottery Commission, establish recommended commissions and other incentives for Lottery Retailers.</td>
</tr>
<tr>
<td><strong>Customer Relationship Management</strong></td>
<td>Provide for customer relations management. All customer complaints and reports of incidents between Lottery Retailers and customers to be reported immediately to the Division of Lottery.</td>
</tr>
</tbody>
</table>

2.1-4
<table>
<thead>
<tr>
<th>Area</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Revocation, Suspended and Terminated Lottery Retailers</td>
<td>Provide services necessary to execute State suspension and revocation orders issued by the Division of Lottery, in accordance with New Jersey statutory requirements on license revocation and assist with removal of all Central Gaming System equipment and peripherals and any Instant ticket inventory as directed. Retrieve, reconcile and return Lottery Retailer Instant Game ticket inventory, as directed by the Division of Lottery for suspended or terminated Lottery Retailers.</td>
</tr>
<tr>
<td>Instant Game End Inventory Reconciliation</td>
<td>Retrieve, reconcile and return, Lottery Retailer Instant Game ticket inventory at game end. Ensure that proper documentation is completed, including reconciliation receipts, with copies sent to the Division of Lottery.</td>
</tr>
<tr>
<td><strong>Secondary Drawings</strong></td>
<td></td>
</tr>
<tr>
<td>Procedures</td>
<td>Subject to the review and approval of the Division of Lottery and the NJ Lottery Commission, establish system of selecting and identifying winners of second chance drawings or promotional drawings. Maintain “Million Dollar Replay” (or any successor Lottery Game) for Internet entry of non-winning tickets and other Online Games for non-winning tickets to be eligible to win prizes “Million Dollar Replay” (or any successor Lottery Game) prizes shall be funded from unclaimed prize reserve.</td>
</tr>
<tr>
<td>Design</td>
<td>Subject to the review and approval of the Division of Lottery and the NJ Lottery Commission, design, format, and maintain prize structures of secondary drawings existing under or added to Lottery Games.</td>
</tr>
<tr>
<td>Prizes</td>
<td>Manage fulfillment and awarding of non-cash second chance draw prizes. Issue form W2G for non-cash prizes as required under applicable federal and State laws.</td>
</tr>
<tr>
<td><strong>Marketing</strong></td>
<td></td>
</tr>
<tr>
<td>Advertising &amp; Public Relations</td>
<td>Design, implement, fund and maintain marketing, advertising, public relations and promotional campaigns. Engage in review of existing advertising contracts and establish criteria for selection of new advertising agencies.</td>
</tr>
<tr>
<td>Branding</td>
<td>Develop Lottery brands.</td>
</tr>
<tr>
<td>Loyalty Program</td>
<td>Design, maintain, and operate a customer loyalty program.</td>
</tr>
<tr>
<td>Strategy</td>
<td>Create a general marketing strategy.</td>
</tr>
<tr>
<td>Sponsorships</td>
<td>Select and negotiate sponsorship opportunities, in conformity with State privacy laws and prohibitions on sales of customer data.</td>
</tr>
<tr>
<td>Area</td>
<td>Description</td>
</tr>
<tr>
<td>------</td>
<td>-------------</td>
</tr>
<tr>
<td>Customer Insights</td>
<td>Design and implement a consumer research strategy to inform and measure marketing strategies and products.</td>
</tr>
<tr>
<td>Draw Production &amp; Broadcast</td>
<td>Support and facilitate the daily broadcast of Lottery Primary drawings via established mediums.</td>
</tr>
</tbody>
</table>

**Customer Service Center – Player and Lottery Retailer**

| Operation | Operate, and maintain service and primary call centers for Lottery Retailers and Lottery customers. Establishment of a system for logging all call center and online intake of inquiries and complaints, with record of the determination/resolution of the issue. |

**Responsible Gambling Program**

| Operation | Develop, operate, and maintain a responsible gambling program that addresses underage and compulsive gambling, etc. Develop and implement policies and programs aimed at preventing underage play. |

**Utilization of Subcontractors**

| Goods and Services | Engage Subcontractors, as necessary, to provide the Services. |
| Management | Manage Subcontractors, and their compliance with the terms and conditions of the Agreement, the Operating Standards and State Policies and Rules. |

**Compliance**

| Game Rules | Comply with rules related to Lottery Games, including multi-jurisdictional games. |

**Legal**

<p>| Legislation | Monitor and maintain compliance with all Regulatory Requirements and State Policies and Rules. |
| Contracts | Prepare, negotiate and monitor contracts with Subcontractors. |
| Game Rules | Subject to the review and approval of the Division of Lottery and the NJ Lottery Commission, prepare game rules consistent with Regulatory Requirements. |</p>
<table>
<thead>
<tr>
<th>Area</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Intellectual Property</td>
<td>Subject to communication with and the review and approval of the Division of Lottery and applicable state deputy attorneys general, maintain the legality and validity of, conduct searches regarding, and investigate claims made against, Intellectual Property that is owned, licensed, or otherwise related to the operations of the Lottery in any way; maintain compliance with State Policies and Rules applicable to Intellectual Property; and, perform any and all registrations, renewals, transfers, assignments, procedural oppositions, and, if necessary, prosecution activities with respect to Intellectual Property that is owned, licensed, or otherwise related to the operations of the Lottery in any way.</td>
</tr>
<tr>
<td>Additional Work</td>
<td></td>
</tr>
<tr>
<td>New Multi-State Lottery Games</td>
<td>Provide services and equipment in connection with new lottery games offered by a multi-state association, if both (i) the Division of Lottery decides to participate in such new lottery games and (ii) the Division of Lottery and Manager reach an agreement with respect to such new lottery games in accordance with Section 4.4 of the Agreement.</td>
</tr>
<tr>
<td>Additional Work</td>
<td>Provide Additional Work, if any, in accordance with Section 4.6 of the Agreement.</td>
</tr>
</tbody>
</table>

For the avoidance of doubt, the Parties acknowledge and agree that this **Schedule 2.1** shall not be construed as a waiver by the State or the Division of Lottery of its actual control and authority, or any part thereof, over the Lottery.

In addition to the functions and responsibilities described in this **Schedule 2.1**, the Parties acknowledge and agree that, subject to the terms and conditions of the Agreement, Manager shall undertake all activities customarily associated with operating a commercial business that may not be directly related to the provision of Services to the Division of Lottery, including but not limited to employing personnel, leasing office space and related facilities, acquiring furniture, fixtures, equipment and supplies.
SCHEDULE 2.2

OPERATIONAL RESPONSIBILITIES OF STATE

The Division of Lottery shall, subject to the terms and conditions of the Agreement and at its own expense, perform the specific functions and services set forth below. The Division of Lottery shall continue to have actual control and oversight over the conduct of all Lottery operations by retaining the authority to direct or countermand Manager’s operating decisions, maintaining ready access to information regarding all aspects of Lottery operations, and retaining ownership of all Lottery assets including all Intellectual Property associated with the Lottery. All functions or responsibilities not explicitly provided below but which are explicitly set forth in Schedule 2.1 or which are an inherent, necessary, or customary part of the functions and responsibilities associated with the Services shall be the responsibility of Manager.

<table>
<thead>
<tr>
<th>Area</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Validation</td>
<td>Physically validate, via the Central Gaming System, and verify winning Lottery Tickets presented at Lottery offices.</td>
</tr>
<tr>
<td>Prizes</td>
<td></td>
</tr>
<tr>
<td>Jackpot Setting</td>
<td>Set jackpot levels according to game structures, based on sales.</td>
</tr>
<tr>
<td>Payment of Prizes</td>
<td>Administrate payment of all Cash Prize Claims not redeemed by Lottery Retailers.</td>
</tr>
<tr>
<td>Securities</td>
<td>Purchase securities, and liquidate same, to provide for deferred payments of certain Prize Claims where deferred payment is selected by the winner.</td>
</tr>
<tr>
<td>Unclaimed Prizes</td>
<td>Maintain records of unclaimed prize funds.</td>
</tr>
<tr>
<td>Technology</td>
<td></td>
</tr>
<tr>
<td>Internal Control System</td>
<td>Operate and maintain the LAPS, including the internal control system on gaming operations.</td>
</tr>
<tr>
<td>Area</td>
<td>Description</td>
</tr>
<tr>
<td>-----------------------------</td>
<td>---------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td><strong>Primary Drawings</strong></td>
<td></td>
</tr>
<tr>
<td>Operation</td>
<td>Manage and operate Lottery Games primary drawings.</td>
</tr>
<tr>
<td>Broadcasting</td>
<td>Facilitate the broadcast of primary drawings and their results through mediums provided/supplied by Manager and approved by the Division of Lottery.</td>
</tr>
<tr>
<td><strong>Collections</strong></td>
<td></td>
</tr>
<tr>
<td>Revenue Transfers</td>
<td>Control the transfer of Lottery proceeds into the appropriate State fund.</td>
</tr>
<tr>
<td>Collection from Lottery Retailers</td>
<td>Perform electronic fund transfers from Lottery Retailer bank accounts for weekly settlements.</td>
</tr>
<tr>
<td>Collection of Past Due Accounts</td>
<td>Collect past-due accounts from Lottery Retailers, including authorized penalties and interest.</td>
</tr>
<tr>
<td>Retailer Accounting</td>
<td>Processing of retailer adjustments and associated queries from Lottery Retailers.</td>
</tr>
<tr>
<td>Commissions &amp; Bonuses</td>
<td>Administrate payment of commissions and bonuses to Lottery Retailers.</td>
</tr>
<tr>
<td>Internet Sales</td>
<td>Collect and deposit all Lottery proceeds generated from sales through the Internet.</td>
</tr>
<tr>
<td><strong>Licensing of Lottery Retailers</strong></td>
<td></td>
</tr>
<tr>
<td>Processing</td>
<td>Evaluate and process the licensing applications received from the Manager for Lottery Retailers including change of ownership applications.</td>
</tr>
<tr>
<td>Issuance</td>
<td>Manage and control the approval and issuance of Lottery Retailer licenses and renewals.</td>
</tr>
<tr>
<td>Area</td>
<td>Description</td>
</tr>
<tr>
<td>----------------------</td>
<td>------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Revocation</td>
<td>Manage and control the revocation of Lottery Retailer licenses.</td>
</tr>
<tr>
<td>Suspension</td>
<td>Manage and control the suspension of Lottery Retailer licenses.</td>
</tr>
<tr>
<td><strong>Tax Reporting</strong></td>
<td></td>
</tr>
<tr>
<td>Prize Payments</td>
<td>Report tax obligations for payments of Cash Prize payments (W2G).</td>
</tr>
<tr>
<td>Lottery Retailers</td>
<td>Report tax obligations for Lottery Retailer commissions and bonuses (IRS form 1099).</td>
</tr>
<tr>
<td><strong>Audit and Investigations</strong></td>
<td></td>
</tr>
<tr>
<td>Allegations of Fraud</td>
<td>Investigate, document, and, where necessary, prosecute allegations of fraud by Players, Lottery Retailers, or other Persons</td>
</tr>
<tr>
<td>Audits</td>
<td>Conduct any and all audits deemed necessary by the Division of Lottery.</td>
</tr>
<tr>
<td><strong>Lottery Commission</strong></td>
<td></td>
</tr>
<tr>
<td>Lottery Commission Approvals</td>
<td>The Division of Lottery shall be responsible for requesting approvals from the Lottery Commission as statutorily required under N.J.S.A. 5:9-7. Examples of which are approvals for Instant Games, changes to Lottery Games and new Online Games. The Division of Lottery shall request any such approval and shall control the contact with the Lottery Commission.</td>
</tr>
</tbody>
</table>
SCHEDULE 3.2

