# SCHEDULE 2.1

## OPERATIONAL RESPONSIBILITIES OF MANAGER

**1. General**. Manager shall, subject to the actual control and oversight of the Commonwealth and in accordance with the terms and conditions of the Agreement, Commonwealth Policies and Rules, and the Annual Business Plan, provide all equipment and services, and perform all functions necessary, to operate the Lottery for the Commonwealth, as more fully described below. Manager may provide such equipment and services, and perform such functions, either directly or through Subcontractors or Vendors. Except for those functions or services specifically defined in **Schedule 2.2 (Operational Responsibilities of the Commonwealth)** (which are reserved by the Commonwealth), Manager's functions and responsibilities shall be comprised of those functions and responsibilities not specifically described below but which are an inherent, necessary or customary part of the functions and responsibilities associated with the operating of the Lottery.

| **Area** | **Description** |
|---|---|
| *Technology* | |
| Central Gaming System | Perform such services required to support, maintain and update the central gaming system, which may be provided pursuant to Managed Contracts, which includes hardware, software, communications, network, warehousing and distribution and equipment and a disaster recovery system and other components necessary for the sales, validation, and inventory management of the Lottery, including any modifications thereto.<br><br>Provide or perform any requirements of the Managed Contracts.<br><br>Internal control for the central gaming system |
| Data and Reports | Provide the data and reports as necessary to enable or facilitate the Lottery's ability to carry out its obligations (including Lottery Retailer settlements and adjustments), including all data and reports required or existing under the Managed Contracts. The format of data and reports must be compatible with existing Lottery management systems and access to data and reports by the Lottery must be without restriction. |

| **Area** | **Description** |
|---|---|
| Websites; Internet | Assume maintenance and hosting of the current the Lottery websites.<br><br>Design, maintain, and host a separate and distinct website for Manager's own company.<br><br>Maintain and enhance Lottery's presence in social media networks (*e.g.*, Facebook, Twitter, etc.) to the extent consistent with the Annual Business Plan.<br><br>Assume maintenance, development and enhancements to the Lottery's "VIP Players Club" in accordance with the Annual Business Plan, this Agreement and any Operating Standards. |
| *Sales Channels* | |
| Retail Hardware | Install, maintain, and update retail hardware and software components necessary for the sales, validation, and inventory management of the Lottery |
| Ticket Vending | Install, maintain, and update as necessary ADA-compliant instant and terminal-based ticket vending reasonably acceptable to the Commonwealth, including dispensing machines, distribution channels, networking, and other components necessary for the sale of Lottery Games |
| Internet and Mobile | Provide, maintain and upgrade as necessary the functionality to sell Lottery Tickets via the internet or mobile devices which functionality shall include geo-location, age verification, and electronic payment technology; *provided, however,* that such internet and mobile functionality shall not be enabled prior to **July 1, 2015**. Provide and maintain customer relationship management functionalities. |
| *Product* | |
| New Lottery Game Design; Monitor-based Game | Design, format, and maintain the appearance and mechanics of Lottery Games; Design, format, maintain and upgrade as necessary monitor-based games in select age-restricted Lottery Retailers; *provided, however,* that such monitor-based games shall not be enabled in select age-restricted Lottery Retailers prior to **July 1, 2013**. |
| Payout Structure | Establish prize structures for Lottery Games |

| **Area** | **Description** |
|---|---|
| Managing Product Portfolio | Manage the portfolio of current Lottery Games, including any recommended adjustment to the format and rules of Lottery Games |
| Pricing | Establish the price of each Lottery Game |
| Platform Channel and Program Development | Develop new Lottery platforms, programs and channels, as appropriate Games |
| *Instant Game Logistics* | |
| Printing | Print Lottery Tickets |
| Distribution | Distribute Lottery Tickets and consumables (including management of returns and destruction) |
| Warehousing | Warehouse Lottery Tickets |
| Inventory Management | Develop an inventory management and predictive ordering system |
| *Lottery Retailers* | |
| Recruitment | Recruit new Lottery Retailers |
| Training | Develop and implement training for Lottery Retailers |
| Supervision | Supervise Lottery Retailers |
| Commissions and Incentives | Determine commissions and other incentives for Lottery Retailers |
| Relationship Management | Provide for retailer relations management |
| Revocation | Execute Commonwealth suspension and revocation orders |
| *Marketing* | |
| Advertising | Design, implement, and maintain advertising and promotional campaigns |

| **Area** | **Description** |
|---|---|
| Branding | Develop Lottery brands |
| Loyalty Program | Design, maintain, and operate a customer loyalty program |
| Strategy | Create a general marketing strategy |
| Sponsorships | Select and negotiate sponsorship opportunities |
| Consumer Research | Design and implement a consumer research strategy to inform and measure marketing strategies and products |
| *Lottery Facilities and Customer Service Center –Lottery Retailer* | |
| Operation | Design, operate, and maintain service and call centers for Lottery Retailers |
| Facilities | Lease, operate and manage existing Lottery facilities |
| *Responsible Gaming Program* | |
| Operation | Develop, operate, and maintain a responsible gaming program |
| *Staffing* | |
| Management of Lottery Employees | Direct and control the duties of Manager's employee subject to any applicable Commonwealth Policies and Rules |
| *Procurement* | |
| Bidding | Create proposals necessary to procure bids for required services of the Lottery in accordance with the Agreement |
| Selection | Select Subcontractors and Vendors in support of Lottery operations |
| Probity / Investigations | Investigate financial, operational, and character and fitness suitability of Vendors and Subcontractors |
| Management | Manage Vendors and Subcontractors |

| Area | Description |
|---|---|
| *Compliance* | |
| Underage Play | Develop and implement policies and programs aimed at preventing underage play |
| Excessive Play | Develop and implement policies and programs aimed at preventing excessive play |
| Game Rules | Comply with rules related to multi-jurisdictional games offered by the Lottery |
| *Legal* | |
| Compliance | Maintain compliance with all Commonwealth laws, rules, regulations and policies. |
| Contracts | Prepare, negotiate and monitor contracts with Subcontractors and Vendors |
| Game Rules | Prepare game rules consistent with applicable law |
| Intellectual Property | Maintain the legality and validity of, conduct searches regarding, and investigate claims made against, Intellectual Property that is owned, licensed, or otherwise related to the operations of the Lottery in any way; maintain compliance with Commonwealth Policies and Rules applicable to Intellectual Property; and, perform any and all registrations, renewals, transfers, assignments, procedural oppositions, and, if necessary, prosecution activities with respect to Intellectual Property that is owned, licensed, or otherwise related to the operations of the Lottery in any way. |

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

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

**2. Process and Technology Evolution**. As part of the Services, Manager acknowledges and agrees that the processes and technologies utilized by Manager in the performance of the Services shall

continue to evolve and change over time and it shall continuously support process and technology evolution throughout the Term. Accordingly, throughout the Term, Manager shall:

**(a)** remain consistent with the practices generally followed by other providers of services similar to the Services and with the objectives and needs of the Commonwealth;

**(b)** consult with the Commonwealth and cooperate with the Commonwealth's efforts to continuously identify, evaluate and implement, or assist the Commonwealth in implementing, cost reduction, margin improvement, information technology improvement and other methodologies (including Manager's "best practice" and other proprietary methodologies and tools) and initiatives in order for the Commonwealth to achieve operational excellence, become more competitive in the markets that the Commonwealth serves and/or increase the value of the businesses of the Commonwealth;

**(c)** proactively and periodically monitor and analyze new processes, technologies, shared service strategies and emerging trends that may have interest or applicability to the Commonwealth and/or that reasonably could be expected to have a positive impact on the Commonwealth, including in the areas of increased efficiency, increased quality and reduced costs, and meet with the Commonwealth at least once each calendar quarter during the Term in accordance with the procedures established by the Commonwealth to inform the Commonwealth of any new information technology or business process Manager is developing or information technology and business process trends and directions of which Manager is otherwise aware that could reasonably be expected to have an impact on the Services; and

**(d)** offer the Commonwealth the opportunity to implement technological advances or changes to Manager's systems, software or technology that are developed by Manager and offered or to be offered to other Manager clients.

**3. Technology Refresh**. In particular, and without limiting the generality of Section 2 of this **Schedule 2.1**: (a) Manager's tools, utilities, methodologies, processes and other normal procedures for performing Services will be upgraded and enhanced consistent with the practice of other providers of services similar to the Services; and (b) Manager will refresh the technology and all equipment used to provide the Services a minimum of every five (5) years. Manager will keep equipment for which Manager has financial responsibility under warranty and/or manufacturer's service contracts and Manager will refresh such equipment at reasonable intervals, consistent with good industry practice and as required to achieve agreed performance standards including at a minimum of once every five (5) years. Manager will keep all software on current supported releases. Manager shall keep all software within release levels supported by the appropriate Third Party provider to ensure compatibility with other software or equipment components of the Commonwealth. Adjustments in Services in accordance with this Section will be deemed to be included within the scope of the Services to the same extent and in the same manner as if expressly described in this Agreement.

## SCHEDULE 2.2

## OPERATIONAL RESPONSIBILITIES OF THE COMMONWEALTH

The Commonwealth shall perform the specific functions and services set forth below subject to the terms and conditions of the Agreement and are considered part of the Commonwealth Expenses. All functions or responsibilities not explicitly provided below or which are an inherent, necessary, or customary part of the functions and responsibilities associated with the Services shall be the responsibility of Manager. The following responsibilities of the Commonwealth shall be performed in accordance with standard operating procedures of the Commonwealth as of the Effective Date of the Agreement or as otherwise determined by the Commonwealth for such functions and services.

| **Area** | **Description** |
|---|---|
| *Validation* | |
| Validation | Physically validate and verify winning Lottery Tickets |
| *Prizes* | |
| Jackpot Setting | Set jackpot levels according to game structures, based on sales |
| Payment of Prizes | Pay Prize Claims not redeemed by Lottery Retailers |
| Securities | Purchase securities, and liquidate same, to provide for deferred payments of certain Prize Claims where deferred payment is selected by the winner |
| Offsets | Provide for offsets of prizes for collection of Commonwealth debts, delinquent child support payments of certain Persons or Players, and other liabilities authorized by the Commonwealth |
| Unclaimed Prizes | Maintain records of unclaimed prize funds |

| **Area** | **Description** |
|---|---|
| *Primary Drawings* | |
| Operation | Manage and operate Lottery Game primary drawings and maintain internal control systems over such drawing as determined by the Lottery |
| Broadcasting | Facilitate the broadcast of primary drawings and their results through mediums provided/supplied by Manager and approved by the Lottery |
| *Second-Chance Drawings* | |
| Conduct | Establish system of selecting and identifying winners of second-chance drawings or promotional drawings |
| Design | Design, format, and maintain prize structures of secondary drawings added to Lottery Games |
| *Collections* | |
| Transfers | Control the transfer of Lottery proceeds into the appropriate funds, as designated by the Lottery |
| Collection from Lottery Retailers | Perform electronic fund transfers from Lottery Retailer bank accounts for weekly settlements |
| Collection of Past Due Accounts | Collect past-due accounts from Lottery Retailers, including authorized penalties and interest (consistent with Lottery standard operating procedures and historical and projected collection rates) |
| Retailer Accounting | Processing of retailer adjustments and associated queries from Lottery Retailers (consistent with Lottery standard operating procedures) |

| **Area** | **Description** |
|---|---|
| Commissions & Bonuses | Administer payment of commissions and bonuses to Lottery Retailers (consistent with Lottery standard operating procedures and historical and projected rates) |
| Internet and Mobile Sales | Collect and deposit all Lottery proceeds generated from sales through the internet in compliance with all Regulatory Requirements and generally accepted industry standards including PCI DSS (consistent with Lottery standard operating procedures and historical and projected collection rates) |
| *Licensing of Lottery Retailers* | |
| Processing | Evaluate and process the licensing applications from the Manager for Lottery Retailers including change of ownership applications (consistent with Lottery standard operating procedures and historical and projected processing rates) |
| Issuance | Manage and control the approval and issuance of Lottery Retailers, though Manager may submit requests for such licenses on behalf of Lottery Retailers(consistent with Lottery standard operating procedures and historical and projected issuance rates) |
| Revocation | Manage and control the revocation of Lottery Retailer licenses; however, Manager may submit requests for such revocations (consistent with Lottery standard operating procedures and historical and projected revocation rates) |
| Suspension | Manage and control the suspension of Lottery Retailer licenses; however, Manager may submit requests for such suspensions (consistent with Lottery standard operating procedures and historical and projected suspension rates) |

| **Area** | **Description** |
|---|---|
| *Tax Reporting* | |
| Prize Payments | Report tax obligations for payments of Prize Claims made through prize payment centers |
| Annual Report and Published Accounts of Lottery | Production of the annual financial report of the Lottery |
| Lottery Retailers | Report tax obligations for Lottery Retailer commissions and bonuses |
| *Investigations* | |
| Allegations of Fraud | Investigate, document, and where necessary, prosecute allegations of fraud by Players, Lottery Retailers, or other Persons (consistent with Lottery standard operating procedures and historical and projected enforcement projected) |

## SCHEDULE 2.3

## FORM OF LEGAL OPINION

1. Manager is a **[corporation or limited liability company]** duly organized, validly existing and in good standing under the laws of the Commonwealth of Pennsylvania and has all requisite corporate power and authority to execute the Agreement, Operating Standards, Employee Transition Agreement, and all of the Schedules, Exhibits, and other documents attached to any such agreement and to consummate the transactions and perform the obligations stated thereunder.

