PENNSYLVANIA LOTTERY

PRIVATE MANAGEMENT AGREEMENT

between

THE COMMONWEALTH OF PENNSYLVANIA DEPARTMENT OF REVENUE

and

[MANAGER]

dated

[INSERT DATE]

TABLE OF CONTENTS

ARTICLE 1	AGREEMENT FRAMEWORK AND STRUCTURE	2
1.1	Purpose of Agreement	2
1.2	Definitions	
1.3	Construction	2
1.4	Due Diligence Complete	4
ARTICLE 2	SCOPE OF SERVICES; RESPONSIBILITIES OF THE PARTIES	4
2.1	Appointment of Manager; Scope of Services	4
2.2	Responsibilities of the Commonwealth	4
2.3	Conditions Precedent	5
ARTICLE 3	TRANSITION SERVICES	5
3.1	Transition	5
3.2	Third Party Consents	8
3.3	Replacement Contracts	9
ARTICLE 4	SERVICES	9
4.1	Scope of Services	9
4.2	Service Standards	9
4.3	Party Bearing Cost of Performance	10
4.4	Continuity of Services	10
ARTICLE 5	SERVICE STANDARDS, GOVERNANCE, AND ANNUAL BUSINESS PLAN	11
5.1	Governance	
5.2	Operating Standards	
5.3	Annual Business Plan	
5.4	Service Levels Generally	12
5.5	Service Levels	13
5.6	SLA Credits	
5.7	Excused Performance	13
5.8	Reporting on Performance	13
5.9	Requirement of Cooperation	
5.10	Reporting of Adverse Impacts	14
ARTICLE 6	EMPLOYEES	
ARTICLE 7	SUBCONTRACTORS AND VENDOR CONTRACTS	18
7.1	Subcontractors and Vendors; Managed Contracts	18

TABLE OF CONTENTS (continued)

7.2	Procurement of Subcontractors and Vendors	19
7.3	Term of Manager Contracts	19
7.4	Notice of Subcontractors and Vendors	19
7.5	Probity Investigation of Subcontractors and Vendors	19
7.6	List of Subcontractors and Vendors	19
7.7	Subcontractor and Vendor Contracts	19
7.8	Responsibility for Subcontractors and Vendors	20
7.9	Ordinary Course Payments to Subcontractors and Vendors	20
7.10	No Commonwealth Responsibility	
7.11	Assignability of Subcontracts and Vendor Contracts	21
7.12	Removal / Replacement of Subcontractors and Vendors	21
ARTICLE 8	INTELLECTUAL PROPERTY RIGHTS	21
8.1	Commonwealth Intellectual Property	21
8.2	Manager Intellectual Property	
8.3	New Intellectual Property	
8.4	Embedded Manager Intellectual Property	24
8.5	General Rights	
ARTICLE 9	DATA PROTECTION, SECURITY, AND CONFIDENTIALITY	
9.1	Ownership of Commonwealth Data	
9.2	Security	
9.3	Confidentiality	
9.4	Injunctive Relief	
ARTICLE 10	COMPENSATION AND PAYMENT TERMS	
10.1	Compensation	
10.2	Payment Terms; Invoices	
10.3	Budget Overruns	
10.4	Right to Apply Monies	
10.5	Taxes	
ARTICLE 11	RECORDKEEPING AND AUDIT RIGHTS	
11.1	Contract Records	
11.2	Recordkeeping	
11.3	Commonwealth Audit Rights	

TABLE OF CONTENTS (continued)

11.4	Audit Results	
11.5	Governmental Audits of the Commonwealth	
11.6	Manager Internal Audit	
11.7	SSAE 16 Examination	
11.8	Manager Response to External Audits	
11.9	Audit Costs	
ARTICLE 12	REPRESENTATIONS, WARRANTIES, AND COVENANTS	
12.1	Manager Representations, Warranties, and Covenants	
12.2	Commonwealth Legal Authority	
12.3	Commonwealth Representations, Warranties or Covenants	
12.4	Covenant Regarding Reporting Delinquencies	
12.5	Covenant Regarding Malicious Code	
12.6	Contingent Fees	40
ARTICLE 13	TERM AND TERMINATION	40
13.1	Term of the Agreement	40
13.2	Commonwealth's Termination for Convenience	40
13.3	Termination for Consistent Annual Profit Commitment Shortfalls	41
13.4	Termination for Change in Control	41
13.5	Termination for Events of Default	41
13.6	Step-In Rights	43
13.7	Termination by Manager	44
13.8	Effect of Termination	45
13.9	Non-Exclusive Remedies	45
13.10	Survival	45
ARTICLE 14	DISENTANGLEMENT OBLIGATIONS	45
14.1	General Obligations	45
14.2	Disentanglement Process and Performance	46
14.3	Specific Disentanglement Services Obligations	47
ARTICLE 15	INDEMNIFICATION	48
15.1	Indemnifications by Manager	48
15.2	Indemnification Procedures	

TABLE OF CONTENTS (continued)

ARTICLE 16	LIMITATIONS ON LIABILITY	51
16.1	Cap on Manager Liability for Damages	51
16.2	Cap on Commonwealth Liability for Direct Damages	51
16.3	Limitation on Non-Direct Damages for Commonwealth	51
16.4	Acknowledged Direct Damages	
16.5	Duty to Mitigate	
ARTICLE 17	INSURANCE AND RISK OF LOSS	
17.1	Required Insurance Coverages	
17.2	General Provisions	
17.3	No Implied Limitation	
17.4	Risk of Loss	
ARTICLE 18	PERFORMANCE SECURITY	54
18.1	Manager's Security	
18.2	Draw on Manager's Security	
18.3	Parent Guaranty	
ARTICLE 19	LEGAL COMPLIANCE	
19.1	Governmental Approvals	
19.2	Compliance with Commonwealth Policies and Rules and Regulatory Requirements	
19.3	Commonwealth Compliance Directives	
ARTICLE 20	DISPUTE RESOLUTION; GOVERNING LAW	
20.1	Dispute Resolution	
20.3	Governing Law, Venue, and Other Legal Considerations	
20.4	Sovereign Immunity	60
ARTICLE 21	ADVERSE ACTIONS	60
21.1	Adverse Actions	60
21.2	Effect of Adverse Action	
21.3	Change in Regulatory Requirements	
ARTICLE 22	MISCELLANEOUS	
22.1	Assignment	
22.2	Third Party Beneficiaries	
22.3	Notices	
22.4	Waivers	

TABLE OF CONTENTS (continued)

22.5	Relationship Between the Parties	63
22.6	Severability	64
22.7	Bankruptcy Protection	64
22.8	Execution, Counterparts, Validity	64
22.9	Further Assurances	64
22.10	Covenant Regarding Pledging	64
22.11	Covenant of Good Faith	64
22.12	Acknowledgement	64
22.13	Controlling Terms and Conditions	64
22.14	Entire Agreement	65

Schedules to Private Management Agreement

Schedule 1.2	Definitions
Schedule 2.1	Operational Responsibilities of the Manager
Schedule 2.2	Operational Responsibilities of the Commonwealth
Schedule 2.3	Form of Legal Opinion
Schedule 3.1.1	Transition Plan
Schedule 3.3	Terminated Commonwealth Contracts
Schedule 5.1	Governance Protocols
Schedule 5.2	Operating Standards
Schedule 5.3.1(a)	Initial Annual Business Plan
Schedule 5.3.1(b)	Annual Business Plan Requirements
Schedule 5.5	Service Level Agreement
Schedule 6.3.1	Manager Key Personnel
Schedule 7.2	Approved Subcontracts and Vendor Contracts
Schedule 8.2.1	Manager Intellectual Property
Schedule 10.1	Compensation and Payment Terms
Schedule 10.2	Form of Invoice
Schedule 12.1.2	Standard Compliance Provisions
Schedule 14.2.2	Disentanglement Services Plan
Schedule 17.1	Insurance Coverages
Schedule 20.1.2	Third Party Mediators / Professionals

Exhibits to Private Management Agreement

Form of Guaranty
Form of Assignment Agreement
Employment Transition Agreement
Form of Confidentiality Agreement
Form of LOC

<u>COMMONWEALTH OF PENNSYLVANIA LOTTERY</u> <u>PRIVATE MANAGEMENT AGREEMENT</u>

This Commonwealth of Pennsylvania Lottery Private Management Agreement is entered into as of this [____] day of [____], 201_ ("Execution Date"), by and between the Commonwealth of Pennsylvania, acting through the Pennsylvania Department of Revenue, and [INSERT NAME], [INSERT TYPE OF COMPANY] with a principal place of business at [INSERT OFFICE LOCATION] ("Manager"). The Commonwealth and Manager are sometimes referred to in the Agreement (as defined below) each individually as a "Party", and collectively, as the "Parties."

RECITALS

WHEREAS, the Commonwealth established the Lottery (as defined below) in 1971 under the State Lottery Law Act 91 of 1971, as amended, 72 PA. STAT. ANN. § 3761, which was enacted to establish a lottery by the Commonwealth, the net proceeds of which are to be used for the purposes of providing property tax relief for the elderly for taxes paid by persons 65 years of age or older and for providing certain free fixed route local transit services to persons 65 years of age or older and reduced fare on group ride transit services to persons 65 years of age or older ("Existing Lottery Law"), which such Lottery has been continuously operated and maintained as a government enterprise of the Commonwealth since its inception;

WHEREAS, pursuant to Existing Lottery Law, the Commonwealth is authorized to enter into a Private Management Agreement with a private manager to provide the Services (as defined below) in connection with the Lottery;

WHEREAS, on June 22, 2012, the Commonwealth issued an invitation for bid seeking a private manager to provide the Services (the "**IFB**");

WHEREAS, Manager submitted to the Commonwealth: (a) an initial response dated [____], which included information concerning Manager's experience, organization, financial reports, references and financial resources; (b) additional information establishing Manager's compliance with Commonwealth probity and procurement requirements and the IFB; (c) a final binding offer dated [____]; and (d) related documents (such response, information, final binding offer and related documents, collectively, the "**Manager Bid**");

WHEREAS, based on the Manager Bid and in accordance with the IFB process, the Commonwealth selected Manager to provide the Commonwealth with the Services as further described in the Agreement;

WHEREAS, the Commonwealth and Manager anticipate that entering into the Agreement will result in maximizing the value of the Lottery by increasing and optimizing Revenue and Profit for the Lottery, including through Annual Profit Commitments, Manager's Security Draws, SLA Credits, Transition Credits and any other rights or remedies of the Commonwealth upon an Event of Default, where applicable (collectively, "Protected Net Profit") – none of which would exist without this Agreement and all of which are for the ultimate benefit of older Pennsylvanians;

WHEREAS, the rights granted to Manager pursuant to the Agreement are subject to all Regulatory Requirements including the veto, regulatory and step-in powers of the Commonwealth with respect to the Lottery; and

WHEREAS, the Commonwealth and Manager wish to specify the terms and conditions under which Manager shall provide such Services to the Commonwealth, which are set forth in the Agreement.

NOW, THEREFORE, in consideration of the representations, warranties, promises and covenants contained in the Agreement, 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:

ARTICLE 1

AGREEMENT FRAMEWORK AND STRUCTURE

1.1 Purpose of Agreement. The Commonwealth, while continuing to conduct and maintain actual control and oversight over the Lottery, desires to engage Manager to perform the Services (which include increasing and optimizing Revenue and Profit for the Lottery) while maintaining the highest levels of integrity and responsibility (including compliance with Regulatory Requirements). The Agreement establishes the framework and terms and conditions of the management relationship between the Commonwealth and Manager pursuant to which Manager shall provide the Services (including coordinating and managing Lottery operations and, to a broad extent, introducing opportunities for innovation, agility and market responsiveness for the Lottery), among other things, through an Annual Profit Commitment for the ultimate benefit of older Pennsylvanians that would not have been earned in the absence of the Agreement.

1.2 Definitions. Capitalized terms used in the Agreement shall have the meanings ascribed to them in **Schedule 1.2 (Definitions)**. Other capitalized terms used in the Agreement are defined in the context in which they are used and shall have the meanings ascribed to them therein.

1.3 Construction.

1.3.1 Captions and References. Captions, titles and headings to articles and sections of the Agreement are inserted for convenience of reference only and are not intended to affect the interpretation or construction of the Agreement. Any reference in the Agreement to a particular Section number (e.g., "Section 2") shall be deemed a reference to all Sections of the Agreement that bear sub numbers to the number of the referenced Section (e.g., Sections 2.1, 2.1.1, etc.). The terms "the Agreement," "hereunder," and similar expressions refer to the Agreement and not to any particular article, section, or other portion of the Agreement. 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 the Agreement shall be construed as if followed by the phrase "without limitation" or "but not limited to."

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

1.3.3 Persons. Words importing persons include individuals, legal personal representatives, firms, companies, associations, joint ventures, general partnerships, limited partnerships, limited liability partnerships, limited liability companies, trusts, business trusts, corporations, governmental bodies, and other legal entities.

1.3.4 References to Manager.

(a) As used in the Agreement relating to the provision of Services hereunder, references to "Manager" also shall apply to Affiliates of Manager, Subcontractors, Vendors, and Manager Personnel in accordance with the following: (i) a reference to Manager means at all times that Manager is responsible for ensuring and causing the compliance of Subcontractors, Vendors, Affiliates of Manager, and Manager Personnel with the terms and conditions of the Agreement; (ii) with regard to complying with the terms and conditions of the Agreement, references to Manager include Affiliates of Manager,

Subcontractors, Vendors and Manager Personnel to the extent that such Affiliates of Manager, Subcontractors or Vendor are providing the Services; and (iii) with regard to complying with the terms and conditions of the 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, Vendors or Manager Personnel be eligible for, or exercise, use, or enjoy any rights or benefits of Manager under the terms and conditions of the Agreement, unless otherwise explicitly stated in the applicable term or condition of the Agreement.

1.3.5 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.

1.3.6 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.

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

1.3.8 Imputation of Knowledge to the Commonwealth. The Commonwealth 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 Bureau) who have responsibilities in connection with the conduct of the performance of the Agreement.

1.3.9 Knowledge Deemed Held by Manager. Without limiting the extent of its actual knowledge, Manager shall 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, Vendors and any of their respective agents, employees, or representatives.

1.3.10 Order of Precedence. It is the intent of the Parties that the language in the documents making up the Agreement be construed to the maximum extent possible so as not to create a conflict among or between such 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 Agreement, the Operating Standards, or the Schedules, Exhibits and other documents attached to any such agreements) incorporated by reference within the Agreement or which incorporate the Agreement, the following order of precedence shall prevail:

- (a) the terms and conditions of the main body of the Agreement;
- (b) the Schedules to the Agreement;
- (c) the Exhibits to the Agreement; and
- (d) the Operating Standards.

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

1.3.12 Neither Party Considered Drafter. Despite the possibility that one Party may have prepared the initial draft of the Agreement or played the greater role in the preparation of subsequent drafts, the Parties agree that neither of the Parties shall be deemed the drafter of the Agreement, and in construing the Agreement in case of any claim that any provision of the Agreement may be ambiguous, no such provision shall be construed in favor of one Party on the ground that such provision was drafted by the other Party.

1.4 Due Diligence Complete. Manager hereby acknowledges and agrees that it has reviewed the Commonwealth's requirements set forth in the Agreement, reviewed the Commonwealth Policies and Rules, reviewed the Managed Contracts, has identified any Replacement Contracts and has otherwise completed all due diligence Manager deems necessary to perform and manage the Services for the Commonwealth as set forth in the Agreement. Manager hereby acknowledges that Manager has obtained, through the Commonwealth or otherwise, all information and documents, including the Managed Contracts and any other agreements, that Manager deems necessary for Manager to negotiate the terms and conditions of the Agreement and to enter into and perform its obligations under the Agreement in accordance with its terms (collectively, the "**Due Diligence Information**"). Manager shall not be relieved of any of its obligations under the Agreement, nor shall the Payments, Services or Service Levels or any other terms and conditions of the Agreement be adjusted, in each case, 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; or (c) Manager's failure to request any information or documents from the Commonwealth.

ARTICLE 2

SCOPE OF SERVICES; RESPONSIBILITIES OF THE PARTIES

2.1 Appointment of Manager; Scope of Services. During the Term, the Commonwealth hereby appoints Manager as the exclusive Entity to manage the Lottery for the Commonwealth in accordance with and subject to the Agreement (including the Schedule 2.1 (Operational Responsibilities of the Manager)). Manager shall provide all Services and perform all functions necessary to operate the Lottery for the Commonwealth as more fully described in the Agreement including Schedule 2.1 (Operational Responsibilities of the Manager), except for those services and functions set forth in Section 2.2 (Operational Responsibilities of the Commonwealth).

2.2 Responsibilities of the Commonwealth.

2.2.1 Operational Responsibilities of the Commonwealth. Subject to the terms and conditions of the Agreement, the Commonwealth shall perform the specific functions and services set forth in Schedule 2.2 (Operational Responsibilities of the Commonwealth).

2.2.2 Actual Control and Oversight by the Commonwealth. Notwithstanding anything to the contrary in the Agreement, the Parties acknowledge and agree that the Commonwealth retains actual control and oversight over the Lottery, including by (a) retaining the authority to direct or countermand Manager's operating decisions, (b) having ready access to information regarding all aspects of Lottery operations as provided by Manager, and (c) retaining ownership of all Lottery assets, including all

Commonwealth Intellectual Property. For clarity, the Commonwealth shall have the right to demand and receive information from Manager concerning any aspect of the Lottery operations at any time during the Term of the Agreement (and any Disentanglement Services Period). The Parties, therefore, acknowledge and agree that the Commonwealth has the sole, absolute and unconditional right to direct, veto or countermand, with or without conditions, any action taken by Manager. Further, the Commonwealth reserves the right to take any and all measures necessary or desirable to protect the interests of the Commonwealth and the Lottery.

2.3 Conditions Precedent. Manager shall complete the following in order to establish the "Effective Date" of the Agreement:

(a) Manager shall make the payment of the Cash Collateral via wire transfer in immediately available funds to an account designated by the Commonwealth;

(b) The Parties shall execute and deliver all documents set forth below:

(i) written legal opinion from counsel for Manager as to the matters set forth in Schedule 2.3 (Form of Legal Opinion);

(ii) Manager's Continuity Plan;

(iii) a signed Guaranty, in the form attached to the Agreement as Exhibit A (Form of Guaranty);

- (iv) a written Disentanglement Services Plan;
- (v) a written Initial Annual Business Plan;

(vi) an Assignment and Assumption Agreement of all those certain agreements mutually agreed upon by the Parties to be assigned to Manager (including the Managed Contracts) in the form attached to the Agreement as **Exhibit B (Form of Assignment Agreement)**; and

(vii) a signed version of the Employment Transtion Agreement.

ARTICLE 3

TRANSITION SERVICES

3.1 Transition.

3.1.1 Transition Services. During the Transition, Manager shall perform the services, functions and responsibilities and provide the deliverables associated with the Transition (other than the Commonwealth Transition Activities) (collectively, the "**Transition Services**") as specified in a plan for Transition to be prepared and submitted by Manager and approved in writing by the Commonwealth prior to the Effective Date, which shall be attached hereto as **Schedule 3.1.1 (Transition Plan)** (the "**Transition Plan**"). During the Transition, the Commonwealth shall perform the services and functions specified as Commonwealth responsibilities in the Transition Plan, at the Commonwealth's sole cost and expense unless otherwise mutually agreed upon in the Transition Plan (the "**Commonwealth Transition Activities**").

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 may be otherwise provided in the Transition Plan, the Commonwealth shall not be responsible for any charges, fees or expenses of Manager or any Third Parties engaged by Manager in connection with the Transition Services. Each Party shall provide reasonable cooperation to the other Party in connection with its performance of its respective activities during the Transition.

3.1.3 Elements of a Transition Plan. The Transition Plan shall include, at a minimum, the following:

teams;

(a) the requirement that both Parties create and identify appropriate Transition

(b) all Transition activities to be performed, and the deliverables to be completed by Manager and the Commonwealth, the significant components and subcomponents of each such activity or deliverable and a complete timetable for completion of each such activity or deliverable, including the dates by which each such activity or deliverable are to be completed;

(c) Manager activities and deliverables (including timeframes and the required dates for completion) that are identified by the Parties in the applicable Transition Plan as "critical" for performance of the Transition Services (the "**Transition Milestones**");

(d) the Commonwealth's plan for terminating the Terminated Commonwealth Contracts and Manager's plan and timetable for entering into the Replacement Contracts;

(e) an assessment by Manager of the risks associated with the Transition, and the contingency or risk mitigation strategies to be employed by Manager and the Commonwealth in the event of disruption or delay (such strategies to be employed by the Commonwealth shall be mutually agreed upon and set forth in the applicable Transition Plan); provided, however, that such assessment and plans shall not excuse Manager's obligations to meet the Transition Milestones and otherwise provide the Transition Services; and

(f) a process for implementing the Commonwealth's right to delay the Base Services Commencement Date in accordance with **Section 3.1.6 (Transition Extension)**.

3.1.4 Transition Meetings and Reports. Manager shall provide Transition-related reports ("**Transition Reports**") in accordance with the schedule and frequency specified in the Transition Plan. In addition, Manager shall provide such additional Transition Reports as the Commonwealth may reasonably request regarding the performance of Manager's responsibilities and the then-current status with respect to the timetable, in each case as such responsibilities or timetable are set forth in the Transition Plan. Promptly upon Manager receiving any information indicating that Manager will delay performing its responsibilities or meet the timetables set forth in the Transition Plan, Manager shall notify the Commonwealth in writing of such delay, identify for the Commonwealth's consideration and Approval specific measures to address such delay and mitigate the risks associated with such delay. Promptly upon the Commonwealth Transition Activities, the Commonwealth shall notify Manager in writing of such delays and shall work with Manager to identify and implement specific measures to address such delay.

3.1.5 Failure to Meet Transition Milestones.

To the extent Manager fails to complete Transition by the Base Services (a) Commencement Date, then the Commonwealth shall have the right to require Manager to promptly reimburse the Commonwealth for any costs or expenses incurred by the Commonwealth as a result of such failure. Notwithstanding the foregoing sentence, Manager shall not have the obligation to reimburse the Commonwealth to the extent that Manager's non-performance is expressly excused under the Transition Plan, the Agreement or is directly caused by or attributable to (i) the wrongful actions of, or failure to act by, the Commonwealth or its agents; (ii) the failure of the Commonwealth to perform any of the Commonwealth's Transition Activities which are a necessary precondition for the performance of Manager; or (iii) the Commonwealth's exercise of its rights under Section 3.1.6(a) (Transition **Extension**) (other than to the extent the exercise of such rights by the Commonwealth is attributable to the failure of Manager to timely perform its obligations contemplated by this Article 3 (Transition Services) and such failure by Manager is not attributable to the reasons contemplated by subsection (i) or (ii)) (collectively, a "Non-Manager Transition Delay Event"). Subject to any costs payable to Manager pursuant to Section 3.1.6(b) (Transition Extension), under no circumstance shall Manager be entitled to recover any additional costs incurred by Manager as a result of any Non-Manager Transition Delay.

(b) To the extent Manager fails to complete Transition by the Base Services Commencement Date for reasons other than a Non-Manager Transition Delay Event, in addition to the Commonwealth's rights under Section 3.1.5(b) (Failure to Meet Transition Milestones), the Commonwealth also shall have the right to: (i) receive from Manager any transition credits set forth in the Transition Plan ("Transition Credits"); (ii) delay Manager from proceeding with any part of the Transition for a length of time reasonably deemed necessary by the Commonwealth based on the business functions or processes impacted; or (iii) alter the timing for the transition of portions of the Services without any increase in the Payments payable by the Commonwealth or any additional costs or expenses charged to the Commonwealth. [NTD: TRANSITION CREDITS WILL BE SUBJECT TO FURTHER REVIEW BASED ON TRANSITION PLANS]

(c) The Commonwealth's rights to the Transition Credits described in **subsection** (b) above shall not limit the Commonwealth's right to pursue other non-financial rights and remedies as a result of such failure including terminating the Agreement in whole or in part in accordance with **Article 13 (Term and Termination)**.

3.1.6 Transition Extension.

(a) Subject to Section 3.1.6(b) (Transition Extension) below, the Commonwealth 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 without any increase in the Payments payable by the Commonwealth or any additional costs or expenses charged to the Commonwealth to the extent the Commonwealth reasonably determines that any part of the Transition Services pose a material risk or hazard to the Commonwealth's interests ("Transition Extension").