EXISTING STATE CONTRACTS

<table>
<thead>
<tr>
<th>T-Number</th>
<th>Title</th>
<th>Vendor</th>
<th>Contract #</th>
<th>Termination Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>T0566 02-x-33519</td>
<td>Instant Lottery Tickets Standard and Proprietary Games</td>
<td>Scientific Games International</td>
<td>49187</td>
<td>December 31, 2013</td>
</tr>
<tr>
<td>TO566 02-x-33519</td>
<td>Instant Lottery Tickets Standard and Proprietary Games</td>
<td>Scientific Games International</td>
<td>49186</td>
<td>December 31, 2013</td>
</tr>
<tr>
<td>TO566 02-x-33519</td>
<td>Instant Lottery Tickets Standard and Proprietary Games</td>
<td>Pollard Banknote Limited</td>
<td>49185</td>
<td>December 31, 2013</td>
</tr>
<tr>
<td>TO566 02-x-33519</td>
<td>Instant Lottery Tickets Standard and Proprietary Games</td>
<td>GTECH Printing Corporation</td>
<td>49184</td>
<td>December 31, 2013</td>
</tr>
<tr>
<td>TO654 09-x-39622</td>
<td>Advertising Agency Services: Division of Lottery</td>
<td>Brushfire Inc.</td>
<td>73252</td>
<td>December 1, 2013</td>
</tr>
<tr>
<td>T1320 08-x-39707</td>
<td>Lottery Gaming System and Support Services</td>
<td>GTECH Corporation</td>
<td>73320</td>
<td>October 2, 2017</td>
</tr>
<tr>
<td>T1551 09-x-20715</td>
<td>Instant Lottery Ticket Dispenser Division of Lottery</td>
<td>Schafer Systems Inc.</td>
<td>74221</td>
<td>December 31, 2013</td>
</tr>
</tbody>
</table>

[Subject to change prior to Agreement Effective Date]
1. STATEMENT OF POLICY

The Division of Lottery has found that it is advantageous to conduct the functions of the Lottery with the assistance of a manager, acting pursuant to a services agreement. Manager shall at all times consider the sensitive nature of a state-conducted lottery, its public image, and the social implications attendant thereto, and conduct its operations with integrity, security, honesty, and fairness and in compliance with State Policies and Rules under the control and oversight and regulatory and step-in powers of the Division of Lottery. The Division of Lottery must exercise actual control over all significant business decisions made by Manager at all times. The objective of these Governance Protocols is to establish the guidelines and principles of the Parties’ communications and relationship, including State or Division of Lottery Approval procedures, during the Term of this Agreement.

2. ORGANIZATION

2.1 Contact Persons. The Parties shall designate the following positions:

   (a) Manager Lead. Manager shall designate one individual (the “Manager Lead”) as the primary individual to communicate with the Division of Lottery, its designee, or the Lottery Commission. Unless otherwise approved by the Division of Lottery, the Manager Lead shall be a corporate officer of Manager, having corporate authority to bind Manager and working full time from a location within ten (10) miles of Lottery headquarters at One Lawrence Park Complex, Brunswick Avenue Circle, Lawrenceville, NJ.

   (b) State Contract Manager. On the Agreement Effective Date, pursuant to N.J.S.A. 52:34-10.7, the Division of Lottery shall designate one individual to serve as the State Contract Manager (the “State Contract Manager”). The State Contract Manager shall have the responsibilities set forth in N.J.S.A. 52:34-10.7 and Treasury Circular 10-15-DPP as may be amended from time to time, and shall be the primary individual to communicate with Manager.

2.2 Direct Communication. Nothing in Section 2.1 shall be construed to limit the Division of Lottery or Manager, or any of their employees, from freely communicating with each other as often as either shall desire; provided, however, that Manager acknowledges and agrees that it shall not communicate with any member of the Lottery Commission without the prior approval of the Executive Director of the Division of Lottery.

3. COMMUNICATION

3.1 Meetings.

   (a) Standing Meetings. A regular meeting of the State Contract Manager and the Manager Lead (each, a “Standing Meeting”) shall be held on regular dates and times as the Parties may reasonably agree; provided, that the Standing Meeting shall be held at least once a month, either in person or by telephone conference. At least five (5) days but not more than ten (10) days prior to each Standing Meeting, the Manager Lead shall provide a Report in writing to the State Contract Manager. The State Contract Manager may, at her sole discretion, establish thresholds, ranges, or other measures for Manager to address in the Reports. Absent such thresholds, ranges or other measures, each Report shall, at a minimum, include the following:
i. A description of progress made against each objective of the Annual Business Plan and any variation therefrom;

ii. A description and discussion of any changes proposed to: (i) the Lottery Games to be offered by Manager; (ii) the prize pay-outs of Lottery Games; (iii) the sales price of Lottery Tickets; and, (iv) the type, number or amount of Prizes;

iii. A description and discussion of proposed changes to commissions and incentives offered to Lottery Retailers;

iv. A description of planned media or marketing campaigns and promotional activities outlining the scope, objectives, and key messages to be delivered to the public or targeted audience;

v. A description of any new sponsorship relationships valued at over $10,000;

vi. A description of any planned Subcontract substitution or engagement;

vii. A description of progress made towards implementing a program to promote responsible gaming; and

viii. Any information not previously communicated concerning any other operating decision, issue, or complaint that bears significantly on the public interest, or that the Division of Lottery would reasonably want to know with respect to the operations of the Lottery.

(b) Other Meetings. In addition to the Standing Meeting, each Party reserves the right to meet with the other Party by providing notice to the other Party at least twenty-four (24) hours prior to the meeting unless notice is waived. Nothing in this section shall be construed as preventing the Parties from meeting at any time by mutual agreement.

(c) Manager Personnel and Subcontractors at Meetings. Manager shall make available at any Standing Meeting or other meeting, in person or by telephone, any Manager Personnel or a representative of any Subcontractor, if requested by the State Contract Manager.

(d) Additional Information. The Manager Lead shall provide the State Contract Manager, orally or in writing, with any and all material information that the Manager Lead reasonably believes the Division of Lottery would want to know promptly after the Manager Lead’s receipt of such information.

3.3 Acceptance of Reports. The State Contract Manager may approve, disapprove, amend, or modify any of the Reports, or any part thereof, within ten (10) Business Days following receipt of the Report. Failure by the State Contract Manager to approve, disapprove, amend, or modify any Reports, or any part thereof, shall be deemed to be an approval of said Reports.

4. DECISION MAKING

4.1 Material Governance Areas. For purposes of the Governance Protocols, the phrase “Material Governance Area” shall be deemed to include any of the following subject matters: (i) Lottery Games and rules of games; (ii) marketing campaigns, promotions, and promotional rules; (iii) prizes and prize structures; (iv) prize pay-outs outside of established ranges, (v) terms of Substantial Subcontracts; and (vi) price points. Manager shall not implement any changes or take any action with respect to any
matter that, in either case, involve, in whole or in part, Material Governance Areas without the Approval of the Division of Lottery. Manager is not obligated to obtain Approval of day-to-day responsibilities that do not involve, in whole or in part, any Material Governance Area.

Notwithstanding anything to the contrary herein, Manager shall have the continuing duty to inform the Division of Lottery of any information that Manager reasonably believes the Division of Lottery would want to know prior to Manager’s decision on such matter.

4.2 **Unconditional Veto Power of Director.** Notwithstanding any other provision herein to the contrary, the Parties understand and agree that the Division of Lottery must retain actual control over all significant business decisions affecting the Lottery at all times. Because such actual control is fundamentally imperative to a fully-compliant governance structure, the Parties expressly agree that the Division of Lottery, directly or through the State Contract Manager, shall have the sole, absolute, and unconditional right to veto or countermand, with or without conditions, any action taken by Manager whatsoever, regardless of whether such action falls within the Material Governance Area or not. Further, the Division of Lottery reserves the right to take any and all measures necessary or desirable to protect the interests of the State, the Division of Lottery and the Lottery from the actions or inactions of Manager.

4.3 **Response Time.** In the event Manager is required to obtain the Approval of the State and/or the Division of Lottery for any purpose, the Division of Lottery will use its commercially reasonable efforts to respond to any such request for Approval within ten (10) Business Days after the latest of (i) its receipt of such request, (ii) Manager providing any additional information requested by the State and/or the Division of Lottery relating to such request, (iii) if applicable, the passage of any period of time which is required by any Regulatory Requirement before such Approval may be effective and (iv) for any matter in which the Lottery Commission approval is required, the date that the minutes of any meeting at which the Lottery Commission approves such matter become final and binding, or such date as the Lottery Commission determines not to approve such matter; provided, however, that this Section 4.3 shall not be applicable to or supersede any provision of the Agreement that expressly provides for a longer period of time that the Division of Lottery will have to take any action, provide any response or obtain any Approval.
SCHEDULE 5.5

SERVICE LEVELS

With respect to each Service Level Credit set forth below, the dollar amount of the Service Level Credit shall be pro-rated for partial periods. For example, if the Service Level Credit is one thousand dollars ($1000) per hour, and the period of non-compliance is thirty (30) minutes, the Service Level Credit shall be five hundred dollars ($500).

As used in this Schedule 5.5, the term “terminal” refers to a Lottery Retailer’s clerk operated terminal, but also, to the extent applicable, to any ticket selling device such as a player-activated terminal, kiosk, or vending machine.

<table>
<thead>
<tr>
<th>SERVICE LEVEL</th>
<th>SERVICE LEVEL CREDITS</th>
</tr>
</thead>
<tbody>
<tr>
<td>PERFORMANCE</td>
<td>$10,000 per day on which the Central Gaming System does not at any time meet the Configuration Threshold.</td>
</tr>
<tr>
<td>Transactions must be logged to at least two (2) local systems, one (1) remote system, and to the Division of Lottery’s ICS.</td>
<td>In the event that the gaming hosts experience non-performance, the Division of Lottery may impose Service Level Credits in an amount of one thousand dollars ($1,000) for each hour of non-performance time, or fraction thereof.</td>
</tr>
<tr>
<td>Critical oversight monitoring functions of Central Gaming System management and administration must be conducted by the management workstations. These include file transfers to the Division of Lottery.</td>
<td></td>
</tr>
<tr>
<td>Instant Game ticket inventory management must not be compromised, including the ability to receive, order, pack, and ship instant tickets, etc. in a manner concordant with production schedules.</td>
<td></td>
</tr>
<tr>
<td>COMMUNICATIONS NETWORK - LOTTERY RETAILER NETWORK OUTAGES</td>
<td></td>
</tr>
<tr>
<td>The Lottery requires a communications network that provides sufficient bandwidth to meet the gaming and multimedia requirements of modern lottery distribution channels.</td>
<td>In the event that a Lottery Retailer network damage condition exists, the Division of Lottery may impose Service Level Credits in an amount of sixty dollars ($60) for each Lottery Retailer experiencing the degraded service.</td>
</tr>
<tr>
<td>Communication equipment and network products and services provided by Manager shall be subject to Service Level Credits for outages and degraded performance.</td>
<td></td>
</tr>
<tr>
<td>A network damage condition occurs if any Lottery Retailer’s availability during gaming hours falls below the agreed-upon service level agreement in any month. The minimum service level agreement, as measured on a monthly basis, must be a minimum of 99.8% of games</td>
<td></td>
</tr>
</tbody>
</table>
## Service Level Credits

<table>
<thead>
<tr>
<th>Service Level</th>
<th>Service Level Credits</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Communications Network - Connectivity Threshold</strong></td>
<td>Ten thousand dollars ($10,000) per day on which the Central Gaming System does not at any time meet the Connectivity Threshold.</td>
</tr>
<tr>
<td><strong>Timely and Accurate Reports</strong></td>
<td>For each late, incomplete, or incorrect report in Group A, once the approved grace period has passed, the Division of Lottery may impose Service Level Credits of one thousand dollars ($1,000) per calendar day, or pro-rated fraction thereof, per report, until the report is provided, made sufficient or corrected. For each late, incomplete, or incorrect report in Group B, once the approved grace period has passed, the Division of Lottery may impose Service Level Credits of one hundred dollars ($100) per calendar day, or pro-rated fraction thereof, per report, until the report is provided, made sufficient or corrected.</td>
</tr>
<tr>
<td><strong>Timely and Accurate Files</strong></td>
<td>For each late, incomplete, or incorrect file in Group A, once the approved grace period has passed, the Division of Lottery may impose Service Level Credits of five thousand dollars ($5,000) per hour, or pro-rated fraction thereof, per file, until the file is provided, made sufficient or corrected. For each late, incomplete, or incorrect file in Group B, once the approved grace period has passed, the Division of Lottery may impose Service Level Credits of five hundred dollars ($500) per hour, or pro-rated fraction thereof, per report, until the report is provided, made sufficient or corrected.</td>
</tr>
<tr>
<td><strong>Failure to Modify Existing On-line Games or to Install Additional Games</strong></td>
<td>The Division of Lottery may impose Service Level Credits of ten thousand dollars ($10,000) per calendar day that the modified or additional Lottery Game is not operational. Manager is not obligated to pay Service Level Credits if the Division of Lottery opts to release the change at a later time than the agreed-upon schedule.</td>
</tr>
</tbody>
</table>
### SERVICE LEVEL

#### FAILURE TO PRODUCE AN ADMINISTRATIVE SOFTWARE CHANGE

Manager shall modify or add Software to produce reports, screen displays, inquiries, and other administrative applications within sixty (60) calendar days from delivery of written approval by the Division of Lottery of a set of change specifications, unless an extension is authorized in writing by the Division of Lottery, or a schedule is otherwise established following written request of the Division of Lottery for changes. Manager’s change must complete a Division of Lottery quality assurance test and receive the Division of Lottery’s written approval, within the time frame specified.