2. The execution and delivery of and the consummation of the transactions contemplated under the Agreement, Operating Standards, Employee Transition Agreement, and all of the Schedules, Exhibits, and other documents attached to any such agreement have been duly authorized and approved by the Board of Directors of Manager and no other corporate proceedings on the part of Manager are necessary or required under the laws of the state of incorporation of Manager on its certificate of **[incorporation or formation]** or **[by-laws or operating agreement]**.

3. The Agreement, Operating Standards, Employee Transition Agreement, and all of the Schedules, Exhibits, and other documents attached to any such agreement when executed and delivered by Manager shall be the legal, valid, and binding obligations of Manager enforceable in accordance with its terms, except as may be limited, extended, altered or impaired by bankruptcy, insolvency, or other laws or equitable principles effecting the enforcement of creditor rights generally.

4. There is no action, suit, proceeding or investigation at law or in equity before any Court, public board or body, pending or to the best of Manager's knowledge threatened wherein an unfavorable decision, ruling or finding would, (a) to the extent not covered by insurance, result in any material adverse change in the financial condition, business, properties or operations of Manager; (b) materially adversely affect the transactions contemplated by the Agreement, Operating Standards, Employee Transition Agreement, and all of the Schedules, Exhibits, and other documents attached to any such agreement, or (iii) adversely affect the validity or enforceability of Agreement, Operating Standards, Employee Transition Agreement, and all of the Schedules, Exhibits, and other documents attached to any such agreement.

5. The execution and performance of the Agreement, Operating Standards, Employee Transition Agreement, and all of the Schedules, Exhibits, and other documents attached to any such agreement, the consummation of the transactions contemplated thereunder or the fulfillment of or compliance with the terms thereof is not prevented, limited by, conflicts with or results in a breach or default of, the terms, conditions or provisions of any (a) law, rule, regulation, judgment, order of any court or governmental agency, or (b) the certificate of **[incorporation or formation]** or **[bylaws or operating agreement]** of Manager, or (c) evidence of indebtedness, agreement or instrument of whatever nature to which Manager or any company, corporation or other business entity controlled by Manager or affiliated with it is now a party, or by which Manager or any such entity is bound, or constitutes a default under any of the foregoing. Such execution and performance will not result in the creation or imposition of any lien, charge or encumbrance of any nature other than the liens created thereby.

# SCHEDULE 3.1.1

## TRANSITION PLAN

**[TO BE PROVIDED AS PART OF THE ANNUAL BUSINESS PLAN]**

# SCHEDULE 3.3

## TERMINATED COMMONWEALTH CONTRACTS

**[TO BE PROVIDED AS PART OF THE ANNUAL BUSINESS PLAN]**

# SCHEDULE 5.1

# GOVERNANCE PROTOCOLS

## 1. INTRODUCTION

The Commonwealth has found that it is in the public's interest to conduct the functions of the Lottery with the assistance of a private manager, acting pursuant to the Agreement. Manager shall consider the sensitive nature of a Commonwealth-conducted lottery, its public image, and the social implications attendant thereto, and conduct its operations with integrity, security, honesty, and fairness and in compliance with Commonwealth Policies and Rules. As set forth in the Agreement, the Commonwealth shall exercise actual control and oversight over the Lottery.

The objective of these Governance Protocols is to establish the guidelines and principles of the Parties' communications and relationship, including Commonwealth's Approval procedures.

## 2. GOALS AND OBJECTIVES

**2.1 Goals and Objectives**. The goals and objectives identified in this Section ("**Goals and Objectives**") include principles that the Parties have determined to be important to ensure the success of their relationship. The Goals and Objectives function as "constitutional" statements regarding the Parties' overall intentions for this Agreement, but are not intended to expand the scope of the Parties' respective obligations or alter the plain meaning of this Agreement's terms and conditions. If any term or condition of this Agreement is ambiguous or unclear or if the Parties did not anticipate a particular issue, the Parties shall refer to and apply the Goals and Objectives to resolve and/or address the ambiguous, unclear or unanticipated issue. The Goals and Objectives under this Agreement are as follows:

(a) **Deliver Reliable, Scalable Services** – Manager shall deliver reliable Services at agreed upon and guaranteed Service Levels.

(b) **Provide High Availability Business Continuity** – Manager shall deliver high availability business continuity for all Services.

(c) **Optimize Business Processes** – Manager shall inform the Commonwealth of best practices to allow the improvement of the Lottery.

(d) **Enhance Capabilities and Effectiveness** – Services shall be provided in a manner that enhances the Lottery.

(e) **Manage Costs** – Cost transparency and improved cost management and economics is a key objective for the Commonwealth in securing Services from Manager. Manager shall continuously implement new, reliable, cost-effective technologies to improve cost effectiveness and to reduce the overall cost of Services to the Commonwealth. The Fees paid by the Commonwealth under this Agreement shall result in an ongoing lower cost of Services delivery than the Commonwealth could achieve internally.

(f) **Improve and Maintain Technology** – Services shall be delivered using new technologies in order to maintain and improve competitiveness in the quality and scope of Services available to the Commonwealth and to take advantage of market cost efficiencies.

(g) **Reliable Information** – Services shall be provided in a manner that ensures the

integrity, accuracy, confidentiality and reliability of the financial and other data and information that Manager maintains, processes and stores on behalf of the Commonwealth.

(h) **Seamless Provision of Services –** Services shall be provided in a manner that ensures a smooth transfer of responsibility to Manager and back to the Commonwealth (or its designee) upon any termination or expiration. In providing Services to the Commonwealth, Manager shall operate as a seamless, value-added extension of the applicable business operations of the Commonwealth.

(i) **Minimize Disruptions –** The Commonwealth expects Manager to minimize disruptions to the existing business operations as well as internal and external customers (through Transition and beyond).

(j) **Relationship Management** – Manager shall provide for active, ongoing management and evaluation of the relationship to ensure it anticipates and supports the changing environment in which the Commonwealth operates.

(k) **Flexible Pricing Methodology** – Provide the Commonwealth a pricing methodology that: (i) provides predictable charges with no unanticipated price increases over time; (ii) is flexible enough to adapt to changing technology and business needs; (iii) is simple and easy for the Commonwealth to administer and audit; (iv) has to the maximum extent possible variable charges rather than fixed minimum charges; (v) provides an equitable allocation between the Commonwealth and Manager of cost savings and increased costs resulting from changes in technology and business needs; and (vi) gives positive incentives to Manager and its personnel (A) to use resources efficiently, (B) to implement new technology that shall lower the Commonwealth charges, (C) to continuously improve quality and service, and (D) to implement technology that facilitates, rather than constrains, the Commonwealth business decisions and strategy.

(l) **Premium Performance** – Provide the Commonwealth with professionalism and excellence in service delivery and comparable with that provided by recognized tier one managed services organizations and in accordance with all applicable Regulatory Requirements.

**2.2 Responsibilities**. Both Parties shall discharge their responsibilities in a manner to ensure advancement and achievement of the following goals:

(a) Compliance with the terms, conditions, obligations and requirements of the Agreements;

(b) Compliance with applicable Regulatory Requirements;

(c) Regular access to Manager's skilled personnel, knowledge, best practices and other capabilities and resources;

(d) Continuous improvement in the quality of Manager's Services;

(e) Appropriate communication between the Parties at executive, managerial and operational levels on all matters of mutual interest pertaining to the Services;

(f) Effective, cordial collaboration between the Parties, and with Third Parties;

(g) Regular review and (when necessary) adjustment of the Parties' relationship in order to improve performance and achieve mutually agreed goals; and

(h) Achievement of the Goals and Objectives in Section 2.1 of this Schedule and the business objectives encompasses by the other provisions of the Agreement.

## 3. ORGANIZATION

**3.1 Contact Persons.** The Parties shall designate the following positions:

**3.1.1 Manager Lead.** Manager shall designate one individual (the "**PM Lead**") as the primary individual to communicate with the Commonwealth, its designee, or the Lottery Bureau. Unless otherwise approved by the Commonwealth, the PM Lead shall initially be a corporate officer of Manager, having corporate authority to bind Manager and resident in the Commonwealth.

**3.1.2 Lottery Lead**. The Commonwealth shall designate one individual (the "**Lottery Lead**") as the primary individual to communicate with Manager.

**3.2 Direct Communication.** Nothing in Section 2.1 shall be construed to limit the Commonwealth or Manager, or any of their employees, from freely communicating with each other as often as either shall desire.

## 4. COMMUNICATION

**4.1 The Annual Business Plan.** The Annual Business Plan, and Manager's performance of the activities and objectives therein, shall serve as the basic framework of the relationship between the Parties. With respect to any and all communications or notices to be sent to the Commonwealth, the PM Lead and the Manager shall copy the Secretary of Revenue at contact information to be provided by the Commonwealth.

**4.2 Meetings.**

**4.2.1 Standing Meetings**. A regular meeting of the Lottery Lead and the PM Lead (each, a "**Standing Meeting**") shall be held on regular dates and times as the Parties may reasonably agree. The Standing Meeting shall be held quarterly, either in person or by telephone conference. Five (5) days prior to each Standing Meeting, the PM Lead shall provide a Report in writing to the Lottery Lead. Each Report shall, at a minimum, include a description of progress made against each objective of the Annual Business Plan, which shall include the following: (i) progress toward implementing a program to promote responsible gaming; and, (ii) any information not previously communicated concerning any other operating decision, issue, or complaint that bears significantly on the public interest, or that the Commonwealth would reasonably want to know with respect to the operations of the Lottery. In addition, each Report shall discuss any material changes proposed to the Annual Business Plan concerning: (1) the Lottery Games to be offered by Manager; (2) the prize pay-outs of Lottery Games; (3) the sales price of Lottery Tickets; (4) the type, number or amount of Prizes; (5) changes to commissions and incentives offered to Lottery; (6) planned media or marketing campaigns and promotional activities, outlining the scope, objectives, and key messages to be delivered to the public or targeted audience; (7) sponsorship relationships valued at over ten thousand dollars $10,000; and, (8) Subcontracts, Vendor Contracts or Major Procurements. The Lottery Lead may, at her sole discretion, establish thresholds, ranges, or other measures limiting the scope of changes to the Annual Business Plan that the Manager is to address in the each Report

**4.2.2 Other Meetings**. In addition to the Standing Meeting, each Party reserves the right to meet with the other Party by providing notice to the other Party at least twenty-four (24) hours

prior to the meeting. Nothing in this section shall be construed as preventing the Parties from meeting at any time by mutual agreement.

**4.2.3 Additional Information.** The PM Lead shall provide the Lottery Lead, orally or in writing, with any and all material information that the PM Lead reasonably believes the Commonwealth would want to know promptly after the PM Lead's receipt of such information. The Lottery Lead shall provide the PM Lead, orally or in writing, with any and all material information that the Lottery Lead reasonably believes Manager would want to know promptly after the Lottery Lead's receipt of such information.