(b) If any such extension period has delayed the date for completion of Transition past the Base Services Commencement Date for longer than a six (6) month period, then Manager shall have the right to require the Commonwealth to reimburse Manager for any additional costs reasonably incurred by Manager after the six (6) month period as a result of such Commonwealth delay, but only to the extent Manager notifies the Commonwealth in advance of such costs, obtains the Commonwealth's Approval to incur such costs, and uses commercially reasonable efforts to minimize such costs. Notwithstanding the foregoing sentence, to the extent such extension was initiated by the Commonwealth

as a result of: (i) delays, risks or hazards created by Manager's failure to perform its obligations contemplated in this **Article 3 (Transition Services)** (other than a failure attributable to a Non-Manager Transition Delay Event); (ii) Manager's failure to perform in accordance with the Agreement (other than a failure attributable to a Non-Manager Transition Delay Event); or (iii) a court injunction that prohibits or causes a material adverse effect (as determined by the Commonwealth) on the Transition, then Manager shall not be entitled to recover any such additional costs. In the event of any Transition Extension, the Parties shall agree on appropriate adjustments to 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 timing of the Annual Profit Commitment and the Budget to be made in accordance with **Schedule 10.1 (Compensation and Payment Terms))**.

3.1.7 **Transition Completion**. Except as otherwise expressly provided in the Agreement or in the Transition Plan, the Commonwealth shall retain responsibility for all Lottery operations until the completion and acceptance by the Commonwealth of all of the obligations of Manager set forth in the Transition Plan (the "Transition Completion Date"). To establish the Transition Completion Date, Manager shall submit written notice to Commonwealth certifying that it has completed each of the Transition Milestones, including supporting documentation as required by the Commonwealth (the "Manager Transition Notice"). Immediately thereafter, the Commonwealth shall conduct those investigations and inquiries as it reasonably deems necessary or appropriate to determine if all of the Transition Milestones have been completed. Within ten (10) Business Days after the Commonwealth's receipt of the Manager Transition Notice, the Commonwealth shall notify Manager accordingly if either the Transition Milestones have been completed in all material respects or the reasons the Transition Milestones have not been met. In the event the Commonwealth provides written notice that each of the Transition Milestones has been achieved in all material respects, Manager and Commonwealth shall execute a "Certificate of Transition" establishing the end of the Transition Period and, if applicable, a final list of items to be addressed. Subject to Section 3.1.5 (Failure to Meet Transition Milestones), to the extent the Commonwealth provides written notice to Manager that any Transition Milestones have not been completed in all material respects. Manager shall, at its sole cost and expense, promptly correct or remedy the deficiencies and other conditions which prevent completion of the Transition. To the extent the conditions causing the failure to achieve all of the Transition Milestones are attributable to a Non-Manager Transition Delay Event, then Manager shall be entitled to additional time to effectuate the Transition in accordance with Section 3.1.6 (Transition Extension) to complete the modifications and tasks necessary to complete the Transition. Upon completion of such modifications or tasks, Manager shall resubmit the Manager Transition Notice to the Commonwealth. The foregoing procedures shall be repeated until Transition has been completed. If the Commonwealth fails to respond to the Manager Transition Notice within the time period set forth above or fails to notify Manager as to the reasons the Commonwealth has not issued the Certificate of Transition in accordance with this Section 3.1.7 (Transition Completion), then the Commonwealth will be deemed to have issued the Certificate of Transition and the Transition Completion Date shall be deemed to be effective as of ten (10) Business Days after the date the notice is submitted by Manager. The Certificate of Transition shall not be unreasonably withheld, conditioned or delayed by the Commonwealth.

3.2 Third Party Consents. Each Party shall obtain and maintain all Third Party consents required for the other Party to fulfill its obligations under the Agreement including any required sub-licensing of Commonwealth 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.

3.3 Replacement Contracts.

3.3.1 Termination of Commonwealth Contracts. In accordance with the Transition Plan, the Commonwealth may terminate certain existing agreements set forth in Schedule **3.3 (Terminated Commonwealth Contracts)** to which the Commonwealth is a party (collectively, the "Terminated Commonwealth Contracts") and for which Manager shall enter into replacement contracts to the extent Manager reasonably determines to be necessary or advisable for use in providing the related Services (collectively, the "Replacement Contracts").

3.3.2 Replacement Contracts. The material terms of each Replacement Contract (or series of Replacement Contracts with the same Subcontractor or Vendor) valued over five hundred thousand dollars (\$500,000) annually shall be Approved in advance by the Commonwealth (whether by Approval of the Initial Annual Business Plan or otherwise). The Parties acknowledge and agree that any Managed Contract shall not be deemed to be a Replacement Contract for purposes of this Article 3 (Transition Services) and will expire or terminate in accordance with its terms. Each Replacement Contract shall materially comply with the terms governing Subcontracts or Vendor Contracts, as applicable, and set forth in Article 7 (Subcontractors and Vendor Contracts).

ARTICLE 4

SERVICES

4.1 Scope of Services. Commencing on the Effective Date, or such later date as may be specified in the Agreement, Manager shall provide the following services to the Commonwealth:

(a) the services, functions, responsibilities, and tasks set forth in: (i) the Operating Standards; (ii) in the Agreement; and (iii) any Schedules or Exhibits to the Agreement;

- (b) the Transition Services;
- (c) the Disentanglement Services;

(d) with respect to the services, functions, responsibilities and tasks set forth in **subsections (a)** through (c) above, any related or incidental services, functions, responsibilities or tasks performed by or on behalf of the Commonwealth (including through any Entities) as of the Effective Date or any time during the twelve (12) months preceding the Effective Date of the Agreement, even if the service, function, responsibility or task is not specifically described in the Agreement; and

(e) any related or incidental services, functions, responsibilities or tasks not specifically described in the 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 (d) above.

The items set forth in **subsections (a)** through (e) shall collectively be referred to as the "Services." The Services other than the Transition Services are referred to as the "Base Services."

4.2 Service Standards.

4.2.1 Service Standards Generally. Manager shall at all times operate the Lottery in accordance with the Agreement including the Schedules, the Exhibits, the Service Levels, the Operating

Standards, the Annual Business Plan, Regulatory Requirements and Commonwealth Policies and Procedures.

4.2.2 Internet Specific Requirements. Notwithstanding the generality of **Section 4.2.1** (Service Standards Generally), and for illustration purposes and the avoidance of any doubt, any and all Lottery Games conducted via the internet shall be initiated, received, or otherwise made available exclusively within the geographical boundaries of the Commonwealth and expressly authorized by and conducted in strict accordance with Commonwealth Policies and Rules, which such Commonwealth Policies and Rules include: (a) age and location verification requirements reasonably designed to block access to minors and persons located outside the geographical boundaries of the Commonwealth; and (b) appropriate data security standards that: (i) prevent unauthorized access by any person whose age and current location has not been verified in accordance with Commonwealth Policies and Rules; and (ii) are in compliance with generally accepted industry practices.

4.3 Party Bearing Cost of Performance. All obligations undertaken by each Party shall be performed at the cost of the Party undertaking the obligation or responsibility, unless the other Party has explicitly agreed in the Agreement to bear all or a portion of the cost either directly, by reimbursement to the Party performing the obligation or as otherwise mutually agreed in Section 10.1 (Compensation) and Schedule 10.1 (Compensation and Payment Terms).

4.4 Continuity of Services. Manager shall provide to the Commonwealth true and complete copies of Approved disaster recovery and business continuity plans prior to the Effective Date (the "**Continuity Plans**"). Such plans to be attached to and incorporated in the Operating Standards and shall be reviewed and updated annually as part of the Annual Business Plan. Without limiting any other obligations of the Agreement, during the Term, the Continuity Plans shall meet generally acceptable industry standards.

4.4.1 Disaster Recovery Execution. In the event of a disaster, Service interruption or Force Majeure Event that results in a failure of Manager to perform any or all of the Services, Manager shall implement the Continuity Plans.

4.4.2 Force Majeure Events.

(a) Subject to **subsection (b)** below, neither Party will incur any liability to the other Party if performance of any obligation under the Agreement is prevented or delayed by a Force Majeure Event.

(b) Manager shall notify the Commonwealth as soon as reasonably practicably (but in no event more than five (5) days) after the date on which Manager becomes aware, or should have reasonably become aware, that a Force Majeure Event would prevent or delay Manager's or any Subcontractor or Vendor's performance. Such notification shall: (i) describe fully such Force Majeure Event and its effect on performance; (ii) state whether performance under the Agreement is prevented or delayed; and (iii) if performance is delayed, state a reasonable estimate of the duration of the delay. Manager shall have the burden of proving that such Force Majeure Event prevented or delayed its performance despite its diligent efforts to perform, and shall produce such supporting documentation to prove such delay or prevention as the Commonwealth may reasonably request. After receipt of such notification, the Commonwealth shall have the right to seek an alternative manager for performance of the Services and shall not be required to pay any Payments to Manager until Manager recommences performing the Services again. To the extent that Manager is unable to perform the Services due to a Force Majeure Event for a period of thirty (30) consecutive days following the Commonwealth's receipt of the notification described above, the Commonwealth shall have the right to terminate the Agreement or to extend the time for Manager to recommence performance of the Services. 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. To the extent that the Commonwealth terminates the Agreement based on this **subsection (b)**, the Commonwealth shall pay to Manager an amount equal to the Termination for Convenience Fee less the amount set forth in subsection (f) of Section 7.1.1 of **Schedule 10.1 (Compensation and Payment Terms)** within thirty (30) days following the Termination Date (and any Disentanglement Services Period).

ARTICLE 5

SERVICE STANDARDS, GOVERNANCE, AND ANNUAL BUSINESS PLAN

5.1 Governance. Schedule 5.1 (Governance Protocols) sets forth the guidelines, principles and protocols governing the Parties' communications and relationship during the Term (and any Disentanglement Services Period) including Commonwealth's Approval procedures ("Governance Protocols"). Notwithstanding anything to the contrary in the Agreement except as set forth in Section 5.3 (Annual Business Plan), Commonwealth's Approval shall be required for any change from those business practices and decisions already Commonwealth Approved (for example, those items enumerated and Approved in Annual Business Plans).

5.2 **Operating Standards**.

5.2.1 Operating Standards Generally. The Commonwealth shall provide to Manager a manual describing the policies and procedures that govern certain operational requirements for the performance of the Services (the "Operating Standards"), which such Operating Standards are set forth on Schedule 5.2 (Operating Standards). Subject to Section 5.2.2 (Commonwealth Modifications to the Operating Standards) and Section 5.2.3 (Manager Modifications to the Operating Standards), Manager shall comply with the Operating Standards in performing the Services, including all modifications or updates to the Operating Standards. The Operating Standards shall in no event be interpreted as an amendment to the Agreement or so as to relieve Manager of any of its performance obligations under the Agreement. For avoidance of doubt, to the extent there is a conflict between the provisions of the Agreement and the Operating Standards, the provisions of the Agreement shall control.

5.2.2 Commonwealth Modifications to the Operating Standards. The Commonwealth shall have the right to modify the Operating Standards at any time upon notice to Manager. To the extent that the Commonwealth proposes modifications to the Operating Standards, the Commonwealth shall be responsible for the actual costs associated with implementing such modifications through a downward adjustment to the Annual Profit Commitment as set forth in Section 21.2 (Effect of Adverse Action). Manager shall comply with the then-current Operating Standards in performing the Services.

5.2.3 Manager Modifications to the Operating Standards. Manager shall have the right to propose a modification to the Operating Standards at any time during the Term. The Commonwealth, shall have the right to, at its sole discretion, incorporate such proposed modification to the Operating Standards and, to the extent the Commonwealth incorporates such proposed modification, the Commonwealth shall inform Manager in writing of any such modification. To the extent that Manager proposes a modification to the Operating Standards and the Commonwealth Approves such modification, Manager shall be responsible for all costs associated with implementing such modification through an upward adjustment to the Annual Profit Commitment as set forth in Section 4.1 of Schedule 10.1 (Compensation and Payment Terms) unless otherwise agreed by the Commonwealth.

5.3 Annual Business Plan.

5.3.1 Initial Annual Business Plan. The initial Annual Business Plan is set forth on **Schedule 5.3.1(a) (Initial Annual Business Plan)** ("**Initial Annual Business Plan**") and includes the requirements set forth on **Schedule 5.3.1(b) (Annual Business Plan Requirements)**. Each Annual Business Plan shall include the Operating Expenses as set forth on **Schedule 5.3.1(b) (Annual Business Plan Requirements)**. Each Annual Business **Plan Requirements)** (the "**Budget**") as well as a description of Manager's goals and objectives for each such Contract Year and Manager's projected Annual Profit Commitment for each such Contract Year. For the avoidance of doubt, the Initial Annual Business Plan is Approved by the Commonwealth and is valid and binding on the Parties.

5.3.2 Updated Annual Business Plan. Except in the case of the Initial Annual Business Plan, Manager shall prepare and submit for Commonwealth's Approval, an updated Annual Business Plan no later than April 1 of each Contract Year during the Term (each, an "Updated Annual Business Plan"). Each Updated Annual Business Plan shall include an updated Budget and each of the requirements set forth on Schedule 5.3.1(b) (Annual Business Plan Requirements).

5.3.3 Modifications to the Annual Business Plan. The Commonwealth and Manager shall have the right to propose modifications to the Annual Business Plan. To the extent that the Commonwealth proposes modifications to the Annual Business Plan, the Commonwealth shall be responsible for the actual costs associated with such modifications through a downward adjustment to the Annual Profit Commitment as set forth in Section 21.2 (Effect of Adverse Action). To the extent that Manager proposes modifications to the Annual Business Plan, Manager shall be responsible for the actual costs associated with such modifications to the Annual Business Plan, Manager shall be responsible for the actual costs associated with such modifications to the Annual Business Plan, Manager shall be responsible for the actual costs associated with such modifications that exceed five percent (5%) of the Operating Expenses established in the applicable Annual Business Plan through an upward adjustment to the Annual Profit Commitment as set forth in Section 4.1 of Schedule 10.1 (Compensation and Payment Terms). Except as set forth in Section 5.3.4 (Right to Adjust Itemized Expenses), Manager shall obtain the Commonwealth's Approval for any modifications to the Annual Business Plan during a Contract Year.

5.3.4 Right to Adjust Itemized Expenses. Manager shall have the right to adjust itemized expenses within the Annual Business Plan to the extent that the Commonwealth Approved the type of expense as part of the Annual Business Plan and the adjustment does not increase the Operating Expenses approved under the Annual Business Plan by more than five percent (5%).

5.3.5 Failure to Approve an Updated Business Plan. To the extent that the Commonwealth has not Approved the Updated Annual Business Plan or any portion thereof prior to the end of the applicable Contract Year, the sections identified in Schedule 5.3.1(b) (Annual Business Plan Requirements) and any other sections that reasonably may be extended to the subsequent Contract Year shall extend into the subsequent Contract Year unless and until the Parties agree on the Updated Annual Business Plan.

5.3.6 Implementation of Annual Business Plan. With respect to each Annual Business Plan, Manager shall be entitled to implement such Annual Business Plan and to rely on the Commonwealth to permit such implementation.

5.4 Service Levels Generally. Until the applicable Service Levels are in full force and effect as set forth in Schedule 5.5 (Service Level Agreement), Manager shall perform the Services at levels of accuracy, quality, completeness, timeliness, responsiveness, resource efficiency and productivity that are at least equal to those received or provided by the Commonwealth prior to such date. If no Service Levels are applicable to a portion of the Services, then Manager shall perform such Services at levels of

accuracy, quality, completeness, timeliness, responsiveness, resource efficiency and productivity that are equal to or higher than the accepted industry standards of first tier providers of services similar to the Services. In addition, regardless of whether any applicable Service Levels are in full force and effect, after the Transition, Manager shall perform the Services in accordance with the Agreement including the Schedules, the Exhibits, the Operating Standards and the Annual Business Plan.

5.5 Service Levels. After the Transition Completion Date, Manager shall perform the Services so as to meet or exceed the applicable Service Levels as set forth in Schedule 5.5 (Service Level Agreement). To the extent the Parties have established a Service Level for a specific Service, the obligations described in Section 5.4 (Service Levels Generally) shall not be construed to alter, expand, diminish or supersede such Service Levels. 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 or Vendors.

5.6 SLA Credits. Manager recognizes that the Commonwealth is paying Manager to deliver the Services at specified Service Levels, and to the extent that Manager fails to deliver the Services at such specified Service Levels, then, in addition to other rights or remedies available to the Commonwealth, Manager shall pay or provide credits to the Commonwealth for such failures specified in **Schedule 5.5 (Service Level Agreement)** ("**SLA Credits**"). The Parties agree that the SLA Credits reflect the diminished value of the Services as a result of any Manager failure to provide the Services in accordance with the Service Levels, and accordingly, the SLA Credits do not constitute nor shall be construed or interpreted as penalties. For the avoidance of doubt, Manager shall not be required to pay or provide an SLA Credit where the failure to meet the applicable Service Level was excused pursuant to **Section 5.7 (Excused Performance)**.

5.7 Excused Performance. Except as set forth in Section 13.7 (Termination by Manager) of the Agreement, the Commonwealth's failure to perform any of its obligations or responsibilities under the Agreement shall not be deemed to be grounds for termination of the Agreement by Manager. Manager's failure to perform its obligations or responsibilities under the Agreement (including meeting or exceeding applicable Service Levels) shall be excused if and only to the extent such Manager non-performance is expressly excused under the Agreement or directly caused by or attributable to: (a) the wrongful actions of, or failure to act by the Commonwealth; or (b) the failure of the Commonwealth to perform any of the Commonwealth's obligations expressly set forth in the Agreement which are a necessary precondition for the performance of Manager or its Subcontractors or Vendors. Subsections (a) and (b) of the preceding sentence shall only be applicable if: (i) Manager notifies the Commonwealth 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) where applicable, Manager provides the Commonwealth with every reasonable opportunity to correct such action or failure to act or perform and thereby avoid such Manager non-performance; and (iii) Manager uses commercially reasonable efforts to perform notwithstanding the Commonwealth's action or failure to act or perform.

5.8 Reporting on Performance. Manager shall provide the Commonwealth with the reports pertaining to the performance of the Services and Manager's other obligations under the Agreement as described in the Governance Protocols, the Operating Standards, and anywhere else in the Agreement in the format and at the frequencies provided therein (collectively, the "**Reports**"). In addition, the Commonwealth may identify additional Reports to be generated by Manager and delivered to the Commonwealth on an ad hoc or periodic basis at no additional costs to the Commonwealth; provided, however, that the Commonwealth may only request a reasonable number of such additional reports and such reports should be generally consistent with the other Reports that Manager is required to deliver to the Commonwealth.

5.9 Requirement of Cooperation.

(a) In the event the Commonwealth contracts with a Third Party to provide any services to the Commonwealth and the Commonwealth requires that such Third Party interact with Manager, Manager shall cooperate in good faith with the Commonwealth and any such Third Party. Such cooperation shall include: (i) providing reasonable access to the facilities being used by Manager to provide the Services, to the extent necessary for the Commonwealth or the Third Party to perform its services; (ii) providing access to the Manager Personnel to the extent reasonably required for the Commonwealth or the Third Party to provide services; (iii) providing 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 reasonable cooperation with the Commonwealth or the Third Party to perform its services; and (iv) reasonable cooperation with the Commonwealth and the Third Party to diagnose and correct any problems and issues.

(b) Upon Manager's request, the Commonwealth shall cooperate with Manager's Subcontractors or Vendors to the extent necessary for Manager to perform Manager's obligations under this Agreement.

5.10 Reporting of Adverse Impacts.

5.10.1 Failure to Comply with Obligations. Manager shall promptly notify the Commonwealth in writing to the extent Manager becomes aware of any failure by Manager to comply with its obligations under the Agreement including the Operating Standards, under the Managed Contracts or any other situation that has had or reasonably could have: (a) a material adverse impact on the maintenance of the Commonwealth's financial integrity or internal controls, the accuracy of the Commonwealth's financial, accounting, manufacturing quality, or records and reports, or compliance with the Commonwealth Policies and Rules; (b) any other material adverse impact on the Services in question or the Lottery; (c) resulted in Manager's inability to achieve any Service Level; or (d) a material adverse impact on the Commonwealth's Intellectual Property, goodwill, or public image. In any such case, Manager shall include with its notice the impact or potential impact of such situation, and Manager and the Commonwealth shall promptly meet to formulate an action plan to minimize or eliminate the impact of such situation at no cost to the Commonwealth.

5.10.2 Reporting of Complaints – **Manager**. In connection with its performance of the Services and in accordance with the Governance Protocols, Manager shall notify the Commonwealth promptly in writing of any material complaints received by Manager or any Manager Personnel regarding the Services or Manager Personnel that would reasonably be expected to impact the Commonwealth's or Lottery's brand or public image, and shall identify the party making such complaint and the party against which such complaint was made and shall specify in reasonable detail the nature of and circumstances giving rise to such complaint.

ARTICLE 6

EMPLOYEES

6.1 Manager Personnel Are Not Commonwealth Employees. Manager, subject to the Commonwealth's ultimate authority and control as provided hereunder, has the right, power, authority and duty to supervise and direct the activities of Manager Personnel and to compensate such Manager Personnel for any work performed by them on the behalf of or for the Commonwealth pursuant to this

Agreement. Manager, and not the Commonwealth, 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. For avoidance of doubt, Manager hereby acknowledges and agrees that neither Manager nor Manager Personnel are entitled to protection under 4 P.A. Code § 39 et al.

6.2 Employment Transition Period.

(a) The Parties acknowledge and agree that protection of the jobs of those individuals who, as of the Effective Date of this Agreement, are employed by the Commonwealth, a list of whose names, positions, and salaries is attached hereto as **Schedule 6 (Commonwealth Employees)** (the "**Current Lottery Employees**") is of importance to the Commonwealth.

(b) Commencing on the Effective Date of this Agreement through 11:59 p.m. E.S.T. on the date one (1) year following the Effective Date (the "**Employment Transition Period**"), the Commonwealth and Manager shall cooperate in the utilization of the Current Lottery Employees to perform work for the Lottery and the Commonwealth in conjunction with the Manager and Manager's employees in accordance with the terms of **Exhibit C (Employment Transition Agreement)**. The Commonwealth shall advise Manager on or before the Effective Date of this Agreement which, if any, of the Current Lottery Employees the Commonwealth desires to retain for continued employment by the Commonwealth.

During the Employment Transition Period, Manager shall accept employment (c) applications from any Current Lottery Employee who desires employment with Manager, such applications to be in a form and substance determined by Manager. Manager shall conduct interviews with such Current Lottery Employees and the Commonwealth shall cooperate and assist the Manager in having reasonable access to such Current Lottery Employees in order to conduct such interviews. If Manager desires to hire any such Current Lottery Employees during the Employment Transition Period, Manager shall notify the Commonwealth not later than ten (10) days prior to the Current Lottery Employees' anticipated start date with the Manager. Manager shall advise the Commonwealth which of the remaining Current Lottery Employees to whom Manager intends to make an offer of employment (such offered employment to commence on the day immediately after the last day of the Employment Transition Period) not later than ninety (90) days prior to the end of the Employment Transition Period. After Manager identifies to the Commonwealth the Current Lottery Employees to whom Manager desires to make an offer of employment, Manager shall have access to such Current Lottery Employees and such Current Lottery Employees' collective bargaining representatives, if required, with the cooperation and assistance of the Commonwealth, for the purpose of meeting with the Current Lottery Employees to discuss employment by Manager.

(d) The Commonwealth acknowledges and agrees that Manager has no obligation under this Agreement to offer employment to any of the Current Lottery Employees. As long as the Current Lottery Employees remain employees of the Commonwealth, the Commonwealth shall be solely responsible for any obligations or liabilities relating to or arising out of the employment of the Current Lottery Employees by the Commonwealth, including employee pension benefit plans or employee welfare benefit plans, accrued vacation, sick day or other similar benefits, wages, payroll taxes, employment taxes, workers compensation claims, contributions to health and welfare plans and medical claims. Any Current Lottery Employees who are employed during or subsequent to the Employment Transition Period by Manager shall be commencing a new, separate employment with Manager. The Parties acknowledge and agree that Current Lottery Employees who become Manager Personnel shall be terminated from employment with the Commonwealth. (e) In accordance with the relevant collective bargaining agreements and memorandum of understanding, the Commonwealth shall no later than sixty (60) days prior to the end of the Employment Transition Period, notify the certified representatives of the Current Lottery Employees of its intent to furlough any applicable Current Lottery Employees as of the date immediately following the end of the Employment Transition Period. Current Lottery Employees will be notified of their furlough no later than ten (10) Business Days prior to the effective date of the furlough.