### SERVICE LEVEL CREDITS

The Division of Lottery may impose Service Level Credits of **five hundred dollars ($500)** per calendar day that the modified or additional Software is not operational.

### DATA SECURITY

#### DATA SECURITY - DATA SECURITY BREACH

The Central Gaming System must adhere to the data protection requirements set forth in the Agreement and the Operating Standards (the “**Data Security Requirements**”). Any intrusion or attack on Confidential Information, Contract Records or State Data which results in unauthorized access to or disclosure of Confidential Information, Contract Records or State Data shall be a “**Data Security Breach**”.

The Central Gaming System must comply with any requirements of the Multi-State Lottery Association or other multi-state consortium or association.

**Ten thousand dollars ($10,000)** per incident of Data Security Breach due to Manager’s failure to maintain Data Security Requirements.

#### DATA SECURITY - UNAUTHORIZED SOFTWARE/HARDWARE MODIFICATIONS

Manager shall not modify any Software or hardware without the prior written consent of the Division of Lottery. Configuration Management practices shall be designed to obviate this problem.

If Manager modifies any Software or hardware without the prior written approval of the Division of Lottery, the Division of Lottery may issue a written order that the change or modification be removed and the Central Gaming System restored to its previous operating state at Manager's expense. “Modification” does not include replacement of a Central Gaming System component with an essentially similar working component in the event of necessary maintenance.

Further, the Division of Lottery may impose Service Level Credits of **ten thousand dollars ($10,000)** per violation in addition to any other Service Level Credits that may occur as a result of such unauthorized modification.
### SERVICE LEVEL CREDITS

<table>
<thead>
<tr>
<th>PHYSICAL SECURITY</th>
<th>SERVICE LEVEL CREDITS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Manager must implement stringent security measures to prevent unauthorized entry and activity at the site(s) of the Central Gaming System, as well as support any applicable federal and local fire and safety regulations (a “Physical Security Breach”). At a minimum the program must (the “Physical Security Requirements”):</td>
<td></td>
</tr>
<tr>
<td>- Prevent unauthorized persons from accessing the facilities;</td>
<td>Ten thousand dollars ($10,000) per incident of Physical Security Breach due to Manager’s failure to maintain Physical Security Requirements in addition to actual damages.</td>
</tr>
<tr>
<td>- Provide a record of all entries and exist from each facility;</td>
<td></td>
</tr>
<tr>
<td>- Include access control and an intrusion system at each site;</td>
<td></td>
</tr>
<tr>
<td>- Provide a system to monitor all activities at entrances/exits and all other high security/sensitive areas;</td>
<td></td>
</tr>
<tr>
<td>- Comply with any gaming operators security protocol; and</td>
<td></td>
</tr>
<tr>
<td>- Comply with New Jersey State security requirements of the Office of Information Technology.</td>
<td></td>
</tr>
</tbody>
</table>

### FAILURE TO REPORT INCIDENTS

Manager shall be responsible to immediately report all significant incidents related to the operation of the Central Gaming System and/or the provision of the Services. The immediate reporting shall be delivered personally or by telephone within one (1) hour of the discovery of the incident, followed by a letter addressed to the Division of Lottery’s State Contract Manager within twenty-four (24) hours of the incident. Written reports and notifications must be sent by courier and facsimile. At a minimum, each of the following types of events shall require a written report:

1. Systemtakeovers;
2. Majorcommunicationsfailures;
3. Significantoperatorerrors;
4. Out of balance conditions;
5. Emergency Software or hardware changes;
6. Securityviolations;
7. Other conditions as defined by a memorandum of understanding;
8. Any situation which may cause the general public to become alarmed and/or which may damage the integrity or public image of the Division of Lottery;
9. The involvement of any of Manager’s employees,

In the event that Manager fails to report incidents as required, the Division of Lottery may impose Service Level Credits of one thousand dollars ($1,000) per calendar day, or prorated fraction thereof, until an incident is correctly reported.
<table>
<thead>
<tr>
<th>SERVICE LEVEL</th>
<th>SERVICE LEVEL CREDITS</th>
</tr>
</thead>
<tbody>
<tr>
<td>owners, or agents in any known criminal arrest or investigation; and (10) any failure to meet a Service Level.</td>
<td>In the event that Manager fails to provide the Services or fails to satisfy any obligation or perform any covenant in the Agreement, the Division of Lottery may impose Service Level Credits of <strong>five hundred dollars ($500)</strong> per calendar day or per incident (at the Division of Lottery’s discretion) until the condition is rectified.</td>
</tr>
</tbody>
</table>

### FAILURE TO COMPLY

Manager shall comply with all requirements of the Agreement. If the Manager fails to provide the Services or fails to satisfy any obligation or perform any covenant in the Agreement, the Division of Lottery may invoke Service Level Credits where the consequences of such failure are not expressly addressed by this Schedule 5.5 or the Agreement.

<table>
<thead>
<tr>
<th>FAILURE TO COMPLY WITH REQUIRED STANDARDS OR TO REMEDY SSAE-16 AUDIT RECOMMENDATIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>If Manager fails to address recommendations made as a result of an audit under the Statement on Standards for Attestation Engagements (SSAE) No. 16, or to comply with required Division of Lottery or multi-jurisdictional standards or other audits, there will be a liquidated damage assessed.</td>
</tr>
</tbody>
</table>

1. In the event that audit recommendations addressing any of Manager’s activities are not corrected within sixty (60) calendar days of notification, unless specifically exempted by the Division of Lottery, Manager may be charged Service Level Credits of **five thousand dollars ($5,000)** at the end of the initial sixty (60) calendar day period and an additional **five thousand dollars ($5,000)** for each subsequent thirty (30) calendar day period or any portion thereof, for which the audit recommendation corrections have not been completed.

2. In the event Manager fails to comply with any required Division of Lottery or multi-jurisdictional association standard, the Division of Lottery may assess Service Level Credits of **five thousand dollars ($5,000)** for each instance. Manager will have thirty (30) calendar days from date of notification to comply. If Manager fails to comply within the initial thirty (30) calendar day period, Service Level Credits may apply in the amount of an additional **five thousand dollars ($5,000)** for each subsequent seven (7) calendar day period, or any portion thereof, for which compliance has not been achieved.

### FAILURE TO PROVIDE SOFTWARE TESTING AND QUALITY SOFTWARE TURNOVERS

If for a designated batch of Software (a “release”) Manager fails to provide a quality assurance test plan or a report on the quality assurance test, or fails to provide quality tested Software, there will be a Service Level Credit assessment.

<table>
<thead>
<tr>
<th>EMERGENCY MANAGEMENT TERMINAL FAILURE</th>
</tr>
</thead>
<tbody>
<tr>
<td>All communication equipment, network products, hardware and Software provided by Manager shall be subject to Service Level Credits for outages and degraded performance.</td>
</tr>
</tbody>
</table>

In the event that untested or poorly tested Software is turned over for Division of Lottery quality assurance testing and production and that Software does not meet the specifications standards established by the Division of Lottery, Manager will be charged Service Level Credits of **five thousand dollars ($5,000)** for the first violation (return or retraction of the software) and **ten thousand dollars ($10,000)** for each subsequent violation.

In the event that emergency management terminals are unavailable to access the Central Gaming System, the Division of Lottery may impose Service Level Credits in an amount of **ten thousand dollars ($10,000)** for each incident.
<table>
<thead>
<tr>
<th>SERVICE LEVEL</th>
<th>SERVICE LEVEL CREDITS</th>
</tr>
</thead>
<tbody>
<tr>
<td>A condition occurs necessitating the use of the emergency management terminals and the terminals are unavailable to access the Central Gaming System.</td>
<td>In the event that Manager fails to (i) execute a suspension or revocation order, (ii) assist with removal of all Central Gaming System Equipment and peripherals and any Instant ticket inventory or (iii) retrieve, reconcile and return Lottery Retailer Instant Game ticket inventory, as directed by the Division of Lottery for suspended or terminated Lottery Retailers. Service Level Credits in an amount of one thousand dollars ($1,000) per day per Lottery Retailer.</td>
</tr>
<tr>
<td>SUSPENSION AND REVOCATION ORDERS</td>
<td></td>
</tr>
<tr>
<td>Manager must (i) execute State suspension and revocation orders issued by the Division of Lottery, in accordance with New Jersey statutory requirements on license revocation and (ii) assist with removal of all Central Gaming System equipment and peripherals and any Instant ticket inventory as directed. Retrieve, reconcile and return Lottery Retailer Instant Game ticket inventory, as directed by the Division of Lottery for suspended or terminated Lottery Retailers.</td>
<td></td>
</tr>
<tr>
<td>SECONDARY DRAWINGS PRIZES</td>
<td>In the event that Manager fails to (i) manage fulfillment and awarding of non-cash second chance draw prizes or (ii) issue form W2G for non-cash prizes as required under applicable federal and State laws. Service Level Credits in an amount of five hundred dollars ($500) per violation plus any fines or penalties (and any interest thereon) assessed by any Governmental Authority.</td>
</tr>
<tr>
<td>INSTANT GAME REQUIREMENTS</td>
<td>In the event that a Ticket for an Instant Game (i) does not meet all applicable requirements as set forth in Section 4.3 of the Operating Standards and (ii) requires the Division of Lottery to process validations or claims in a manner outside of the ordinary course, then the Division of Lottery may impose Service Level Credits in an amount of five thousand dollars ($5,000) per defect.</td>
</tr>
<tr>
<td>INSTANT GAMES</td>
<td>In the event that the Division of Lottery determines that an Instant Game contains defective packs that do not require a complete recall of the game, Manager shall take steps to remove the defective packs from retailer network within 3 days. Service Level Credits in an amount of one hundred dollars ($100) per pack.</td>
</tr>
<tr>
<td>INSTANT TICKETS</td>
<td>In the event that Manager fails to immediately cease sales of the game and/or retrieve all game packs and partial packs by the deadline imposed by the Division of Lottery, the Division of Lottery may impose Service Level Credits in an amount of fifty thousand dollars ($50,000) per defective game.</td>
</tr>
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**SCHEDULE 8.1.2**

**STATE INTELLECTUAL PROPERTY**

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<td>Lawrence D. Bradley</td>
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<td>Disclaimer</td>
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</table>
Word Mark

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<td>Attorney of Record</td>
<td>Stephen J. Jeffries</td>
</tr>
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<td>Disclaimer</td>
<td>NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE the representation of the outline of the state of New Jersey APART FROM THE MARK AS SHOWN</td>
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<td>Affidavit Text</td>
<td>SECT 15. SECT 8 (6-YR).</td>
</tr>
</tbody>
</table>
Live/Dead Indicator

LIVE
SCHEDULE 9.3.2

FORM OF CONFIDENTIALITY AGREEMENT

This Non-Disclosure Agreement (this “Agreement”) is hereby entered into as of this ___ day of __________, 20[__] by and between [NAME OF BIDDER], [TYPE OF ENTITY AND JURISDICTION OF FORMATION], on behalf of itself and its Affiliates (“Manager”), and [NAME OF SUBCONTRACTOR; if EMPLOYEE, global revision from “Company” to “Employee”] (“Company” and, together with Manager, the “Parties”). For purposes of this Agreement, “Affiliates” of a person or entity shall mean any person, corporation, partnership, limited liability company, professional organization, enterprise, sole proprietorship or other entity or association that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, Manager or in which such person has an economic or voting interest of at least ten percent (10%) of common equity.