**4.3 Acceptance of Reports.** The Lottery Lead may approve, disapprove, amend, or modify any of the proposed or requested changes or actions set forth in the Reports, or any part thereof, within ten (10) business days following receipt of the Report. In the case of reports not dealing with Material Governance Areas as described in Section 5.1 of this Schedule, failure by the Lottery Lead to approve, disapprove, amend, or modify any Reports, or any part thereof, shall be deemed to be an approval of said Reports (inclusive of the proposed or requested changes or actions set forth therein). In the case of reports dealing with Material Governance Areas, there will be no deemed approvals.

**4.4 Reporting**. Without limiting any other provision of the Agreement, Manager shall provide Reports to the Commonwealth in order for the Commonwealth to comply with Regulatory Requirements, requests by the legislature, for purposes of addressing constituent concerns in a form and with the contents as described by the Commonwealth within thirty (30) days (or such shorter time period which is reasonably required by the Commonwealth) following the Commonwealth's request for such Report.

## 5. DECISION MAKING

**5.1 Material Governance Areas**. For purposes of this Governance Protocols, "**Material Governance Area**" means any decision or action concerning any of the following subject matters (not otherwise previously approved by the Commonwealth): (a) Games and rules of games; (b) marketing campaigns, promotions, and promotional rules; (c) prizes and prize structures; (d) prize pay-outs outside of established ranges; (e) Subcontracts and Major Procurements; (f) price points; (g) audits (h) security of games; and (i) financial documents.

**5.2 Day-To-Day Decision Making**. Manager is not obligated to comply with the advance reporting requirements set forth in this **Schedule 5.1 (Governance Protocols)** with respect to the day-to-day responsibilities of Manager that are not Material Governance Areas. However, Manager shall comply with the advance reporting requirements with respect to the day-to-day responsibilities that are Material Governance Areas. Notwithstanding anything to the contrary in this Section, Manager shall have the continuing duty to inform the Commonwealth of any information that Manager reasonably believes the Commonwealth would want to know prior to Manager's decision on such matter.

## SCHEDULE 5.3.1(a)

## ANNUAL BUSINESS PLAN REQUIREMENTS

Subject to the additional particular requirements pertaining to the Initial Annual Business Plan as described in **Section 5.3.1 (Initial Annual Business Plan)** of the Agreement, each Annual Business Plan shall include , at a minimum, the following with respect to the immediately following Contract Year ("**Base Year**") and, unless specified otherwise, the following four (4) Contract Years thereafter (the "**Out Years**"):

a. **Executive Summary:** Description of the overall strategy, including detailed goals and objectives, for managing and growing the Lottery in a responsible manner. If Manager proposes one or more capital investment(s) equal to or in excess of **Twenty-Five Million Dollars ($25,000,000)** per investment (a "**Significant Investment**"), then Manager must describe the anticipated annual increase in Profit directly resulting from the Significant Investment over the amortization period of such investment.

b. **Organizational Structure:** Description of any material changes to the organizational structure, resources or staff of the Manager.

c. **Primary Drivers of Innovation:** Detailed analysis of the areas of innovation and value creation the Manager intends to pursue. Specifically, Manager shall describe initiatives with respect to accelerating and implementing innovation to appeal to the customer base and create value for the Lottery's beneficiaries.

d. **Growing the Customer Base:** Describe the specific activities that the Manager will design and implement to attract new, infrequent, or lapsed players to the Lottery.

e. **Operational Transparency:** Describe updates, if any, to the tools, reports, and processes that the Manager will utilize to ensure transparency of operations and facilitate the Commonwealth's exercise of control over the conduct of the Lottery.

f. **Profit Bridges:** Along with a summary of key assumptions, indicate how total Lottery Revenue and Profit can develop in the Base Year and Out Years. Provide an approximate break-down of the relative importance of each factor contributing to the incremental revenue and Profit that may be achieved under the Annual Business Plan.

g. **Projected Income Statements:** Provide Manager's requested Operating Expenses for the Base Year and its estimated Operating Expenses for each of the Out Years, which shall update the five (5) year rolling Budget.

h. **Social Responsibility:** Describe updates to the programs that Manager has designed, implemented, or administered to address the social effects of gambling by those who can least afford it and what the Manager considers to be best practices for addressing this issue.

i. **Subcontract and Vendor Contracts:** Summarize the material terms and conditions of all Subcontracts and Vendor Contracts.

j. **Schedules and Attachments to the PMA**. Provide the Schedules to the Agreement and any other attachments or documents required by the PMA including the Continuity Plans.

Manager must submit its Annual Business Plans in accordance with the structure reflected in the following table.

**Annual Business Plan Structure**

| Section | Title | Maximum Number of Pages |
|---|---|---|
| **1.0** | **Transmittal Letter** | 2 |
| **2.0** | **Business Plan** | |
| | Table of Contents | As needed |
| 2.1 | Executive Summary | 20 |
| 2.2 | Organizational Structure | 25 |
| 2.3 | Primary Drivers of Innovation | 50 |
| 2.4 | Growing the Customer Base | 25 |
| 2.5 | Operational Transparency | 25 |
| 2.6 | Net Profit Bridges | 25 |
| 2.7 | Projected Income Statements | 25 |
| 2.8 | Social Responsibility | 25 |
| 2.9 | Use of Existing Subcontractors | 25 |
| 3.0 | Attachments (including the Schedules and Attachments to the PMA) | As needed |

# SCHEDULE 5.3.1(b)

# INITIAL ANNUAL BUSINESS PLAN

# SCHEDULE 5.5

## SERVICE LEVEL AGREEMENT

**1. Purpose and Overview.**

**1.1 Purpose**. During the Term and continuing for the duration of any Disentanglement Services Period, Manager shall perform the Services in such a manner that such Services meet or exceed the Service Levels agreed by the Parties and set forth in the attached Service Level Matrix. This **Schedule 5.5 (Service Level Agreement)** sets forth the general guidelines that will be used to measure and assess Manager's performance of the Services as measured against the Service Levels. This **Schedule 5.5 (Service Level Agreement**) also sets forth the methodology for calculating SLA Credits that will be provided to the Commonwealth by Manager in the event of Manager's failure to deliver the Services at specified Service Levels.

**1.2 Overview**. Manager will be responsible for measuring its performance with respect to the Service Levels set forth in the attached Service Level Matrix.

**2. Definitions**. Any capitalized terms used in this Schedule and not otherwise defined shall have the meaning ascribed to such terms in the Agreement. Unless otherwise specified, references to "Article" or "Section" refer to the applicable Article or Section of this **Schedule 5.5 (Service Level Agreement)**.

(a) "**Actual Sales**" means the aggregate net Lottery Ticket sales during the Applicable Period.

(b) "**Average Comparison Sales**" means the average weekly Lottery Ticket sales for the Applicable Period during the thirteen (13) operating weeks preceding the week in which the gaming system was down.

(c) "**Applicable Period**" means the period of time which the central gaming system is down or experiencing degraded performance expressed as a time of operating day and a day of the week for the beginning and the ending of the Applicable Period.

(d) "**Comparison Terminal Sales**" means with respect to non-operational terminals that have been deployed for at least thirteen (13) operating weeks, the weekly average of the net online Lottery Ticket sales generated by the applicable non-operational terminal during the thirteen (13) operating weeks preceding the week in which such terminal became non-operational and (b) with respect to non-operational terminals that have been deployed for less than thirteen (13) operating weeks, the weekly average of the net online Lottery Ticket sales generated by the applicable non-operational terminal during the operating weeks preceding the week in which such terminal became non-operational.

(e) "**Duration**" means the duration of the Applicable Period in operating minutes.

(f) "**Estimated Lost System Net Revenue System Down**" means the product of (i) the ratio of (A) the Average Comparison Sales to (B) the Duration, (ii) the Net Duration (Down) and (iii) forty percent (40%).

(g) "**Estimated Lost System Net Revenue System Degraded**" means the greater of (a) the product of (i) the ratio of (A) the Average Comparison Sales minus the Actual Sales to (B) the Duration, (ii) the Net Duration Degraded and (iii) forty percent (40%)and (b) zero.

(h) "**Estimated Lost Terminal Net Revenue**" means the product of (a) the ratio of (i) the applicable Comparison Terminal Sales to (ii) one hundred nine (109) (note: 109 hours is the agreed-upon average number of operating hours per week during which Lottery Retailers are in operation), (b) the number of hours (excluding non-operating hours) of maintenance delay in excess of two (2) hours and (c) forty percent (40%)).

(i) "**Incident**" means any event that is not part of the expected, standard operation of a Service and that causes, or threatens to cause, an interruption to a Service, or a reduction in its quality. More than one Incident may be related to a single problem.

(j) "**Net Duration (Down)**" means the Duration minus three (3) minutes.

(k) "**Net Duration (Degraded)**" means the Duration minus ten (10) minutes.

(l) "**Performance Failure**" means a failure of Manager to meet a Service Level, whether or not the failure is excused.

(m) "**Root Cause Analysis**" the problem analysis process undertaken to identify and enumerate the underlying cause(s) of a Performance 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.

(n) "**Service Level Default**" means an unexcused Performance Failure; provided, however, that if a single unexcused Performance Failure could be subject to SLA Credits under multiple Service Levels, Manager shall be required to pay or credit to the Commonwealth SLA Credits under only one (1) Service Level, at the sole discretion of the Commonwealth.

(o) "**Service Level Matrix**" means the listing of the applicable Service Levels and their associated SLA Credits attached to this **Schedule 5.5 (Service Level Agreement)** as **Attachment I**.

(p) "**Validation Period**" means, for any Service Level that is subject to validation, a period of six (6) months beginning on the first day of the first month after Manager first becomes capable of measuring its performance relative to such Service Level.

## 3. Service Level Guidelines.

### 3.1 General.

(a) The Service Level Matrix sets forth the applicable Service Levels that Manager must meet or exceed in performing the Services under this Agreement. Manager shall perform such Services at levels of accuracy, quality, completeness, timeliness, responsiveness, resource efficiency, and productivity that are at least equal to those received and provided by the Commonwealth prior to the Base Services Commencement Date. At all times after the Transition, 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.

(b) To the extent the Parties have established a Service Level for a specific Service, Manager's general performance obligations as described in **subsection (a)** above shall not be construed to alter, expand, diminish, or supersede such Service Level. If more than one Service Level applies to any particular obligation of Manager, Manager shall perform in accordance with the most stringent of 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, Managers, or Third Parties under Managed Contracts unless excused in accordance with the terms of the Agreement.

**3.2 Performance Measuring and Reporting**.

(a) Manager shall monitor, measure, and report on Manager's performance of the Services against the Service Levels in accordance with the guidelines set forth in the Service Level Matrix.

(b) On or before the Base Services Commencement Date, Manager shall implement reporting procedures, all acceptable to the Commonwealth, to report Manager's performance of the Services at a level of detail sufficient, as determined by the Commonwealth, to verify Manager's compliance with the applicable Service Levels. The Commonwealth has the right to audit all such reporting procedures subject to any reasonable applicable confidentiality restrictions as set forth in **Section 11.3.1 (Audit Procedures)** of the Agreement.

(c) Throughout the Term of the Agreement and for the duration of the Disentanglement Services Period (to the extent Manager remains responsible for such Services during such period), Manager will track its performance against the Service Levels in accordance with the provisions set forth in **Attachment I** and shall provide to the Commonwealth detailed, comprehensive reports of its performance. Manager shall submit the reports to the Commonwealth in the format to be mutually agreed by the Commonwealth and Manager.

(d) The reports shall facilitate the effective management of the applicable Services and enable continuous improvement of the Services as described this **Schedule 5.5 (Service Level Agreement)**. If any report does not contain a level of detail sufficient to allow the Commonwealth to determine whether Manager has met or failed to meet a Service Level during the applicable reporting period, then the Commonwealth may provide written notice to Manager within thirty (30) days of receipt of the report, which notice must describe the reporting deficiencies in reasonable detail. Unless otherwise agreed, if within five (5) Business Days after receiving the notice, Manager fails to deliver a sufficiently detailed replacement report in an agreed format, Manager shall be deemed to have failed to meet the Service Level during the applicable reporting period.