(f) The Commonwealth will attempt to place Current Lottery Employees who are being furloughed, and who have not been offered or are not accepting an offer of employment with Manager in budgeted, available positions, which the Commonwealth intends to fill and for which such Current Lottery Employees qualify. Any employment of any Current Lottery Personnel by Manager shall be solely on the terms and conditions of employment established by Manager.

6.3 Manager Personnel – Designation, Removal and Replacement.

6.3.1 Designation of Manager Key Personnel. Each of Manager Key Personnel shall be designated in **Schedule 6.3.1 (Manager Key Personnel)**, and shall have the functions assigned to him or her therein. Manager shall update **Schedule 6.3.1 (Manager Key Personnel)** designating Manager Key Personnel annually with the Annual Business Plan.

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) Except as set forth in this subsection (b), Manager shall not transfer, reassign or remove Manager Key Personnel without the Approval of the Commonwealth. To the extent that any Manager Key Personnel becomes incapacitated, suffers a disability that cannot be reasonably accommodated, takes a long-term leave of absence, voluntarily terminates his or her employment with Manager, is terminated or removed for cause by Manager, Manager shall promptly provide written notice to the Commonwealth of such occurrence and identify a replacement in writing and replace such person with another person in accordance with Section 6.3.4 (Reassignment/Replacement of Manager Personnel) below. In the event of any replacement of Manager Key Personnel, 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 Removal of Manager Personnel by the Commonwealth. The Commonwealth shall notify the Manager to the extent that the performance or conduct of any Manager Personnel employed or retained by Manager to perform Manager's obligations under this Agreement (including Manager Key Personnel) is unsatisfactory or is not in compliance with the provisions of this Agreement (including actual or suspected violations of the terms and conditions of this Agreement or the Commonwealth Policies and Rules). Following receipt of such notice from the Commonwealth, Manager shall, at Manager's cost, either:

(a) promptly address the performance or conduct of such Manager Personnel in a manner that is reasonably acceptable to the Commonwealth; or

(b) if the Manager is unable to address the performance or conduct of such Manager Personnel within thirty (30) days after the Commonwealth's notification, replace such Manager Personnel with another Manager Personnel reasonably acceptable to the Commonwealth and with sufficient knowledge and expertise to perform the Services in accordance with this Agreement.

6.3.4 Reassignment/Replacement of Manager Personnel. If: (a) Manager is obligated to replace any Manager Personnel as provided in Section 6.3.3 (Removal of Manager Personnel by the Commonwealth) above; or (b) Manager requests a transfer, reassignment or replacement of any of the Manager Key Personnel and the Commonwealth Approves such transfer, reassignment or replacement as provided in Section 6.3.2 (Removal/Replacement of Manager Key Personnel by Manager) above, then the proposed replacement personnel shall be "qualified," meaning that the proposed replacement personnel shall possess necessary experience and training as Manager Personnel to be replaced (and as otherwise described in this Agreement including the Operating Standards) and, as Manager deems warranted, the replacement Manager Personnel shall work with the replaced Manager Personnel during a reasonable transition period.

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. For Manager employees, Manager shall: (a) determine and pay all applicable wages and salaries, including applicable overtime and other premium pay; (b) comply with applicable tax regulatory requirements, including income tax and employment tax withholding regulatory requirements; (c) comply with all applicable regulatory requirements governing the employment relationship between Manager and its employees, including regulatory requirements, as applicable, relating to accommodation of disabilities, equal pay, provision of leave (e.g., FMLA, jury duty, etc.), unlawful discrimination, as well as wage and hour requirements; (d) comply with all applicable workers' compensation insurance coverage regulatory requirements; (e) ensure that the employees are appropriately licensed and/or supervised to perform their assigned duties in accordance with applicable regulatory requirements; and (f) maintain all required employment records, including I-9, personnel and medical files consistent with applicable regulatory requirement and customary business practices.

6.5 Other Commonwealth Requirement Regarding Manager Personnel.

6.5.1 Probity Investigations by the Commonwealth. Manager hereby acknowledges and agrees that the Commonwealth shall have the right to conduct probity investigations of any Manager Personnel in accordance with the Operating Standards.

6.5.2 Background Checks for Manager Personnel. 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 shall conduct its standard background check on all Manager Personnel and shall review the results of the background check of each Manager Personnel to verify that Manager Personnel meets Manager's standards for employment. Such background check shall be in the form generally used by Manager in its initial hiring of employees or contracting for contractors or, as applicable, during the employment screening process.

6.5.3 Substance Abuse Policies for Manager Personnel. To the extent permitted by applicable Commonwealth Policies and Rules and in accordance with Manager's policies and procedures, Manager shall immediately remove (or cause to be removed) any Manager Personnel who is known to be or reasonably suspected of engaging in substance abuse while performing Services. In the case of

reasonable suspicion, at Manager's sole discretion, such removal shall be pending completion of the applicable investigation. Substance abuse includes the sale, attempted sale, possession or use of illegal drugs, drug paraphernalia, the misuse of prescription or non-prescription drugs or, to the extent not permitted by Manager, use of alcohol. Manager covenants that it has and shall maintain substance abuse policies, in each case in conformance with applicable Commonwealth Policies and Rules, and Manager Personnel shall be subject to such policies.

6.5.4 Written Compliance Requirement. Manager shall require and cause all Vendors, Subcontractors and Manager Personnel to sign a written agreement, in a form reasonably satisfactory to the Commonwealth, in which such person agrees to comply with (a) the Commonwealth Policies and Rules and (b) the confidentiality provisions of this Agreement.

6.6 Equal Employment. Manager and Manager Personnel shall comply, and shall require all of its Subcontractors to comply, with all Regulatory Requirements that pertain to, or otherwise touch upon, the employment relationship, including without limitation all applicable provisions of Commonwealth and federal laws and regulations pertaining to discrimination against any employee or applicant for employment because of race, color, religion, age, gender, national origin, ancestry, marital status, sexual orientation, military status, physical or mental disability unrelated to ability, order of protection status, unfavorable discharge from military service, sexual or other forms of unlawful harassment and equal employment opportunity. Upon the Commonwealth's request, Manager shall furnish to the Commonwealth written certification that Manager is in compliance with all applicable non-discrimination Regulatory Requirements applicable to private sector employers and agrees to obtain similar certifications from any Subcontractors and Vendors.

ARTICLE 7

SUBCONTRACTORS AND VENDOR CONTRACTS

7.1 Subcontractors and Vendors; Managed Contracts.

7.1.1 Use of Subcontractors and Vendors. Subject to the terms of this Article 7 (Subcontractors and Vendor Contracts) and Section 2.2.2 (Actual Control and Oversight by the Commonwealth), Manager shall have the right to use Subcontractors and Vendors to provide products or services as Manager deems necessary for the management of the Lottery. In contracting with Subcontractors and Vendors, Manager shall consider the sensitive nature of a Commonwealth-conducted lottery, its public image and social implications, and shall act to promote and ensure security, honesty, fairness, and integrity in the procurement of Subcontractors or Vendors and the operation of the Lottery.

7.1.2 Managed Contracts.

(a) The Parties acknowledge and agree that Manager will assume all rights and obligations under the Managed Contracts as of the earlier of the Transition Completion Date or the Base Services Commencement Date and has the right to enforce the Managed Contracts to the fullest extent permitted under such Managed Contracts. To the extent that this Agreement terminates prior to the expiration or termination of any Managed Contract, the Commonwealth shall assume the Managed Contracts from the Manager. The Commonwealth shall be responsible for all charges and fees due pursuant to the Managed Contracts prior to the earlier of the Transition Completion Date and the Base Services Commencement Date.

(b) Manager shall obtain advance approval from the Commonwealth for any termination for convenience and all enforcement measures (including the imposition of liquidated damages and termination actions) with respect to the Managed Contracts, such approval by the Commonwealth not to be unreasonably withheld, delayed or conditioned. Notwithstanding the preceding sentence, the Commonwealth shall not to be obligated to pay any fees, costs or expenses with respect to any termination for convenience (or transition costs associated with such termination for convenience) or enforcement measures exercised by the Manager under a Managed Contract and the Parties acknowledge and agree that to the extent any termination for convenience or enforcement measure requires such payment, the Commonwealth shall have the right to withhold, delay or condition its approval.

7.2 Procurement of Subcontractors and Vendors. Subject to the terms and conditions of the Agreement including the Operating Standards and Section 7.4 (Notice of Subcontractors and Vendors), Manager shall have the right to subcontract with any Entity to perform all or any part of the Services. Manager shall identify the Subcontracts and Vendor Contracts existing as of the Effective Date on Schedule 7.2 (Approved Subcontracts and Vendor Contracts) to be updated as part of, and incorporated into, the Annual Business Plan. Manager shall not have a financial interest in any Entity providing Services pursuant to the Agreement except with the Approval of the Commonwealth.

7.3 Term of Manager Contracts. To the extent a contract entered into by Manager in connection with the Agreement has a term extending beyond the Term (and the Disentanglement Services Period), Manager shall be solely responsible for any additional costs or obligations that arise under or respect to such contract, unless such contract has been assigned to the Commonwealth as contemplated hereunder, or the Commonwealth or the Replacement Manager has assumed the use and benefit thereof pursuant to Section 14.3.2 (Assumption of Subcontracts and Vendor Contracts).

7.4 Notice of Subcontractors and Vendors. Prior to entering into any Subcontract or Vendor Contract that has an annual contract value in excess of five hundred thousand dollars (\$500,000) and such Subcontract or Vendor Contract was not approved through the Annual Business Plan, then, in each case, Manager shall: (a) notify the Commonwealth in writing of the components of the Services affected, the scope of the proposed agreement, the identity and qualifications of the proposed Subcontractor or Vendor, and the reasons for the agreement; (b) obtain Commonwealth's prior written approval of such Subcontractor or Vendor, such approval not to be unreasonably withheld, conditioned or delayed; and (c) obtain the right to provide the benefits of the agreement to the Commonwealth.

7.5 Probity Investigation of Subcontractors and Vendors. Manager acknowledges and agrees that the Commonwealth shall have the right to conduct probity investigations of any Subcontractor or Vendor prior to and during the term of its Subcontract or Vendor Contract with Manager in accordance with the Operating Standards and such costs associated with such investigations shall be included in Operating Expenses. Manager shall be responsible for notifying Subcontractors or Vendors of the possibility of such probity investigations.

7.6 List of Subcontractors and Vendors. Manager shall provide to the Commonwealth a written list of all Subcontractors and Vendors used, or to be used, by Manager to perform any portion of the Services provided by Manager to the Commonwealth to the extent their Subcontracts or Vendor Contracts has an annual contract value in excess of five hundred thousand dollars (\$500,000). Such list shall be provided within thirty (30) days prior to the Base Services Commencement Date and updated quarterly thereafter.

7.7 Subcontractor and Vendor Contracts. Except for the Managed Contracts, Manager shall include in its Subcontracts and Vendor Contracts having an annual contract value in excess of five

hundred thousand dollars (\$500,000) a provision that the Services to be provided by the Subcontractor or Vendor are for the benefit of the Commonwealth and deeming the Commonwealth a third party beneficiary to such Subcontract or Vendor Contract, as well as flow-down provisions and terms and conditions that are consistent with the provisions of the Agreement including those provisions relating to termination (other than termination for convenience, it being understood and agreed that Manager shall be solely responsible for any obligations that arise under or with respect to such Subcontracts or Vendor Contracts after the Term, unless such contract has been assigned to the Commonwealth as contemplated hereunder, or the Commonwealth or its Replacement Manager has assumed the use and benefit thereof pursuant to Section 14.3.2 (Assumption of Subcontracts and Vendor Contracts)), personnel requirements, the Commonwealth Intellectual Property, the Commonwealth's audit rights, privacy and data safeguards, confidentiality, representations and warranties, limitations on liability, certifications (including the Standard Compliance Provisions), indemnification obligations and insurance. Without limiting the foregoing sentence, Manager shall require all of its Subcontractors or Vendors having Subcontracts or Vendor Contracts that have an annual value in excess of five hundred thousand dollars (\$500,000) to carry insurance of the types set forth in Article 17 (Insurance and Risk of Loss) at levels customary and appropriate for the types and volumes of services being provided by the Subcontractors and Vendors. Subject to Article 9 (Data Protection, Security, and Confidentiality), Manager shall provide the Commonwealth with access to all Subcontracts and Vendor Contracts and other documents relating to the Subcontractors' and Vendors' performance of the Services and amounts charged to the Commonwealth under the Agreement as reasonably necessary to satisfy the Commonwealth's internal control requirements.

7.8 Responsibility for Subcontractors and Vendors. In no event shall Manager be relieved of its obligations under the Agreement as a result of its use of any Subcontractors or Vendors, including any failure by Subcontractor or Vendor to perform its obligations to Manager. Manager shall supervise the activities and performance of each Subcontractor and Vendors and shall remain wholly and fully responsible and liable for the actions and omissions of each Subcontractor or Vendors or for any act or failure to act by such Subcontractor or Vendor in connection with or related to the Agreement. Manager shall ensure that each Subcontractor or Vendor 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 or Vendor is responsible. Manager shall be the Commonwealth's sole point of contact regarding the Services that are subcontracted, including with respect to payment.

7.9 Ordinary Course Payments to Subcontractors and Vendors. Manager shall directly pay to all Subcontractors and Vendors all amounts due in accordance with their respective Subcontracts or Vendor Contracts, subject to reimbursement by the Commonwealth in accordance with Article 10 (Compensation and Payment Terms).

7.10 No Commonwealth Responsibility. The Commonwealth shall not pay any Subcontractor or Vendor any amount due under its respective Subcontracts or Vendor Contracts arising out of indemnity claims for which Manager is responsible. No Subcontractor or Vendor shall have any right against the Commonwealth for labor, services, materials, or equipment furnished for the Services, unless its Subcontract or Vendor Contract has been assigned to the Commonwealth as contemplated hereunder, or the Commonwealth or its Replacement Manager has assumed the use and benefit thereof pursuant to Section 14.3.2 (Assumption of Subcontracts and Vendor Contracts). Manager acknowledges that its indemnity obligations to its Subcontractors or Vendors under this Section 7.10 (No Commonwealth Responsibility) shall include all claims for payment or damages by any Subcontractor or Vendor who furnishes or claims to have furnished any labor, services, materials, or equipment in connection with the Services, except to the extent its Subcontract or Vendor Contract has been assigned to the Commonwealth

as contemplated hereunder, or the Commonwealth or its Replacement Manager has assumed the use and benefit thereof pursuant to Section 14.3.2 (Assumption of Subcontracts and Vendor Contracts).

7.11 Assignability of Subcontracts and Vendor Contracts. All Subcontracts or Vendor Contracts entered into by Manager with respect to the Agreement shall be freely assignable to the Commonwealth or to a Replacement Manager at the Commonwealth's election and without cost or penalty to the Commonwealth or a Replacement Manager (it being understood and agreed that in the event the Commonwealth elects to have the rights and benefits under such Subcontracts or Vendor Contracts assigned, the assignee shall assume the obligations and liabilities under such Subcontracts or Vendor Contracts).

7.12 Removal / Replacement of Subcontractors and Vendors. The Commonwealth shall have the right to require Manager to replace a Subcontractor or Vendor for any reasonable reason, including: (a) material non-performance of the applicable Services performed by such Subcontractor or Vendor in the Commonwealth's reasonable determination that, to the extent capable of cure, is not cured within a reasonable amount of time; (b) engagement by such Subcontractor or Vendor in illegal activity or material violation of Commonwealth Policies and Rules that, to the extent capable of cure, is not cured within a reasonable amount of time as determined by the Commonwealth, or (c) material violation of the Agreement attributable to such Subcontractor or Vendor that, to the extent capable of cure, is not cured within a reasonable amount of time as determined by the Commonwealth. Upon any occurrence of any of the events described in subsections (a) through (c) above, the Manager shall promptly notify the Commonwealth. To the extent the Commonwealth exercises its right to require Manager to replace such Subcontractor or Vendor, Manager shall replace such Subcontractor or Vendor with another Third Party or with Manager Personnel as soon as reasonably possible after receipt of such notice from the Commonwealth with no penalties, fees, or damages to the Commonwealth. At all times, notwithstanding the removal of the Subcontractor or Vendor, Manager shall continue to perform all of its obligations under the Agreement in compliance with all of the terms and conditions of the Agreement.

ARTICLE 8

INTELLECTUAL PROPERTY RIGHTS

8.1 Commonwealth Intellectual Property.

8.1.1 Ownership. As between the Parties, all worldwide rights, title, and interests in and to all Commonwealth Intellectual Property are and shall be owned by the Commonwealth.

8.1.2 Commonwealth Intellectual Property. Subject to any restrictions from Third Parties and during the Term (and any Disentanglement Services Period), the Commonwealth hereby grants to Manager a royalty-free, non-exclusive, non-transferable (except as part of an assignment of this Agreement pursuant to Section 22.1 (Assignment)) license to use the Commonwealth Intellectual Property provided or otherwise designated by the Commonwealth solely to the extent necessary to perform, and solely for the purpose of performing, Manager's obligations under the Agreement. Manager shall have the right to sublicense to its Subcontractors or Vendors the royalty-free right to use such Commonwealth Intellectual Property (subject to any rights or obligations of any Third Parties) solely to the extent necessary to perform, and solely for the purpose of performing Manager. Notwithstanding the preceding sentence, such sublicense shall be subject to such Subcontractors or Vendors entering into a written agreement with Manager consistent with the applicable terms set forth in the Agreement that protect the applicable Commonwealth Intellectual Property, including all confidentiality, non-disclosure, non-use,

and non-compete obligations. As between the Parties, the Commonwealth has and shall continue to have the initial right (but not the obligation) to initiate and control any litigation or other proceeding or action taken involving any of the Commonwealth Intellectual Property and to file and control the filing of any new Commonwealth Trademarks. Manager shall immediately notify the Commonwealth of any infringement, violation, misuse or misappropriation of the Commonwealth Intellectual Property of which Manager becomes aware.

8.1.3 Trademarks; Quality Control.

(a) The Commonwealth shall retain ownership of any Commonwealth Trademarks unless otherwise mutually agreed by the Parties in advance in writing. Manager shall obtain the Approval of the Commonwealth to use any Trademarks on or in connection with the Services (including with the Lottery Games or the promotion of such Lottery Games), in part, to ensure that quality standards for such Trademarks are being maintained. Any use of a Commonwealth Trademark or a Trademark by or on behalf of the Manager with respect to the Services performed by the Manager hereunder (or in connection with a Lottery Game) shall inure to the benefit of the Commonwealth unless otherwise mutually agreed by the Parties in advance in writing. To the extent that the Commonwealth Approves any use of a Commonwealth Trademark, such Commonwealth Trademark shall be deemed licensed to the Manager pursuant to **Section 8.1.2 (Commonwealth Intellectual Property)**.

(b) With respect to any Commonwealth Trademarks that are licensed to the Manager and in use as of the Effective Date, Manager shall use such Commonwealth Trademarks in a form and style consistent with the use of such Commonwealth Trademark by the Commonwealth as of the Effective Date and any Commonwealth Policies and Rules. With respect to any new Commonwealth Trademarks, Manager shall use such Commonwealth Trademarks as Approved by the Commonwealth.

(c) Manager shall not use any Commonwealth Trademarks in any manner which would disparage, tarnish or dilute the distinctive quality of such Trademarks or the reputation and goodwill embodied in such Commonwealth Trademarks or which would reflect adversely on the Commonwealth Trademarks or the Commonwealth.

(d) Upon the Commonwealth's request, Manager shall submit to the Commonwealth, from time to time, (i) samples sufficient to accurately show Manager's use of the Commonwealth Trademarks; and (ii) detailed descriptions of any and all goods and services provided and activities conducted by Manager in connection with the Commonwealth Trademarks.

8.1.4 No Post-Termination Rights. After the termination or expiration and non-renewal of the Agreement, Manager shall have no rights in or to Commonwealth Intellectual Property, and Manager shall return promptly to the Commonwealth all Commonwealth Intellectual Property or items embodying such Commonwealth Intellectual Property in Manager's possession or in the possession of any Subcontractor or Vendor, or upon the Commonwealth's request, destroy any copies of such items remaining in Manager's, Subcontractor's or Vendor's possession and certify such destruction to the Commonwealth.

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. Manager's patents, trademarks, or copyrights to be used in connection with the Services are listed on Schedule 8.2.1 (Manager Intellectual Property).

8.2.2 License to the Commonwealth. Manager hereby grants, and shall cause to be granted, to the Commonwealth, a royalty-free, non-transferable (except as transferable under Section 22.1 (Assignment)), 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 Commonwealth to receive the Services, and which shall be irrevocable during the Term (and any Disentanglement Services Period).

8.2.3 Post-Termination Rights. After the termination or expiration and non-renewal of the Agreement, except as set forth in **Section 8.4 (Embedded Manager Intellectual Property)**, the Commonwealth shall have no rights in or to Manager Intellectual Property, and the Commonwealth shall promptly return to Manager all Manager Intellectual Property or items embodying such Manager Intellectual Property in the Commonwealth's possession or in the possession of any Commonwealth employees, representatives, or agents or, upon Manager's request, destroy any copies of such items remaining in the Commonwealth's possession and certify such destruction to Manager.

8.3 New Intellectual Property. The Commonwealth and Manager shall specify in a separate agreement whether any New Intellectual Property is categorized as "Type I", "Type II" or "Type III" ownership. To the extent that the Parties do not enter into a separate agreement or otherwise fail to specify the ownership with respect to any New Intellectual Property, then the New Intellectual Property shall be considered Type I. Manager shall promptly notify the Commonwealth upon the completion of the earliest of conception, creation, or reduction to practice of any and all New Intellectual Property.

8.3.1 Type I Ownership. As between the Parties, the Commonwealth owns all worldwide right, title, and interest in and to the New Intellectual Property. The New Intellectual Property shall be considered to be "works made for hire" (as that term is used in the United States Copyright Act, 17 U.S.C. § 101, or in analogous provisions of other applicable Commonwealth Policies and Rules). If any such New Intellectual Property may not be considered a work made for hire under applicable Commonwealth Policies and Rules, Manager hereby irrevocably assigns, and shall assign, to the Commonwealth, without further consideration, all of Manager's right, title, and interest in and to such New Intellectual Property, including United States and foreign patent, copyright, and other intellectual property rights. Manager acknowledges that the Commonwealth and the successors and assigns of the Commonwealth have the right to obtain and hold in their own name any patent, copyright, and other intellectual property rights in and to such New Intellectual Property. The Commonwealth hereby grants Manager certain license and other rights with respect to such New Intellectual Property as described in Section 8.1.2 (Commonwealth Intellectual Property and Licensed Technology), subject to Section 8.1.3 (No Post-Termination Rights).

8.3.2 Type II Ownership. As between the Parties, Manager owns all worldwide right, title and interest in and to the New Intellectual Property. Manager shall deliver to the Commonwealth a minimum of one copy of such New Intellectual Property. Manager hereby grants to the Commonwealth and the Commonwealth accepts, an irrevocable, perpetual, nonexclusive, worldwide, paid-up, royalty-free right and license to use, execute, reproduce, display, perform and distribute copies of such New Intellectual Property. Manager hereby grants to the Commonwealth an irrevocable, perpetual paid-up, royalty-free right and license under the Manager Intellectual Property to any rights that are necessary for the Commonwealth to use such New Intellectual Property.

8.3.3 Type III Ownership. For any New Intellectual Property that is jointly developed by the Commonwealth and Manager, the Parties shall jointly own such New Intellectual Property. To effectuate any joint ownership, each Party hereby irrevocably assigns and transfers to any other Party a one-half undivided interest in and to all of the Party's right, title and interest in such New Intellectual Property.

Such joint ownership rights in the New Intellectual Property shall be fully vested exclusively as of the moment of creation, generation, development, reduction to practice or fixation of such New Intellectual Property. Any joint developer of New Intellectual Property agrees to provide the other Party with a right of first refusal to acquire the entire ownership interest. Pursuant to such right of first refusal, prior to entering into any agreement or other arrangement to transfer or license such copyright to any Third Party, the joint developer shall provide the other Party with reasonable advance notice of an opportunity to enter into such agreement or other arrangement, on fair and reasonable terms and conditions no less favorable than those offered to the prospective Third Party. Any Party shall promptly report to the other Party if such Party files any patent or copyright application, and shall provide a copy of the application and any subsequent correspondence with any governmental agency regarding the application. Any application filed by a Party hereunder shall name all of the joint owners as owners of the registered property.