BACKGROUND

WHEREAS, Manager and the New Jersey Department of the Treasury, Division of Purchase and Property, on behalf of the State of New Jersey (the “State”), and the New Jersey Department of the Treasury, Division of State Lottery (the “Division of Lottery”) entered into that certain State of New Jersey Lottery Services Agreement on ________________, 20[__] (the “Services Agreement”) by which Manager shall provide certain services, goods and equipment to the Division of Lottery in connection with the operation of the State-conducted lottery (the “Transaction”);

WHEREAS, pursuant to the terms of the Services Agreement, Manager must require all of its Subcontractors and Manager Personnel having access to Confidential Information (as defined below) to be subject to a written agreement of confidentiality and non-disclosure that contains terms and conditions substantially similar to those set forth in Section 9 of the Services Agreement;

WHEREAS, Company may need, from time to time, to access or use the Confidential Information in furtherance of Company’s obligations to Manager, and Manager may need, from time to time, to disclose such Confidential Information to Company; and,

WHEREAS, the Parties now wish to enter into this Agreement to protect the Confidential Information and restrict its use strictly to the purposes stated herein.

AGREEMENT

NOW, THEREFORE, and in consideration of the promises and covenants hereinafter set forth, and for such other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, and with the foregoing recitals being incorporated into this Agreement by this reference, the Parties hereby agree as follows:

1. Definitions.

   (a) Confidential Information. For purposes of this Agreement, “Confidential Information” shall mean (a) all information marked confidential, restricted or proprietary by Manager, the State and/or the Division of Lottery; and (b) any other information that is treated as confidential by Manager, the State and/or the Division of Lottery and would reasonably be understood to be confidential, whether or not so marked. In the case of the State and the Division of Lottery, Confidential Information also shall include State Intellectual Property, the State Data, attorney-client privileged materials, attorney
work product, customer lists, customer contracts, customer information and transaction data, rates and pricing, information with respect to competitors, strategic plans, account information, research information, financial/accounting information (including assets, expenditures, mergers, acquisitions, divestitures, billings collections, revenues and finances), IT and personnel information, marketing/sales information, information regarding businesses, plans, operations, Third Party contracts, licenses, internal or external audits, law suits, regulatory compliance or other information or data obtained, received, transmitted, processed, stored, archived or maintained by Manager under this Agreement.

(b) Other Definitions. Capitalized words or phrases used, but not defined, in this Agreement (including any schedules, exhibits, or other documents attached to or otherwise made a part of this Agreement) shall have those meanings ascribed to them in the Services Agreement.

2. Obligations of Confidentiality.

(a) Company understands and agrees that it will be deemed in a relationship of confidence with respect to the Confidential Information disclosed to it by Manager. Company shall not disclose, and shall maintain the confidentiality of, all Confidential Information disclosed to it. Company shall each use at least the same degree of care to safeguard and to prevent the disclosure of the Confidential Information as it employs to avoid unauthorized disclosure, publication, dissemination, destruction, loss or alteration of its own information (or information of its customers) of a similar nature, but not less than reasonable care.

(b) Company shall ensure that its directors, officers and employees shall have access to the Confidential Information only to the extent necessary for such director, officer or employee to perform his or her obligations under or with respect to the Services Agreement or as otherwise naturally occurs in such director’s, officer’s or employee’s scope of responsibility, provided that such access is not in violation of any State Policies and Rules. Company may disclose Confidential Information to its Affiliates, auditors, attorneys, accountants, consultants, contractors and subcontractors (collectively, “Representatives”), where: (i) use by such Person is authorized by Company; (ii) such disclosure is necessary for the performance of such Person’s obligations under or with respect to the Services Agreement or otherwise naturally occurs in such Person’s scope of responsibility; and (iii) such Person (and its applicable officers and employees) agrees to confidentiality obligations that meet the requirements of this Agreement. Company agrees to instruct all such Representatives to perform his, her, or its obligations in accordance with the terms and conditions of this Agreement and not to disclose such Confidential Information to any third parties, and not to use the Confidential Information for any purpose (other than in connection with the provision of Services under the Services Agreement), without the prior written permission of Manager. Company hereby assumes full responsibility for the acts or omissions of its directors, officers, employees and Representatives and shall ensure that the Confidential Information is not disclosed or used in contravention of this Agreement. Any disclosure to a Representative shall be under the terms and conditions as provided herein.

(c) Company shall not: (i) make any use or copies of the Confidential Information disclosed to it except as contemplated by this Agreement; (ii) acquire any right in or assert any lien against the Confidential Information disclosed to it; (iii) sell, assign, transfer, lease or otherwise dispose of Confidential Information disclosed to it to Third Parties or commercially exploit such information; or (iv) refuse for any reason to promptly provide the Confidential Information (including copies thereof) to Manager, the State or the Division of Lottery if requested by Manager, the State or the Division of Lottery to do so.

3. Exclusions. Section 2 shall not apply to any particular information which Company can demonstrate: (a) is, at the time of disclosure to it, generally available to the public other than through a breach of Company’s or a Third Party’s confidentiality obligations; (b) after disclosure to it, is published by
Manager, the State or the Division of Lottery, as the case may be, or otherwise becomes generally available to the public other than through a breach of Company’s or a Third Party’s confidentiality obligations; (e) is lawfully in the possession of Company at the time of disclosure to it; (d) is received from a Third Party having a lawful right to disclose such information without any restriction on further disclosure; or (e) is independently developed by Company without reference to or use of Confidential Information; provided however, that the exclusions in the foregoing subsections (a), (b) and (c) shall not be applicable to the extent that the disclosure or sharing of such information is subject to any limitation, restriction, consent or notification requirement under any applicable Data Privacy Laws then in effect. The Parties acknowledge and agree that Confidential Information that is not generally available to the public shall not be deemed public or subject to this exclusion merely because it is combined with information that is generally available to the public.

4. Required Disclosure.

(a) Company may disclose Confidential Information to the extent disclosure is based on the good faith written advice of Company’s legal counsel that disclosure is required by Regulatory Requirement; provided, however, that Company shall give advance notice of such requested disclosure to Manager and shall use commercially reasonable efforts to obtain a protective order or otherwise protect the confidentiality of the Confidential Information and, in the case of Confidential Information of the State and/or the Division of Lottery, to the extent the State and/or the Division of Lottery reasonably determines it is appropriate and consistent with the New Jersey Open Public Records Act (N.J.S.A. 47:1A-1, et seq.) and/or the common law right to know as established under New Jersey law. Notwithstanding the foregoing, Manager reserves the right to obtain a protective order or otherwise protect the confidentiality of such Confidential Information. For purposes of this Section 4, Company’s in-house counsel or law department may act as their respective legal counsel.

(c) Company, and its directors, officers, employees and Representatives will at all times cooperate timely and fully with Manager to protect the confidentiality of the Confidential Information and will exercise all reasonable efforts to obtain reliable assurance that confidential treatment will be accorded to the Confidential Information, and will disclose only so much of the Confidential Information as it is legally compelled to disclose (which shall mean and include an effort to redact or “sanitize” any information required to be disclosed to the maximum extent permitted by law).

5. Notification, Mitigation and Remedy.

(a) In the event of any impermissible disclosure, loss or destruction of Confidential Information, Company shall immediately notify Manager and take all reasonable steps to mitigate any potential harm or further disclosure, loss or destruction of such Confidential Information.

(b) In the event that there is a breach of Company’s obligations contained in this Agreement, or otherwise, involving Personal Information in the possession of Company, and such breach is the direct cause of an unauthorized disclosure of such Personal Information, then the cost of the notifications in N.J.S.A. 56:8-163 shall be borne in full by Company and Company shall fully indemnify Manager against any third party claims as a result of such unauthorized disclosure.

6. Return/Destruction of Confidential Information. Upon termination of this Agreement, and at any other time upon written request by Manager or the State or the Division of Lottery, to the extent permitted by law and consistent with any applicable document retention policies, Company shall return to Manager all applicable Confidential Information (including all documentation in any medium to the extent it contains, refers to, or relates to the Confidential Information) then in its possession or control, in whatever form, or, in the case of a written request by Manager, the Confidential Information specified
in such request as then in Company’s possession or control, in whatever form, in any case within thirty (30) days following such termination or request. In addition, unless Manager otherwise consents in writing, Company also shall deliver to Manager or, if requested by Manager, shall delete or destroy and provide a certification as to the deletion or destruction of, any copies, duplicates, summaries, abstracts or other representations of any such Confidential Information or any part thereof, in whatever form, then in the possession or control of Company to the extent permitted by applicable law and consistent with any applicable document retention policies. Notwithstanding the foregoing, Company may retain a reasonable number copies of documentation and data, excluding the State Data, for archival purposes or warranty support; provided, however, that any subsequent disclosure of such archived data shall comply with this Agreement. Company shall deliver to Manager written certification of its compliance with this Section 6 signed by an authorized representative of Company.

7. Ownership of Confidential Information. Manager, the State or the Division of Lottery, as the case may be, shall be deemed to be the owner of all Confidential Information disclosed by it, including all patent, copyright, trademark, trade secret and other proprietary rights and interests therein, and Company recognizes and agrees that nothing contained in this Agreement shall be construed as granting any rights, by license or otherwise, in or to any Confidential Information disclosed pursuant to this Agreement or in or to any such intellectual property rights therein.

8. Injunctive Relief and Attorneys’ Fees. If Company or anyone acting on its behalf or operating under its control, publishes, transmits, releases, discloses or uses any Confidential Information in violation of this Agreement, or if Manager anticipates that Company may violate or continue to violate any restriction set forth in this Agreement, then Manager shall have the right to have the provisions of this Agreement specifically enforced by any court having equity jurisdiction, without being required to post bond or other security and without having to prove the inadequacy of available remedies at law, it being acknowledged and agreed that any such violation shall cause irreparable injury to Manager, the State and/or the Division of Lottery, as the case may be, and that monetary damages shall not provide an adequate remedy.

9. Duration; Survival. This Agreement shall remain in effect until written notice by Manager to terminate this Agreement. Notwithstanding the termination of this Agreement, the confidentiality obligations set forth in this Agreement with respect to any Confidential Information shall survive the termination of this Agreement until such Confidential Information is publicly known.

10. State and Division of Lottery As Beneficiary. The Parties expressly acknowledge and agree that the State and the Division of Lottery shall be considered third-party beneficiaries under this Agreement, having all of the legal, equitable, or similar rights (or remedies or claims) that Manager may have under this Agreement.

11. Miscellaneous. If any provision of this Agreement or any portion of any such provision shall be held invalid or unenforceable by a court of competent jurisdiction, the remaining provisions of the Agreement shall remain in full force and effect, and the provision or portion thereof affected by such holding shall be modified, if possible, so that it is enforceable to the maximum extent permissible. This Agreement shall be governed by and construed in accordance with the laws of the State of New Jersey without regard to or application of choice of law rules or principles. Nothing contained herein shall be deemed to obligate Manager to deal exclusively with Company with respect to the Transaction, or any part thereof, and Manager shall be free to engage other parties to perform the same or similar work as is being requested of Company with respect to the Transaction. This Agreement constitutes the entire agreement of the parties regarding the subject matter hereof and may not be modified except by a written instrument signed by an authorized representative of each Party and the State and the Division of Lottery.
IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the date first written above.

“MANAGER”

[NAME],

By: __________________________
   Name: ______________________
   Title: ______________________

“COMPANY”

[________________________________],
   a __________________________

By: __________________________
   Name: ______________________
   Title: ______________________
SCHEDULE 10.2
PAYMENTS SCHEDULE

Manager shall receive reimbursement for Operating Expenses and payment of Incentive Compensation, in accordance with and pursuant to Section 10 of the Agreement and this Schedule 10.2.