**3.3 Performance Failures and Excused Failures**.

(a) If Manager fails to provide the Services in accordance with the general performance standards and requirements set forth in the Agreement, the Services Exhibit, this **Schedule 5.5 (Service Level Agreement)**, the Operating Standards, and the Annual Business Plan, Manager shall (after restoring service or otherwise resolving any immediate problem): (i) promptly investigate and report on the causes of the problem; (ii) provide an immediate draft Root Cause Analysis of such failure after the restoration of service or resolution of any immediate problems, and a final Root Cause Analysis within five (5) Business Days after the full restoration of service and resolution of all problems; (iii) correct the problem in accordance with the time frames set forth in the Service Level Matrix or, if no such time frames are available, as soon as practicable; (iv) advise the Commonwealth of the status of remedial efforts being undertaken with respect to such problem; (v) demonstrate to the Commonwealth's reasonable satisfaction that the causes of such problem have been corrected; and (vi) take commercially reasonable actions to prevent any recurrence of such problem. In all circumstances Manager shall reasonably coordinate the correction of the problem with Third Parties regardless of whether Manager has responsibility for the cause of the problem.

(b) Manager shall also be responsible for reporting any Incident that appears likely to result in a Performance Failure as soon as practicable but in any event within [four (4)] business hours of Manager becoming aware of such Incident.

(c) Manager's failure to perform the Services in accordance with the applicable Service Levels will constitute a Service Level Default unless (and only to the extent that) (i) such failure is caused by a Force Majeure Event,; (ii) the failure is directly attributable to the wrongful actions of, or failure to act by the Commonwealth or its agents; or (iii) Manager's non-performance is attributable to the failure of the Commonwealth to perform any of the Commonwealth's obligations expressly set forth in this Agreement which are a necessary precondition for the performance of Manager. Subsections (ii) and (iii) of the preceding sentence shall only be applicable if: (x) 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; (y) 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 (z) Manager uses commercially reasonable efforts to perform notwithstanding the Commonwealth's action or failure to act or perform..

(d) If Manager wishes to avail itself of one of the excuses in Section 3.3(c) above, then Manager will so state in the Report. In the Report, Manager will also indicate the following:

(i) which Service Level(s) is(are) affected by the excuse(s) and the calculation of the affected Service Level value(s), both with and without taking into account the effect of the excuse(s) concerned; and

(ii) all of the circumstances that give rise to the excuse, in sufficient detail to permit the Commonwealth to evaluate whether Manager's claim of excuse is valid.

(e) Manager will at all times bear both the burden of production of evidence and the burden of proof as to the existence of an excuse and the applicability of the excuse to the Performance Failure at issue, including during dispute resolution proceedings and without regard to procedural rules of the dispute resolution forum that would otherwise impose either such burden on the Commonwealth.

**4. SLA Credit Calculation**. Manager recognizes that the Commonwealth is paying Manager to deliver the Services in a manner that meets or exceeds the applicable Service Levels. If Manager fails to meet the Service Levels, then, in addition to other remedies available to the Commonwealth, Manager shall pay or credit to the Commonwealth the SLA Credits specified in the Service Level Matrix.

(a) In the event of a Service Level Default, the Commonwealth shall be entitled to receive SLA Credits to reflect the diminished value of the Services actually received by the Commonwealth. Accordingly, the SLA Credits do not constitute nor shall be construed or interpreted as penalties or as liquidated damages for a Service Level Default and they will not be deemed to constitute the Commonwealth's remedy, exclusive or otherwise, for any damages caused by a Service Level Default. In the event of a Service Level Default, the Commonwealth shall have the right to exercise any and all other rights and remedies of the Commonwealth under the Agreement. SLA Credits will be in addition to any other monetary and non-monetary remedies available to the Commonwealth under the Agreement, at law, or in equity with respect to a Service Level Default or the events that result in a Service Level Default; provided, however, that if the Commonwealth asserts any claim for damages arising from or in connection with a Service Level Default, the Commonwealth agrees that the amount of damages payable to the Commonwealth in respect of the claim will be reduced by the amount of any SLA Credit given by Manager with respect to that Service Level Default. Manager hereby irrevocably waives

any claim or defense that SLA Credits are not enforceable or that they constitute a sole and exclusive remedy of the Commonwealth with respect to a Service Level Default.

(b) To the extent the same Service Level Default could be subject to SLA Credits under multiple Service Levels, Manager shall be required to pay or credit to the Commonwealth SLA Credits under only one (1) Service Level, the choice of which shall be made by the Commonwealth at its sole discretion.

(c) If more than one Service Level Default occurs in a single calendar month, each of the SLA Credits payable for each failure shall be credited to the Commonwealth.

(d) The Parties agree that, except as expressly set forth in this **Schedule 5.5 (Service Level Agreement)**, no SLA Credits shall be applicable prior to the Base Services Commencement Date.

**5. Modification or Addition of Service Levels**.

**5.1 General**.

(a) In response to changes in the Commonwealth or the Lottery's needs, or to reflect changes in or evolution of the Services, the Commonwealth may add Service Levels and associated SLA Credits not more than once each calendar quarter during the Term in order to ensure that the Service Level Matrixes provide a fair, accurate and consistent measurement of the full range of Manager's performance of the Services throughout the Term. For example, such additions may occur in conjunction with the introduction of new equipment or software, or means of Service delivery.

(b) If the addition of a new Service Level results in additional, demonstrable costs to Manager, Manager may request an increase in the charges under the Agreement by providing information documenting such additional costs to the Commonwealth. If the Commonwealth does not agree (in the Commonwealth's reasonable discretion) to Manager's proposed increase in the Fees, the Parties will resolve the dispute concerning such costs using the dispute resolution process described in the Agreement prior to implementing the Service Level.

**5.2 Determination of Service Levels for New Service Levels**. With respect to each new Service Level that the Commonwealth adds, the following methodology will apply to determine the initial Service Level value:

(a) **Historical Performance Data Exists**. For each new Service Level for which at least six or more consecutive months of historical performance data exists within the previous twelve (12) months, then the value to be listed in the Service Level Matrixes as the Service Level will be set equal to the arithmetic mean of most recent six monthly measurements, disregarding the highest and the lowest of the six monthly measurements. Continuing the example above, the 99.90% and 99.95% month measurements would be dropped, and the Service Level would be the arithmetic mean (99.925%) of the remaining four monthly measurements (calculated as ((99.91% + 99.92% + 99.93% + 99.94%) / 4).

(b) **Historical Performance Data Does Not Exist**. For each new Service Level for which at least six months of historical performance data does not exist within the previous twelve (12) months, and for which the Parties do not otherwise agree what the Service Levels should be a reasonable initial value set by the Commonwealth for such new Service Level based upon either (A) reliable, albeit incomplete or imprecise, information relating to actual performance as against the new Service Level; or (B) industry standard performance levels; and such Service Levels will be subject to the validation procedure set forth in **Section 5.3**.

**5.3 Validation Procedure**. The terms of this **Section 5.3** apply to any of the Service Levels that the Parties have agreed are subject to validation and are so designated in the Service Level Matrixes.

(a) During the Validation Period for each Service Level designated as being subject to validation:

(i) Manager will measure and reports its performance against each such Service Level; and

(ii) Manager will use commercially reasonable efforts to meet (or exceed) the Service Levels initially set by the Commonwealth and to otherwise comply fully with the provisions of this Agreement with respect to such Service Levels; provided, however, that SLA Credits will not apply to any Service Level that is subject to validation during its Validation Period.

(b) At the end of the Validation Period, the affected Service Levels will be set in the manner specified in **Section 5.3(a) (Historical Performance Data Exists)** or at such other levels as the Parties may otherwise agree taking into account pertinent factors, including the performance data obtained during the Validation Period, applicable industry standards for comparable environments, performance prior to the Validation Period, improvements in Manager's performance and non-recurring (or remedied) events responsible for any performance degradation during the Validation Period.

6. **Continuous Improvement**. Manager shall, at no additional cost to the Commonwealth, continuously improve the delivery of the Services through the introduction of tools, techniques and other procedures so that the Service Levels are improved over the Term so as to provide continuous quality assurance and quality improvement through: (a) the identification and application of proven techniques, tools and procedures used in the industry that would benefit the Commonwealth or the Lottery; and (b) the implementation of programs, practices and measures designed to ensure that, as a minimum, the Services are performed in accordance with this Agreement and to improve levels of performance, including any programs, practices and measures specified in this Agreement.

# ATTACHMENT I

## TO SCHEDULE 5.5 (SERVICE LEVEL AGREEMENT)

**1. Definitions.** Capitalized terms used in this Attachment I to **Schedule 5.5 (Service Level Agreement)** shall have the meanings ascribed to them in these Definitions for Attachment I to **Schedule 5.5 (Service Level Agreement)**. Other capitalized terms used in this Agreement are defined in the context in which they are used and shall have the meanings ascribed to them herein or as otherwise understood in accordance with generally accepted industry standards.

"**Accounting Week**" means starting on commencement of Sales Day Tuesday and ends at the end of Sales Day the following Monday.

**"Back-Up Data Center"** means the secondary computer facility located within the forty-eight (48) contiguous United States at which a Back-Up Central System that processes in real time the mirror image of the System is installed and that will become the Primary Data Center in the event that the Primary System installed at the Data Center is not operating.

**"Communications Network"** or **"Network"** means a Communications Network that may utilize various communications methodologies approved by the Lottery which provides interfaces and compatibility between terminals, modems, data sets, lines, satellites, other communications equipment or devices and Manager's Subcontractor's Primary and Back-Up Computer Systems.

**"Degraded Performance"** means if the System is not capable of providing all of the services or functionality required of Manager or as agreed by the Parties for reasons other than Force Majeure or Network or communications failures.

**"Down"** means the System shall be Down if a transaction submitted by any terminal in the System is not processed by the System due to System failures, other than Network or communications failures or other failures which are determined to be outside the responsibility of Manager's Subcontractor, including Force Majeure Event.

**"Instant Ticket"** means a hard copy bearer instrument that is a player's record of a Wager for participation in an instant Lottery game.

**"Instant Ticket Vending Machine**" or "**ITVM"** means a free-standing device that may be connected to the System for use by Lottery game players which, upon the insertion of cash or other acceptable method of payment, dispenses' Instant Tickets selected by the players.

**"Lottery Retailer"** or **"Retailer"** means an established business which is a party to a contract with the Lottery to sell Lottery Tickets.

**"Lottery Ticket"** means any ticket to a game sold by the Lottery representing a Wager and processed on the System.

**"On-Line Games," "Terminal Based Games,"** or **"Games"** means Games, also known as terminal-based games, which are sold, recorded, validated and redeemed through the System to be provided by Manager's Subcontractor pursuant to the Managed Contract.

**On-Line Terminals"** means the terminal installed at Lottery Retailer locations for the for the purpose of selling and redeeming tickets sold and performing accounting functions for On-Line Games, activating Instant Tickets, validating Instant Tickets and performing pack management and accounting functions.

**"PAT" (Player Activated Terminal)** means a self-service device that allows Lottery players to place Wagers on any Lottery On-Line or Instant Game. The PAT is connected to the System and records Transactions in the same manner as On-line Terminals.

**"System"** means the System to be furnished by Manager's Subcontractor pursuant to the Managed Contract which sells and redeems On-Line Tickets, validates Instant Tickets, and performs accounting and pack management functions for On-Line and Instant Tickets at the Primary Data Center and Back-up Data Center pursuant to the Managed Contract.

**"Transaction"** means an action initiated at a terminal and recorded on the System which is assigned a unique transaction number in the System.

**"Up"** means when the System is fully operational and is capable of performing services as set forth in the Managed Contract.