8.4 Embedded Manager Intellectual Property.

License Grant. To the extent that Manager Intellectual Property is either: (a) embedded 8.4.1 in; (b) incorporated into; or (c) necessary for the access and use of any Commonwealth Intellectual Property, Manager shall not be deemed to have assigned its or any Third Party's intellectual property rights in such materials to the Commonwealth, but Manager hereby grants (subject to the following sentence) to the Commonwealth an irrevocable, perpetual, non-exclusive, fully paid-up non-transferable and non-sublicensable license, 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 Manager Third Party Intellectual Property into Commonwealth Intellectual Property, Manager describes to the Commonwealth such Manager Third Party Intellectual Property and any limitations and restrictions associated with such Manager Third Party Intellectual Property and obtains the Commonwealth's Approval to use of such Manager Third Party Intellectual Property notwithstanding such limitations and restrictions, then such Manager Third Party Intellectual Property shall be subject to such limitations and restrictions.

8.4.2 Delivery of Code. In accordance with Section 8.4.1 (License Grant), Manager shall deliver to the Commonwealth (or, at the Commonwealth's election, to its designee(s)) the object code for Manager Proprietary Intellectual Property, to the extent such code is reasonably necessary to permit the Commonwealth to access and use Manager Proprietary Intellectual Property as contemplated under Section 8.4.1 (License Grant).

8.4.3 Provision of Support. To the extent reasonably required for the Commonwealth to receive the Services during the Term and any Disentanglement Services Period, Manager shall offer to provide to the Commonwealth (or, at the Commonwealth's election, to its designee(s)) upgrades, maintenance, support, and other services for commercial off-the-shelf Manager Proprietary Intellectual Property on mutually acceptable terms and conditions for such services.

8.4.4 No Obligation to Pay. Unless the Commonwealth has otherwise agreed in advance, the Commonwealth (and, to the extent applicable, the Commonwealth's designee(s)) shall not be obligated to pay any license or transfer fees in connection with its receipt of the licenses and other rights granted under this Section 8.4 (Embedded Manager Intellectual Property). Manager shall not use any Manager Proprietary Intellectual Property for which it is unable to offer such license or other rights without Commonwealth's Approval, and absent the Commonwealth's Approval, 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 Commonwealth.

8.4.5 Sublicense to Manager Third Party Intellectual Property. In accordance with Section 8.4.1 (License Grant), Manager hereby grants to the Commonwealth (or, at the Commonwealth's election, to its approved designee(s)) a sublicense offering the same rights and warranties with respect to Manager Third Party Intellectual Property available to Manager (or its Subcontractors or Vendors), on the same terms and conditions, for the benefit and use of the Commonwealth; provided, however, that in lieu of such license, Manager shall have the right to substitute one of the following for such sublicense with the Commonwealth's Approval:

(a) the assignment to the Commonwealth (or, at the Commonwealth's election, to its designee(s)) of the underlying license for such Manager Third Party Intellectual Property;

(b) the procurement for the Commonwealth (or, at the Commonwealth's election, to its 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 Commonwealth; or

(c) the procurement for the Commonwealth (or, at the Commonwealth's election, to its 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 the Agreement, the functions of Manager Third Party Intellectual Property.

8.4.6 Other Obligations. Except as set forth in Section 8.4.1 (License Grant), 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 Third Party Intellectual Property, including the source code to such Manager 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 Commonwealth.

8.5 General Rights.

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

8.5.2 Cooperation on Enforcement of Intellectual Property Rights. Each Party agrees to reasonably cooperate with and reasonably assist the other Party in connection with the enforcing or investigating violations of the Intellectual Property rights of such Party.

8.5.3 Assistance in Perfecting Intellectual Property Rights. Each Party agrees to execute any documents or take any other actions as may reasonably be necessary, as the other Party may reasonably request, to perfect such other Party's ownership of, as applicable, any Commonwealth Intellectual Property and Manager Intellectual Property.

8.5.4 No Implied Rights. Except as expressly specified in the Agreement, nothing in the 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.

8.5.5 Residual Knowledge. Nothing in the Agreement shall restrict a Party from using generic data processing or business process ideas, concepts, or know-how developed by or disclosed to a Party in connection with the Agreement and inadvertently retained in the unaided memory of the receiving Party's

employees and representative (and not intentionally memorized for the purpose of later recording or use) who have rightful access to such information under the terms of the Agreement, provided that such use does not violate, infringe or misappropriate the Intellectual Property rights of a Party or breach any confidentiality obligations or other obligations under the Agreement.

ARTICLE 9

DATA PROTECTION, SECURITY, AND CONFIDENTIALITY

9.1 Ownership of Commonwealth Data. As between the Commonwealth and Manager, the Commonwealth Data is and shall be owned by the Commonwealth. Subject to Section 9.3.6 (Return/Destruction of Confidential Information), and except to the extent prohibited by applicable Regulatory Requirements, Manager shall promptly deliver the Commonwealth Data (or the portion of such the Commonwealth Data specified by the Commonwealth) to the Commonwealth in the format and on the media mutually agreed upon by the Parties: (a) at any time upon reasonable notice and at the Commonwealth's reasonable request; and (b) at the end of the Term (and any Disentanglement Services Period). With respect to the Managed Contract, Manager shall only be responsible to comply with this Section to the extent required by such Managed Contract. Manager shall not withhold any of the Commonwealth Data as a means of resolving any Dispute. The Commonwealth Data shall not be utilized by Manager for any purpose other than the performance of Services under the Agreement, and Manager shall comply with the Manager privacy policy established in accordance with the Operating Standards. Except to the extent otherwise permitted by a Managed Contract, the Commonwealth Data shall not be sold, assigned, leased, encumbered, commercially exploited, or otherwise provided to Third Parties without the Commonwealth's Approval. Manager shall promptly notify the Commonwealth in writing if it believes that the Commonwealth Data has been used in a manner inconsistent with the Agreement or the Commonwealth Policies and Rules.

9.2 Security.

Safeguarding Procedures. Except to the extent otherwise set forth in a Managed 9.2.1 Contract, Manager shall establish and maintain physical, environmental, safety and facility procedures, data security procedures, and other safeguards consistent with the requirements of the Agreement and Commonwealth Policies and Rules including Regulatory Requirements and generally accepted industry standards against the destruction, loss, unauthorized access, or alteration of the Commonwealth Data in the possession or control of Manager which are: (a) no less rigorous than those maintained by the Commonwealth prior to the Effective Date; (b) no less rigorous than generally accepted industry standards for safeguarding information of a similar nature; (c) no less rigorous than those maintained by Manager for other customers of Manager; and (d) adequate to meet the requirements of the applicable Commonwealth Policies and Rules. With respect to the Commonwealth Data in Manager's possession or direct or indirect control, Manager shall provide the Commonwealth with copies of the Commonwealth Data in Manager's possession, as requested by the Commonwealth, to enable the Commonwealth to maintain backup security or backup copies of the Commonwealth Data. Except to the extent otherwise set forth in a Managed Contract, Manager shall remove all the Commonwealth Data from any Equipment or media taken out of service and shall destroy or securely erase such Equipment or media in accordance with Manager's record retentions policy established pursuant to the Operating Standards or, if not specified therein, generally acceptable industry standards. Except to the extent otherwise set forth in a Managed Contract, no Equipment or media on which the Commonwealth 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 Commonwealth Data in Manager's possession or

direct or indirect control, Manager shall: (i) expeditiously notify the Commonwealth in writing of such breach or potential breach in sufficient time to allow the Commonwealth to comply with any applicable notification or other Commonwealth Policies and Rules; (ii) investigate such breach or potential breach and perform a Root Cause Analysis and provide such Root Cause Analysis report to the Commonwealth; (iii) remediate the effects of such breach or potential breach of security, provided that the Commonwealth is not the direct cause of the breach or potential breach; (iv) provide the Commonwealth with such assurances as the Commonwealth shall request that such breach or potential breach shall not recur, provided that the Commonwealth is not the direct cause of the breach or potential breach; (v) provide periodic updates of any investigations to the Commonwealth; and (vi) cooperate with the Commonwealth with respect to any investigation by the Commonwealth.

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 or restoration of lost Commonwealth Data. Such procedures shall be consistent with generally accepted industry standards for data restoration which shall in no event be less rigorous than those specified in the Operating Standards, maintained by Manager for its own information of a similar nature, or with respect to the Managed Contract, in accordance with the requirements of the Managed Contracts.

9.2.3 Corrections. Except to the extent otherwise set forth in a Managed Contract, Manager shall adhere to the procedures and safeguards specified in the Operating Standards. Manager shall correct (including data backup and restoration from scheduled backups or, if not available on such backups, using other generally accepted data restoration techniques) any unauthorized destruction, loss, or alteration of any the Commonwealth Data in Manager's possession or direct or indirect control to the extent possible. To the extent attributable to the failure of Manager, such correction shall be made at no cost to the Commonwealth,.

Data Access. The Commonwealth shall have the right to access all computer or other 9.2.4 files to the extent such computer or other files contain the Commonwealth Data, as well as all systems and network logs, system parameters, and documentation to the extent such systems, logs, parameters, and documentation contain the Commonwealth Data (collectively "Commonwealth 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 Commonwealth. Manager shall provide to the Commonwealth all passwords, codes, comments, keys, documentation, and the locations of any such files and other materials promptly upon the request of the Commonwealth, including Equipment and Software keys, and such information as to format, encryption (if any), and any other specification or information necessary for the Commonwealth to retrieve, read, revise or maintain such files and information. Upon the request of the Commonwealth, Manager shall confirm in writing that, to the best of its knowledge, all the Commonwealth Data Files provided to the Commonwealth are materially complete, and that no material element, amount, or other fraction of such the Commonwealth Data Files has been deleted, withheld, disguised, or encoded in a manner inconsistent with the purpose and intent of providing the access to the Commonwealth as contemplated by the Agreement.

9.2.5 Advice on Best Practices. Manager and the Commonwealth shall discuss and remediate any discrepancies in data security practices, procedures, and safeguards in effect for other Manager customers, where such practices, procedures, and safeguards are of a higher standard than those contemplated under the Agreement.

9.3 Confidentiality.

9.3.1 Confidential Information. Manager and the Commonwealth acknowledge and agree 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' businesses, and is not generally available to the public. The Parties acknowledge and agree that for purposes of the Pennsylvania Right-To-Know Law ("RTKL") (65 PA. STAT. ANN. §§ 67.101-3104), 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.

9.3.2 Confidentiality Obligations.

During the Term and at all times thereafter, Manager and the Commonwealth (a) shall not disclose, and shall maintain the confidentiality of, all Confidential Information of the other Party. The Commonwealth 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, its Affiliates, agents, and employees shall not disclose to others any information, documents, reports, data, or records provided to, or prepared by, Manager under the Agreement without the Approval of the Commonwealth, except as required by the RTKL (65 PA. STAT. ANN. §§ 67.101-3104), other Regulatory Requirement or as otherwise provided in the Agreement. Manager shall require all Manager Personnel, Subcontractors and Vendors having access to the Commonwealth Confidential Information 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 Article 9 (Data Protection, Security, and Confidentiality) protecting the Commonwealth Confidential Information, a form of which is set forth in Exhibit D (Form of Confidentiality Agreement). Upon the Commonwealth's request, Manager shall cooperate with, and enforce, such terms and conditions. Manager shall ensure that Manager Personnel, Subcontractors and Vendors shall have access to the Commonwealth Confidential Information only to the extent necessary for such Manager Personnel, Subcontractors or Vendors to perform their respective obligations under the Agreement, or as otherwise naturally occurs in such Manager Personnel, Subcontractor or Vendor's scope of responsibility, provided that such access is not in violation of any Commonwealth Policies and Rules.

(b) The Parties may disclose Confidential Information to their respective Affiliates, auditors, attorneys, accountants, consultants, contractors, and subcontractors, where: (i) use by such Entity is authorized under the Agreement; (ii) such disclosure is necessary for the performance of such Entity's obligations under the Agreement or otherwise naturally occurs in such Entity's scope of responsibility; and (iii) the Entity (and its applicable officers and employees) agrees to confidentiality obligations that meet the requirements of **Section 9.3 (Confidentiality)**.

(c) Each Party hereby assumes full responsibility for the acts or omissions of any disclosure of the Disclosing Party's Confidential Information and shall ensure that the Confidential Information is not disclosed or used in contravention of the Agreement.

(d) Each Party's Confidential Information shall remain the property of such Party.

(e) Neither Party shall: (i) make any use or copies of the Confidential Information of the other Party except as contemplated by the 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 the 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 (Confidentiality Obligations) shall not apply to any particular Confidential 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 publicly 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 prior to the time of disclosure by the Disclosing Party; (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 access to or reference to 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. The Receiving Party shall have the right to disclose the Confidential Information of the Disclosing Party to the extent disclosure is based on the advice of the Receiving Party's legal counsel that disclosure is required by Regulatory Requirement; provided, however, that the Receiving Party shall give advance written notice of such requested disclosure and advice to the Disclosing Party prior to any such disclosure and shall use commercially reasonable efforts to obtain a protective order or otherwise protect the confidentiality of the Disclosing Party's Confidential Information. Notwithstanding the foregoing, the Disclosing Party reserves the right to obtain a protective order or otherwise protect the confidential Information. For purposes of this Section 9.3.4 (Legally Required Disclosures), the Parties' in-house counsel or law department may act as their respective legal counsel.

9.3.5 Notification and Mitigation. 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.

9.3.6 Return/Destruction of Confidential Information. After the Term (and any Disentanglement Services Period), and at any other time upon written request by the Disclosing Party, 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 (except Contract Records, which shall be retained by Manager for the Record Retention Period unless and to the extent Manager is directed by the Commonwealth to deliver such Contract Records to the Commonwealth prior to the expiration of such Record Retention Period). In addition, unless the Disclosing Party or, if requested by the Disclosing Party, shall delete or destroy 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. Notwithstanding the foregoing: (a) Manager may retain one copy of documentation and data, excluding the Commonwealth Data, for archival purposes or warranty support; provided, however, that any subsequent disclosure of such archived data shall comply with this **Article 9** (**Data Protection, Security, and Confidentiality**); and (b) the Commonwealth may retain copies of Manager Confidential Information to the extent required by Regulatory Requirement and to the extent otherwise permitted under the Agreement and for legal archival purposes; provided, however, that any subsequent disclosure of such archived data shall comply with this **Article 9** (**Data Protection, Security, and Confidentiality**). Each Party shall deliver to the other Party written certification of its compliance with this **Section 9.3.6** (**Return/Destruction of Confidential Information**) 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 **Article 9** (Data Protection, Security, and Confidentiality), or if the Disclosing Party anticipates that the Receiving Party may violate or continue to violate any restriction set forth in this **Article 9** (Data Protection, Security, and Confidentiality), then the Disclosing Party shall have the right to have the provisions of this **Article 9** (Data Protection, Security, and Confidentiality), 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.

ARTICLE 10

COMPENSATION AND PAYMENT TERMS

10.1 Compensation. During the Term (and any Disentanglement Services Period), the Commonwealth shall pay to Manager the amounts: (a) set forth in Schedule 10.1 (Compensation and Payment Terms) to be paid by the Commonwealth to Manager; and (b) set forth in the mutually agreed upon Disentanglement Services Plan and Transition Plan, if any (collectively, subsections (a) and (b), the "Payments"). The Commonwealth shall not be liable for, and shall not pay, any amounts other than as specifically set forth in the Agreement (including Schedule 10.1 (Compensation and Payment Terms)) or otherwise Approved by the Commonwealth. Except as otherwise expressly provided in the Agreement (including the Transition Plan and the Disentanglement Services Plan) or separately Approved by the Commonwealth shall not 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 Transition Completion Date.

10.2 Payment Terms; Invoices.

10.2.1 General Requirements. On the first Business Day of each calendar month during the Term (and any Disentanglement Services Period), beginning with the first month following the Transition Completion Date, Manager shall deliver to the Commonwealth or its designee an invoice in the form and format set forth in Schedule 10.2 (Form of Invoice) for any payment due as set forth on Schedule 10.1 (Compensation and Payment Terms). Each monthly invoice shall be accompanied by backup data and information documenting Operating Expenses during the previous month. Documentation supporting Operating Expenses for the previous month include paid invoices and cancelled checks. Manager shall provide notice to the Commonwealth for any invoices submitted on an estimated basis (including

Manager Expenses) and provide supporting documentation justifying these expenses. The estimated Operating Expenses will be reconciled to actual expenses incurred on a quarterly basis (September, December, March, and June) for each preceding calendar quarter. The invoice(s) and data underlying each invoice shall be delivered to the Commonwealth electronically (if requested by the Commonwealth) in a form and format compatible with the Commonwealth's accounting systems. All invoices shall be subject to the Commonwealth's review and Approval based on the requirements of the Agreement prior to payment, and any Dispute shall be raised in accordance with Article 20 (Dispute Resolution; Governing Law).

10.2.2 Annual Invoice for Incentive Compensation. Within fifteen (15) days after the end of each Contract Year, Manager shall submit a written estimate to the Commonwealth of the amount of Incentive Compensation payable to Manager in accordance with Schedule 10.1 (Compensation and Payment Terms). Manager shall provide final data and information sufficient to reasonably demonstrate to the Commonwealth the Incentive Compensation for the applicable Contract Year. After Approval by the Commonwealth on such final data and information, Manager shall submit to the Commonwealth a final annual invoice for Incentive Compensation together with such final data and information.

10.2.3 Payment Terms; Disputed Amounts. The Commonwealth shall pay any undisputed amounts due under this Agreement by the Required Payment Date following receipt of the applicable invoice from Commonwealth monies in the following priority: first, from monies which the Commonwealth is permitted by law to pay via executive authorization; and, second from monies subject to the Commonwealth's appropriation process but only to the extent that sufficient money to pay the invoice is not available from funds available via executive authorization. The Commonwealth may withhold payment of any Manager invoice (or part thereof) that it in good faith disputes as due or owing. The failure of the Commonwealth to pay a disputed invoice, or to pay the disputed part of an invoice, shall not constitute a breach or default by the Commonwealth, so long as the Commonwealth complies with the provisions of this Section 10.2 (Payment Terms; Invoices). For purposes of Article 20 (Dispute Resolution; Governing Law), any issue or problem relating to amounts owed by a Party hereunder shall be considered a Dispute. All of Manager's obligations under this Agreement shall continue unabated during the Dispute resolution process.

10.2.4 Calculations. The Parties acknowledge and agree that any calculations of Revenue, Profit, Gross Profit, Operating Expenses, Manager Expenses, Commonwealth Expenses and Incentive Compensation shall be based on the accounting methodologies of the Commonwealth and in the Commonwealth's reasonable discretion. Solely with respect to calculations determined for Contract Year 1, to the extent there is a conflict between the Manager and the Commonwealth with respect to any aspect of such calculation and the Commonwealth failed to provide the information reasonably necessary for Manager to determine such aspect of such calculation, then the increase in Operating Expenses or decrease in Revenues associated with such conflict shall be considered an Adverse Action as set forth in **Section 21.1.1 (Adverse Actions)** during such Contract Year 1.

10.3 Budget Overruns. Manager shall be solely responsible for all operating costs and expenses that are in excess of the Operating Expenses set forth in the Budget, unless such additional costs and expenses are Approved in writing by the Commonwealth. If any such additional expenses are Approved by the Commonwealth, then the applicable Annual Business Plan shall be adjusted to include such additional expenses in the calculations of the Operating Expenses to be paid corresponding to such adjusted Annual Business Plan.

10.4 Right to Apply Monies. The Commonwealth shall have the right to deduct, from any funds or monies due to Manager, any amounts due or to become due to the Commonwealth from Manager as a

result of any losses, costs, expenses, damages, state tax liability, or other obligation of Manager for which Manager is responsible pursuant to the terms and provisions of the Agreement. In the event it is determined after the dispute resolution process in **Article 20 (Dispute Resolution; Governing Law)** that any of such monies were improperly withheld, the Commonwealth shall pay such sums to Manager.

10.5 Taxes. Each Party shall be responsible for their own taxes arising under or in connection with the Agreement. The Commonwealth is exempt from all excise taxes imposed by the Internal Revenue Service and has accordingly registered with the Internal Revenue Service to make tax free purchases under Registration No. 23740001-K. The Commonwealth is also exempt from Pennsylvania state sales tax, local sales tax, public transportation assistance taxes, and fees and vehicle rental tax.

ARTICLE 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 the Agreement, Manager shall maintain complete and accurate records of and supporting documentation for 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 the Agreement including performance by any Subcontractor and Vendor ("Contract Records"). Manager shall provide reports necessary to provide fiscal year-end financial statements and accruals to the Commonwealth for each fiscal year beginning July 1 and ending on June 30, or any short period beginning July 1 and ending before June 30. Manager shall provide such reports to the Commonwealth by July 30 of each Contract Year or within thirty (30) days after the close of the Stub Contract Year. All financial reports shall be prepared in accordance with GAAP principles and any Commonwealth Policies and Rules.

11.2 Recordkeeping. Manager shall preserve books, documents, and records that relate to costs or pricing data for the Agreement for a period of three (3) years after the date of final Payment or such other period as required by the Commonwealth Policies and Rules (the "**Record Retention Period**").

11.3 Commonwealth Audit Rights.

11.3.1 Audit Procedures. In connection with any and all audits conducted by the Commonwealth under this Section 11.3 (Commonwealth Audit Rights), the Parties shall follow the procedures set forth below in subsections (a) through (f) during the Term (and any Disentanglement Services Period) and the Record Retention Period, as required in the Operating Standards.

(a) The Commonwealth and the Commonwealth's internal and external auditors shall have the right to conduct audits of Manager, Manager Affiliates, Subcontractors and Vendors.

(b) Manager shall give full and free access to all records to the Commonwealth or its designees in conducting any audit, and shall make requested Manager Personnel and Contract Records available. In performing audits, the Commonwealth shall give Manager fifteen (15) days advance notice of audits; provided, however, the fifteen (15) day advance notice requirement shall not apply in connection with audits by or in connection with Governmental Authorities.

(c) Upon the Commonwealth's request, Manager shall assist the Commonwealth in conducting or responding to any audit or audit request, including assisting in the Commonwealth's Page 32 of 65

attempts to obtain certifications or other confirmations required by the Commonwealth Policies and Rules.

(d) Notwithstanding any provision of this Agreement including Section 11.3 (Commonwealth Audit Rights) to the contrary, the Commonwealth and its designees shall not be given access to: (i) the proprietary information of other Manager customers; (ii) Manager locations or facilities, or areas in locations or facilities, that are not involved in, directly or indirectly in whole or part, the provision of Services to the Commonwealth; or (iii) Manager's internal costs or pricing models, except to the extent such costs are the basis upon which the Commonwealth is charged or are necessary to calculate the applicable variable Payments.

(e) Manager will provide the Commonwealth with the information required to prepare any Lottery financial reports in accordance with statutory requirements for those reports.

(f) Manager will provide to the Commonwealth any financial information as requested by the Commonwealth in order to fulfill audit requirements.

11.3.2 Operational Audits. The Commonwealth and its designees shall have the right to conduct any reasonable type of operational audit to verify that the performance of the Services is in compliance with the Agreement.

11.3.3 Financial Audits. The Commonwealth and its designees shall have the right to conduct any type of reasonable financial audit to verify that Manager's invoices have been calculated in compliance with the invoicing and pricing terms and conditions and the compliance of the foregoing with the terms and conditions of the Agreement. Such audit may, in addition, as determined by the Commonwealth: (a) verify the accuracy and completeness of Contract Records; (b) verify the accuracy and completeness of the Incentive Compensation, Manager Expenses and Operating Expenses and any other approved expenses; (c) examine the financial controls, processes, and procedures utilized by Manager; and (d) enable the Commonwealth to meet applicable Regulatory Requirements, in each case to the extent applicable to the Services or the Payments for such Services.

11.3.4 Manager Investigation. In accordance with the Operating Standards, Manager shall commence a complete and thorough financial and operational investigation promptly once every three (3) years during the Term.

11.3.5 Inspector General Inquiry. Upon the inquiry or request of the Inspector General of the Commonwealth or any of that official's agents or representatives, Manager shall provide, or, if appropriate, make available promptly for inspection or copying, any information of any type or form deemed relevant by the Inspector General to Manager's integrity or responsibility, as those terms are defined by the Commonwealth's statutes, regulations, or management directives. Such information may include Manager's business or financial records, documents or files of any type or form that refers to or concern the Agreement. Manager shall retain such information for a period of three (3) years after the termination or expiration and non-renewal of the Agreement unless otherwise provided by Regulatory Requirements.

11.4 Audit Results.

11.4.1 Results of Operational Audits. If an operational audit under Section 11.3.2 (**Operational Audits**) reveals that Manager is not in compliance with any Regulatory Requirement, Commonwealth Policy or Rule, or any other term of the 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, Commonwealth Policy(ies) and Rules, or term of the Agreement. In addition, Manager shall promptly reimburse the Commonwealth for the actual cost of such audit and any damages, fees, fines, or penalties assessed against or incurred by the Commonwealth as a result thereof.