Notwithstanding anything to the contrary elsewhere in the Agreement or this Schedule 10.2, the State’s and the Division of Lottery’s obligation to pay any amount owed to Manager under the Agreement shall be subject to appropriations and the availability of funds, the New Jersey Prompt Payment Act (N.J.S.A. 52:32-32, et. seq.) and N.J.S.A. 5:9-7(a)(11).

1. Operating Expenses. “Operating Expenses” in each Contract Year are comprised of (i) the “Manager Expenses” (as defined below), and (ii) “Subcontractor Expenses” (as defined below):

   a. The “Manager Expenses” for each Contract Year shall equal the fixed amount established annually in accordance with clause (c) below to reimburse Manager for the expenses, other than Subcontractor Expenses (as defined below), incurred by Manager with respect to its provision of the Services under the Agreement, including Manager’s base employee compensation and employee benefits (excluding any bonuses, which the Division of Lottery shall not reimburse Manager for), and overhead for its business operations with respect to the provision of the Services. The Manager Expenses shall not include any expenses otherwise included as Subcontractor Expenses.

   b. The “Subcontractor Expenses” shall be comprised of the fixed amount established annually in accordance with clause (c) below that is required by Manager to pay Subcontractors for goods and services provided in support of the operation of the Lottery, provided that all Subcontracts are procured in compliance with Section 7 of the Agreement or relate to Existing State Contracts.

   c. The Manager Expenses and Subcontractor Expenses for each Contract Year are set forth in the Annual Business Plan, and are subject to adjustment each Contract Year pursuant to the Annual Business Plan process described in Section 5.3.5 of the Agreement.

2. Incentive Compensation: Cap.

   a. “Incentive Compensation” each Contract Year shall be based solely upon Manager’s achievement of Net Income (as defined in the Agreement) that exceeds “Base Level Income,” “Middle Level Income,” and “Upper Level Income,” respectively, all as set forth in Appendix A to this Schedule 10.2, and expressly subject to the cap in Section 2(b) below and, in accordance with Section 5 below, after first offsetting the amount of any Net Income Shortfall Payment due from Manager pursuant to Section 3 below for such Contract Year (prior to application of the Downside Cap).

   b. Notwithstanding anything contained in this Schedule 10.2 or the Agreement to the contrary, in any given Contract Year the Incentive Compensation payable to Manager shall not exceed five percent (5%) of Net Income for such Contract Year.
c. Adjustments.

i. **Upward Adjustment to Income Levels:** Manager and the Division of Lottery agree that the Net Income Levels reflected in Appendix A to this Schedule 10.2 are premised upon the net income the Division of Lottery could reasonably achieve under the current gaming environment in the State. Manager agrees that the Net Income Targets represent Manager’s projected Net Income for each Contract Year. Manager and the Division of Lottery acknowledge that should there be a material change in the gaming environment in the State, for example (x) a change in law that would make available or expand Lottery sales channels or authorize game types or platforms currently unavailable to the Lottery, (y) the elimination or reduction of current competing forms of gaming or (z) as contemplated by Sections 4.4 and 4.5 of the Agreement, then the Division of Lottery shall be entitled to recommend in writing (the “**State’s Recommended Adjustments**”) to Manager a proportional increase to the Base Level Income, Middle Level Income and Upper Level Income (the “**Net Income Levels**”) and the Net Income Targets for (i) the Contract Year in which the Division of Lottery sends Manager notice of the State’s Recommended Adjustments, and (ii) if applicable, all subsequent Contract Years for the Term of the Agreement. If Manager disagrees, in writing, with the State’s Recommended Adjustments within fourteen (14) days of receiving the State’s Recommended Adjustments, then the dispute over the appropriate amount of adjustment to reflect the material change shall be settled in accordance with the Dispute Resolution provisions of Section 20 of the Agreement; provided, however, that the DPP must approve any adjustments to the Net Income Levels and/or Net Income Targets that are mutually agreed upon by the Division of Lottery and Manager (excluding any adjustments that are finally determined by the Superior Court of the State of New Jersey - Mercer Vicinage in accordance with Section 20.3.2 of the Agreement). The failure of Manager to respond in writing to the State’s Recommended Adjustments within fourteen (14) days of receipt of the applicable notification shall be deemed acceptance by Manager of the State’s Recommended Adjustments.

ii. **Downward Adjustment to Income Levels:** In the event of an Adverse Action as defined in Section 21 of the Agreement, Manager shall be entitled to recommend, in writing (the “**Manager’s Recommended Adjustments**”), to the Division of Lottery a proportional decrease to the amount of Net Income Levels and Net Income Targets for (i) the Contract Year in which Manager sends the Division of Lottery notice of Manager’s Recommended Adjustments to reflect an Adverse Action, and (ii) if applicable, all subsequent Contract Years for the Term of the Agreement. If the Division of Lottery disagrees, in writing, with Manager’s Recommended Adjustments within fourteen (14) days of receiving Manager’s Recommended Adjustments, then the dispute over the appropriate amount of adjustment to reflect the Adverse Action shall be settled in accordance with the Dispute Resolution provisions of Section 20 of the Agreement; provided, however, that the DPP must approve any adjustments to the Net Income Levels and/or Net Income Targets that are mutually agreed upon by the Division of Lottery and Manager (excluding any adjustments that are finally determined by the Superior Court of the State of New Jersey - Mercer Vicinage in accordance with Section 20.3.2 of the Agreement). The failure of the Division of Lottery to respond in writing to Manager’s Recommended Adjustments within fourteen
(14) days of receipt of the applicable notification shall be deemed acceptance of Manager’s Recommended Adjustments.

3. **Shortfall Payments.**

   a. A “Net Income Shortfall” shall be deemed to have occurred in any Contract Year in which Net Income does not meet or exceed the Net Income Target for such Contract Year. If there is a Net Income Shortfall for a Contract Year, Manager shall pay the Division of Lottery an amount calculated in the following manner (the “Net Income Shortfall Payment”):

   i. If in any Contract Year, Net Income is greater than or equal to the Base Level Income for such Contract Year as set forth in Appendix A to this Schedule 10.2, but less than the Net Income Target for such Contract Year as set forth in Appendix A to this Schedule 10.2, then Manager shall pay the Division of Lottery a Net Income Shortfall Payment equal to fifty percent (50%) of the difference between:

      1. the Net Income Target for such Contract Year; and
      2. the Net Income for such Contract Year.

   For purposes of clarity in this Section 3(a)(i):

   $$\text{Net Income Shortfall Payment to the Division of Lottery} = (\text{Net Income Target} - \text{Net Income}) \times 0.50$$

   ii. If in any Contract Year, Net Income is less than the Base Level Income for such Contract Year as set forth in Appendix A to this Schedule 10.2, then Manager shall pay the Division of Lottery a Net Income Shortfall Payment equal to the sum of:

      1. (x) fifty percent (50%) of the difference between (i) the Net Income Target for such Contract Year and (ii) the Base Level Income for such Contract Year; and (y) one hundred percent (100%) of the difference between (i) the Base Level Income for such Contract Year and (ii) the Net Income for such Contract Year.

   For purposes of clarity in this Section 3(a)(ii):

   $$\text{Net Income Shortfall Payment to the Division of Lottery} = ((\text{Net Income Target} - \text{Base Level Income}) \times 0.50) + (\text{Base Level Income} - \text{Net Income})$$

   iii. The amount of any Net Income Shortfall Payment payable by Manager to the Division of Lottery for a Contract Year pursuant to clauses (i) and (ii) above shall first offset (in accordance with Section 5 below) the amount of any Incentive Compensation due to the Manager under Section 2(a) above, if any. If the amount of the Net Income Shortfall Payment is more than the amount of Incentive Compensation, the net amount of the Net Income Shortfall Payment due from the Manager shall not exceed two percent (2.00%) of Net Income in such Contract Year (the “Downside Cap”). For the avoidance of doubt, (A) the
foregoing Downside Cap is applicable to the amount of the Net Income Shortfall Payment for any single Contract Year and not the aggregate amount of Net Income Shortfall Payments during the Term, and (B) the Contribution Shortfall is not subject to or otherwise affected by the Downside Cap.

iv. Notwithstanding anything to the contrary herein, after determining the amount of any Net Income Shortfall Payment due under clause (iii) above, Manager shall receive a credit towards such amount in an aggregate amount up to $20,000,000 (the “Income Shortfall Credit Amount”). No Net Income Shortfall Payment shall be due from Manager or otherwise netted against payments due to Manager, except to the extent that the total aggregate amount of any Net Income Shortfall Payments (for the current and all prior Contract Years) exceeds the Income Shortfall Credit Amount. For the avoidance of doubt, (A) the Income Shortfall Credit Amount may not be used to reduce any Contribution Shortfall Payment, and (B) the Income Shortfall Credit Amount shall be applied after (I) Incentive Compensation and Net Income Shortfall Payment have been netted as described in Section 5 of this Schedule 10.2, and (II) application of the Downside Cap set forth in Section 3.a.iii of this Schedule 10.2, in either case if applicable.

b. If there is a Contribution Shortfall in any Contract Year, Manager shall pay the Division of Lottery an amount equal to such Contribution Shortfall (the “Contribution Shortfall Payment”, and together with the Net Income Shortfall Payment, the “Shortfall Payments”).

c. Any Shortfall Payments for a Contract Year shall be made in accordance with the procedures set forth in Section 5 of this Schedule 10.2 and Section 10.3.2 of the Agreement.

4. Stub Year Calculations. For purposes of this Schedule 10.2, the various Net Income Level and Net Income Target amounts in the Stub Contract Year shall be prorated as follows:

   Prorated Net Income Level = Actual Number of Days Elapsed in Stub Contract Year / 365 x each Net Income Level

   Prorated Net Income Target = Actual Number of Days Elapsed in Stub Contract Year / 365 x each Net Income Target

5. Net of Incentive Compensation and Shortfall Payments. Notwithstanding any other provision of this Schedule 10.2 or the Agreement to the contrary Manager hereby acknowledges and agrees that if in any Contract Year: (a) both Incentive Compensation and a Net Income Shortfall Payment are payable, then the Incentive Compensation and the Net Income Shortfall Payment shall be netted, prior to application of (i) the Downside Cap set forth in Section 3.a.iii of this Schedule 5 and (ii) the Income Shortfall Credit Amount, in either case if applicable, and (b) both Incentive Compensation and a Contribution Shortfall Payment are payable, then the amount of Incentive Compensation (after application of the Downside Cap set forth in Section 3.a.iii of this Schedule 5 and any Income Shortfall Credit Amount, in either case if applicable) and the Contribution Shortfall Payment shall be netted.
The following hypothetical example is solely for purposes of clarity:

**Contract Year 5 Assumptions:**
- Net Income Target: $1,375.0 million
- Actual Net Income Achieved: $1,200.0 million
- Contribution Shortfall: $0.0
- Remaining Income Shortfall Credit Amount: $20.0 million

<table>
<thead>
<tr>
<th><strong>Contract Year 5</strong></th>
<th><strong>$ Million</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Base Level</strong></td>
<td>$994</td>
</tr>
<tr>
<td><strong>Middle Level</strong></td>
<td>$1,096</td>
</tr>
<tr>
<td><strong>Upper Level</strong></td>
<td>$1,364</td>
</tr>
<tr>
<td><strong>Net Income Target</strong></td>
<td>$1,375</td>
</tr>
<tr>
<td><strong>Actual Net Income Achieved</strong></td>
<td>$1,200</td>
</tr>
</tbody>
</table>

- **Incentive Compensation Payable to Manager (prior to application of caps, credits and offsets):** $25.9
- **Net Income Shortfall Payment Payable to the Division of Lottery (prior to application of caps, credit and offsets):** $87.5
- **Net Payable to the Division of Lottery After Offset and Before Application of Cap and Credit:** $61.6
- **Net Payable by Manager to the Division of Lottery After Application of Cap:** $24
- **Net Payable by Manager to the Division of Lottery After Application of the Income Shortfall Credit Amount:** $4
- **Contribution Shortfall Payment Payable to the Division of Lottery (no caps or credit apply, prior to application of any offset):** $0
- **Final Netted Amount Payable by Manager to the Division of Lottery:** $4