**"Wager"** means one play for a specified Lottery drawing of a Lottery game.

**2. Service Levels and SLA Credits.**

| SLA No. | SERVICE LEVEL | SLA CREDITS |
|---|---|---|
| | **CENTRAL GAMING SYSTEM SERVICE LEVELS** | |
| **1** | **Central Gaming Systems Down.**<br>(a) Manager will ensure that the central gaming systems are not "down" for more than five (5) minutes during the operational hours for sales or validation on any day. Central gaming systems are considered "down" if Lottery Tickets cannot be sold, Lottery Tickets cannot be canceled (pursuant to permitted conditions), or winning Lottery Tickets cannot be validated during the operational sales period each day. | (a) If the central gaming systems are down for more than five (5) minutes during the operational hours for sales or validation on any day, the Commonwealth may assess SLA Credits in an amount equal to Estimated Lost System Net Revenue System Down. The Estimated Lost System Net Revenue System Down shall be used to calculate the damages during this period (less the five (5) minute grace period).<br>The total time during which the central gaming systems are down during the day will be calculated as the sum of all time during such daily operational sales period when the systems are down. |

| SLA No. | SERVICE LEVEL | SLA CREDITS |
|---|---|---|
| | (b) To the extent that the central gaming system is under the control of Manager's Subcontractor pursuant to a Managed Contract, the central gaming system shall be considered "Down" if:<br><br>i. The System experiences complete failure for any period of time totaling greater than five (5) minutes during any Sales Day (a single event or combined total of time), or ten (10) minutes per Accounting Week, the Lottery may in its discretion assess liquidated damages. | For example, five (5) one-minute long instances of down time in one day constitute five (5) minutes of daily down time.<br><br>(b) To the extent that the central gaming system is under the control of Manager's Subcontractor pursuant to a Managed Contract, the total aggregated liquidated damages assessed during any one (1) contract year for System failure or Degraded Performance is limited to the greater of either (i) the amount the Manager actually receives from the Manager's Subcontractor under a Managed Contract, or (ii) the sum of ten million dollars ($10,000,000) plus any liquidated damages assessed against the Manager's Subcontractor during the preceding twelve (12) months of operation of the Managed Contract. In addition, the total aggregated liquidated damages assessed during any Accounting Week shall not exceed six hundred thousand dollars ($600,000).<br><br>For the purposes of calculating liquidated damages, the Lottery will calculate the amount of damages based upon the average dollar amount of the net return to the Commonwealth (gross revenue received by the Lottery from Wagers less prizes, commissions and promotions) received by the Lottery based on the Wagers made during the time of day and duration the System experiences complete failure, or during the time of day and duration of Degraded Performance, for the thirteen (13) sales weeks immediately prior to the week in which the failure or Degraded Performance occurred. Should the System experience Degraded Performance or complete failure when the advertised jackpot of a Powerball® game or other multistate game of which the Commonwealth is a participant is less than two hundred million dollars ($200,000,000), such thirteen-week calculation |

| SLA No. | SERVICE LEVEL | SLA CREDITS |
|---|---|---|
| | | shall exclude any sales week during which such advertised jackpot exceeds the advertised jackpot for the sales week in which the failure or Degraded Performance occurred, divided by thirteen (13). Should the System experience Degraded Performance or complete failure when the advertised jackpot of a Powerball® game or other multistate game of which the Commonwealth is a participant exceeds two hundred million dollars ($200,000,000), liquidated damages shall be calculated by determining the dollar amount of Wagers placed on the previous thirteen (13) times the Powerball® or other multistate game jackpot exceeded two hundred million dollars ($200,000,000), on the day of the sales week in which the failure or Degraded Performance occurred, divided by thirteen (13) . Either such amount shall comprise the applicable "Base Amount."<br><br>(c) To the extent that the central gaming system is under the control of Manager's Subcontractor pursuant to a Managed Contract, and the System cannot process any Transactions (a complete System failure), the Lottery may in its discretion assess as liquidated damages for each minute of System failure in excess of five (5) consecutive minutes during any Sales Day or ten (10) minutes during any Accounting Week an amount equal to the Base Amount for those minutes. |
| **2** | **Gaming Host System Degraded Performance.**<br>(a) Manager will ensure that the central gaming system does not evidence "degraded performance" for more than sixty (60) minutes during the operational hours of sales or validation on any day. The central gaming system shall be considered as having degraded performance if: | (a) If the central gaming system experiences degraded performance for more than sixty (60) minutes during the operational hours for sales or validation on any day, the Commonwealth may assess SLA Credits in an amount equal to Estimated Lost System Net Revenue System Degraded. The Estimated Lost System Net Revenue System Degraded shall be |

| SLA No. | SERVICE LEVEL | SLA CREDITS |
|---|---|---|
| | i. The central gaming system processes transactions from less than ninety-five percent (95%) of the installed and operational lottery terminals;<br><br>ii. The central gaming system processes transactions from all Lottery terminals, but not for all gaming products and Lottery Retailer-related activities (degraded performance exists if the gaming host systems do not allow sales, cashes, or cancellations for on-line games, or do not support activations, disabling, or settlements for instant tickets);<br><br>iii. transactions do not log to at least two (2) lottery systems, one (1) remote system, and to the ICS;<br><br>iv. Critical functions of central gaming system management and administration cannot be conducted by the management workstations (e.g., file transfers to the Lottery);<br><br>v. Instant ticket inventory management is compromised (e.g., the ability to receive, order, pack, and ship instant tickets in a manner concordant with production schedules); or<br><br>vi. During a defined promotion period the central gaming system cannot issue tickets or conduct transactions to support an intended promotion.<br><br>(b) To the extent that the central gaming system is under the control of Manager's Subcontractor pursuant to a Managed Contract, the central gaming system shall be considered as having degraded performance if any of the following conditions exist in excess of one (1) hour in aggregate in any day: | used to calculate the damages during this period (less the sixty (60) minute grace period).<br><br>The total time during which the central gaming systems are down during the day will be calculated as the sum of all time during such daily operational sales period when the systems are operating at "degraded performance level." For example, six (6) ten (10) minute long instances of down time in one day constitute sixty (60) minutes of daily degraded performance.<br><br>(b) To the extent that the central gaming system is under the control of Manager's Subcontractor pursuant to the Managed Contract, the Lottery may in its discretion assess as liquidated damages for Degraded Performance in the following instances: |

| SLA No. | SERVICE LEVEL | SLA CREDITS |
|---|---|---|
| | i. If the average transaction time for a single On-Line Wager Transaction exceeds four (4) seconds during each Sales Day, or the average transaction time for multiple On-Line Wager Transactions exceeds seven (7) seconds during each SDay. | i. Where the average transaction time for a single On-Line Wager Transaction exceeds four (4) seconds during each Sales Day, or the average transaction time for multiple On-Line Wager Transactions exceeds seven (7) seconds during each Sales Day, the Lottery may in its discretion assess as liquidated damages for Degraded Performance five thousand dollars ($5,000) per day. |
| | ii. If data is not received on at least three (3) media, as approved by the Lottery, prior to the issuance of any ticket. At least one (1) copy must be off-site. Acceptable media shall be a combination of the following: non-volatile memory, disk, magnetic tape, cartridge, optical disk, or others approved by the Lottery and agreed to by Manager or its Subcontractor under a Managed Contract in an executed memorandum of understanding. | ii. When data is not received on at least three (3) media, as approved by the Lottery, prior to the issuance of any ticket, the Lottery may in its discretion assess as liquidated damages for Degraded Performance five thousand dollars ($5,000) per day. |
| | iii. If all services are available but only to some On-Line Terminals, not due to a Communications Network failure. | iii. When all services are available but only to some On-Line Terminals, not due to a Communications Network failure, the Lottery may in its discretion assess as liquidated damages for Degraded Performance in this case the Base Amount times the proportion of the Network not being served. |
| | iv. If the System fails to process some but not all Wager and Lottery Ticket validation Transactions. | iv. When the System fails to process some but not all Wager and Lottery Ticket validation Transactions, the Lottery may in its discretion assess as liquidated damages for Degraded Performance in this case fifty (50%) percent of the Base Amount. Examples: The System can sell but not validate On-Line Tickets; the System can validate Instant Tickets but not On-Line Tickets; the System can sell some but not all On-Line Games. |
| **3** | **Terminal and Peripheral Repair.**<br>Subject to SLA No. 4 below, Manager shall ensure that "non-operational" Lottery terminals are repaired or replaced and | For critical failures which either (a) are not resolved within two |

| SLA No. | SERVICE LEVEL | SLA CREDITS |
|---|---|---|
| | operational within two (2) hours of terminal problem notification from the Lottery Retailer or from a network monitoring process. A Lottery Retailer terminal is considered non-operational if Lottery Tickets cannot be sold or canceled (under permitted conditions) or validations cannot be performed, or if the reader and/or scanner cannot process wagers or playslips. "Terminal" includes the Lottery Retailer terminal, all associated peripherals, and check writing equipment provided by Manager. Critical failures are any failures that involve readers, scanners, retailer display screens, or printers or any other items required to sell or validate Lottery products.<br><br>For less critical failures that do not render the terminal non-operational as defined above (for example, the terminal's jackpot display is out of service), Manager shall complete such repair within twenty-four (24) hours from the time of notice by the Lottery Retailer. | (2) hours of terminal problem notification from the Lottery Retailer or from a network monitoring process (including only those hours in which the relevant Lottery Retailer is open) or (b) adversely affect ten percent (10%) or more of the installed terminal network, the Commonwealth may impose SLA Credits in an amount equal to Estimated Lost Terminal Net Revenue for time periods in excess of the two (2) hour grace period.<br><br>For less critical failures, the Commonwealth may impose SLA Credits of One Hundred Dollars ($100.00) per non-operational terminal per day, or fraction thereof, until a repair has been completed for time periods in excess of the twenty-four (24) hour grace period. |
| **4** | **Terminal and Peripheral Repair**:<br>To the extent that terminal repair is under the control of Manager's Subcontractor pursuant to a Managed Contract, the following SLA shall apply and SLA No. 3 shall not apply:<br><br>Manager or Manager's Subcontractor staff shall accept and log trouble calls any time the host system is Up for production operations and the On-Line Terminals and PAT may be in use. Trouble calls will be resolved over the phone or a repair technician must be dispatched during normal Manager Subcontractor field service hours (currently 6:00 a.m.-10:00 | To the extent that terminal repair is under the control of Manager's Subcontractor pursuant to a Managed Contract, the following liquidated damages shall apply and SLA Credit No. 3 shall not apply:<br><br>In the event Manager or Manager's Subcontractor fails to respond to a trouble call within the applicable response time, the Lottery may assess as liquidated damages up to two hundred dollars ($200) per hour per Terminal, PAT, or ITVM subject to a trouble call exceeding the applicable response and repair time. |

| SLA No. | SERVICE LEVEL | SLA CREDITS |
|---|---|---|
| | p.m.), which service hours may be amended from time to time by agreement of the Parties. If a trouble call arises within one (1) hour of the end of Manager Subcontractor's field service hours or the retailer's business day, whichever is earlier, then repair may be deferred until commencement of field service hours the next Sales Day so that the retailer does not experience a total outage greater than the response time limit when the retailer is both open for business and the System is Up.<br><br>Manager or Manager's Subcontractor must respond to all trouble calls for Online Terminals, PAT, and all other terminals for the sale of Online Lottery Tickets, and ITVMs within two (2) hours in the following counties: Allegheny, Beaver, Berks, Bucks, Butler, Cambria, Chester, Crawford, Cumberland, Dauphin, Delaware, Erie, Lackawanna, Lancaster, Lawrence, Lebanon, Lehigh, Luzerne, Mercer, Montgomery, Northampton, Philadelphia, Somerset, Washington, Westmoreland, and York, and total of four (4) hours in all other counties. The time for response assumes that a Retailer is both open and the System is Up.<br><br>All repairs shall be completed within thirty (30) minutes of Manager's or Manager's Subcontractor's arrival at the Lottery Retailer location. The determination of whether a terminal failure is due to a communications failure or a terminal-related failure is subject to verification by the Lottery. | In the event Manager or Manager's Subcontractor cannot in good faith repair a PAT or ITVM within the response and repair time and must replace the PAT or ITVM, Manager or Manager's Subcontractor shall have one (1) Sales Day to replace such PAT or ITVM. In the event Manager or Manager's Subcontractor under a Managed Contract fails to replace such PAT or ITVM within one (1) Sales Day, the Lottery may assess as liquidated damages up to two hundred dollars ($200) per hour until such PAT or ITVM is replaced.<br><br>The liquidated damages set forth in this section will also apply if Manager or Manager's Subcontractor have neglected to supply necessary consumables to a retailer so that as a. result the retailer cannot operate and the Terminal, PAT or ITVM is, in effect, Down. This provision is not in addition to the provision of a supplies shortage provision above. (The decision as to which liquidated damages provision applies to the failure to provide supplies shall be at the sole discretion of the Lottery.) |