11.4.2 Results of Financial Audits. If a financial audit under Section 11.3.3 (Financial Audits) reveals an overcharge by Manager, Manager shall promptly pay to the Commonwealth 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 Commonwealth prescribed by the Commonwealth's Act 266 of 1982 (72 PA. STAT. ANN. § 1507). In addition, if any such audit reveals an overcharge of more than three percent (3%) of the audited Payments, Manager shall promptly reimburse the Commonwealth for the actual cost of such audit (including all fees of any designees) and any damages, fees, fines, or penalties assessed against or incurred by the Commonwealth as a result thereof.

11.4.3 Audit Follow-Up. Manager and the Commonwealth shall meet promptly upon the completion of a Commonwealth audit (but in no event more than fifteen (15) days after completion) conducted pursuant to this Article 11 (Recordkeeping and Audit Rights) (i.e., an exit interview) or the issuance of an interim or final report to Manager and the Commonwealth following an audit. Manager shall develop for Approval by the Commonwealth 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 Requirements, Commonwealth Policies and Rules, or terms of the Agreement, or otherwise resolve any deficiencies, problems, concerns, or recommendations identified in such exit interview or audit report.

11.4.4 Commonwealth Investigation. In accordance with the Agreement (including the Operating Standards) and without limiting any of the other rights granted under the Agreement, the Commonwealth shall have the right to conduct a thorough financial and operational investigation promptly once every three (3) years during the Term.

11.4.5 Copies of Reports. Manager shall provide copies of any third-party auditor's reports or management letters to the Commonwealth.

11.5 Governmental Audits of the Commonwealth. The Commonwealth may be subject to regulation and audit by Governmental Authorities or standards organizations under applicable Commonwealth Policies and Rules or contract provisions. If a Governmental Authority or standards organization exercises its right to examine or audit the Commonwealth's books, records, documents, or accounting practices and procedures pursuant to such Commonwealth Policies and Rules or contract provisions, Manager shall provide all assistance reasonably requested by the Commonwealth in responding to such audits or requests for information (including allowing the Commonwealth to conduct an audit pursuant to Section 11.3 (Commonwealth Audit Rights)), and shall do so in an expeditious manner to facilitate the prompt closure of such audit or request.

11.6 Manager Internal Audit. If Manager determines as a result of its own internal audit that it has: (a) overcharged the Commonwealth, then Manager shall: (i) promptly pay to the Commonwealth 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 Commonwealth prescribed by Act 266 of 1982 (72 PA. STAT. ANN. § 1507); and (ii) investigate why such overcharge occurred and identify in writing to the Commonwealth what actions Manager is taking to ensure that such overcharge shall not occur again; or (b) failed to perform a task, activity, or process in compliance with the applicable Regulatory Requirement, Commonwealth Policy(ies) or Rules, or term of the Agreement, then Manager shall: (i) investigate why such failure occurred and identify in writing to the Commonwealth what actions Manager is taking to ensure that such failure shall not occur again; and (ii) work with the Commonwealth to identify the portion of the Services that may have been impacted and the Commonwealth personnel affected by such failure. In any case, Manager shall comply with the requirements of **Section 11.4.3** (Audit Follow-Up) to address the issues, deficiencies, or problems.

11.7 SSAE 16 Examination.

(a) In addition to its other obligations, Manager shall ensure that an independent certified public accounting firm performs an examination of internal controls of Manager, and of any supplier if it is a separate Entity from Manager, that are applicable to the processing of transactions on behalf of the Lottery Bureau. Such examination shall be performed at no additional cost to the Commonwealth and in accordance with the Statement on Standards for Attestation Engagements No. 16 ("SSAE 16"). All SSAE 16 reports to be provided by Manager shall be Type 2 Reports (Internal Controls applicable to operations and tests of operating effectiveness during a specified period of time). The initial SSAE 16 examination shall be conducted for the first official annual reporting period required by the Agreement (including the Operating Standards). Thereafter, SSAE 16 examinations shall be conducted annually and shall each cover the entire Commonwealth's fiscal year commencing on July 1 of a given calendar year and ending on June 30 of the subsequent calendar year.

(b) The Commonwealth shall have the right to establish specific control objectives to be tested in each SSAE 16 examination. Manager shall confer with the Commonwealth as to the scope and timing of each such examination, and shall accommodate the Commonwealth's requirements and concerns to the extent reasonably practicable.

(c) Manager shall provide a copy of each SSAE 16 report to the Commonwealth for review and comment as soon as reasonably practicable and in all events within thirty (30) days after completion of an examination. Final reports shall be submitted to the Commonwealth no later than September 1 of each calendar year.

(d) The Commonwealth in its sole discretion may require Manager to provide a SSAE 16 Type 2 report of any Subcontractor or Vendor providing any Services impacting internal controls.

11.8 Manager Response to External Audits. If an audit by a Governmental Authority other than the Commonwealth or by a standards organization having jurisdiction over the Commonwealth or Manager results in a finding that Manager is not in compliance with any applicable Regulatory Requirement, any GAAP or other audit requirement relating to the performance of its obligations under the 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.

11.9 Audit Costs. Manager shall provide the audit-related Services and the audit assistance and compliance described in this Article 11 (Recordkeeping and Audit Rights) at no additional charge to the Commonwealth.

ARTICLE 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 Commonwealth that: (a) Manager is a special purpose entity whose sole activity is the performance of the Services, which is (i) not disregarded for federal income tax purposes; (ii) classified as a corporation for Pennsylvania income tax purposes; (iii) majority-owned by the Guarantor; and (iv) is qualified and registered to transact business in all 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 the Agreement, and the execution, delivery, and performance of the Agreement by Manager have been duly authorized by all necessary corporate action; (c) the execution and performance of the Agreement by 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 the 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 Commonwealth Policies and Rules.

12.1.2 Performance of the Services. Manager represents and warrants to the Commonwealth that Manager, directly or through Subcontractors or Vendors, has the skills, resources, and expertise to provide, and covenants that it shall provide, all Services in accordance with the terms of the Agreement. Without limiting the generality of the preceding sentence, Manager represents and warrants to the Commonwealth that all Services provided under the Agreement shall be provided in a timely, professional, and workmanlike manner consistent with the industry standards of quality and integrity; provided, however, that where the 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 hereby certifies that each of the representations and warranties set forth in **Schedule 12.1.2 (Standard Compliance Provisions)** attached to the Agreement are true and correct as of the Effective Date and covenants that it shall maintain compliance with each such representation and warranty (the "**Standard Compliance Provisions**").

12.1.3 Efficiency and Cost Effectiveness. Manager represents and warrants to the Commonwealth 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 preceding sentence, such actions shall include: (a) making adjustments in the timing of actions and the performance of non-critical functions (consistent with the Commonwealth priorities and schedules for the Services and Manager's obligation to meet the Service Levels); (b) scheduling usage of Commonwealth system resources to low utilization periods where practicable and in Manager's control; and (c) efficiently using the processes and resources for which the Commonwealth is charged hereunder, consistent with industry norms.

12.1.4 No Inducements. Manager represents and warrants to the Commonwealth that neither Manager, nor any of its Affiliates, nor any Manager Personnel, has accepted or shall accept anything of value based on an understanding that the actions of Manager, any such Affiliates, or any such Manager Personnel would be influenced thereby in connection with the Agreement. Manager further represents and warrants that it has not given and shall not give commissions, payments, kickbacks, lavish or extensive entertainment, or other inducements to any Commonwealth personnel, representative or agent

in connection with the Agreement. Manager also represents and warrants that, to the best of its knowledge, no officer, director, employee, agent, or representative of Manager, its Affiliates, or any Manager Personnel has given any such payments, gifts, entertainment, or other thing of value to any Commonwealth personnel, representative, or agent.

12.1.5 Financial Condition and Accuracy of Financial Information. Manager represents and warrants to the Commonwealth 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 the Agreement, including any contingent obligations under any Subcontract or Vendor Contract. If Manager experiences a change in its financial condition that would materially and adversely affect its ability to perform under the Agreement, then it immediately shall notify the Commonwealth of such change. Manager further represents and warrants to the Commonwealth that all financial statements, reports, and other information furnished by Manager to the Commonwealth as part of the Manager Bid or otherwise in connection with the award of the Agreement fairly and materially accurately represent 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.

12.1.6 No Litigation. Manager represents and warrants to the Commonwealth that as, of the Effective Date, there is no pending or, to its knowledge, anticipated claim, suit, or proceeding that involves Manager that would materially and adversely affect Manager's ability to perform its obligations under the Agreement, including actions pertaining to the proprietary rights described in Section 12.1.7 (Non-Infringement; Authority to Grant Rights). At all times during the Term, Manager shall notify the Commonwealth within a reasonable period of time after Manager's knowledge of any such claim, suit, or proceeding initiated by or against Manager that would materially adversely affect Manager's ability to perform under the Agreement.

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

12.1.8 Information Furnished to the Commonwealth. Manager represents and warrants to the Commonwealth that: (a) the Manager Bid; (b) all written clarifying responses and other written information submitted by or on behalf of Manager as part of the IFB process; (c) all pricing information and disclosures; and (d) all the information provided by Manager made a part of the Agreement contains neither any untrue statement of a material fact nor omits any material fact necessary to make such information misleading.

12.1.9 No Suspension. Manager certifies in writing, for itself, its Affiliates, its Subcontractors and Vendors required to be disclosed to or Approved by the Commonwealth, that as of the date of the Effective Date, neither Manager, nor any such Affiliates, Subcontractors or Vendors, are under suspension by the Commonwealth or any governmental entity, instrumentality, or authority.

12.1.10 No Liabilities or Obligations. Manager certifies in writing, that as of the Effective Date, it has no tax liabilities or other Commonwealth obligations, or has filed a timely administrative or judicial appeal if such liabilities or obligations exist, or is subject to a duly deferred payment plan Approved by the Commonwealth if such liabilities exist.

12.1.11 Taxation. Manager represents and warrants to the Commonwealth that Manager shall conduct substantially all of the Services within the Commonwealth of Pennsylvania. Without limiting the generality of the preceding sentence. Manager covenants to the Commonwealth that for each fiscal year during the Term, either (a)(i) at least eighty percent (80%) of the hours worked by employees of Manager and its Subcontractors and Vendors with respect to the Services shall be conducted in the Commonwealth of Pennsylvania; (ii) at least eighty percent (80%) of the employees employed by Manager and its Subcontractors and Vendors with respect to the Services shall have a base of operations in the Commonwealth of Pennsylvania; (iii) at least eighty percent (80%) of all real and personal property owned or rented by Manager and its Subcontractors and Vendors in connection with the Services shall be located in the Commonwealth of Pennsylvania; and (iv) at least seventy percent (70%) of Manager's and its Subcontractors and Vendors' costs and expenses arising from the performance of the Services shall originate in the Commonwealth of Pennsylvania; or (b) the fraction determined under 72 PA. CONS. STAT. 401(3)2(a)(9)(B) for Manager and its Subcontractors and Vendors shall not be less than ninety percent (90%). The intent of this Section 12.1.11 (Taxation) is that all or substantially all of the net income earned by Manager and its Subcontractors and Vendors directly or indirectly under the Agreement shall be subject to Pennsylvania income tax and that the Pennsylvania capital stock tax or the Pennsylvania franchise tax shall apply to the assets and activities of Manager and its Subcontractors and Vendors related to the Agreement. The provisions of these Sections and all provisions of the Agreement shall be interpreted in a manner consistent with such intent. For all income tax purposes, Manager and its Subcontractors and Vendors shall report all Payments as compensation for services or expense reimbursements, and not as a share of income or profits from a joint venture, partnership or any other entity jointly owned by Manager and its Subcontractors and Vendors and the Commonwealth. Notwithstanding anything to the contrary in the Agreement, this Section shall not apply with respect to the Subcontractor under the Managed Contracts.

12.2 Commonwealth Legal Authority. The Commonwealth represents and warrants to Manager that: (a) the Commonwealth has all necessary powers and authority to enter into the Agreement, and the execution, delivery, and performance of the Agreement by the Commonwealth have been duly authorized by all necessary legal action; and (b) the execution of the Agreement by the Commonwealth shall not breach any agreement, court order, judgment, or decree to which the Commonwealth is a party or by which it is bounds.

12.3 Commonwealth Representations, Warranties or Covenants.

12.3.1 Financial Information. The financial information of the Commonwealth relating to the Lottery for fiscal years ended June 30, 2008, 2009, 2010, 2011 and 2012 provided to Manager accurately present the financial position of the Lottery for the periods stated in such financial information. The Commonwealth represents and warrants that the financial information provided to Manager as part of the Due Diligence Information is the financial information that the Commonwealth relies on and would rely on to determine the Revenue, Profit, Gross Profit, Operating Expenses, Manager Expenses, Commonwealth Expenses and Incentive Compensation; provided that the sole and exclusive remedy for the Manager and the sole and exclusive liability of the Commonwealth with respect to any breach of this representation and warranty is set forth in the second sentence of **Section 10.2.4 (Calculations)**.

12.3.2 Accuracy of Information. To the knowledge of the Commonwealth, the factual and past historical information regarding the Lottery that the Commonwealth provided to Manager in the virtual data room labeled "Project Secure" hosted by Ansarada and set forth on the archive copy of such data room was accurate in all material respects at the time such information was prepared.

12.3.3 Managed Contracts. The Commonwealth covenants that, (a) as of the Effective Date, each Managed Contract is valid and binding on the respective parties thereto, is in full force and effect and enforceable in all material respects in accordance with its terms, (b) as of the Effective Date, there has not occurred any event which would constitute a material breach or material default on the part of any party to any Managed Contract of any covenant, agreement or condition contained in any Managed Contract, (c) as of the Effective Date, no circumstance exists under any of the Managed Contracts under which the Commonwealth could be assessed liquidated damages, and (d) the Commonwealth has made available to Manager true and complete copies of all Managed Contracts.

12.4 Covenant Regarding Reporting Delinquencies. Manager acknowledges that obligations pursuant to Section 12.1.9 (No Suspension) and Section 12.1.10 (No Liabilities or Obligations) are ongoing from and after the Effective Date of the Agreement through the end of the Term (and any Disentanglement Services Period). Accordingly,

(a) Manager shall have an obligation to inform the Commonwealth: (i) if, at any time during the Term, it becomes delinquent in the payment of taxes, or other Commonwealth obligations; or (ii) if it or, to the best knowledge of Manager, any of its Subcontractors or Vendors are suspended by the Commonwealth, the federal government, or any other state or governmental entity. Such notification shall be made within fifteen (15) days of the date of suspension;

(b) Manager acknowledges that the failure to notify the Commonwealth of its suspension by the Commonwealth, any other state, or the federal government shall constitute an Event of Default of Manager; and

(c) Manager agrees to reimburse the Commonwealth for the reasonable costs of investigation incurred by the Pennsylvania Office of the Inspector General for investigations of Manager's compliance with the terms of this or any other agreement between Manager and the Commonwealth that results in the suspension of Manager. Such costs shall include, but shall not be limited to, salaries of investigators (including overtime, travel, and lodging expenses), and expert witness and documentary fees. Manager shall not be responsible for investigative costs for investigations that do not result in Manager's suspension.

12.5 Covenant Regarding Malicious Code. Manager shall cooperate with the Commonwealth and shall take commercially reasonable actions and precautions consistent with **Section 9.2.1 (Safeguarding Procedures)** to prevent the introduction and proliferation of Malicious Code into the Commonwealth's networks, environments, or systems (including all subcomponents thereof) or networks, environments, or systems (including all subcomponents thereof) or networks, environments, or systems (including all subcomponents thereof) used by Manager to provide the Services. Without limiting Manager's other obligations under the Agreement, in the event Malicious Code is found in any Manager Intellectual Property, Equipment, Software, networks, environments, or systems (including all subcomponents thereof): (a) managed, supported, or provided by Manager hereunder; (b) used or accessed by Manager to provide the Services; or (c) used or accessed by the Commonwealth to receive the Services, then in any such case Manager shall, at no additional cost or charge to the Commonwealth, 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 in accordance with

Section 9.2.3 (Corrections); provided that in the case of subsection (b) or (c), Manager's obligations shall apply only if such Malicious Code was introduced by Manager, its Subcontractors or Vendors.

12.6 Contingent Fees. Manager represents and warrants that no person or selling agency has been employed or retained to solicit or secure the Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by Manager for the purpose of securing business. For breach or violation of this warranty, the Commonwealth shall have the right to terminate the Agreement without liability or in its discretion to deduct from the Agreement price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

ARTICLE 13

TERM AND TERMINATION

13.1 Term of the Agreement.

13.1.1 Term. The term of the Agreement shall commence on the Effective Date and shall continue until the earlier of: (a)(i) June 30, 2033 ("**Initial Term**"); plus (ii) any Five Year Extension Term and One Year Extension Terms; and (b) the date on which the Agreement terminates in accordance with the Agreement including any Disentanglement Services Period (the "**Termination Date**").

13.1.2 Extension Terms.

(a) The Agreement shall be extended by one (1) year for each of the Contract Years during the first five Contract Years that the Profit meets or exceeds the Annual Profit Commitment ("**One Year Extension Terms**") for total extensions not to exceed five (5) years.

(b) The Agreement shall be extended by five (5) years if the average Profit in Contract Years six through fifteen exceeds the average Annual Profit Commitment for Contract Years six through fifteen ("Five Year Extension Term", and together with any "One Year Extension Terms" and the Initial Term, the "Term").

(c) The Parties acknowledge and agree that the Agreement shall not extend after thirty (30) years following the Effective Date unless otherwise mutually agreed upon in writing by the Parties.

13.2 Commonwealth's Termination for Convenience.

13.2.1 Commonwealth's Right to Terminate for Convenience. Subject to its payment obligations set forth in Section 13.2.2 (Termination for Convenience Fee) below, the Commonwealth shall have the right to terminate the Agreement for its convenience after the third (3rd) anniversary following the Effective Date, by delivering to Manager a Termination Notice no less than one hundred eighty (180) days prior to the Termination Date.

13.2.2 Commonwealth's Termination For Convenience Fee. If the Commonwealth terminates the Agreement for its convenience, then the Commonwealth shall pay the Termination for Convenience Fee as defined in Section 7 of Schedule 10.1 (Compensation and Payment Terms). The Termination for Convenience Fee shall be the Commonwealth's sole and exclusive liability to Manager, and Manager's sole and exclusive remedy from the Commonwealth, resulting from the Commonwealth's exercise of its rights under Section 13.2.1 (Commonwealth's Right to Terminate for Convenience).

Page 40 of 65

For the avoidance of doubt, payment of the Termination for Convenience Fee shall only apply to a termination for convenience by the Commonwealth as set forth in Section 13.2.1 (Commonwealth's **Right to Terminate for Convenience**), and under no circumstances except those expressly set forth in the Agreement, shall the Commonwealth be liable for the payment of any other penalties, liabilities, costs, fees, and expenses in connection with the Commonwealth's exercise of any of its other termination rights. Any Disputes with respect to the calculation of the Termination for Convenience Fee shall be resolved in accordance with Section 20.1 (Dispute Resolution). A termination of the Agreement pursuant to Section 13.2 (Commonwealth's Termination for Convenience) shall not terminate any provisions of the Agreement relating to Termination for Convenience Fee, including their calculation and Manager's right to payment thereof, and all such provisions shall continue in full force and effect until Manager has received full payment of such Termination for Convenience Fee.

13.3 Termination for Consistent Annual Profit Commitment Shortfalls. Subject to any adjustments contemplated by Schedule 10.1 (Compensation and Payment Terms), the Commonwealth shall have the right to terminate the Agreement without payment of any Termination for Convenience Fee, in the event the amount of Annual Profit Commitment Shortfalls equating to more than ten percent (10%) of the applicable Annual Profit Commitment occur for: (a) any consecutive two (2) Contract Year period; or for (b) any three (3) Contract Years in a five (5) Contract Year period, which termination shall be effected by delivery by Commonwealth to Manager of a Termination Notice no less than ninety (90) days prior to the Termination Date.

13.4 Termination for Change in Control. The Commonwealth shall have the right to terminate the Agreement without payment of any Termination for Convenience Fee, in the event of a Change in Control of Manager that is not Approved by the Commonwealth by delivering to Manager a Termination Notice no less than ninety (90) days prior to the Termination Date.

13.5 Termination for Events of Default.

13.5.1 Types of Events of Default. 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 the Agreement by Manager, and the Commonwealth may terminate the Agreement, any Exhibit or the impacted portion of the Services, in its sole discretion, without payment of any Termination for Convenience Fee:

(a) 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 (A) causes or shall cause a material disruption to or otherwise has or shall have a material adverse impact on the Lottery or businesses of the Commonwealth; and (B) is not cured by Manager within thirty (30) days following receipt of written notice of such failure;

(b) Manager's failure or inability to achieve recovery in accordance with and subject to the Continuity Plans (including any process set forth in such Continuity Plans);

(c) Manager's failure to obtain any Governmental Approval as set forth in **Section 19.1 (Governmental Approvals)**, and provided further that such failure is not cured by Manager within thirty (30) days following receipt of written notice of such failure;

(d) Manager's failure to implement a Commonwealth-required Manager Personnel removal as set forth in Section 6.3.3 (Removal of Manager Personnel by the Commonwealth),

provided that such failure is not cured by Manager within thirty (30) days following receipt of written notice of such failure;

(e) Manager's material breach of any representation or warranty if such breach is not curable, or if such breach is curable, if not cured within the time frames, if any, specified in the 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;

(f) Manager's failure to notify the Commonwealth of the suspension of Manager, its Subcontractors or its Vendors by the Commonwealth, any other state, or the federal government in accordance with Section 12.4 (Covenant Regarding Reporting Delinquencies) within thirty (30) days following such suspension;

(g) Manager's failure to maintain all of the insurance coverages as specified in Article 17 (Insurance and Risk of Loss) or the Manager's Security as specified in Article 18 (Performance Security), provided that such failure is not cured by Manager within thirty (30) days following receipt of written notice of such failure;

(h) 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 making of an assignment for the benefit of creditors 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) initiation of any corporate action taken by the Manager's Board of Directors in furtherance of any of the above actions; or (v) assignment by Manager of all or substantially all of its assets for the benefit of creditors, or Manager's Board of Directors takes any corporate action by in furtherance of the above action;

(i) Manager's material breach of any of the terms, conditions or requirements of **Article 9 (Data Protection, Security, and Confidentiality)**; provided that such failure is not cured by Manager within thirty (30) days following receipt of written notice of such failure;

(j) Manager's material breach of any of the terms, conditions or requirements of **Article 19 (Legal Compliance)**; provided that such failure is not cured by Manager within thirty (30) days following receipt of written notice of such failure;

(k) Manager's attempted assignment, transfer, or delegation of its rights and duties hereunder in breach or violation of **Section 22.1 (Assignment)**;

(1) Manager's material breach of any of its other duties, responsibilities, or obligations under the Agreement that is not cured within thirty (30) days following receipt of written notice of such breach;

(m) Except with respect to a Force Majeure Event or events due to the fault of the Commonwealth, Manager fails to operate the Lottery central gaming system for a period of longer than ten (10) consecutive days or fifteen (15) days in the aggregate for any Contract Year;

(n) Manager's breach of its covenants set forth in **Section 12.1.11 (Taxation)** that is not cured within thirty (30) days following receive of written notice of such breach; and

(o) Manager's failure to timely file all applicable tax returns with the Commonwealth and Governmental Authorities located within the Commonwealth and timely pay all taxes owing to the Commonwealth and all Governmental Authorities located within the Commonwealth that is not cured within thirty (30) days following receipt of written notice of such breach.

13.5.2 Termination Notice. Upon the occurrence of an Event of Default with respect to which the Commonwealth exercises its termination rights, the Commonwealth 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 **Article 14 (Disentanglement Obligations)** until they are fulfilled.

13.6 Step-In Rights. The Commonwealth may assign Commonwealth staff or Third Parties to step in and perform any failing element of the Services in accordance with this Section 13.6 (Step-In Rights) until such time as Manager can demonstrate the ability to resume provision of such Services to the satisfaction of the Commonwealth ("Step-In Rights").

13.6.1 Step-In Notice. The Commonwealth may exercise its Step-In Rights by giving Manager notice (the "**Step-In Notice**") if: (a) Manager commits a breach of the Agreement that the Commonwealth 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; (b) the Commonwealth has reasonable suspicion that acts of fraud are being committed in relation to the Services or (c) there is a Force Majeure Event in accordance with **Section 4.4.2 (Force Majeure Events)**. The Step-In Notice must specify in reasonable detail the basis on which the Commonwealth is entitled to exercise its Step-In Rights and the affected Services.