*Note that if in the above example a Contribution Shortfall Payment of $5 million also was due, the Final Netted Amount payable by Manager would be $9 million.*
APPENDIX A TO SCHEDULE 10.2

The Base Level Income, Middle Level Income, Upper Level Income and Net Income Targets are as follows:

<table>
<thead>
<tr>
<th>Contract Year</th>
<th>Base Level Income</th>
<th>Middle Level Income</th>
<th>Upper Level Income</th>
<th>Net Income Target*</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Manager shall receive five percent (5%) of that portion of Net Income in any applicable Contract Year that exceeds the Base Level Income set forth below, but is equal to or less than the Middle Level Income in such Contract Year, subject to the cap set forth in Section 2(b) above</td>
<td>Manager shall receive twenty percent (20%) of that portion of Net Income in any applicable Contract Year that exceeds the Middle Level Income set forth below, but is equal to or less than the Upper Level Income in such Contract Year, subject to the cap set forth in Section 2(b) above</td>
<td>Manager shall receive thirty percent (30%) of that portion of Net Income in any applicable Contract Year that exceeds the Upper Level Income as set forth below in such Contract Year, subject to the cap set forth in Section 2(b) above</td>
<td>($ million)</td>
</tr>
<tr>
<td>Contract Year 1</td>
<td>$959</td>
<td>$978</td>
<td>$1,021</td>
<td></td>
</tr>
<tr>
<td>(Stub Contract Year)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Contract Year 2</td>
<td>$967</td>
<td>$1,006</td>
<td>$1,098</td>
<td></td>
</tr>
<tr>
<td>Contract Year 3</td>
<td>$976</td>
<td>$1,035</td>
<td>$1,180</td>
<td></td>
</tr>
<tr>
<td>Contract Year 4</td>
<td>$985</td>
<td>$1,065</td>
<td>$1,269</td>
<td></td>
</tr>
<tr>
<td>Contract Year 5</td>
<td>$994</td>
<td>$1,096</td>
<td>$1,364</td>
<td></td>
</tr>
<tr>
<td>Contract Year 6</td>
<td>$1,002</td>
<td>$1,128</td>
<td>$1,466</td>
<td></td>
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<tr>
<td>Contract Year 7</td>
<td>$1,011</td>
<td>$1,160</td>
<td>$1,576</td>
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<tr>
<td>Contract Year 8</td>
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<td>Contract Year 9</td>
<td>$1,030</td>
<td>$1,229</td>
<td>$1,821</td>
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<tr>
<td>Contract Year 10</td>
<td>$1,039</td>
<td>$1,264</td>
<td>$1,958</td>
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<tr>
<td>Contract Year 11</td>
<td>$1,048</td>
<td>$1,301</td>
<td>$2,105</td>
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</tr>
<tr>
<td>Contract Year 12</td>
<td>$1,058</td>
<td>$1,339</td>
<td>$2,263</td>
<td></td>
</tr>
<tr>
<td>Contract Year 13</td>
<td>$1,067</td>
<td>$1,378</td>
<td>$2,432</td>
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</tr>
<tr>
<td>Contract Year 14</td>
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<td>$1,418</td>
<td>$2,615</td>
<td></td>
</tr>
<tr>
<td>Contract Year 15</td>
<td>$1,087</td>
<td>$1,459</td>
<td>$2,811</td>
<td></td>
</tr>
<tr>
<td>Contract Year 16</td>
<td>$1,096</td>
<td>$1,501</td>
<td>$3,022</td>
<td></td>
</tr>
</tbody>
</table>

*Net Income Targets to be inserted from the Manager Proposal.
SCHEDULE 10.3

FORM OF INVOICE

<table>
<thead>
<tr>
<th>[Manager]</th>
<th>INVOICE</th>
</tr>
</thead>
<tbody>
<tr>
<td>[address]</td>
<td>Invoice Number:</td>
</tr>
<tr>
<td>[phone]</td>
<td>Invoice Date:</td>
</tr>
<tr>
<td>[fax]</td>
<td></td>
</tr>
</tbody>
</table>

This Invoice is issued pursuant to that certain Services Agreement, dated [__________] (the “Services Agreement”).

Customer Information: The New Jersey Department of the Treasury, Division of State Lottery.

Billing Address:

<table>
<thead>
<tr>
<th>Company:</th>
<th>The New Jersey Department of the Treasury, Division of State Lottery</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name:</td>
<td></td>
</tr>
<tr>
<td>Address:</td>
<td>One Lawrence Park Complex</td>
</tr>
<tr>
<td></td>
<td>Brunswick Avenue Circle</td>
</tr>
<tr>
<td>City/State/Zip:</td>
<td>Lawrenceville, NJ 08648</td>
</tr>
</tbody>
</table>

Invoice Information:

<table>
<thead>
<tr>
<th>Operating Expenses for Contract Year</th>
<th>Operating Expenses Paid Year-to-Date</th>
<th>Amount Due</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Subtotal (for informational purposes):

<table>
<thead>
<tr>
<th>Monthly Expense Allowance per Section 10.3.1 of the Services Agreement:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less any applicable Service Level Credits:</td>
</tr>
<tr>
<td></td>
</tr>
</tbody>
</table>

Grand Total:

Notes /Additional Information:

By signing below, the undersigned, on behalf of [Manager] (“Manager”), hereby certifies that (i) Manager has reviewed all invoices submitted by a Subcontractor (as defined in the Services Agreement) for the period relating to this Invoice and (ii) the charges set forth on each such invoice submitted by a Subcontractor are in conformance with the terms of the engagement with such Subcontractor.

INVOICE CERTIFICATION

NOTICE: This document constitutes a claim to the Division of Lottery for reimbursement. The Government’s payment decisions are based upon Manager’s Certification that this document is true, accurate and complete.

Manager understands that submitting an invoice to the Division of Lottery that is not true, accurate and complete constitutes false certification and presentment of a false claim for payment in violation of the New Jersey False Claims Act, N.J. Stat. Ann. § 2A:32C-1 et seq.
CERTIFICATION: By signing below, the undersigned, on behalf of Manager, hereby certifies that he has read the above statements and has reviewed this invoice and that, to the best of his knowledge and belief, the statements therein are true, correct and complete.

[MANAGER]

By: __________________________
   Name: ______________________
   Title: _______________________

10.3-
NEW JERSEY STATE LOTTERY
LOTTERY VENDORS’ CODE OF ETHICS

Introduction

The proper functioning and financial success of the New Jersey State Lottery are vitally dependent upon the maintenance of public trust and confidence. It is essential; therefore, that the Lottery and those persons or firms who do business with it avoid all situations where proprietary or financial interests or the opportunity for financial gain could lead to favored treatment for any organization or individual. They must also avoid circumstances and conduct which may not constitute wrongdoing or a conflict of interest but might nevertheless appear questionable to the general public, thus compromising the integrity of the Lottery.

The Lottery Commission recognizes that in this complex society there will often occur situations in which overlapping or linked ownerships make total separations of interest impossible. It is also familiar with the laws governing the executive Commission on Ethical Standards, N.J.S.A. 52:13D-12 et. seq. which, while not strictly applicable to vendors or other contracting parties, provides guidance in this general area.

Accordingly, pursuant to authority embodied in N.J.S.A. 5:9-1, et. seq., and for good cause, the following is hereby established as the New Jersey State Lottery Code of Ethics for Vendors and Contractors.

This code of ethics shall be made part of every request for proposals (RFP) promulgated by the Lottery following the effective date of this resolution. It shall be distributed to all present and future parties who do business with the Lottery (other than as purchasers of lottery tickets, public comment and projected enactment as an agency rule pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1, et. seq.

Lottery Vendors Code of Ethics

17:20-8.1 Lottery vendors’ code of ethics

(a) No Lottery vendor shall employ any person or maintain any business relationship with any person who is a Lottery Commissioner, officer or employee or his or her immediate family or with any person, firm or entity with which he or she is employed or associated or in which he or she has an interest within the meaning of the New Jersey Conflict of Interest Law (N.J.S.A. 52:13D-13g). As used in this section, Lottery vendor means any person, firm or corporation, or Lottery retailer engaging or seeking to engage in business with the Division of the State Lottery.

(b) The maintenance of a business relationship shall be deemed to include, but not be limited to, any interest, financial or otherwise, direct or indirect, any business transaction or professional activity involving a Commissioner, officer or employee, including the sale of any interest in the vendor.

(c) No Lottery vendor shall cause or influence, or attempt to cause or influence, any Lottery Commissioner, officer or employee to act in his or her official capacity in any manner which might tend to impair the objectivity or independence of judgment of said Lottery Commissioner, officer or employee.
(d) No Lottery vendor shall cause or influence, or attempt to cause or influence, any Lottery Commissioner, officer or employee to use, or attempt to use, his or her official position to secure unwarranted privileges or advantages for the Lottery vendor or for any other person.

(e) No Lottery vendor shall pay, offer to pay, or agree to pay, either directly or indirectly, to any Lottery Commissioner, officer or employee or to any member of the immediate family, as defined by the New Jersey Conflicts of Interest Law (N.J.S.A. 52:13D-13i), of any such person, or any partnership, firm, or corporation with which such person is employed or associated, or in which such person has an interest within the meaning of New Jersey Conflicts of Interest Law (N.J.S.A. 52:13D-13g), any fee, commission, compensation, gift, favor, service or other thing of value under circumstances from which it might be reasonably inferred that such gift, service or other thing of value was given or offered for the purpose of influencing the recipient in the discharge of his or her official duties. The solicitation of any fee, commission, compensation, gift, gratuity or other thing of value by any commissioner, officer or employee from any State vendor shall be reported in writing forthwith by the vendor to the Attorney General and the State Ethics Commission.

(f) No Lottery vendor shall, without the written approval of the Director, disclose, directly or indirectly, any information not generally or legally available to the public concerning the affairs of the Division.

(g) This code is intended to augment and not replace existing administrative orders and pertinent codes of ethics.
SCHEDULE 18.1.1

FORM OF GUARANTY

This Payment and Performance Guaranty (this “Guaranty”), dated as of [_________], 20[____], is made by XXXXX Corporation, a company incorporated in [__________] (the “Guarantor”) in favor of THE NEW JERSEY DEPARTMENT OF THE TREASURY, DIVISION OF STATE LOTTERY (the “Beneficiary”).

WITNESSETH:

WHEREAS, contemporaneously with the execution of this Guaranty, [NAME OF MANAGER] (the “Company”) and the Beneficiary are entering into that certain Services Agreement by and among the Company, the Beneficiary and the New Jersey Department of the Treasury, Division of Purchase and Property (as amended, restated, supplemented or otherwise modified from time to time, the “Agreement”); and

WHEREAS, as a condition to entering into the Agreement, and in consideration thereof, the Beneficiary has requested, and the Guarantor has agreed to issue, this Guaranty.

NOW, THEREFORE, in consideration of the foregoing premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Guarantor hereby agrees as follows:

ARTICLE I
GUARANTY

Section 1.1 Payment Guaranty. The Guarantor hereby unconditionally, absolutely and irrevocably guarantees to the Beneficiary and its successors and assigns the full and prompt payment when due of all of the payment obligations of the Company under the Agreement, including without limitation all indemnification obligations of the Company thereunder (the “Payment Obligations”).

Section 1.2 Performance Guaranty. In addition to the guaranty provided for in Section 1.1 above, the Guarantor hereby unconditionally, absolutely and irrevocably guarantees to the Beneficiary and its successors and assigns the (i) the full and prompt performance and observance by the Company of each and every obligation, undertaking, liability, promise, warranty, covenant and agreement of the Company in and under the terms of the Agreement; and (ii) the truth of each and every representation and warranty made by the Company in the Agreement (the “Performance Obligations, and together with the Payment Obligations, the “Obligations”).

Section 1.3 Reimbursement of Expenses. The Guarantor also agrees that it will reimburse the Beneficiary on demand for all expenses, including reasonable attorneys’ fees and expenses, incurred by the Beneficiary in connection with the enforcement of this Guaranty; provided however that in the event of a lawsuit, Guarantor shall only be responsible for the payment of attorney’s fees if Beneficiary prevails.