| SLA No. | SERVICE LEVEL | SLA CREDITS |
|---|---|---|
| 5 | **Communications Network Service Levels.**<br>Manager must provide a design for a telecommunications network to serve the Lottery. The Lottery requires a communications network maintained in proper working order at all times as to ensure that the system is fully available to the Lottery and Lottery Retailers. Communications equipment at the Lottery Retailer's premises shall be considered part of a terminal repair or maintenance. | In the event of a failure of this service level, the Lottery may in its discretion assess SLA Credits for the total time that the Communications Network is unavailable during each calendar month that exceeds the 99.85% service level agreement. Such SLA Credits shall be calculated using the Base Amount for each one (1) minute of Network outage, or fraction thereof, provided that no such Network outage is caused by (i) the fault of the Retailer, the Lottery, any subcontractor of the Lottery; or, (ii) the failure or unavailability of cellular, land line or satellites or transponders providing service to the Manager's Subcontractor; or, (iii) Force Majeure Events, including weather fade; or, (iv) telecommunications service provider or telecommunications service provider component failures. |
| | **SECURITY** | |
| 6 | **Physical Security.**<br>Subject to SLA No. 7 below, Manager must implement stringent security measures to prevent unauthorized entry and activity at the site(s) of the central gaming system, as well as support any applicable federal and local fire and safety regulations (a "**Physical Security Breach**"). At a minimum the program must (the "**Physical Security Requirements**"):<br>• Prevent unauthorized persons from accessing the facilities;<br>• Provide a record of all entries and exist from each facility;<br>• Include access control and an intrusion system at each site; and<br>• Provide a system to monitor all activities at entrances/exits and all other high security/sensitive areas. | Ten Thousand Dollars ($10,000) per Incident of Physical Security Breach due to Manager's failure to maintain Physical Security Requirements. |

| SLA No. | SERVICE LEVEL | SLA CREDITS |
|---|---|---|
| | | |
| 7 | **Physical Security under a Managed Contract**.<br>To the extent that such physical security is under the control of Manager's Subcontractor pursuant to a Managed Contract, the following SLA shall apply and SLA No. 6 shall not apply:<br><br>Manager shall provide, install and maintain security for the computer, office and services facilities with limit and control unauthorized persons from accessing the computer facility and the computerized system. Said Security System shall be approved by the Lottery Lead. | To the extent that such physical security is under the control of Manager's Subcontractor pursuant to a Managed Contract, then should the system not be installed in accordance with the instructions approved by the Lottery Lead, the Lottery may in its discretion assess as liquidated damages, an amount of five thousand dollars ($5,000) per violation. For purposes of this section, "violation" shall mean the failure to deliver, properly install, or maintain any of the requirements for the approved Security System. |
| 8 | **Data Security.**<br><br>The central gaming system must adhere to the data protection requirements set forth in the Agreement and Operating Standards (the "**Data Security Requirements**"). Any intrusion or attack on Lottery data which results in unauthorized access to or disclosure of Lottery data shall be a "**Data Security Breach**". | Ten Thousand Dollars ($10,000) per Incident of Data Security Breach due to Manager's failure to maintain Data Security Requirements.<br><br>With respect to this section, there shall be no obligations on Manager more stringent than the obligations of Manager's Subcontractor pursuant to a Managed Contract as long as such Managed Contract is in effect. |
| **REPORTING REQUIREMENTS** | | |
| 9 | (a) Manager must provide each of the following reports (each, a "**Performance Report**"):<br><br>• A weekly, monthly, quarterly and annual reporting on each of the "Central Gaming System Service Levels" included above, including measurement and analysis of performance against such Service Levels;<br><br>• An immediate report of any security violation, Central | Beginning with the third day after a Performance Report was due, One Thousand Dollars ($1,000) per day of delay until such Performance Report is delivered to the Commonwealth. |

| SLA No. | SERVICE LEVEL | SLA CREDITS |
|---|---|---|
| | System compromise, or violations of law (*e.g.*, theft); and<br><br>• An immediate report of the involvement of any of Manager's employees, owners, or agents in any known criminal arrest or investigation. | |
| **10** | To the extent that certain reports are provided to Manager by Manager's Subcontractor pursuant to a Managed Contract, the following SLA shall apply and SLA No. 9 shall not apply:<br><br>**(a) Late or Missing Reports**<br><br>i. *Failure to Provide Progress Reports*:<br>Manager shall provide all reports required by the procurement or by the Agreement, including scheduled implementation progress reports. Implementation and progress reports shall be provided on a weekly basis, or as otherwise agreed by the Parties, beginning with the signing of the Contract on a day of the week agreed to by Manager and the Lottery.<br><br>ii. *Failure to Provide On-Line Terminal Reports*:<br>Manager must provide any one (1) or more Retailer On-Line Terminal, PAT, or ITVM reports that have been deployed on the System as specified by the Lottery.<br><br>iii. *Lottery Weekly Settlement Reports*:<br>Manager must provide the Lottery with Lottery Weekly Settlement Reports for all Lottery Retailers. | With respect to this section, to the extent that Manager is relying on Manager's Subcontractor to provide any Performance Report pursuant to a Managed Contract, the following SLA Credits shall apply and SLA Credit No. 9 shall not apply:<br><br>i. In the event that Manager fails to provide a Performance Report within the forty-eight (48) hour period, the Lottery may in its discretion assess as liquidated damages an amount of five hundred dollars ($500) per day until such report is received by the Lottery.<br><br>ii. In the event that Manager is unable to provide any one (1) or more Retailer On-Line Terminal, PAT, or ITVM reports that have been deployed on the System as specified by the Lottery due to the fault of Manager Subcontractor or Manager Subcontractor-supplied equipment and software, Manager shall have twenty-four (24) hours in which to provide such Retailer report. In the event Manager fails to provide such report to the Lottery within the twenty-four (24) period, the Lottery may in its discretion assess as liquidated damages five thousand dollars ($5,000) per day per report, until such condition is resolved.<br><br>iii. In the event that Manager is unable to provide the Lottery with Lottery Weekly Settlement Reports for all Lottery Retailers due to the fault of Manager's Subcontractor or Manager's Subcontractor-supplied equipment or software, Manager shall |

| SLA No. | SERVICE LEVEL | SLA CREDITS |
|---|---|---|
| | | have one (1) hour from receipt of notice from the Lottery in which to provide such report. In the event Manager fails to provide such report to the Lottery within the one (1) hour period, the Lottery may in its discretion assess as liquidated damages an amount of five hundred dollars ($500) per hour until such condition is resolved. |
| | iv. *Daily Operational Reports Delivery*:<br>Daily operational reports must be available by 7:00 a.m. | iv. In the event that the daily operational reports are not available by 7:00 a.m., Manager shall have one (1) hour to provide such report to the Lottery. In the event Manager fails to provide the missing daily operation reports to the Lottery within the one (1) hour period, the Lottery may in its discretion assess as liquidated damages an amount of five thousand dollars ($5,000) per day for any number of reports which are late or not delivered, subject to a one (1) hour grace period from the initial request for such report by the Lottery. This provision shall include reports available for viewing, printing, or downloading by management terminals. |
| | v. *Matrix Game(s) Balancing Reports*:<br>It is critical to the public reputation of the Lottery that Lottery Retailers be able to pay prizes on winning Lottery Tickets, both Instant Games and On-line Games, promptly. The Lottery requires timely preparation of reports for On-Line Games that use matrices to determine the prize payment amounts (Matrix Game(s) Balancing Reports) to facilitate the availability of prize information and prize payments to Lottery players. The Matrix Game(s) Balancing Reports for each matrix game drawing must be provided to the Lottery within thirty (30) minutes of certification by the Lottery of the game's winning numbers. In the case of Powerball® or other multi-state lottery game drawing, the winning numbers will be certified by the game's governing body. | v. In the event that Manager fails to timely provide the Lottery with any Matrix Game(s) Balancing Report, the failure to provide such report being solely the fault of Manager's Subcontractor or Manager's Subcontractor-supplied equipment or software, Manager shall have thirty (30) minutes to provide such missing report to the Lottery. In the event Manager fails to provide such missing report within the thirty (30) minute period, Manager shall pay to the Lottery liquidated damages in the amount of five thousand dollars ($5,000) per thirty (30) minutes or portion thereof until such report is received by the Lottery. |

| SLA No. | SERVICE LEVEL | SLA CREDITS |
|---|---|---|
| **11** | (a) Late Reports, Game Files and Information.<br><br>(b) Faulty Reports, Game Files and Information. | (a) In the event the Manager fails to provide any report, Game file, or information contained in those reports or Game files in and in accordance with the manner and schedule agreed upon in the Agreement, or otherwise mutually agreed to by the Parties the Lottery may assess liquidated damages of $1,000 per day, per report, Game file, or information contained in those reports or Game files until correct, complete and usable reports, Game files or information are provided.<br><br>(b) In the event the Manager's reports, Game files, or information contained in those reports or Game files agreed to in Agreement, or otherwise mutually agreed to by the Parties, are incorrect, incomplete or unusable, the Lottery may assess liquidated damages of $1,000 per day for each report, Game file, or information until correct, complete and usable reports, Game files or information contained in those reports or Game files are provided. |

# SCHEDULE 6.3.1

## MANAGER KEY PERSONNEL

## [TO BE INCLUDED AS PART OF THE ANNUAL BUSINESS PLAN]

# SCHEDULE 7.2

## APPROVED SUBCONTRACTS AND VENDOR CONTRACTS

Manager-identified Subcontracts and Vendor Contracts are listed below:

**[TO BE INCLUDED AS PART OF THE ANNUAL BUSINESS PLAN]**

# SCHEDULE 8.2.1

## MANAGER INTELLECTUAL PROPERTY

**[TO BE INCLUDED AS PART OF THE ANNUAL BUSINESS PLAN]**

# SCHEDULE 10.1

## COMPENSATION AND PAYMENT TERMS

Manager shall receive Operating Expenses, Manager Expenses, and payment of Incentive Compensation, in accordance with and pursuant to **Article 10 (Compensation and Payment Terms)** of the Agreement and this **Schedule 10.1 (Compensation and Payment Terms)**. All capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Agreement.

**1. Definitions.**

(a) "**Amortization Methodology**" means one of the two following methodologies that results in the quickest depreciation or amortization of the applicable asset:

(i) a methodology under which the applicable period and rate of depreciation or amortization is both (A) not longer than straight line depreciation or amortization over the useful life (as defined by or reasonably acceptable to the Commonwealth); and (B) not shorter than the generally acceptable industry standards of any first tier provider for comparable capital expenditure investments; or

(ii) a methodology under which the depreciation or amortization of the capital expenditure investment is calculated in accordance the Regulatory Requirements of the United States for taxation (including the Internal Revenue Code).

(b) "**Annual Profit Commitment**" means the Profit threshold to be achieved by the Manager in each Contract Year as set forth in **Section 3.2 (Annual Profit Commitment)** below.

(c) "**Annual Profit Commitment Shortfall**" means the dollar value of the difference between the Annual Profit Commitment for such Contract Year and the Profit for such Contract Year to the extent that the level of Profit is less than the Annual Profit Commitment applicable to such Contract Year.

(d) "**Cash Collateral Draw**" has the meaning set forth in **Section 5 (Manager's Security Draw)** of this **Schedule 10.1 (Compensation and Payment Terms)**.

(e) "**Commonwealth Expenses**" mean the operating expenses of the Commonwealth for the services to be performed by the Commonwealth as set forth in **Schedule 2.2 (Responsibilities of the Commonwealth)**.

(f) "**Commonwealth's Recommended Adjustments**" has the meaning set forth in **Section 4.1(b) (Upward Adjustment to Annual Profit Commitment)**.

(g) "**Gross Profit**" means, on an accrual basis, all Revenue derived from the Lottery, less prizes, commissions to Lottery retailers, Operating Expenses, and Commonwealth Expenses .

(h) "**Incentive Compensation**" means the sum of Tier 1 Compensation and Tier 2 Compensation described in subsections (a) and (b) of **Section 3.3 (Incentive Compensation)** below, subject to **Section 3.1 (Cap on Incentive Compensation)** below.

(i) "**LOC Draw**" has the meaning set forth **in Section 5 (Manager's Security Draw)** of this **Schedule 10.1 (Compensation and Payment Terms)**.

(j) "**Manager Expenses**" means 0.75% multiplied by the total annual Gross Profit. Manager Expenses shall not include any Operating Expenses.

(k) "**Manager Surplus**" has the meaning set forth **in Section 2(d) (Establishment of Operating Expenses, Manager Expenses and Commonwealth Expenses)**.