13.6.2 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 Commonwealth 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 Commonwealth shall exercise its Step-In Rights, including how the Commonwealth may engage any Third Party to act on its behalf. If Manager and the Commonwealth fail to reach agreement within three (3) Business Days after Manager's receipt of the Step-In Notice, the Commonwealth may exercise its Step-In Rights. The Commonwealth's exercise of its Step-In Rights shall not prejudice any other rights of the Commonwealth under the Agreement.

(b) In exercising its Step-In Rights, the Commonwealth 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 Commonwealth and any replacement Third Party provider to enable the affected Services to resume. Manager's assistance shall include: (i) granting the Commonwealth or the replacement Third Party provider management control over relevant Manager employees; (ii) granting the Commonwealth or the replacement Third Party provider access to Manager's premises and materials as needed to provide the Services; (iii) granting the Commonwealth 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 Commonwealth requests, providing written confirmation that the Commonwealth may give to Third Parties confirming that the Commonwealth is exercising its rights in compliance with the Agreement.

(c) So long as the Commonwealth exercises its Step-In Rights for reasons set forth in **Section 13.6.1 (Step-In Notice)** above: (i) the Commonwealth shall not be obliged to pay or make any

payments (whether Payments or otherwise) to Manager for Services that the Commonwealth or replacement Third Party is providing; and (ii) Manager shall be liable to pay any additional costs directly incurred by the Commonwealth as a result of the exercise of the Step-In Rights. The Commonwealth's exercise of its Step-In Rights shall not constitute a waiver by the Commonwealth 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.

13.6.3 Step-Out Notice. The Commonwealth's Step-In Rights shall end when the event giving rise to the Step-In Rights is resolved to the Commonwealth's reasonable satisfaction. The Commonwealth shall deliver a sufficiently prior written notice to Manager specifying the date the Commonwealth plans to conclude its Step-In Rights (the "**Step-Out Notice**"). Manager shall, following receipt of a Step-Out Notice, meet with the Commonwealth to discuss the Commonwealth'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 Commonwealth a plan to implement the Commonwealth's reasonable recommendations to improve the Services.

13.7 Termination by Manager.

13.7.1 Manager's Termination for Failure to Pay.

(a) To the extent the Commonwealth fails to pay any undisputed amount due and owing to Manager under the Agreement by the Required Payment Date (provided such Payment is not subject to the Commonwealth's appropriation process), Manager shall have the right to provide written notice of such failure. To the extent that, after sixty (60) days following receipt of such notice from Manager, the Commonwealth has failed to pay such undisputed amounts and provided no Force Majeure Event is continuing, then Manager shall have the right to terminate the Agreement upon prior written notice to Commonwealth (which date must be within three (3) months after the Commonwealth's failure to pay the amounts set forth in this Section 13.7 (Termination by Manager)). To the extent the Manger terminates the Agreement based in this Section 13.7 (Termination by Manager), the Commonwealth shall pay to Manager an amount equal to the Termination for Convenience Fee less subsection (f) of Section 7 of Schedule 10.1 (Compensation and Payment Terms) within thirty (30) days after the end of any Disentanglement Services Period.

(b) To the extent that the Transition Completion Date has not occurred within twelve (12) months following the Effective Date due to a Non-Manager Transition Delay Event, then Manager shall have the right to terminate this Agreement with thirty (30) days prior written notice to Commonwealth.

13.7.2 Manager's Termination for Convenience.

(a) Subject to its payment obligations set forth in **subsection (b)** below, Manager shall have the right to terminate the Agreement for its convenience after the fourth (4th) anniversary following the Effective Date by delivering to Manager a Termination Notice no less than one hundred eighty (180) days prior to the Termination Date.

(b) If Manager terminates the Agreement for its convenience, then the Manager shall pay the Termination for Convenience Fee as defined in Section 7.1.2 of Schedule 10.1 (Compensation and Payment Terms). The Termination for Convenience Fee shall be the Manager's sole and exclusive liability to Commonwealth, and the Commonwealth's sole and exclusive remedy from the Manager, resulting from the Manager's exercise of its rights under Section 13.7.2 (Manager's Terminate for Convenience). For the avoidance of doubt, payment of the Termination for Convenience Fee shall only Page 44 of 65 apply to a termination for convenience by the Manager as set forth in Section 13.7.2 (Manager's Terminate for Convenience), and under no circumstances except those expressly set forth in the Agreement, shall the Manager be liable for the payment of any other penalties, liabilities, costs, fees, and expenses in connection with Manager's exercise of any of its other termination rights. Any Disputes with respect to the calculation of the Termination for Convenience Fee shall be resolved in accordance with Section 20.1 (Dispute Resolution). A termination of the Agreement pursuant to Section 13.7.2 (Manager's Termination for Convenience) shall not terminate any provisions of the Agreement relating to Termination for Convenience Fee, including their calculation and the Commonwealth's right to payment thereof, and all such provisions shall continue in full force and effect until the Commonwealth has received full payment of such Termination for Convenience Fee.

13.7.3 Termination by Manager. For the avoidance of doubt, this **Section 13.7 (Termination by Manager)** provides Manager's only termination rights under the Agreement.

13.8 Effect of Termination. If this Agreement expires or is terminated for any or no reason, (a) the Commonwealth shall obtain from Manager any capital assets acquired by Manager during the Term and paid-for as Operating Expenses or Manager Expenses pursuant to the Agreement; (b) the Commonwealth shall return any remaining Cash Collateral within sixty (60) days following the Termination Date set forth in such notice; and (c) the Commonwealth shall obtain the release of the LOC.

13.9 Non-Exclusive Remedies. The remedies provided in this Article 13 (Term and Termination) and elsewhere in the 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, in equity, by contract, or otherwise, individually or in any combination thereof. The election by a Party of any remedy provided for in the 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.

13.10 Survival. The provisions of Article 9 (Data Protection, Security, and Confidentiality), Article 10 (Compensation and Payment Terms), Article 14 (Disentanglement Obligations), Article 15 (Indemnification), Article 16 (Limitations on Liability), Article 17 (Insurance and Risk of Loss), Article 20 (Dispute Resolution; Governing Law), Article 22 (Miscellaneous) and Section 8.1.1 (Ownership), Section 8.2.1 (Ownership), Section 8.3 (New Intellectual Property), Section 8.5 (General Rights), Section 11.1 (Contract Records), Section 11.2 (Recordkeeping), Section 12.1 (Manager Representations, Warranties, and Covenants), Section 12.4 (Covenant Regarding Reporting Delinquencies), Section 13.2.2 (Commonwealth's Termination for Convenience Fee), Section 13.8 (Effect of Termination), Section 13.9 (Non-Exclusive Remedies) and Section 13.10 (Survival) and any other Sections, Schedules, or Exhibits of the Agreement that by their nature may reasonably be presumed to survive any termination or expiration of the Agreement, shall so survive.

ARTICLE 14

DISENTANGLEMENT OBLIGATIONS

14.1 General Obligations. With respect to any terminated or expired Services, Manager shall cooperate to disentangle the Services and transfer the Services from Manager to the Commonwealth or to any replacement manager or provider designated by the Commonwealth (the "**Replacement Manager**") as directed by the Commonwealth and without any material interruption of, or material adverse impact on, the Services being provided as set forth in the applicable Disentanglement Services Plan. As part of

the Services, Manager shall perform the obligations set forth in this Article 14 (Disentanglement Services) 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 begin on any of the following dates: (a) the date designated by the Commonwealth in connection with the natural expiration of the Term, which date shall not be earlier than one hundred eighty (180) days prior to the Termination Date; (b) the date of any Termination Notice delivered by the Commonwealth to Manager pursuant to and in compliance with the Commonwealth's termination rights as set forth in the Agreement including **Article 13 (Term and Termination)**; or (c) the date of any Termination Notice delivered by Manager to the Commonwealth pursuant to and in compliance with **Section 13.6 (Step-In Rights)**, continuing up to six (6) months after the Termination Date as indicated by Commonwealth and subject to any extension of the Disentanglement Services as set forth in **Section 14.2.6 (Extension of Disentanglement Services Period**").

14.2.2 Disentanglement Services Plan. On or before the Effective Date, Manager shall provide for the Commonwealth's review, comment, and Approval of a plan (the "**Disentanglement Services Plan**") for implementing the provision of the Disentanglement Services set forth in Article 14 (**Disentanglement Obligations**). Once the Disentanglement Services Plan has received the Approval of the Commonwealth, such Disentanglement Services Plan shall be attached as Schedule 14.2.2 (**Disentanglement Services Plan**). Such Disentanglement Services Plan shall be updated annually by Manager subject to Approval by the Commonwealth.

14.2.3 Charges for the Disentanglement Services. Manager's Disentanglement Services obligations through the Termination Date specified in the Termination Notice, as applicable, shall be provided as part of the Payments payable for all of the Services.

14.2.4 Firm Commitment. Manager shall provide the Disentanglement Services to the Commonwealth or the Replacement Manager regardless of the reason for the expiration or termination of the Agreement; provided, however, that if the Agreement is terminated by Manager pursuant to Section 13.7 (Termination by Manager), Manager may require payment by the Commonwealth in advance for such Disentanglement Services. At the Commonwealth'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 the Agreement. 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 the 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 Commonwealth to be critical to the performance of the Services and Disentanglement Services shall be retained on the Commonwealth account through the completion of all relevant Disentanglement Services.

14.2.6 Extension of Disentanglement Services. The Commonwealth shall have the right to extend the period for the provision of the Disentanglement Services for up to an additional twelve (12) months after the initial proposed expiration of the Disentanglement Services Period; provided, however, in no circumstance shall the Disentanglement Services Period extend past expiration of the maximum

Term. To the extent the Commonwealth requires such extension of the Disentanglement Services, the Commonwealth shall continue to pay Manager the Payments set forth in **Schedule 10.1 (Compensation and Payment Terms)** for the performance of the Services. To the extent the Commonwealth requests a portion (but not all) of the Disentanglement Services extended, the Payments to be paid by the Commonwealth shall be equitably decreased 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 (Specific Disentanglement Services Obligations) and in the Schedules. 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 Commonwealth in writing a complete and accurate list of all items that shall be subject to conveyance or re-conveyance to the Commonwealth, its Affiliates, or the Replacement Manager as provided in this Section 14.3 (Specific Disentanglement Services Obligations).

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 or expired Services from Manager to the Commonwealth or the Replacement Manager. Without limiting the generality of the preceding sentence, Manager shall: (a) cooperate with the Commonwealth or the Replacement Manager and otherwise promptly take all steps required to assist the Commonwealth in effectuating the Disentanglement Services: (b) provide to the Commonwealth 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 Commonwealth's or the Replacement Manager's personnel to fully assume and 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 Commonwealth may direct, including completion or partial completion of Services, documentation of work in progress, and other measures to assure an orderly transition to the Commonwealth or the Replacement Manager; and (d) accomplish the other specific obligations described in this Article 14 (Disentanglement Obligations) and the Disentanglement Services Plan. In addition to the foregoing requirements, as directed by the Commonwealth, Manager shall deliver to the Commonwealth or the Replacement Manager all documentation and data related to the Commonwealth, including Commonwealth Data, as well as all procedures, standards, and operating documentation (including any Operating Standards) held by Manager.

14.3.2 Assumption of Subcontracts and Vendor Contracts. Without limiting the obligations of Manager set forth in the Agreement, if requested by the Commonwealth as part of the Disentanglement Services, Manager shall procure, at no charge to the Commonwealth, any Third Party consent necessary to grant the Commonwealth, its Affiliates, or the Replacement Manager the use and benefit of any Vendor Contracts and Subcontracts used by Manager to provide the Services. At the Commonwealth's request, Manager shall cause such Subcontractors and Vendors to permit the Commonwealth or the Replacement Manager to assume prospectively any or all such Subcontracts or Vendor Contracts or to enter into new contracts with the Commonwealth 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 Commonwealth or the Replacement Manager by Manager or its Subcontractors or Vendors for any such assumption by the Commonwealth. Manager shall: (a) represent and warrant that it is not in default under such Subcontracts and Vendor Contracts; (b) represent and warrant that all payments thereunder through the date of assignment are current; and (c) notify the

Commonwealth of any Subcontractor's or Vendor Contract's default with respect to such Subcontracts or Vendor 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 Article 9 (Data Protection, Security, and Confidentiality).

ARTICLE 15

INDEMNIFICATION

15.1 Indemnifications by Manager.

15.1.1 Manager General Indemnifications. Manager shall indemnify and hold harmless the Commonwealth Indemnitees from any Claims and against any and all Losses based upon or arising out of any activities performed by Manager, its Affiliates, its Subcontractors or Vendors and their respective officers, director, employees, agents and representatives under the Agreement and shall, at the request of the Commonwealth, defend any and all such Claims brought against the Commonwealth based upon any such activities. Manager shall pay any and all Losses sustained or incurred by any of the Commonwealth Indemnitees, based upon, relating to, or arising from, any and all Claims 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 directly or indirectly from acts, errors or omissions that constitute negligence, willful misconduct, or violations of Regulatory Requirement;

(b) Manager's breach of any of the representations and warranties set forth in: (i) Section 12.1.1 (Legal and Corporate Authority); (ii) Section 12.1.4 (No Inducements); (iii) Section 12.1.6 (No Litigation); and (iv) Section 12.2 (Covenant Regarding Reporting Delinquencies);

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

(d) Any actual or alleged breach by Manager of a Managed Contract or a Replacement Contract, to the extent the claim, suit, or proceeding accrues after the date of assignment and assumption to Manager with respect to the Managed Contract or Replacement Contracts, and is a result of: (i) Manager's failure to fulfill its obligations under the Managed Contract or Replacement Contract; or (ii) Manager's breach of any term or condition of the Agreement;

(e) Any improper disclosure, misuse, or theft of Commonwealth Data;

(f) Any introduction of Malicious Code in the Commonwealth's environment, network, or systems, to the extent Losses caused by such introduction arise from acts, errors, or omissions of Manager;

(g) Manager's breach of or failure to perform or comply with any of Manager obligations set forth in Article 19 (Legal Compliance);

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

(i) Manager's breach of or failure to obtain, maintain, or comply with any Third Party consents to comply with any Third Party consent obtained by the Commonwealth;

(j) Any failure by Manager to pay applicable taxes, together with any interest and penalties, assessed or imposed against the Commonwealth for which Manager has responsibility pursuant to **Section 10.5 (Taxes)** or applicable Commonwealth Policies and Rules;

(k) With respect to events that occur after the completion of the Employment Transition Period, any and all losses (except to the extent attributable to the willful misconduct, gross negligence or breach of the Commonwealth) arising from or incurred in connection with (i) any claim that the Commonwealth is the employer, co-employer or joint employer of any Manager Personnel; and (ii) actions of Current Lottery Employees taken at the direction of Manager (and not at the direction of the Commonwealth); and

(1) An Affiliates of Manager, Subcontractor or Vendor asserting rights under the Agreement, or any entity to which Manager assigned, transferred, pledged, hypothecated, or otherwise encumbered its rights to receive payments from the Commonwealth under the Agreement.

15.1.2 Manager Infringement Indemnification.

(a) Manager represents and warrants that it is the sole owner or author of, or has entered into a suitable legal agreement concerning any product or process provided or used in the performance of the Agreement. Manager shall defend any Claims for Losses on account of any alleged infringement, violation or misappropriation of any Intellectual Property by any of the materials provided or used in the performance of the Agreement. The foregoing is conditioned upon the Commonwealth providing: (i) prompt notification in writing of such suit or proceeding; provided, however, that failure to give prompt notice shall not reduce Manager's obligations; (ii) full right, authorization, and opportunity to conduct the defense thereof; and (iii) full information and all reasonable cooperation for the defense of same.

Manager shall indemnify and hold harmless the Commonwealth Indemnitees (b)from all Losses that Manager or the Commonwealth Indemnitees may pay or incur based upon, relating to or arising from, any and all actual, threatened, or alleged Claims that the: (i) Services, Manager Intellectual Property, New Intellectual Property, and any other Manager services, technologies, techniques, or products used by Manager to provide the Services; (ii) any deliverables provided by Manager; or (iii) the receipt or use by the Commonwealth of any of the foregoing items referenced in subsections (i) and (ii) (collectively referred to as "Manager Items") infringes, misappropriates or violates any Intellectual Property rights of any Third Party. If any of the Manager Items provided by Manager in such suit or proceeding are held to constitute infringement and the Commonwealth's right to use, receive, or enjoy the Manager Items is enjoined or appears likely to be enjoined, Manager promptly shall, at Manager's own expense and at its option, either: (A) procure for the Commonwealth the right to continue receiving and using such Manager Items free of claims of infringement, misappropriation, or violation; (B) modify the Manager Items so that they are no longer infringing (provided that such modification does not degrade the performance or quality of the Services or adversely affect the Commonwealth's intended use as contemplated by the Agreement); or (C) replace Manager Items with non-infringement equal performance products acceptable to the Commonwealth.

(c) If Manager is unable to perform any of the obligations in **subsections (a)** and **(b)** of **Section 15.1.2 (Manager Infringement Indemnification)**, Manager agrees to remove all the Equipment or Software which are obtained contemporaneously with the infringing product, or, at the option of the Commonwealth, only those items of equipment or software which are held to be infringing, and to pay the Commonwealth: (i) any amounts paid by the Commonwealth towards the purchase of the product, less straight line depreciation; (ii) any license fee paid by the Commonwealth for the use of any software, less an amount for the period of usage; and (iii) the pro rata portion of any pre-paid maintenance fee representing the balance of time remaining in any period of maintenance.

(d) The obligations of Manager under this Section 15.1.2 (Manager Infringement Indemnification) shall survive termination of the Agreement indefinitely.

15.2 Indemnification Procedures.

If any legal action governed by this Article 15 (Indemnification) is 15.2.1 General. commenced against the Commonwealth, the Commonwealth 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 Manager's obligations under this Article 15 (Indemnification), except to the extent Manager can demonstrate that it is prejudiced thereby. After such notice, if Manager acknowledges in writing to the Commonwealth that the right of indemnification under the Agreement applies with respect to such Claim, then Manager shall be entitled, if it so elects in a written notice delivered to the Commonwealth not fewer 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 Commonwealth, to handle and defend same at Manager's expense. The Commonwealth shall cooperate in all reasonable respects with Manager and its attorneys, at Manager's expense, in the investigation, trial, and defense of such Claim and any appeal arising therefrom; provided, however, that the Commonwealth may participate, at its own expense, through its attorneys or otherwise, in such investigation, trial, and defense of such Claim and any appeal arising therefrom.

15.2.2 Defense Accepted. Notwithstanding anything to the contrary contained in this **Article 15 (Indemnification)**, if Manager accepts defense of a Claim as provided in this Section, the Commonwealth 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 Commonwealth deems fit to protect its interests. Manager and its counsel must reasonably cooperate with the Commonwealth's counsel at the Commonwealth's expense to enable such counsel to adequately represent the interests of the Commonwealth.

15.2.3 Defense Declined. If Manager declines to assume defense of a Claim as provided in this Section, without limiting any other rights or remedies available to the Commonwealth: (a) the Commonwealth may assume such defense and, if such defense is assumed, unless the Parties otherwise agree in writing, Manager thereafter shall be barred from assuming such defense at a later time; and (b) if it is later determined by a court of competent jurisdiction, without right of further appeal, that such Claim was eligible for indemnification by Manager under this **Article 15 (Indemnification)**, within thirty (30) days following such determination, Manager shall reimburse the Commonwealth in full for all settlements, judgments, costs, and expenses (including reasonable attorneys' fees) incurred by the Commonwealth in connection with such Claim.

15.2.4 Settlement of Claims. No settlement of a Claim that involves a remedy other than the payment of money by Manager along with standard settlement terms, specifically including a dismissal of

all Claims with prejudice in favor of the Commonwealth as well as a non-admission of liability or other wrongdoing by the Commonwealth, shall be entered into by Manager without the Approval of the Commonwealth not to be unreasonably withheld, conditioned or delayed. In no event shall an adverse judgment be entered against the Commonwealth as part of a settlement without its Approval.

15.2.5 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.

ARTICLE 16

LIMITATIONS ON LIABILITY

16.1 Cap on Manager Liability for Damages.

(a) SUBJECT TO SUBSECTION (C) BELOW, 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 THE AGREEMENT, NOTWITHSTANDING THE FORM IN WHICH ANY SUCH ACTION IS BROUGHT, WHETHER IN CONTRACT, TORT, OR OTHERWISE, SHALL BE LIMITED TO ONE HUNDRED MILLION DOLLARS (\$100,000,000) FOR CLAIMS THAT ACCRUE DURING ANY ONE CONTRACT YEAR AND FIVE HUNDRED MILLION DOLLARS (\$500,000,000) IN THE AGGREGATE DURING THE TERM.

(b) SUBJECT TO SUBSECTION (C) BELOW, MANAGER SHALL NOT BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, EXEMPLARY, 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.

(c) As to Manager's liability, the caps set forth in **subsections (a)** and **(b)** for damages liability shall not apply to: (i) Losses arising under or relating to Manager's failure to comply with **Article 9 (Data Protection, Security and Confidentiality)**; (ii) Losses arising under or relating to Manager's obligations under **Article 15 (Indemnification)** and **Article 17 (Insurance and Risk of Loss)**; (iii) Losses resulting from Manager's failure to comply with any Regulatory Requirement; (iv) Losses arising under or relating to the gross negligence, willful misconduct or fraud of Manager; (v) Losses arising from a breach by Manager of its obligations of confidentiality; (vi) personal injury, including death, and damage to tangible personal or real property; (vii) amounts owed by Manager to the Commonwealth; or (ix) Manager's wrongful termination of the Agreement or repudiation or wrongful abandonment of all or any part of the Services.

16.2 Cap on Commonwealth Liability for Direct Damages. EXCEPT WITH RESPECT TO ANY PAYMENTS DUE TO THE MANAGER, THE AGGREGATE CUMULATIVE MONETARY LIABILITY OF THE COMMONWEALTH FOR ANY AND ALL DIRECT DAMAGES FOR ANY AND ALL CLAIMS, EVENTS, OR OCCURRENCES ARISING UNDER OR RELATING TO THE AGREEMENT, NOTWITHSTANDING THE FORM IN WHICH ANY SUCH ACTION IS BROUGHT, WHETHER IN CONTRACT, TORT, OR OTHERWISE, SHALL BE LIMITED TO ONE HUNDRED MILLION DOLLARS (\$100,000,000).

16.3 Limitation on Non-Direct Damages for Commonwealth. THE COMMONWEALTH SHALL NOT BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, EXEMPLARY, Page 51 of 65 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 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 the Agreement:

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

(c) Costs and expenses incurred by the Commonwealth as a result of Manager's breach of or failure to comply with **Section 9.2.1 (Safeguarding Procedures)**;

(d) Costs and expenses of replacing lost, stolen, or damaged Commonwealth or Manager Equipment, Software, or other materials;

(e) Cover damages, including the reasonable expenses incurred by the Commonwealth to procure the Services or corrected Services from an alternate source, to the extent in excess of the Payments that the Commonwealth is obligated to pay Manager under the Agreement; and

(f) Straight time, overtime, or related expenses incurred by the Commonwealth, including overhead allocations of the Commonwealth for the Commonwealth'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.

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

ARTICLE 17

INSURANCE AND RISK OF LOSS

17.1 Required Insurance Coverages. During the Term (and any Disentanglement Service Plan) and for a minimum of one (1) year after the expiration or termination of the Agreement, at its sole expense, Manager shall provide and maintain insurance consistent with acceptable and prudent business practices including, at a minimum, the types of insurance and the amounts described in Schedule 17.1 (Insurance Coverages). The fact that Manager has obtained the insurance required in this Article 17 (Insurance and Risk of Loss) shall in no manner lessen nor otherwise affect Manager's other obligations or liabilities set forth in the Agreement including its obligations to defend, indemnify, and hold harmless the Commonwealth Indemnitees in accordance with Article 15 (Indemnification). If Manager retains any Subcontractors or Vendors, Manager shall require all such Subcontractors or Vendors to carry the coverages that are commensurate with the services being performed by each such Subcontractor or Vendor.

17.2 General Provisions.

17.2.1 Satisfaction of Insurance Requirements. Manager may satisfy the minimum limits requirements of **Section 17.1 (Required Insurance Coverages)** by any combination of primary liability and umbrella or excess liability coverage that result in the same protection to Manager and the Commonwealth Indemnitees. 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 (Required Insurance Coverages)** must be on a per occurrence basis except for professional liability insurance which is on a per claim basis.