Section 1.4 Guaranty Absolute. The Guarantor, as the sole and independent obligor hereunder, hereby guarantees that the Payment Obligations will be paid and the Performance Obligations will be performed strictly in accordance with the terms of the Agreement. This is a present and continuing guaranty of payment and performance and not of collection, and is in no way conditioned upon (and Guarantor in any case hereby waives) any requirement that the Beneficiary first attempt to collect or enforce any of the Obligations from or against the Company or resort to any security or any other means.
of obtaining payment or performance of any of the Obligations which the Beneficiary now has or may acquire after the date hereof, or upon any other contingency whatsoever. The Guarantor hereby further waives all notices to which the Guarantor might otherwise be entitled and any demand for payment and/or performance under this Guaranty. The liability of the Guarantor under this Guaranty shall be absolute, unconditional, present and continuing until all of the Obligations have been indefeasibly paid in full or performed, as applicable, irrespective of the validity, regularity or enforceability of any Obligation, and constitutes the full recourse obligations of the Guarantor enforceable against it to the full extent of all its assets and properties. To the fullest extent permitted by applicable law, the Guarantor hereby waives any defense based on or arising out of any defense of the Company or the Guarantor or the unenforceability of all or any part of the Obligations from any cause, or the cessation from any cause of the liability of the Company or the Guarantor, other than the payment or performance in full of the Obligations. The obligations of the Guarantor set forth herein shall not be affected by any action taken under the Obligations in the exercise of any right or remedy therein conferred, or by any failure or omission on the part of the Beneficiary to enforce any right given under the Agreement or hereunder or any remedy conferred thereby or hereby. The Guarantor’s liability under this Guaranty will not be discharged or impaired by:

1. any amendment, waiver, renewal, extension or release of, or any consent to or departure from or other action or inaction related to, the Agreement;

2. any acceptance by the Beneficiary of partial payment or performance from the Company;

3. any bankruptcy, insolvency, reorganization, arrangement, composition, adjustment, winding up, dissolution, liquidation, or other like proceeding, or any legal limitation, incapacity or lack of corporate power or authority of or relating to the Company, or any action taken with respect to the Agreement or this Guaranty by any trustee or receiver, or by any court, in any such proceeding;

4. any absence of any notice to, or knowledge by, the Guarantor, of the existence or occurrence of any of the matters or events set forth in the foregoing subsections (1) through (3);

5. all notices and demands whether of presentment, protest, dishonor or otherwise, other than any notices and demands expressly set forth herein;

6. any change in the charter documents or corporate identity, structure, existence or ownership or any loss of corporate identity of Guarantor or the Company, or any merger or consolidation of Guarantor or the Company, or by any sale, lease or transfer by the Company or the Guarantor of any or all of its properties;

7. any disability or other defense of the Company or of any successor to the Company;

8. any other action, event or omission whatsoever (whether or not known to the Company) which would or might (but for this clause) operate to impair or discharge the liability of the Guarantor hereunder or any obligation of the Company under the Agreement;

9. the existence of any claim, setoff or other rights which the Beneficiary may have at any time against the Company or the Guarantor; and
10. any other circumstance that might otherwise constitute a defense available to, or a discharge of, a guarantor.

Section 1.5 Subrogation Waiver. The Guarantor agrees that it shall not have any rights (direct or indirect) of subrogation, contribution, reimbursement, indemnification, or other rights of payment or recovery from the Company for any payments made by the Guarantor hereunder until all of the Obligations have been finally, indefeasibly and unconditionally paid and performed, and the Guarantor hereby irrevocably waives and releases, to the fullest extent permitted by law, any such rights of subrogation, contribution, reimbursement, indemnification, and other rights of payment or recovery it may now have or hereafter acquire against the Company until all of the Obligations have been paid and performed. Notwithstanding the foregoing, provided that Guarantor is not in default of Guarantor’s obligations hereunder and is undertaking or causing to be undertaken the Obligations, Guarantor shall be entitled to receipt of any payments the Company would have been entitled to receive under the Agreement in respect of the performance of the Obligations thereunder.

Section 1.6 Continuing Guaranty. This Guaranty is a continuing guaranty and shall (i) remain in full force and effect until the indefeasible payment of the Payment Obligations and the complete performance of the Performance Obligations, (ii) be binding upon the Guarantor and its respective successors and assigns, and (iii) inure to the benefit of and be enforceable by the Beneficiary and its respective successors, transferees, and assigns; provided, however, that the obligations of the Guarantor hereunder may not be assigned, transferred, or delegated unless the Guarantor remains liable hereunder. This Guaranty shall continue to be effective, or be automatically reinstated, as the case may be, if at any time payment, or any part thereof, made by or on behalf of the Company or the Guarantor in respect of any of the Obligations is rescinded or must otherwise be restored or returned by the Beneficiary for any reason whatsoever, whether upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of the Company or the Guarantor, or upon or as a result of the appointment of a receiver, intervenor or conservator of, or trustee or similar officer for the Company or the Guarantor or any substantial part of the property of the Company or the Guarantor, or otherwise, all as though such payment had not been made. The obligations of the Guarantors under this Section 1.6 shall survive the termination of this Guaranty.

Section 1.7 Limitations. Notwithstanding any other provision in this Guaranty to the contrary, Guarantor’s liability under this Guaranty will at all times be subject to the limitations and exclusions of liability under the Agreement. Guarantor will have the benefit of any defenses, liability exclusions and limitations and grace periods available to the Company under or in connection with the Agreement.

ARTICLE II
REPRESENTATIONS AND WARRANTIES

Section 2.1 Guarantor. The Guarantor represents and warrants to the Beneficiary as follows:

a) The Guarantor is, and shall continue to be, a company duly incorporated, validly existing and in good standing under the laws of the State of [________] and has all requisite power and authority to carry on its business as it is currently conducted and to own, lease and operate its properties where such properties are now owned, leased or operated.

b) This Guaranty has been duly authorized, executed and delivered by the Guarantor and constitutes a legal, valid, binding and enforceable obligation of the Guarantor.
The consummation by the Guarantor of the transactions contemplated by this Guaranty does not and will not, in any material respect, violate or conflict with:

i. its governing documents;

ii. any provision of any agreement or instrument to which the Guarantor is a party; or

iii. any law, judgment, order, writ, injunction or decree applicable to the Guarantor.

d) No approvals, consents, notifications, filings or registrations of or with any governmental authority or any third party is required to be obtained or made by or with respect to the Guarantor in connection with the execution and delivery of this Guaranty or the performance by the Guarantor of its obligations hereunder.

e) There is no action, litigation, subpoena, suit or proceeding, arbitration or other labor and employment proceeding pending or threatened against or affecting the Guarantor which could reasonably be expected to have a material adverse effect on the Guarantor.

ARTICLE III
MISCELLANEOUS

Section 3.1 Termination of Guaranty. This Guarantee shall remain in full force and effect until the performance in full of the Obligations. This Guaranty shall terminate and be of no further force and effect upon the date on which all of the Obligations have been indefeasibly paid in full or performed, as applicable; provided, that this Guaranty shall remain in effect in respect of any claims made hereunder prior to such date until each such claim is finally resolved.

Section 3.2 Binding Effect; Assignment. This Guaranty shall be binding upon the Guarantor and inure to the benefit of the Beneficiary and their respective successors and permitted assigns. The Guarantor may not assign (by contract, operation of law or otherwise) either this Guaranty or any of its rights, interests or obligations hereunder without the express prior written consent of the Beneficiary and any attempted assignment, without such consent, shall be null and void.

Section 3.3 No Waiver. A delay or omission by the Beneficiary hereto to exercise any right or power under this Guaranty shall not be construed to be a waiver thereof. A waiver by the Beneficiary hereto of any of the covenants to be performed by the Guarantor or any breach thereof shall not be construed to be a waiver of any succeeding breach thereof or of any other covenant herein contained. All waivers shall be in writing and signed by the Beneficiary.

Section 3.4 Notices. Any written notice, request, consent, approval or other communication required or permitted to be given pursuant to this Guaranty shall be in writing and shall be deemed to have been given: (a) upon delivery if delivered personally; (b) upon transmission if sent via facsimile (with the original sent by recognized overnight courier); or (c) one (1) business day after deposit with a national overnight courier, in each case addressed to the following addresses/telecopier numbers, or to such other addresses/telecopier numbers as may be specified by a Party upon written notice to the other in accordance with the terms of this Section 3.4:
If to the Beneficiary:  
The New Jersey Lottery  
Attn: Executive Director  
One Lawrence Park Complex,  
Brunswick Avenue Circle  
P.O. Box 041  
Lawrenceville, NJ 08648

If to the Guarantor:  
[_______________]  
Attn: Chief Executive Officer

With copies to:  
Director  
Division of Law  
New Jersey Office of the Attorney General  
PO Box 106  
Trenton, NJ 08625-0106

and

Deputy Treasurer  
New Jersey Department of the Treasury  
P.O. Box 002  
Trenton, NJ 08625-0002

and

Director  
Department of the Treasury  
Division of Purchase and Property  
P.O. Box 230  
Trenton, NJ 08625-0230

Section 3.5 Applicable Law. This Agreement shall in all respects be interpreted under, and governed by, the laws of the State of New Jersey including as to validity, interpretation and effect, without giving effect to the State of New Jersey conflicts of laws principles.

Section 3.6 Litigation Provisions. With respect to any suit, action or proceedings relating to this Guaranty (“Proceedings”), the Guarantor irrevocably (i) submits to the exclusive jurisdiction of the law division of the Superior Court of New Jersey - Mercer Vicinage, (ii) waives any objection which it may have at any time to the laying of venue of any Proceedings brought in such court, and (iii) waives any claim that such Proceedings have been brought in an inconvenient forum and further waives the right to object, with respect to such Proceedings, that such court does not have any jurisdiction over it. Any claim hereunder shall be subject to appropriations and the New Jersey Contractual Liability Act (N.J.S.A. 59:13-1, et seq.) and the New Jersey Tort Claims Act (N.J.S.A. 59:1-1, et seq.).

Section 3.7 Severability. If any provision of this Guaranty is determined to be invalid or unenforceable, that provision shall be deemed stricken and the remainder of this Guaranty shall continue in full force and effect insofar as it remains a workable instrument to accomplish the original intent and
purposes of the parties, and, if possible, the parties shall replace the severed provision with a provision that reflects the intention of the parties with respect to the severed provision but that shall be valid and enforceable.

Section 3.8 Amendments. No supplement, modification, or amendment of this Guaranty shall be binding unless executed in writing by the Guarantor and the Beneficiary.

Section 3.9 Time of Essence. Time is of the essence of this Guaranty and of each and every provision hereof.

Section 3.10 Headings. The subject headings of the articles, sections, subsections and clauses of this Guaranty are included for purposes of convenience only, and shall not affect the construction or interpretation of any of its provisions.

Section 3.11 Currency. All payments hereunder shall be made in United States Dollars and all references to currency herein shall be to United States Dollars.

(END OF PAGE; SIGNATURE ON THE FOLLOWING PAGE)
IN WITNESS WHEREOF, this Guaranty is issued by the Guarantor as of the date first written above.

GUARANTOR:

[________________]

By: __________________________
Name: ________________________
Title: _________________________
SCHEDULE 18.1.3

FORM OF LETTER OF CREDIT OR PERFORMANCE BOND

[FORM OF LETTER OF CREDIT]

Irrevocable Standby Letter of Credit No.:
Date of issue: ___________ XX, 20[__]
Currency and Amount: US$100,000,000.00
Expiration Date: ___________ XX, 20[__]
Place of Expiry: Trenton, New Jersey

<table>
<thead>
<tr>
<th>BENEFICIARY:</th>
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<tbody>
<tr>
<td>New Jersey Department of Treasury</td>
</tr>
<tr>
<td>Division of State Lottery</td>
</tr>
<tr>
<td>The New Jersey Lottery</td>
</tr>
<tr>
<td>One Lawrence Park Complex,</td>
</tr>
<tr>
<td>Brunswick Avenue Circle</td>
</tr>
<tr>
<td>P.O. Box 041</td>
</tr>
<tr>
<td>Lawrenceville, NJ 08648</td>
</tr>
</tbody>
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<thead>
<tr>
<th>APPLICANT:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ladies and Gentlemen:</td>
</tr>
</tbody>
</table>

We, [NAME & ADDRESS OF L/O/C BANK], located at ________________, New York, NY XXXXX, hereby issue this Irrevocable Standby Letter of Credit No.: _______ in your favor for the account of _____________ in the amount of One Hundred Million United States Dollars ($100,000,000.00) as the Stated Amount. We do not hold any equity interest, directly or indirectly, in [NAME OF GUARANTOR] (the “Guarantor”).