(l) "**Manager's Recommended Adjustments**" has the meaning set forth in **Section 4.2(a) (Downward Adjustment to Annual Profit Commitment)**.

(m) "**Manager's Security Draw**" means one or more of the following: (i) the LOC Draw; or (ii) the Cash Collateral Draw.

(n) "**Operating Expenses**" mean: (i) the actual amounts required by Manager to pay Subcontractors and other Vendors for goods and services provided in support of the operation of the Lottery and approved in advance by the Commonwealth, the Lottery Lead or the Annual Business Plan; provided that all Subcontractors and Vendors are procured in compliance with **Article 7 (Subcontractors and Vendor Contracts)** of the Agreement; plus (ii) the actual amounts required to reimburse Manager for documented expenses incurred by the Manager for activities set forth in the Annual Business Plan and approved in advance by the Commonwealth. Such expenses shall include audit, communications, in-state travel, insurance, multi-state consortium fees, real estate occupancy, fees incurred in connection with the LOC, responsible gaming programs, personnel and vehicles. Operating Expenses exclude retailer commissions, prizes, and Manager Expenses. For clarity, Operating Expenses do not include the Operating Surplus, which shall be included as part of Gross Profit.

(o) "**Operating Surplus**" has the meaning set forth in **Section 2(b) (Establishment of Operating Expenses, Manager Expenses and Commonwealth Expenses)**.

(p) "**Professional's Downward Adjustments**" has the meaning set forth **in Section 4.2(b) (Upward Adjustment to Annual Profit Commitment)**.

(q) "**Professional's Upward Adjustments**" has the meaning set forth in **Section 4.1(c) (Upward Adjustment to Annual Profit Commitment)**.

(r) "**Profit**" means Gross Profit less Manager Expenses.

(s) "**Tier 1 Compensation**" has the meaning set forth in **Section 3.3(a) (Incentive Compensation Tiers)** below.

(t) "**Tier 1 Upper Bound**" means the Annual Profit Commitment multiplied by one and one hundredth (1.01).

(u) "**Tier 2 Compensation**" has the meaning set forth in **Section 3.3(b) (Incentive Compensation Tiers)** below.

(v) "**Unamortized Amount**" means the difference between: (a) the total amount of the capital expenditure investment that may be depreciated or amortized; and (b) the amount depreciated or amortized for such capital expenditure investment under the Amortization Methodology.

(w) "**Value Drivers**" has the meaning set forth in **Section 4.1(b) (Upward Adjustment to Annual Profit Commitment)**.

**2. Establishment of Operating Expenses, Manager Expenses and Commonwealth Expenses.**

(a) The Operating Expenses shall be established for the Initial Contract Year in the Manager Bid and the Initial Annual Business Plan, and adjusted each Contract Year thereafter pursuant to the Updated Annual Business Plan process described in **Section 5.3 (Annual Business Plan)** of the Agreement. The Parties acknowledge and agree that certain Operating Expenses agreed upon in the Annual Business Plan may increase or decrease based on Revenues or Profits to the Lottery.

(b) To the extent that the Commonwealth paid any amounts to Manager in excess of the actual Operating Expenses ("**Operating Surplus**"), Manager shall reimburse the Commonwealth for such amount within thirty (30) days following the end of the applicable Contract Year.

(c) To the extent the Commonwealth approves any increases in Operating Expenses under a previously approved Annual Business Plan as set forth in **Section 5.3 (Annual Business Plan)**, then the Annual Profit Commitment may be increased as set forth in **Section 5.3 (Annual Business Plan)** of the Agreement to the extent such Operating Expenses increase Profit.

(d) For the purpose of invoicing and budgeting, as an estimate of Manager Expenses, the Commonwealth shall pay the Manager an amount equal to one-twelfth (1/12th) of 0.75% multiplied by the Annual Profit Commitment for the applicable Contract Year on a monthly basis and in arrears; provided, however, Manager Expenses shall be reconciled annually based on Gross Profit in accordance with **Section 10.2.2 (Annual Invoice for Incentive Compensation)**. The Parties acknowledge and agree that the Manager Expenses represent a fair and reasonable estimate of the amount of actual indirect overhead and other expenses not otherwise defined as the Operating Expenses. To the extent that the Commonwealth paid any amounts in excess of actual Manager Expenses ("**Manager Surplus**"), Manager shall reimburse the Commonwealth for such amount within thirty (30) days following the end of the applicable Contract Year.

(e) The Annual Business Plan shall include the annual Commonwealth Expenses provided by the Commonwealth. To the extent that the Commonwealth expends a greater amount than the amount of Commonwealth Expenses included in the Annual Business Plan in any Contract Year, such additional expenses shall not reduce Profit for purposes of calculating the Annual Profit Commitment (for the purpose of calculating Incentive Compensation) in any Contract Year. Unless otherwise mutually agreed by the Parties in accordance with the Annual Business Plan, the Commonwealth Expenses shall not exceed fifteen million dollars ($15,000,000) in Contract Year 2. For each Contract Year thereafter, the Commonwealth shall provide to the Manager an estimate for the immediately subsequent Contract Year no later than March 1 of each calendar year.

(f) With respect to the Operating Expenses or the Manager Expenses, the Commonwealth deems the following expenses allowable indirect expenses. Any conflict between the Parties with respect to whether an expense is considered allowable shall be determined by the Commonwealth in its reasonable discretion and in accordance with Commonwealth Policies and Rules:

(i) Audit costs and related services

(ii) Communication costs

(iii) Compensation for Personal Services

(iv) Depreciation and use allowances

(v) Employee morale, health, and welfare costs

(vi) Equipment and other capital expenses

(vii) Insurance and indemnification

(viii) Professional services costs

(g) With respect to the Operating Expenses or the Manager Expenses, the Commonwealth deems the following expenses unallowable indirect expenses. Any conflict between the Parties with respect to whether an expense is considered unallowable shall be determined by the Commonwealth in its reasonable discretion and in accordance with Commonwealth Policies and Rules:

(i) Entertainment costs

(ii) Monetary contributions or donations

(iii) Goods or services for personal use

(iv) Lobbying

(v) Bad debts

(vi) Donated Services

(vii) Contingency provisions

(viii) Fund raising

(ix) Investment management costs

(x) Financing Interest costs

**3. Incentive Compensation.**

**3.1 Cap on Incentive Compensation**. In any given Contract Year, the Incentive Compensation payable to Manager plus any amounts paid by the Commonwealth that are not allowable expenses of Manager shall not exceed five percent (5.0%) of Profit for such Contract Year.

**3.2 Annual Profit Commitment**.

(a) The Annual Profit Commitments during the Term shall be as follows:

| **Contract Year** | **Annual Profit Commitment** | **Tier 1 Upper Bound** |
|---|---|---|
| **Contract Year 1** | $["A"] | "A" multiplied by 1.01 ("B") |
| **Contract Year 2** | $[__] | |
| **Contract Year 3** | $[__] | |
| **Contract Year 4** | $[__] | |

| **Contract Year** | **Annual Profit Commitment** | **Tier 1 Upper Bound** |
|---|---|---|
| **Contract Year 5** | $[__] | |
| **Contract Year 6** | $[__] | |
| **Contract Year 7** | $[__] | |
| **Contract Year 8** | $[__] | |
| **Contract Year 9** | $[__] | |
| **Contract Year 10** | $[__] | |
| **Contract Year 11** | $[__] | |
| **Contract Year 12** | $[__] | |
| **Contract Year 13** | $[__] | |
| **Contract Year 14** | $[__] | |
| **Contract Year 15** | $[__] | |
| **Contract Year 16** | $[__] | |
| **Contract Year 17** | $[__] | |
| **Contract Year 18** | $[__] | |
| **Contract Year 19** | $[__] | |
| **Contract Year 20** | $[__] | |

* [Inserted from Manager Bid dated [_____] and signed by [_____]].

(b) The Parties acknowledge and agree that Contract Years 1 through 20 are binding; provided, however, that commencing on Contract Year 11, the Annual Profit Commitment may be adjusted as mutually agreed upon the Parties as part of the Annual Business Plan provided that the Annual Profit Commitment for any Contract Year commencing on Contract Year 11 shall not be less than the Annual Profit Commitment for the immediately prior Contract Year increased by one (1) percent.

**3.3 Incentive Compensation Tiers**. Manager shall receive the following performance-based Incentive Compensation:

**3.3.1 Tier 1 Compensation.**

(a) In a Contract Year, to the extent the total annual Profit equals an amount on or above the Annual Profit Commitment but on or below the Tier 1 Upper Bound, Manager shall receive an amount equal to twenty-five percent (25.0%) of the difference between the Annual Profit Commitment and the total annual Profit.

(b) For clarity, in a Contract Year, to the extent the total annual Profit equals an amount above the Tier 1 Upper Bound, Manager shall receive an amount equal to twenty-five percent (25.0%) of the difference between the Annual Profit Commitment and Tier 1 Upper Bound plus the Tier 2 Compensation (as defined below).

**3.3.2 Tier 2 Compensation.** In a Contract Year, to the extent the total annual Profit equals an amount above the Tier 1 Upper Bound, Manager shall receive an amount equal to fifty percent (50.0%) of the difference between the Tier 1 Upper Bound and the total annual Profit ("**Tier 2 Compensation**").

**3.3.3 Incentive Compensation Examples**. For illustration purposes only, examples of the calculation of Incentive Compensation are attached as **Attachment I** to this **Schedule 10.1 (Compensation and Payment Terms)**.

**4. Adjustments**.

**4.1 Upward Adjustment to Annual Profit Commitments**.

(a) Manager and the Commonwealth agree that the Annual Profit Commitments reflected above are based upon the Profit the Lottery could reasonably achieve under the current and approved gaming environment in Pennsylvania.

(b) The Parties acknowledge and agree that, to the extent there is a change in Commonwealth Policies and Rules that will create added value that positively impact Profit ("**Value Drivers**"), for example (i) a change in a Regulatory Requirement that would make available new or expanded lottery sales channels (*e.g.*: ability to sell all Lottery products in Pennsylvania Liquor Control Board locations, [_____], etc.); (ii) authorization of game types or platforms currently unavailable to the Lottery (*e.g.*: [_____]); (iii) the elimination or reduction of current competing forms of gaming (*e.g.*: electronic gaming devices); or (iv) a downward adjustment to the fiscal code (including 72 P.S. § 1730-H or other similar legislation) requiring that less than twenty-seven percent (27%) of total revenues accruing from the sale of Lottery Tickets be used to provide services for seniors in the Commonwealth, then the Commonwealth shall be entitled to recommend in writing to Manager a proportional increase to the Annual Profit Commitment (the "**Commonwealth's Recommended Adjustments**") for (A) the Contract Year in which the Commonwealth sends Manager notice of the Commonwealth's Recommended Adjustments to reflect a material change, and (B) if applicable, all subsequent Contract Years for the Term of the Agreement. Any of Commonwealth's Recommended Adjustments shall be provided to the Manager within ninety (90) days after the date of the relevant change in the Commonwealth Policies and Rules.

(c) If Manager disagrees with the Commonwealth's Recommended Adjustments by providing written notice to the Commonwealth within fourteen (14) days after receiving the Commonwealth's Recommended Adjustments, then the Parties shall engage a Professional pursuant to **Section 20.2 (Engagement of a Professional)** of the Agreement to determine the appropriate adjustments to the Annual Profit Commitment for (i) the Contract Year in which the Commonwealth sends Manager notice of the Commonwealth's Recommended Adjustments to reflect a material change, and (ii) if applicable, all subsequent Contract Years for the Term of the Agreement (the "**Professional's Upward Adjustments**").

(d) The Professional's Upward Adjustments, if any, shall be final and binding upon the Parties to the extent the Professional's Upward Adjustments is less than a five percent (5%) increase to the Annual Profit Commitment. If the Professionals Upward Adjustments is equal to or greater than a five percent (5%) increase to the Annual Profit Commitment and either Party disagrees with the Professional's Recommended Upward Adjustments by providing written notice to the other Party within fourteen (14) days after receiving such Professional's Recommended Upward Adjustments, then the dispute over the appropriate amount of adjustment to reflect the material change shall be settled in accordance with the Dispute Resolution provisions of **Article 20 (Dispute Resolution; Governing Law)** of the Agreement.