17.2.2 Endorsements. Manager's insurance policies as required in the Agreement for Commercial General Liability Insurance and Commercial Business Automobile Insurance shall name the Commonwealth as "Additional Insureds" for any and all liability caused by Manager's performance under the Agreement, with the standard separation of insureds provision or an endorsement for cross-liability coverage. Should any policy expire or be canceled during the Term (and any Disentanglement Service Period) and Manager fails to immediately procure replacement insurance as specified, the Commonwealth reserves the right (but not the obligation) to procure such insurance. Prior to the Commonwealth's procuring such insurance, the Commonwealth shall provide Manager with prior written notice of its intent to procure such insurance, and if Manager shall fail to procure such insurance within thirty (30) days of receipt of the Commonwealth's written notice, the Commonwealth shall have the right to procure such insurance and to deduct the cost thereof from any sums due Manager under the Agreement. All insurance required under Article 17 (Insurance and Risk of Loss) shall be primary insurance and any other valid insurance existing for the Commonwealth'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 the Agreement.

17.2.3 Evidence of Insurance. On or before the Effective Date and thereafter at the Commonwealth's request, Manager shall deliver to the Commonwealth certificates of insurance evidencing the insurance required hereunder.

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 four (4) years after the expiration and non-renewal or termination of Term (and any Disentanglement Service Period);

(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 the 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 provider shall give the Commonwealth 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 workers' 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 Commonwealth and its respective employees, excepting without limit, claims caused by the Commonwealth's willful misconduct. Manager waives its rights to recover against the Commonwealth and its respective employees, excepting without limit, claims caused by the Commonwealth's willful misconduct.

17.2.7 Qualifying Insurers. All policies of insurance required hereby (except for professional liability insurance) shall be issued by companies that have been approved to do business in the Commonwealth of Pennsylvania, unless a company lacking such Approval is otherwise Approved by the Commonwealth. All providers of insurance shall have an A.M. Best Financial Strength Rating (FSR) rating of A or better.

17.3 No Implied Limitation. The obligation of Manager, its Subcontractors or Vendors to provide the insurance specified in the Agreement shall not limit in any way any obligation or liability of Manager provided elsewhere in the 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 Commonwealth is responsible, such repair or replacement shall not be considered part of Manager's Service obligations, but Manager shall, if requested by the Commonwealth, coordinate and oversee repair or replacement performed by a Third Party as an Operating 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) such loss is covered by insurance required to be maintained by such Party under the 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 Commonwealth 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.

ARTICLE 18

PERFORMANCE SECURITY

18.1 Manager's Security.

(a) Manager shall provide to the Commonwealth cash collateral in the amount of one hundred fifty million dollars (\$150,000,000) to be delivered within forty-eight hours after the Execution Page 54 of 65

Date of the Agreement via wire to the Commonwealth in accordance with the Commonwealth's instructions ("Cash Collateral").

To the extent at any time during the Term (and any Disentanglement Services (b)Period), the Cash Collateral is depleted to less than fifty million dollars (\$50,000,000), then Manager shall deliver to the Commonwealth within ten (10) days after receipt of notice from the Commonwealth of such depletion and maintain thereafter until the end of the Term (and any Disentanglement Services Period) one or more letters of credit in forms Approved by the Commonwealth, issued by Eligible Institutions for the benefit of the Commonwealth in the aggregate amount of fifty million dollars (\$50,000,000) (such aggregate amount, the "Minimum LOC" and such letters of credit, the "LOC" which shall be substantially in the form of Exhibit E (Form of LOC)) (the LOC, together with the Cash Collateral, the "Manager's Security"). Such amount of the LOC shall be maintained during the Term (and any Disentanglement Services Period) and increased annually based on the Consumer Price Index. The instruments comprising the LOC shall be renewable annually for the remainder of the Term (and any Disentanglement Services Period and to the extent necessary to equal or exceed the Minimum LOC). provided that: (i) each instrument making up LOC provides that in the event it will not be renewed for an additional year (and is necessary to ensure that the LOC is equal to or exceeds the Minimum LOC), the applicable Eligible Institution will provide the Commonwealth with written notice thereof at least thirty (30) days prior to the expiration thereof; and (ii) if any such instrument comprising the LOC is not renewed for an additional year (to the extent such instrument is necessary to ensure that LOC is equal to or exceeds the Minimum LOC), Manager must obtain a replacement bond, letter of credit, or alternate security instrument Approved by the Commonwealth to be in place so that at no time is Manager in violation of its obligation pursuant to this Section 18.1 (Manager's Security) to maintain in place letters of credit or alternate security instruments Approved by the Commonwealth throughout the Term (and any Disentanglement Services Period that is equal to or exceeds the Minimum LOC.

(c) Notwithstanding anything to the contrary contained in the Agreement, neither non-renewal by the issuer of an instrument that is part of the Manager's Security nor the failure or inability of Manager to renew an instrument that is part of the Manager's Security for a subsequent year shall constitute a loss to the Commonwealth recoverable under the Manager's Security only to the extent that replacement letters of credit or alternate security instruments Approved by the Commonwealth are put in place on a timely basis so that at no time is Manager in violation of its obligation pursuant to this **Section 18.1 (Manager's Security)** to maintain in place letters of credit or alternate security instruments that are equal to or exceed the Minimum LOC.

(d) For the avoidance of doubt, the Commonwealth shall return or release (as applicable) any remaining Manager's Security within sixty (60) days following the end of the Term (and any Disentanglement Services Period) and Manager shall not be obligated to maintain any LOC after the end of the Term (and any Disentanglement Services Period).

18.2 Draw on Manager's Security. The Commonwealth and Manager agree that the Manager's Security shall serve as collateral and security in the hands of the Commonwealth to be drawn upon for the applicable amount in the event of any of the following: (a) Manager's failure to perform any of its obligations in respect of the Services under the Agreement by reason of becoming insolvent; (b) nonperformance by Manager of its obligations regarding the Services which renders Manager to be in breach of the Agreement which breach was not remedied within any applicable cure period (or if no such cure period is specifically provided hereunder, then which has not been remedied within thirty (30) days, it being acknowledged and understood that such thirty (30) day grace period applies solely for purposes of this Section 18.2 (Draw on Manager's Security)); (c) Manager is liable to the Commonwealth for Transition Credits pursuant to Section 3.1.5 (Failure to Meet Transition Milestones) or SLA Credits in

accordance with Section 5.6 (SLA Credits), and such Transition Credits or SLA Credits remain due and payable thirty (30) days after the due date for payment and notice of default from the Commonwealth; (d) Manager owes amounts to the Commonwealth due to an Annual Profit Commitment Shortfall in accordance with Section 5 of Schedule 10.1 (Compensation and Payment Terms), and such amounts remain due and payable thirty (30) days after the due date for payment and notice of default from the Commonwealth; or (e) Manager exercises its right to terminate as set forth in Section 13.7.2 (Manager's Termination for Convenience) and owes any amount as a Termination for Convenience Fee (each of causes (a), (b), (c), (d) and (e) above in respect of the Services shall be each be known as "Trigger **Events**"). The Manager's Security shall serve as a security against the Trigger Events, and not for any other purpose or risk whatsoever, and may not be exercised by the Commonwealth for any other reason. The Parties acknowledge and agree that the Manager's Security is necessary to protect the Commonwealth from a potential Manager default, among other reasons. Prior to the Commonwealth's draw upon the Manager's Security upon the occurrence of any Trigger Event, Commonwealth shall provide written notice as to the occurrence of a Trigger Event and the amount which the Commonwealth intends to draw under the Manager's Security. Manager shall have ten (10) calendar days from its receipt of such written notice to pay to the Commonwealth an amount equivalent to the amount proposed to be drawn by the Commonwealth from the Manager's Security, failing which the Commonwealth may draw upon the Manager's Security up to the proposed amount. For the avoidance of doubt, only the LOC may be considered an Operating Expense.

18.3 Parent Guaranty. On or before the date of the Agreement, Manager shall have delivered to the Commonwealth an executed copy of a guaranty issued by the parent company of Manager (provided Manager is not a special purpose or newly formed Entity), the majority shareholder of Manager (provided Manager is a special purpose or newly formed Entity), or such other Entity as determined by the Commonwealth at its sole and absolute discretion (collectively, the "**Guarantor**"), and provided further that such Entity is determined by the Commonwealth at its sole and capable to cover the full and faithful performance and completion of the Services and payment obligations of Manager under the Agreement, substantially in the form of **Exhibit A (Form of Guaranty)** or in such other form satisfactory to the Commonwealth at its sole and absolute discretion (the "**Guaranty**").

ARTICLE 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 Services.

19.2 Compliance with Commonwealth Policies and Rules and Regulatory Requirements. Manager shall comply with the Commonwealth Policies and Rules as well as all Regulatory Requirements in the performance of the Agreement and shall be responsible for any fines or penalties imposed on Manager or the Commonwealth resulting from Manager's failure to comply with the Commonwealth Policies and Rules.

19.3 Commonwealth Compliance Directives. Subject to Article 21 (Adverse Actions), the Commonwealth shall have the right to instruct Manager in writing as to the manner in which Manager should implement compliance with any Commonwealth Policies and Rules and changes in Manager's policies, procedures, and processes relating to such compliance ("Commonwealth Compliance Directive"). Manager shall promptly implement and comply with each such Commonwealth Compliance

Directive in the performance and delivery of the Services. The Commonwealth shall notify Manager in writing of any new Commonwealth Policies and Rules or changes in the Commonwealth Policies and Rules that are applicable to the Services, and Manager shall work with the Commonwealth to the extent necessary to identify the impact of such new Commonwealth Policies and Rules and changes in the Commonwealth Policies and Rules on Manager's performance and the Commonwealth's receipt and use of the Services. Manager shall promptly notify the Commonwealth of any new Commonwealth Policies and Rules or changes in the Commonwealth Policies and Rules that are applicable to the Services of which Manager becomes aware.

ARTICLE 20

DISPUTE RESOLUTION; GOVERNING LAW

20.1 Dispute Resolution. Any Dispute arising out of or relating to the Agreement, or any breach thereof, which cannot be resolved using the procedures set forth below in **Section 20.1.1 (Internal Escalation)** and **Section 20.1.2 (Mediation)** shall be finally resolved exclusively in accordance with the Board of Claims Act (62 PA. CONS. STAT. § 1721 *et seq.*); provided, however, that without limiting any rights at law or in equity a Party may have because of an improper termination of the Agreement by the other Party, nothing contained in the Agreement shall limit either Party's right to terminate the Agreement under this Agreement including **Article 13 (Term and Termination)**. The Commonwealth shall not enter into binding arbitration to resolve any Dispute arising hereunder, and reserves the right to forego any of the mediation or other dispute resolution provisions set forth in this **Section 20.1 (Dispute Resolution)** or **Schedule 10.1 (Compensation and Payment Terms)**.

20.1.1 Internal Escalation. Prior to the initiation of formal proceedings, the Parties shall first attempt to resolve their Dispute informally in accordance with this **Section 20.1.1 (Internal Escalation)**. 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 the 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.

20.1.2 Mediation. In the event of a controversy or claim arising from the Agreement, if the Parties fail to resolve a Dispute through discussion pursuant to **Section 20.1.1 (Internal Escalation)** within forty five (45) days after the initiation of such discussions (or if one of the Parties refuses to participate in such negotiations), the Parties agree to submit the Dispute to mediation.

(a) Manager must, within six (6) months after the cause of action accrues, file a written claim with the Commonwealth for a determination unless a shorter time period is expressly required under the Agreement or Regulatory Requirements. The claim shall state all grounds upon which Manager asserts a controversy exists. If Manager fails to file a claim or files an untimely claim, Manager is deemed to have waived its right to assert a claim in any forum. At the time the claim is filed, or within sixty (60) days thereafter, either Party may request mediation through the Commonwealth Office of General Counsel Dispute Resolution Program.

(b) If either Manager or the Commonwealth requests mediation and the other Party agrees, the Commonwealth shall promptly make arrangements for mediation with one of the five (5) mediators set forth in Schedule 20.1.2 (Third Party Mediators / Professionals), which shall be updated and mutually agreed upon by the Parties on an annual basis as part of the Annual Business Plan. Mediation shall be scheduled so as to not delay the issuance of the final determination beyond the required one hundred twenty (120) days after receipt of the claim if mediation is unsuccessful. If mediation is not agreed to or if resolution is not reached through mediation, the Commonwealth shall review timely-filed claims and issue a final determination in writing regarding the claim. The final determination shall be issued within one hundred twenty (120) days after the receipt of the claim, unless extended by the mutual agreement of the Commonwealth and Manager. The Commonwealth shall send his/her written determination to Manager. If the Commonwealth fails to issue a final determination within the one hundred twenty (120) days (unless extended by mutual agreement of the Parties), the claim shall be deemed denied. The determination shall be the final order of the Commonwealth.

(c) Within fifteen (15) days after the mailing date of the determination denying a claim or within one hundred thirty-five (135) days after filing a claim, or if no extension is agreed to by the Parties, whichever occurs first, Manager may file a statement of claim with the Commonwealth Board of Claims. Pending a final judicial resolution of a controversy or claim, Manager shall proceed diligently with the performance of the Agreement in a manner consistent with the determination of the Commonwealth shall compensate Manager pursuant to the terms of the Agreement.

(d) 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.

(e) 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.

20.2 Engagement of a Professional.

(a) The Party requesting the services of a professional to decide the upward or downward adjustments to the Annual Profit Commitment shall give notice of such request to the other Party, and, together with such notice, shall propose three (3) names from the professionals identified in **Schedule 20.1.2 (Third Party Mediators / Professionals)**, which Schedule contains the five (5) professionals agreed in advance as mutually acceptable by the Parties (each, a "**Professional**"). The non-requesting Party shall select one (1) of the three (3) names identified by the requesting Party within thirty (30) days after the receipt of the proposal. In the event the Professional declines or is otherwise unavailable to perform the services requested, the requesting Party shall propose an alternative professional from the two (2) remaining Professionals named in the Party's request within ten (10) days after receipt of notice from the Professional that the Professional is unable to perform the services requested by the non-requesting Party shall be the conclusive expert for purposes of performing the services. In any event, the selection of the Professional shall occur within sixty (60) days following the initiation of the engagement to select a Professional under this Section.

(b) Schedule 20.1.2 (Third Party Mediators / Professionals) shall be reviewed as part of the Annual Business Plan and on an annual basis in accordance with the procedures of Section 5.3 (Annual Business Plan). To be eligible to be selected for inclusion on Schedule 20.1.2 (Third Party Mediators / Professionals), a Professional shall be independent, have a minimum of ten (10) years' experience and expertise in financial and/or economic analysis, and be licensed or otherwise permitted to conduct business in the Commonwealth. Within thirty (30) days after the first day of each Contract Year and prior to inclusion as a Professional under this Agreement, the Parties shall contact each professional identified in Schedule 20.1.2 (Third Party Mediators / Professionals) and determine if such professional is willing and able to serve as a professional during such Contract Year. If any Professional is not willing or not able to serve as a Professional during such Contract Year, a vacancy shall be deemed to exist, and the Professional may be replaced upon the mutual written agreement of the Parties.

(c) The Professional shall be deemed to act as an expert and not as an arbitrator. The Professional shall be instructed to notify its determination to both Parties within sixty (60) days after engagement, by means of a written determination which shall be final and binding on both Parties for purposes of this Agreement.

(d) In the event that the Professional's determination of an upward adjustment to the Annual Profit Commitment for the subsequent Contract Year is more than three percent (3%) below the Commonwealth's Recommended Adjustment, the Commonwealth shall incur the costs of the Professional as a Commonwealth Expense.

(e) In the event that the Professional's determination of the Annual Profit Commitment for the subsequent Contract Year is less than three percent (3%) above than the Manager's Recommended Adjustment, the Annual Profit Commitment will be adjusted upwards by an amount equal to the costs of the Professional.

(f) In the event the Professional's determination of an adjustment to the Annual Profit Commitment is not subject to **subsections (d)** or **(e)**, then the costs of the Professional shall be considered an Operating Expense.

20.3 Governing Law, Venue, and Other Legal Considerations.

20.3.1 Governing Law. The Agreement shall be governed by and interpreted and enforced in accordance with the laws of the Commonwealth of Pennsylvania (without regard to any conflict of laws provisions) and the decisions of the Pennsylvania courts.

20.3.2 Venue and Jurisdiction. Manager consents to the jurisdiction of any court of the Commonwealth of Pennsylvania and any federal courts in Pennsylvania, waiving any claim or defense that such forum is not convenient or proper. Manager agrees that any such court shall have in personam jurisdiction over it, and consents to service of process in any manner authorized by Pennsylvania law. Following exhaustion of Manager's administrative remedies as set forth in **Section 20.1.2 (Mediation)**, Manager's exclusive remedy shall be to seek damages in the Board of Claims.

20.3.3 Continued Performance. The Parties agree to continue performing their respective obligations under the Agreement during the pendency of any Dispute, unless and until the Dispute is resolved or until the Agreement is terminated. In addition to the foregoing, under no circumstances shall a Party repudiate the Agreement, in whole or part, or otherwise refuse to perform all or any portion of the Agreement including, with respect to Manager or the Services, except as a Party's refusal to perform is expressly excused by a contractual provision in the Agreement or a Party is permitted to terminate the 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 Commonwealth under the Agreement, except as specifically and expressly agreed in writing by the Commonwealth and Manager. The time frame for a Party to cure any breach of the terms of the Agreement shall not be tolled by the pendency of any Dispute resolution procedures.

20.4 Sovereign Immunity. Except as provided in the Commonwealth's Procurement Code (62 PA. CONS. STAT. § 1702(b)), the Commonwealth shall not be made a defendant or party in any court whatsoever. Manager's remedies hereunder are expressly limited to the remedies afforded to it under the Agreement. Notwithstanding the foregoing, the Commonwealth hereby reserves any and all rights to sovereign immunity with respect to all claims that may be asserted by Manager arising out of the Agreement. The Commonwealth does not waive sovereign immunity by entering into the Agreement.

ARTICLE 21

ADVERSE ACTIONS

21.1 Adverse Actions.

21.1.1 Adverse Actions. Subject to and to the extent not covered by Section 21.3 (Change in Regulatory Requirements), an "Adverse Action" shall consist of the following actions (or any failure to act):

(a) a modification to a specific provision of the Annual Business Plan by the Commonwealth that is inconsistent with a specific provision of the existing Annual Business Plan that has been Approved by the Commonwealth;

(b) a modification to a specific provision of the Operating Standards by the Commonwealth that is inconsistent with a specific provision of the then-existing Operating Standards;

- (c) a Lottery Tax Imposition occurs;
- (d) any new Casino Facility;

(e) a material breach by the Commonwealth of the responsibilities set forth in **Schedule 2.2** (**Operational Responsibilities of the Commonwealth**); provided that the Commonwealth has not cured such breach within thirty (30) days following written notice of such breach from the Manager which such notice shall a written description of such breach;

(f) an adjustment to the fiscal code (including through 72 P.S. § 1730-H or similar legislation) requiring that, prior to June 30, 2015, more than twenty-seven percent (27%) or, after July 1, 2015, more than thirty percent (30%), in each case, of total revenues accruing from the sale of Lottery Tickets are used to provide services for seniors in the Commonwealth;

(g) any Commonwealth Expenses in excess of the amount set forth in the applicable Annual Business Plan as determined by the Commonwealth;

(h) any adjustment based on Contract Year 1 in accordance with Section 10.2.4 (Calculations);

(i) any final decision, judgment, opinion or interpretation by the Lottery Bureau interpreting the Existing Lottery Law as it existed as of the date the Manager Bid was submitted to the Commonwealth; or

(j) to the extent not covered by **subsections (a)** through **(i)** above, any action by the Commonwealth which has an actual adverse effect upon the Annual Profit Commitments,

in each case, that results in increases in Operating Expenses in excess of five hundred thousand (\$500,000) dollars annually, or decreases in Revenues in excess of one-half of one percent (0.50%) of the total annual Revenue;

and except, in each case, to the extent that 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 the Agreement by Manager.

21.1.2 No Adverse Action. An Adverse Action shall not be deemed to have occurred in the following circumstances:

or requires:

(a) the Commonwealth enacts or amends a Regulatory Requirement which permits

(i) expanded gaming activities to be conducted at all or any one of the Casino Facilities existing in the Commonwealth as of the date the Manager Bid was submitted to the Commonwealth that are substantially similar to the gaming activities being conducted at such Casino Facilities as of the date the Manager Bid was submitted to the Commonwealth;

(ii) new charity gaming activities which are substantially similar to the charity gaming activities being conducted in the Commonwealth as of the date the Manager Bid was submitted to the Commonwealth;

(iii) expanded pari-mutuel wagering on live races at racetracks or satellite facilities existing in the Commonwealth as of the date the Manager Bid was submitted to the Commonwealth that is substantially similar to the pari-mutuel wagering being conducted at such racetracks or satellite facilities as of the date the Manager Bid was submitted to the Commonwealth;

(iv) any "type II" or "type III" gaming activities (as defined and clarified in the Indian Gaming Regulatory Act, 25 U.S.C. §2701, et seq. and the regulations promulgated thereunder); or

- (v) the expansion of existing Casino Facilities;
- (b) the imposition of, or an increase in, taxes of general application; or

(c) an upward adjustment to the fiscal code (including 72 P.S. § 1730-H or other similar legislation), that currently requires that twenty-seven percent (27%) of total revenues accruing from the sale of Lottery Tickets be used to provide services for seniors in the Commonwealth from twenty-seven percent (27%) to thirty percent (30%).

21.2 Effect of Adverse Action. If Manager believes an Adverse Action has occurred, Manager shall, initiate the procedures to claim a downward adjustment to the Annual Profit Commitments as provided in Schedule 10.1 (Compensation and Payment Terms) within thirty (30) days of the date on which Manager knows of the Adverse Action and such procedure shall be Manager's sole remedy with respect to such Adverse Action.

21.3 Change in Regulatory Requirements. Except with respect to any Regulatory Requirement that is otherwise as set forth in Section 21.1.2 (No Adverse Action), to the extent that there is a change in Regulatory Requirements that requires an increase in expenses to Manager or decreases in Revenue in order to comply with such Regulatory Requirement, then Manager or the Commonwealth shall have the right to request a modification to the Annual Business Plan and an adjustment to the Annual Profit Commitment to cover any expenses incurred by Manager or decreases in Revenue as a result in the change in Regulatory Requirements. To the extent the increase in expenses or decreases in Revenue are less than five hundred thousand dollars (\$500,000), the Commonwealth shall modify the Annual Profit Commitment to cover the increased expenses or decreased Revenue for such compliance. To the extent the increase in expenses or decrease in Revenue are equal to or greater than five hundred thousand dollars (\$500,000), the Commonwealth shall have the right to reject such modification to the Annual Business Plan within sixty (60) days following the request for such modification. To the extent the Commonwealth rejects such modification in accordance with this Section and the Commonwealth shall notify Manager of such rejection and Manager shall have the right to cover the expenses or decreases in Revenue at no cost to the Commonwealth required to comply with the change in Regulatory Requirement. If Manager fails to notify the Commonwealth of its intent to cover such increases in expenses or decreases in Revenue within sixty (60) days following the Commonwealth's notice of rejection or comply with such Regulatory Requirement within the time periods set forth in the Regulatory Requirement, then the Commonwealth shall have the right to terminate the Agreement upon prior written notice to Manager, subject to the Disentanglement Services Period.

ARTICLE 22

MISCELLANEOUS

22.1 Assignment.

(a) Manager may not assign, in whole or in part, the Agreement or its rights, duties, obligations, or responsibilities hereunder without the Approval of the Commonwealth, which Approval may be withheld at the sole and absolute discretion of the Commonwealth, except for subcontracting certain of Manager's obligations as permitted by Article 7 (Subcontractors and Vendor Contracts). Any assignment Approved by the Commonwealth shall be evidenced by a written assignment agreement executed by Manager and its assignee in which the assignee agrees to be legally bound by all of the terms and conditions of the Agreement and to assume the duties, obligations, and responsibilities being assigned.

(b) Notwithstanding **subsection** (a), Manager shall have the right to assign its rights to Payment to be received under the Agreement without the consent of the Commonwealth; provided that Manager provides written notice of such assignment to the Commonwealth together with a written acknowledgement from the assignee that any such Payments are subject to all of the terms and conditions of the Agreement.

(c) The Commonwealth may assign its rights or obligations under the Agreement, without approval of Manager, to another Governmental Authority in the Commonwealth which expressly assumes the Commonwealth's obligations and responsibilities hereunder.