Funds under this Standby Letter of Credit are available to you upon presentation to us at [NAME & ADDRESS OF L/O/C BANK] with a fax copy to [NAME & ADDRESS OF L/O/C BANK], Standby Letter of Credit Department, Fax No.: XXX-XXX-XXXX, of one or more sight drafts drawn on us, for a sum or sums in the aggregate amount not exceeding the Stated Amount, specifically referencing [NAME OF L/O/C BANK] Irrevocable Standby Letter of Credit No.: ________, signed by the Executive Director of the Division of Lottery (whether acting or actual), which draft shall contain a statement that the New Jersey Treasury Department, Division of State Lottery (the “Division of Lottery”) is entitled to make such draw in connection with that certain Services Agreement (the “Services Agreement”) entered into by [NAME OF MANAGER] (the “Manager”), the New Jersey Department of the Treasury, Division of Purchase and Property, on behalf of the State of New Jersey (the “State”), and the Division of Lottery, or be accompanied by a similarly signed statement of the New Jersey Treasury Department to the same effect.

Our obligations hereunder are primary obligations to the Division of Lottery and shall not be affected by the performance or non-performance by the Guarantor or the Manager under any agreement with the Division of Lottery or by any bankruptcy, insolvency or other similar proceeding initiated by or against the Guarantor or the Manager. We agree with you that any draws under this Standby Letter of Credit shall be duly honored on sight if presented to us on or before January XX, 20[__] (the “Expiry Date”). This Standby Letter of Credit shall terminate on the earliest of (i) 5:00 P.M., New Jersey time on the Expiry Date and (ii) the date on which we have honored one or more draws in the Stated Amount of this Standby Letter of Credit. This Standby Letter of Credit may not be transferred by the Division of Lottery to any other person.

It is a condition of this Standby Letter of Credit that it is deemed to be automatically extended without amendment for one year from the expiry date hereof or any future expiration date unless at least thirty (30) calendar days prior to any expiration date, we notify you in writing by courier that we elect not to consider this Standby Letter of Credit renewed for any such additional period. In such event and provided that an alternative security instrument is not
approved by you and put in place prior to the Expiry Date, you may draw hereunder by means of your draft at sight drawn on us together with your signed certificate stating that you are drawing under this letter of credit.

Neither non-renewal by us of this Standby Letter of Credit nor the failure or inability of Applicant to renew this Standby Letter of Credit for a subsequent year shall constitute a loss to the Division of Lottery recoverable under this Standby Letter of Credit, provided that an alternate security instrument is approved by you is put in place on a timely basis so that at no time would the Guarantor be in violation of its obligation under the Services Agreement to maintain in place such security instrument.

To the extent not inconsistent with the express provisions hereof, this Standby Letter of Credit shall be governed by and construed in accordance with the International Standby Practices 1998, International Chamber of Commerce, Publication No. 590 (ISP98) as interpreted under the laws of the State of New Jersey and shall, as to matters not governed by ISP98, be governed and construed in accordance with the laws of the State of New Jersey without regard to principles of conflicts of law.

With respect to any suit, action or proceeding relating to this Standby Letter of Credit ("Proceedings"), we irrevocably (i) submit to the exclusive jurisdiction of the law division of the Superior Court of New Jersey - Mercer Vicinage, (ii) waive any objection which we may have at any time to the laying of venue of any Proceedings brought in such court, and (iii) waive any claim that such Proceedings have been brought in an inconvenient forum and further waive the right to object, with respect to such Proceedings, that such court does not have any jurisdiction over us. Any claim hereunder shall be subject to appropriations and the New Jersey Contractual Liability Act (N.J.S.A. 59:13-1, et seq.) and the New Jersey Tort Claims Act (N.J.S.A. 59:1-1, et seq.).

[Name of Bank]

Authorized Signature

Authorized Signature

[FORM OF PERFORMANCE BOND]

ANNUALLY RENEWABLE PERFORMANCE BOND

BOND #

KNOW ALL MEN BY THESE PRESENTS: THAT [NAME OF SURETY] (HEREINAFTER CALLED THE SURETY), IS HELD AND FIRMLY BOUND UNTO THE STATE OF NEW JERSEY, ACTING THROUGH THE NEW JERSEY TREASURY DEPARTMENT, DIVISION OF STATE LOTTERY (HEREINAFTER CALLED THE OBLIGEE), IN THE FULL AND JUST SUM OF ONE HUNDRED MILLION DOLLARS ($100,000,000.00), THE PAYMENT OF WHICH SUM, WELL AND TRULY TO BE MADE, THE SAID SURETY BINDS ITSELF, AND EACH OF ITS HEIRS, ADMINISTRATORS, EXECUTORS, AND ASSIGNS, JOINTLY AND SEVERALLY, FIRMLY BY THESE PRESENTS.

WHEREAS, [NAME OF MANAGER] (hereinafter called the “Manager”) has by written agreement dated the ___ day of __________, 20[_____] entered into a Services Agreement (hereinafter called the “Services Agreement”) with the Obligee and the New Jersey Department of the Treasury, Division of Purchase and Property, on behalf of the State of New Jersey (the “State”), to provide the Services (as defined in the Agreement).

WHEREAS, the Services Agreement requires the Surety to provide the Guarantor’s Security (as defined in the Services Agreement) in the aggregate amount of One Hundred Million Dollars ($100,000,000) to serve as collateral and security for any unpaid claim of the State and/or the Obligee against the Manager or the Surety (a “Trigger Event”).

WHEREAS, the Obligee has agreed to accept this bond to satisfy the Guarantor’s Security for a period of one year.
NOW, THEREFORE, THE CONDITIONS OF THE ABOVE OBLIGATION ARE SUCH, that if no Trigger Event occurs during the term of the Agreement, or if a Trigger Event occurs but the applicable amount owed to Obligee in respect of such Trigger Event is otherwise satisfied (whether by the Manager or otherwise), then, the Surety shall not have any obligation under this bond, otherwise to remain in full force and effect.

PROVIDED, HOWEVER, that this bond is subject to the following conditions:

1. This bond is for the term beginning January XX, 20[___] and ending January XX, 20[___]. The bond may be extended for additional terms at the option of the Surety, by continuation certificate executed by the Surety. Neither non-renewal by the Surety, nor failure, nor inability to file a replacement bond shall constitute a loss to the Obligee recoverable under this bond. In the event that during the term of the Agreement this bond is not to be extended for an additional term, the Surety will provide written notice to the Obligee at least 30 days prior to the expiration of this bond.

2. In the event of a Trigger Event and a demand (in accordance with provision 3 below) by the Obligee, the Surety shall promptly and at Surety’s expense take one of the following actions: a) cure the Trigger Event; provided, however, that if the requisite action by Surety to cure a Trigger Event is other than a repayment obligation, such cure actions shall be performed with the prior consent of the Obligee; b) assume the remainder of the Contract and to perform or sublet same, but only with the prior written consent of Obligee; c) or to tender to the Obligee funds sufficient to pay all costs associated with the curing of the Trigger Event up to an amount not to exceed the sum of this bond.

3. Any demand made by the Obligee shall be accompanied by a written statement certifying that a Trigger Event has occurred (describing with reasonable specificity the circumstances thereof) and the amount demanded by the Obligee under this bond.

4. The aggregate liability of the surety is limited to the sum of this bond stated herein regardless of the number or amount of claims brought against this bond and regardless of the number of years this bond remains in force.

5. If any conflict or inconsistency exists between the Surety’s obligations or undertakings as described in this bond and as described in the underlying document, then the terms of this bond shall prevail.

6. This bond shall not bind the Surety unless the bond is accepted by the Obligee. The acknowledgement and acceptance of this bond is demonstrated by signing where indicated below. If this obligation is not accepted by way of signature of the Obligee below, this bond shall be deemed null and void.

7. All notices to be delivered herein shall be delivered in accordance with the Agreement.

8. The Surety hereby waives notice of any change, including changes of time, to the Services Agreement or to related subcontracts, purchase orders and other obligations.

9. The Surety acknowledges that it does not hold any equity interest, directly or indirectly, in the Manager.

10. With respect to any suit, action or proceedings relating to this bond (“Proceedings”), the Surety irrevocably (i) submits to the exclusive jurisdiction of the law division of the Superior Court of New Jersey - Mercer Vicinage, (ii) waives any objection which it may have at any time to the laying of venue of any Proceedings brought in such court, and (iii) waives any claim that such Proceedings have been brought in an inconvenient forum and further waives the right to object, with respect to such Proceedings, that such court does not have any jurisdiction over it. Any claim hereunder shall be subject to appropriations and the New Jersey Contractual Liability Act (N.J.S.A. 59:13-1, et seq.) and the New Jersey Tort Claims Act (N.J.S.A. 59:1-1, et seq.).
Signed and sealed this _______ day of ________________, 20___.

PRINCIPAL:                     SURETY:
_____________________________ (seal) ____________________________ (seal)
_____________________________                ____________________________
(name & title)                  Attorney-in-Fact

THE ABOVE TERMS AND CONDITIONS OF THIS BOND HAVE BEEN REVIEWED AND APPROVED AND ACCEPTED BY THE (OBLIGEE).

ACKNOWLEDGED, APPROVED AND ACCEPTED BY OBLIGEE:

BY:                             
PRINTED NAME/TITLE:            
DATE:                           

PLEASE RETURN A COPY OF ACCEPTED BOND TO:
EXHIBIT 3.1

TRANSITION PLAN

[TO BE SUBMITTED BY BIDDER WITH PROPOSAL AND ATTACHED AT EXECUTION]
EXHIBIT 5.3.1

INITIAL ANNUAL BUSINESS PLAN

[TO BE SUBMITTED BY BIDDER WITH PROPOSAL AND ATTACHED AT EXECUTION]
EXHIBIT 6.3.1

MANAGER KEY PERSONNEL

<table>
<thead>
<tr>
<th>Title:</th>
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<tbody>
<tr>
<td>Name of Employee:</td>
</tr>
<tr>
<td>Supervises:</td>
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<tr>
<td>Reports to:</td>
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<td>Primary Responsibilities:</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Title:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name of Employee:</td>
</tr>
<tr>
<td>Supervises:</td>
</tr>
<tr>
<td>Reports to:</td>
</tr>
<tr>
<td>Primary Responsibilities:</td>
</tr>
</tbody>
</table>

[TO BE COMPLETED BY BIDDER. THE ABOVE ARE EXAMPLES OF FORMAT.]

NOTE: Persons in each of the above position will devote all or substantially all of their working hours to Manager//New Jersey Lottery matters. Names followed with a [T] shall indicate that these individuals are transitional personnel only and not permanent Manager employees.
EXHIBIT 7.2

APPROVED SUBCONTRACTS

[TO BE SUBMITTED BY BIDDER WITH PROPOSAL AND ATTACHED AT EXECUTION]
EXHIBIT 7.3

SUBCONTRACTOR ENGAGEMENT PLAN

[TO BE SUBMITTED BY BIDDER WITH PROPOSAL AND ATTACHED AT EXECUTION]
EXHIBIT 8.2.1

MANAGER INTELLECTUAL PROPERTY

[TO BE SUBMITTED BY BIDDER WITH PROPOSAL AND ATTACHED AT EXECUTION]
EXHIBIT 14.2.2

DISENTANGLEMENT SERVICES PLAN

[TO BE ATTACHED PRIOR TO BASE SERVICES COMMENCEMENT DATE]