(d) A change of name by Manager, following which Manager's federal identification number remains unchanged, shall not be considered to be an assignment hereunder. Manager shall give the Commonwealth written notice of any such change of name.

(e) Any assignment in contravention of this Section 22.1 (Assignment) shall be null and *void ab initio*. Subject to all other provisions contained in this Section 22.1 (Assignment), the Agreement shall be binding upon the Parties and their respective successors and assigns.

22.2 Third Party Beneficiaries. The Agreement is entered into solely between, and may be enforced only by, the Commonwealth and Manager. Except for the Commonwealth Indemnitees, the 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 Entity.

22.3 Notices. Any written notice, request, consent, Approval or other communication required or permitted to be given pursuant to the 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 national 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 (Notices):

If to the Commonwealth:	If to Manager:
0	0
With a copy to:	With a copy to:
Π	[]

22.4 Waivers. A delay or omission by either Party hereto to exercise any right or power under the 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 contained in the Agreement. 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 the Agreement. Manager, in furnishing Services to the Commonwealth 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 the Agreement. Neither party shall represent to any Entity that the relationship described in the Agreement is other than

Page 63 of 65

that of an independent contractor relationship, nor shall either Party represent to any Entity that it has the right to bind the other Party.

22.6 Severability. If any provision of the Agreement is determined to be invalid or unenforceable, that provision shall be deemed stricken and the remainder of the 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.

22.7 Bankruptcy Protection. All rights and licenses granted under or pursuant to the Agreement by Manager to the Commonwealth 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 Commonwealth, as licensee of such rights under the 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.

22.8 Execution, Counterparts, Validity. The Agreement may be executed in multiple counterparts, each of which shall be deemed an original and both of which together shall constitute one and the same instrument. In order to be valid, the Agreement must be fully executed by Manager and the Commonwealth, all approvals required by Commonwealth contracting procedures obtained, and the fully-executed Agreement sent to Manager. Execution by the Commonwealth shall not be complete unless the Agreement bears the signature approvals of duly authorized representatives of each and every Commonwealth office designated on the signature page.

22.9 Further Assurances. Subsequent to the execution and delivery of the 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 the Agreement.

22.10 Covenant Regarding Pledging. To the extent permitted by Section 22.1 (Assignment) or by the Approval by the Commonwealth, if Manager assigns, transfers, pledges, hypothecates, or otherwise encumbers its rights to receive payments from the Commonwealth under the Agreement, Manager shall continue to be the Commonwealth's sole point of contact with respect to the Agreement, including with respect to payment. The Entity to which such rights are assigned, transferred, pledged, hypothecated, or otherwise encumbered shall not be considered a third party beneficiary under the Agreement and shall not have any rights or causes of action against the Commonwealth.

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

22.12 Acknowledgement. The Parties each acknowledge that the terms and conditions of the Agreement have been the subject of active and complete negotiations, and that such terms and conditions should not be construed in favor of or against any Party by reason of the extent to which any Party or its professional advisors participated in the preparation of the Agreement.

22.13 Controlling Terms and Conditions. The terms and conditions of the Agreement shall be the exclusive terms of agreement between Manager and the Commonwealth. All quotations requested and received from Manager are for obtaining firm pricing only. Other terms and conditions or additional terms and conditions included or referenced in Manager's quotations, invoices, business forms, or other documentation shall not become part of the Parties' agreement and shall be disregarded by the Parties, unenforceable by Manager and not binding on the Commonwealth.

22.14 Entire Agreement. All documents incorporated by reference into the Agreement are an integral part of the Agreement and shall be read and interpreted together with the Agreement as a single document. The Agreement sets forth the entire, final, and exclusive agreement between the Parties and supersedes all prior and contemporaneous agreements, understandings, negotiations, and discussions, whether oral or written, between the Parties related to the subject matter of the Agreement. No agent, representative, employee, or officer of either the Commonwealth or Manager has authority to make, or has made, any statement, agreement or representation, oral or written, in connection with the Agreement, which in any way can be deemed to modify, add to or detract from, or otherwise change or alter its terms and conditions. No negotiations between the Parties, nor any custom or usage, shall be permitted to modify or contradict any of the terms and conditions of the Agreement. No modifications, alterations, changes, or waiver to the Agreement or any of its terms shall be valid or binding unless accomplished by a written amendment signed by both Parties.

[END OF PAGE; SIGNATURES ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, this Private Management Agreement is entered into by the duly authorized representatives of the Parties and made effective as of the Effective Date.

COMMONWEALTH OF PENNSYLVANIA **DEPARTMENT OF REVENUE**

[MANAGER]

By:	By:
Name:	Name:
Title:	Title:

APPROVED AS TO FORM AND LEGALITY

By: ______Office of Chief Counsel

By: ______Office of Chief Counsel

By: ______Office of Chief Counsel

APPROVED FOR FISCAL RESPONSIBILITY, BUDGETARY APPROPRIATENESS AND AVAILABILITY OF FUNDS

By: _____Comptroller

SCHEDULE 1.2

DEFINITIONS

"Adverse Action" has the meaning set forth in Section 21.1.1 (Adverse Actions).

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

"AFSCME" means the American Federation of State, County, and Municipal Employees.

"Agreement" means this Private Management Agreement, the Schedules, the Exhibits, the Operating Standards and all other documents attached to the Agreement or otherwise incorporated by reference into the Agreement, the Schedules, the Exhibits or the Operating Standards, all as amended from time-to-time.

"Amortization Methodology" has the meaning set forth in Section 10.1 (Compensation and Payment Terms).

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

"Annual Profit Commitment" has the meaning set forth in Section 10.1 (Compensation and Payment Terms).

"Annual Profit Commitment Shortfall" has the meaning set forth in Section 10.1 (Compensation and Payment Terms).

"Approval", "Approve", or "Approved" means the prior written approval by the Commonwealth, in its sole discretion.

"Bankruptcy Code" means the United States Bankruptcy Code, as amended.

"Base Services" has the meaning set forth in Section 4.1 (Scope of Services).

"Base Services Commencement Date" means July 1, 2013.

"Budget" has the meaning set forth in Section 5.3.1 (Initial Annual Business Plan).

"**Business Day**" means any day which is not a Saturday, Sunday, or legal holiday on which banking institutions in the Commonwealth are authorized to close.

"Cash Collateral" has the meaning set forth in Section 18.1 (Manager's Security).

"Cash Collateral Draw" has the meaning set forth in Section 10.1 (Compensation and Payment Terms).

"Casino Facility" means: (a) any slot machine license or pari-mutual horse racing operator license and facility where Games are conducted under the jurisdiction of the Pennsylvania Gaming Control Board pursuant to the applicable Regulatory Requirement including those facilities permitted under the Pennsylvania Race Horse Development Act (as may be amended from time to time); and (b) any facilities authorized but not yet issued or developed, in each case, existing as of the Effective Date.

"Certificate of Transition" has the meaning set forth in Section 3.1.7 (Transition Completion).

"Change in Control" means: (a) any transaction or combination of transactions as a result of which an Entity 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 Entity 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 in providing the Services to the Commonwealth is sold or transferred to an Entity other than an Excluded Person or otherwise experiences a change in ownership or control.

"Claim" means any civil, criminal, administrative, or investigative claim, demand, proceeding, suit, action, or proceeding brought by a Third Party against a Party.

"Commonwealth" means the Commonwealth of Pennsylvania, acting through the Pennsylvania Department of Revenue and includes any related governmental organizations or agencies of the Commonwealth of Pennsylvania.

"Commonwealth Compliance Directive" has the meaning set forth in Section 19.3 (Commonwealth Compliance Directives).

"Commonwealth Data" means in or on any media or other form of any kind: (a) all data that is in the possession of the Commonwealth, as of the Effective Date, all data updating or manipulating such data and all data concerning or indexing such data (regardless of whether or not owned by the Commonwealth or generated or compiled by or for the Commonwealth); (b) all other records, data, files, input materials, reports, forms, and other such items that may be received, computed, developed, used, or stored by Manager from, for, or on behalf of the Commonwealth, or in connection with the Services; and (c) Commonwealth Personal Data.

"Commonwealth Data Files" has the meaning set forth in Section 9.2.4 (Data Access).

"Commonwealth Expenses" has the meaning set forth in Section 10.1 (Compensation and Payment Terms).

"Commonwealth Indemnitees" means the Commonwealth and each of its respective directors, officers, employees, attorneys, agents, representatives, consultants, successors, and assigns.

"Commonwealth Intellectual Property" means, collectively: (a) the Intellectual Property, that is (i) owned, acquired, or developed independent of Manager by the Commonwealth prior to, on or after the Effective Date, or (ii) licensed or leased by the Commonwealth from a Third Party prior to, on or after the Effective Date; (b) New Intellectual Property except to the extent otherwise mutually agreed by the Parties in accordance Section 8.3 (New Intellectual Property); and (c) any Commonwealth Trademarks.

"Commonwealth Personal Data" means, collectively, all data or information, in any form, that is provided to Manager by or from a Third Party on behalf of the Commonwealth or any data or information that is collected, generated, or processed by Manager for the benefit of the Commonwealth, that alone, or in combination with other information: (a) is considered "sensitive personal data" defined under any applicable Regulatory Requirements; or (b) uniquely identifies (i) a current, former or prospective customer, agent, vendor, or contractor of the Commonwealth, or (ii) any employee of any of the foregoing or an employee of the Commonwealth, or their respective spouses or families, and includes customer

names, addresses, telephone numbers, or any other personally identifiable information, including copies of such information, and materials derived from such information.

"Commonwealth Policies and Rules" means (a) the standards, policies, practices, processes, procedures, controls and rules, of the Commonwealth regarding confidentiality, security, record retention, safety, and health and personal, professional and ethical conduct (including those contained in the Ethics Code, 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)**.

"Commonwealth Trademarks" mean the Trademarks owned by the Commonwealth as of the Effective Date or any Trademarks or otherwise created, developed or used by or on behalf of the Manager pursuant to this Agreement (excluding any Trademarks licensed through Multi-State Lottery Games).

"Commonwealth Transition Activities" has the meaning set forth in Section 3.1.1 (Transition Services).

"Commonwealth's Recommended Adjustments" has the meaning set forth in Section 10.1 (Compensation and Payment Terms).

"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 Commonwealth, Confidential Information also shall include Commonwealth Intellectual Property, the Commonwealth 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 the Agreement. In the case of the Manager, Confidential Information shall include the Manager Intellectual Property.

"Consumer Price Index" means the United States Averages for all Urban Consumers, All Items Index (not seasonally adjusted) as published by the United State's Department of Labor, Bureau of Labor Statistics; provided, however, that if the Index is changed so that the base year of the Index changes, the Index shall be converted in accordance with the conversion factor published by the United State's Department of Labor, Bureau of Labor Statistics; provided, further that if the Index is discontinued or revised during the Term, such other Index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Index had not been discontinued or revised.

"Continuity Plans" has the meaning set forth in Section 4.4 (Continuity of Services).

"Contract Records" has the meaning set forth in Section 11.1 (Contract Records).

"Contract Year" means each twelve (12) month period beginning on July 1, 2013 and each anniversary thereafter.

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

"**Data Privacy Laws**" means all applicable data or privacy Commonwealth Policies and Rules in connection with all processing of Commonwealth 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" has the meaning set forth in Section 14.1 (General Obligations).

"Disentanglement Services Period" has the meaning set forth in Section 14.2.1 (Disentanglement Services Period).

"Disentanglement Services Plan" has the meaning set forth in Section 14.2.2 (Disentanglement Services Plan).

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

"Due Diligence Information" has the meaning set forth in Section 1.4 (Due Diligence Complete).

"Effective Date" has the meaning set forth in Section 2.3 (Conditions Precedent).

"**Eligible Institution**" means a company or financial institution that is: (a) rated at least (i) A3 by Moody's and A- by Standard and Poor's; or (ii) A by A.M. Best Company; (b) duly licensed, admitted, and authorized to do business in the Commonwealth of Pennsylvania; and (c) without any equity interest, directly or indirectly, in Manager.

"**Entity**" means any natural person, corporation, limited liability company, limited liability partnership, general partnership, limited partnership, joint venture, trust, association, governmental organization or agency, political subdivision, body politic, or other legal person or entity of any kind, legally constituted.

"Equipment" means all telecommunications, electronic, computing, network, office and facilities equipment and machinery, vehicles and tools owned or leased by a Party and used to provide or in connection with the Services, including the following (to the extent owned or leased by a Party and used to provide or in connection with the Services): (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, peripheral or network devices and cabling; and (c) voice, data, video and wireless telecommunications and network and monitoring equipment and associated attachments, features, accessories, peripheral devices and cabling.

"Ethics Code" means the Commonwealth's code of ethics as set forth in the Operating Standards.

"Event of Loss" has the meaning set forth in Section 17.4.1 (General).

"Events of Default" means any of the events described in Section 13.6.1 (Types of Events of Default).

"Execution Date" has the meaning set forth in the preamble.

"**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 Law" has the meaning set forth in the recitals to the Agreement and any other related Regulatory Requirements (including 72 P.S. § 1730-H).

"Five Year Extension Term" has the meaning set forth in Section 13.1.2 (Extension Terms).

"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. Notwithstanding the foregoing, "Force Majeure Event" expressly excludes: (i) a strike, walkout, lockout, labor shortage, or labor dispute involving Manager (including Manager Subcontractors or Affiliates) and their respective Manager Personnel; and (ii) 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 accepted in the United States.

"Governance Protocols" means the guidelines, principles and protocols governing the Parties' relationship and Approval by the Commonwealth and attached hereto as Schedule 5.1 (Governance Protocols).

"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 Commonwealth Policies and Rules for the consummation of the transactions and the performance of the Services contemplated by the Agreement.

"Governmental Authority" means any federal, state, regional, or local legislative, executive, judicial or other governmental board, department, agency, authority, commission, administration, court, taxing authority, or other body, or political subdivision thereof (including the Commonwealth, acting in its governmental capacity other than as a party to the Agreement), or any official thereof, having jurisdiction in any way over or in respect of any aspect of the performance of the Agreement.

"Gross Profit" has the meaning set forth in Schedule 10.1 (Compensation and Payment Terms).

"Guarantor" has the meaning set forth in Section 18.3 (Parent Guaranty).

"Guaranty" has the meaning set forth in Section 18.3 (Parent Guaranty).

"IFB" has the meaning set forth in the recitals to the Agreement.

"Incentive Compensation" has the meaning set forth in Schedule 10.1 (Compensation and Payment Terms).

"Initial Annual Business Plan" has the meaning set forth in Section 5.3.1 (Initial Annual Business Plan).

"Initial Term" has the meaning set forth in Section 13.1.1 (Term).

"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 trade secrets, and other intellectual property rights in or appurtenant to any of the foregoing.

"Internet" means the international computer network of interoperable packet switched data networks.

"LOC Draw" has the meaning set forth in Schedule 10.1 (Compensation and Payment Terms).

"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 Pennsylvania 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 Bureau" means the Pennsylvania Commonwealth Lottery created to administer and operate the lottery by order of the Executive Board (61 PA. CODE § 801.1).

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

"Lottery Retailer" means an Entity 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 Tax Imposition" means any new or increased Tax imposed by the Commonwealth or through change in Regulatory Requirement after the Effective Date of the Agreement or during the Term that is directed only at the Lottery or Manager, including any new or increased Tax on the sale or purchase of a Lottery Ticket.

"Lottery 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.

"**Managed Contracts**" means the following agreements that Manager will assume and manage on and after the Effective Date of the Agreement including the following: (a) that certain Contract for Instant Lottery Games Services or "CSP Contract" by and between the Commonwealth and Scientific Games International dated August 21, 2007; and (b) that certain Contract for Lottery Games System and Related Services or "Systems Contract" by and between the Commonwealth and Scientific Games International dated December 19, 2008.

"Manager" has the meaning set forth it the preamble to the Agreement.

"Manager Bid" has the meaning set forth in the recitals to the Agreement.

"Manager Expenses" has the meaning set forth in Schedule 10.1 (Compensation and Payment Terms).

"Manager Indemnitees" means Manager and its Affiliates, and each of their respective officers, directors, employees, attorneys, consultants, agents, successors, and assigns.

"**Manager Intellectual Property**" means, collectively, the Manager Proprietary Intellectual Property and the Manager Third Party Intellectual Property.

"Manager Items" has the meaning set forth in Section 15.1.2(b) (Manager Infringement Indemnification).

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

"**Manager Personnel**" mean those employees, representatives, contractors, subcontractors and agents of Manager, Subcontractors and Manager Affiliates who perform any Services under the Agreement.

"**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 Manager prior to the Effective Date.

"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 Surplus" has the meaning set forth in Schedule 10.1 (Compensation and Payment Terms).

"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, on or after the Effective Date from a Third Party, Subcontractor or Vendor.

"Manager Transition Notice" has the meaning set forth in Section 3.1.7 (Transition Completion).

"Manager's Recommended Adjustments" has the meaning set forth in Schedule 10.1 (Compensation and Payment Terms).

"Manager's Security" has the meaning set forth in Section 18.1 (Manager's Security).

"Manager's Security Draw" has the meaning set forth in Schedule 10.1 (Compensation and Payment Terms).

"New Intellectual Property" means (a) any modifications and enhancements to, and derivatives of, Intellectual Property described in subsection (a) of the definition of "Commonwealth Intellectual Property;" (b) any Intellectual Property developed under the Agreement by or on behalf of Manager or the Commonwealth, or Manager's Subcontractors or Vendors; (c) any Intellectual Property licensed or leased by the Commonwealth from a Third Party on or after the Effective Date; and (d) any modifications and enhancements to, and derivatives of, Intellectual Property described in subsections (b) and (c) of this definition.

"Non-Manager Transition Delay Event" has the meaning set forth in Section 3.1.5(a) (Failure to Meet Transition Milestones).

"One Year Extension Terms" has the meaning set forth in Section 13.1.2 (Extension Terms).

"Operating Expenses" has the meaning set forth in Schedule 10.1 (Compensation and Payment Terms).

"Operating Standards" has the meaning set forth in Section 5.2.1 (Operating Standards Generally).

"Operating Surplus" has the meaning set forth in Schedule 10.1 (Compensation and Payment Terms).

"Party" or "Parties" means, individually or collectively, the Commonwealth or Manager.

"Payments" has the meaning set forth in Section 10.1 (Compensation and Payment Terms).

"Player" means any Entity who legally seeks to purchase or purchases a Lottery Ticket.

"Professional" has the meaning set forth in Section 20.2 (Engagement of a Professional).

"Professional's Downward Adjustments" has the meaning set forth in Schedule 10.1 (Compensation and Payment Terms).

"Professional's Upward Adjustments" has the meaning set forth in Schedule 10.1 (Compensation and Payment Terms).

"Profit" has the meaning set forth in Schedule 10.1 (Compensation and Payment Terms).

"Protected Net Profit" has the meaning set forth in the recitals to the Agreement.

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

"Record Retention Period" has the meaning set forth in Section 11.2 (Recordkeeping).

"**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 or amended from time to time, including laws that apply directly or indirectly to the delivery or receipt of Services under the 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" has the meaning set forth in Section 3.3.1 (Termination of Commonwealth Contracts).

"Replacement Manager" has the meaning set forth in Section 14.1 (General Obligations).

"Reports" has the meaning set forth in Section 5.8 (Reporting on Performance).

"**Required Payment Date**" means (a) thirty (30) days after a proper invoice actually is received at the "Bill To" address if a date on which Payment is due is not specified in the Agreement; or (b) the payment date specified on the invoice if later than the dates established by **subsection (a)** above.

"**Revenue**" means all income earned that is directly attributable to the operations of the Lottery determined by the Lottery in accordance with GAAP and the financial accounting standards board. For the avoidance of doubt, Revenue excludes non-operating line items including interest, miscellaneous non-operating expense and the sale of securities.

"**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 or trends which could result in problems.

"RTKL" means Pennsylvania's Right-To-Know Law, 65 PA. STAT. ANN. §§ 67.101-3104.

"Service Level" or "SLA" means a service level requirement and is a standard for performance for particular Services, each as set forth in the Service Level Agreement.

"Services" has the meaning set forth in Section 4.1 (Scope of Services).

"Significant Investment" has the meaning set forth in Schedule 5.3.1(a) (Annual Business Plan Requirements).

"SLA" or "Service Level" means a service level requirement and is a standard for performance for particular Services, each as set forth in the Service Level Agreement.

"SLA Credits" has the meaning set forth in Section 5.6 (SLA Credits).

"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.

"SSAE 16" has the meaning set forth in Section 11.7 (SSAE 16 Examination).

"Standard Compliance Provisions" has the meaning set forth in Section 12.1.2 (Performance of the Services).

"Step-In Rights" has the meaning set forth in Section 13.6 (Step-In Rights).

"Step-In Notice" has the meaning set forth in Section 13.6.1 (Step-In Notice).

"Step-Out Notice" has the meaning set forth in Section 13.6.3 (Step-Out Notice).

"Stub Contract Year" means any partial year commencing on the beginning of a Contract Year and ending at the end of the Term (and any Disentanglement Services Period).

"Subcontract" means any contract between Manager and a Subcontractor for the provision of Services in support of Lottery operations.

"Subcontractor" means, subject to the terms of Article 7 (Subcontractors and Vendor Contracts), any Third Party that provides Services for the Lottery pursuant to an agreement or other arrangement with Manager. An Affiliate of Manager that provides Services to or for the benefit of the Lottery shall be considered a Subcontractor.

"Tax" means any state or local sales, use, gross receipts, excise, value-added, withholding, personal property or employment-related taxes.

"Term" has the meaning set forth in Section 13.1.2 (Extension Terms).

"Terminated Commonwealth Contracts" has the meaning set forth in Section 3.3.1 (Termination of Commonwealth Contracts).

"Termination Date" has the meaning set forth in Section 13.1.1 (Term).

"Termination for Convenience Fee" means: (a) the amount set forth in Section 7.1 of Schedule 10.1 (Compensation and Payment Terms) to the extent that the Commonwealth exercises its right to terminate pursuant to Section 13.2 (Commonwealth's Termination for Convenience); or (b) the amount set forth in Section 7.2 of Schedule 10.1 (Compensation and Payment Terms) to the extent that Manager exercises its right to terminate pursuant to Section 13.7.2 (Manager's Termination for Convenience).

"Termination Notice" means a written notice of termination delivered by one Party to the other in accordance with Article 13 (Term and Termination).

"Third Party" means an Entity other than the Parties and an Affiliate of Manager.

"Tier 1 Compensation" has the meaning set forth in Schedule 10.1 (Compensation and Payment Terms).

"Tier 1 Upper Bound" has the same meaning set forth in Schedule 10.1 (Compensation and Payment Terms).

"Tier 2 Compensation" has the meaning set forth in Schedule 10.1 (Compensation and Payment Terms).

"**Trademarks**" means the trade names, service marks, trademarks, domain names, logos, slogans or other indicators or designators of source.

"**Transition**" means the period for performance of the Transition Services that commences on the Effective Date of the Agreement and expires on the Transition Completion Date.

"Transition Completion Date" has the meaning set forth in Section 3.1.7 (Transition Completion).

"**Transition Credits**" means the amounts payable to the Commonwealth by Manager pursuant to **Section 3.1.5(b) (Failure to Meet Transition Milestones)** of the Agreement if Manager fails to meet Transition Milestones or to complete the Transition Services, as such amounts are set forth in the Transition Plan.

"Transition Extension" has the meaning set forth in Section 3.1.6(a) (Transition Extension).

"Transition Milestone" has the meaning set forth in Section 3.1.3(c) (Elements of a Transition Plan).

"Transition Plan" has the meaning set forth in Section 3.1.1 (Transition Services).

"Transition Report has the meaning set forth in Section 3.1.4 (Transition Meetings and Reports).

"Transition Services" has the meaning set forth in Section 3.1.1 (Transition Services).

"Trigger Events" has the meaning set forth in Section 18.2 (Draw on Manager's Security).

"Unamortized Amount" has the meaning set forth in Schedule 10.1 (Compensation and Payment Terms).

"Updated Annual Business Plan" has the meaning set forth in Section 5.3.2 (Updated Annual Business Plan).

"Value Drivers" has the meaning set forth in Schedule 10.1 (Compensation and Payment Terms).

"Vendor" means any Third Party or Affiliate of Manager who is party to a Vendor Contract.

"Vendor Contract" means any agreement (whether written or oral) entered into by Manager (except the Agreement) or a Subcontractor with any Third Party or any Affiliate of Manager to supply materials or goods to Manager, Lottery Retailers or Players.

"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 Commonwealth Policies and Rules).