(e) The failure of Manager to respond to the Commonwealth's Recommended Adjustments by providing written notice to the Commonwealth within fourteen (14) days after receipt of

a notification in either **subsection (c)** or **subsection (d)** shall be deemed acceptance of the Commonwealth's Recommended Adjustments or the Professional's Upward Adjustment, as applicable.

**4.2 Downward Adjustment to Annual Profit Commitments**.

(a) In the event of an Adverse Action as defined in **Article 21 (Adverse Actions)** of the Agreement, then Manager shall be entitled to recommend, in writing (the "**Manager's Recommended Adjustments**"), to the Commonwealth a proportional decrease to the amount of Annual Profit Commitment for (i) the Contract Year in which Manager sends the Commonwealth notice of Manager's Recommended Adjustments to reflect an Adverse Action, and (ii) if applicable, all subsequent Contract Years for the Term of the Agreement.

(b) If the Commonwealth disagrees with Manager's Recommended Adjustments by providing written notice to the Manager within fourteen (14) days after receiving Manager's Recommended Adjustments, then the Parties shall engage a Professional pursuant to **Section 20.2 (Engagement of a Professional)** of the Agreement to determine the appropriate adjustment amount to the Annual Profit Commitment for (i) the Contract Year in which Manager sends the Commonwealth notice of Manager's Recommended Adjustments to reflect an Adverse Action, and (ii) if applicable, all subsequent Contract Years for the Term of the Agreement (the "**Professional's Downward Adjustments**").

(c) The Professional's Downward Adjustments, if any, shall be final and binding on the Parties to the extent that the Professional's Downward Adjustments is less than a five percent (5%) decrease to the Annual Profit Commitments. If the Professional's Downward Adjustments is equal to or greater than a five percent (5%) decrease to the Annual Profit Commitments and either Party disagrees with the Professional's Downward Adjustments by providing written notice to the Manager within fourteen (14) days after receiving such Professional's Downward Adjustments, then the dispute over the appropriate amount of adjustment to reflect the Adverse Action shall be settled in accordance with the Dispute Resolution provisions of **Article 20 (Dispute Resolution; Governing Law)** of the Agreement.

(d) The failure of the Commonwealth to respond to Manager's Recommended Adjustments by providing written notice to the Manager within fourteen (14) days after receipt of the applicable notification shall be deemed acceptance of Manager's Recommended Adjustments or the Professional's Recommended Adjustments, as applicable.

**4.3 Professional for Upward and Downward Adjustments.** In the event either Party requires the need for a Professional pursuant to **Section 4.1 (Upward Adjustment to Annual Profit Commitments)** or **Section 4.2 (Downward Adjustment to Annual Profit Commitments)** of this **Schedule 10.1 (Compensation and Payment Terms)**, the Parties acknowledge and agree that the provisions of **Section 20.2 (Engagement of a Professional)** shall govern and control.

**5. Manager's Security Draw.**

(a) To the extent that an event set forth in **Section 18.2(Draw on Manager's Security)** occurs, Manager acknowledges and agrees that the Commonwealth shall have the right to draw from Cash Collateral (the "**Cash Collateral Draw**").

(b) To the extent there is an event set forth in **Section 18.2 (Draw on Manager's Security)** and the Cash Collateral has been fully depleted, the Commonwealth has the right to draw on the LOC (the "**LOC Draw**"), (i) the Commonwealth has the right to set-off the amount of the LOC Draw amount against any funds or monies due to Manager pursuant to **Section 10.4 (Right to Apply Monies)** of the Agreement; (ii) if such set-off is insufficient to recover the entire LOC Draw, then the Commonwealth shall demand payment in writing of the balance due; and (iii) if the Commonwealth has not received payment of such amount demanded within ten (10) Business Days of such demand, then it shall be entitled to draw such amount from the LOC.

(c) To the extent that an Annual Profit Commitment Shortfall occurs, Manager acknowledges and agrees that the Commonwealth shall have the right to draw the following amount from Cash Collateral or the LOC, as the case may be (in accordance with **subsections (a)** and **(b)** above):

To the extent in any Contract Year, Profit is less than the Annual Profit Commitment for such Contract Year (and cumulative Annual Profit Commitment Shortfalls are less than or equal to one-hundred fifty million ($150,000,000.00)), then the Commonwealth shall draw, as the Cash Collateral Draw or LOC Draw, an amount equal to the difference between:

(i) the Annual Profit Commitment for such Contract Year; and

(ii) the Profit for such Contract Year.

*For purposes of clarity in this Section 5(c):*

**Draw by the Commonwealth** = (Annual Profit Commitment – Profit)

(d) In any given Contract Year the total Cash Collateral Draw and the LOC Draw in each case for an Annual Profit Commitment Shortfall shall not exceed five percent (5.0%) of Profit for such Contract Year.

**6. Stub Year Calculations.** For purposes of this **Schedule 10.1 (Compensation and Payment Terms)**, the various Annual Profit Commitment amounts in any Stub Contract Year shall be prorated as follows:

$$\underline{\textbf{Prorated Annual Profit Commitment}} = \frac{\text{Actual Number of Days Elapsed in Stub Contract Year}}{365} \times \text{each Annual Profit Commitment}$$

**7. Termination for Convenience Fee**.

**7.1 The Commonwealth's Termination for Convenience Fee**. To the extent that the Commonwealth exercises its right to terminate as set forth in **Section 13.2.1 (Commonwealth's Right to Terminate for Convenience)** of the Agreement**,** the Commonwealth shall pay to Manager at the expiration of the Disentanglement Services Period, the following amounts which are deemed the Termination for Convenience Fee:

(a) Manager Expenses due and owing to the Manager pro-rated for the applicable portion of the Contract Year until the completion of the Disentanglement Services Period; plus

(b) any Incentive Compensation due and owing to Manager from any previous Contract Year and, in the event that Annual Profit Commitments were met or exceeded in the three Contract Years prior to the Termination Date, an amount equal to the average annual Incentive Compensation Manager received during the three previous Contract Years as pro-rated for the applicable portion of the Contract Year until the completion of the Disentanglement Services Period; plus

(c) documented Operating Expenses due and owing to the Manager for goods or services rendered through the completion of the Disentanglement Services Period; plus

(d) the lesser of (i) the fair market value of any capital assets in use on the Termination Date that resulted from capital expenditures made or incurred by the Manager directly related to the provision of the Services (including the Transition Services) or (ii) the Unamortized Amount of any capital expenditures made or incurred by the Manager directly related to the provision of the Services; provided that the Manager shall, at the Commonwealth's option: (A) take all reasonable measures to mitigate such costs, including by causing a redeployment of such remaining assets or contractual rights to other productive opportunities for their continued use that may be available to the Manager or its Affiliates (in which event the amount payable shall be reduced accordingly) or (B) cause any Equipment and products that have been fully paid for by the Commonwealth associated with such Payments (and not redeployed pursuant to the foregoing clause (A)) to be transferred to the Commonwealth, free and clear of all liens and encumbrances; plus

(e) amounts due and owing under the Disentanglement Services Plan; plus

(f) a sum equal to ten percent (10%) of the aggregate amount of the expenses set forth in subsections (c), (d) and (e) above; less

(g) any accrued and unpaid amounts as of completion of the Disentanglement Services Period owed to the Commonwealth from the Manager pursuant to this Agreement.

**7.2 Manager's Termination for Convenience Fee**. To the extent that Manager exercises its right to terminate as set forth in **Section 13.7.2 (Manager's Termination for Convenience)** of the Agreement**,** Manager shall pay to the Commonwealth at the expiration of the Disentanglement Services Period, the following amounts which are deemed the Termination for Convenience Fee:

(a) all disentanglement costs associated with the Disentanglement Services Period and all transition costs associated with the procurement of and transition to a Replacement Manager or to the Commonwealth determined by the Commonwealth; plus

(b) the lesser of (i) the fair market value of any capital assets in use on the Termination Date that resulted from capital expenditures made or incurred by the Commonwealth directly related to the provision of the Services (including the Transition Services) or (ii) the Unamortized Amount of any capital expenditures made or incurred by the Commonwealth directly related to the provision of the Services; plus

(c) amounts due and owing under the Disentanglement Services Plan; plus

(d) a sum equal to ten percent (10%) of the aggregate amount of the expenses set forth in subsections (a) and (c) above; less

(e) any prorated Manager Expenses and Operating Expenses due up to the completion of the Term and the Disentanglement Services Period. For the avoidance of doubt, to the extent that the amount

with respect to subsection (e) is greater than the sum of the amounts with respect to subsections (a) through (d), then the Commonwealth shall pay the Manager the resulting amount owed under this section.

**8. Return of Cash Collateral**. For clarity and as set forth in **Section 18.1(d)(Manager's Security)**, in the event that the Commonwealth exercises its right to termination for convenience set forth in **Section 13.2 (Termination for Convenience)**, the Commonwealth shall return any remaining Cash Collateral to the Manager within sixty (60) days following the end of the Term (and any Disentanglement Services Period).

**9. Pennsylvania Lottery Funding of Programs and Services for Older Pennsylvanians**.

(a) To the extent that the Commonwealth is required to submit a report pursuant to 72 P.S. § 1730-H, the Commonwealth shall submit such report in the same format and containing the same substance as the Commonwealth has submitted such report prior to the Effective Date of this Agreement, including by using the same accounting methodologies.

(b) To the extent that Manager: (i) fails to meet its Annual Profit Commitment and (ii) fails to meet the obligations set forth in 72 P.S. § 1730-H (as may be amended or replaced) in any Contract Year, then the Commonwealth shall have the right to draw on the Manager's Security (in accordance with **Section 5(a)** and **Section 5(b)** of this **Schedule 10.1 (Compensation and Payment Terms)**) an amount equal to any damages incurred by the Commonwealth as a result of such failure (in addition any other rights or remedies of the Commonwealth including the right the Commonwealth has to draw on the Manager's Security (in accordance with **Section 5(a)** and **Section 5(b)** of this **Schedule 10.1 (Compensation and Payment Terms)**) for the Annual Profit Commitment Shortfall).

(c) To the extent that Manager: (i) meets or exceeds the Annual Profit Commitment in any Contract Year; and (ii) fails to meet the obligations set forth in 72 P.S. § 1730-H (as may be amended or replaced) in any Contract Year, then the Commonwealth shall not have the right to draw on the Manager's Security for such Contract Year; provided, however, the Commonwealth shall have the right to modify the Annual Business Plan for the immediate subsequent Contract Year to require the Manager to target a higher percentage of total revenues accruing from the sale of Lottery Tickets to be available for use to provide services for seniors such that such percentage will meet or exceed the obligations set forth in 72 P.S. § 1730-H (as may be amended or replaced) without such modification being deemed an Adverse Action in accordance with **Section 21.1.1(a) (Adverse Actions)**.

# Attachment I
## Examples of Incentive Compensation

| **Example of Contract Year in which Actual Profit is greater than Tier 1 Upper Bound** | **$** |
|---|---|
| Annual Profit Commitment | 100 |
| Tier 1 Upper Bound | 101 |
| Actual Profit Achieved | 115 |
| | |
| Tier 1 Incentive Compensation Payable to Manager | 0.25 |
| Tier 2 Incentive Compensation Payable to Manager | 7.00 |
| Total Incentive Compensation Payable to Manager Before Application of 5% Cap | 7.25 |
| Total Incentive Compensation Payable to Manager After Application of 5% Cap | 5.75 |
| | |
| Net Profit to the Commonwealth | 109.25 |
| Manager's Security Draw for the Commonwealth Before Application of 5% Cap | N/A |
| Manager's Security Draw for the Commonwealth After Application of 5% Cap | N/A |

| **Example of Contract Year in which Actual Profit is greater than Annual Profit Commitment but less than Tier 1 Upper Bound** | **$** |
|---|---|
| Annual Profit Commitment | 100 |
| Tier 1 Upper Bound | 101 |
| Actual Profit Achieved | 100.50 |
| | |
| Tier 1 Incentive Compensation Payable to Manager | 0.125 |
| Tier 2 Incentive Compensation Payable to Manager | 0 |
| Total Incentive Compensation Payable to Manager Before Application of 5% Cap | 0.125 |
| Total Incentive Compensation Payable to Manager After Application of 5% Cap | 0.125 |
| | |
| Net Profit to the Commonwealth | 100.375 |
| Manager's Security Draw for the Commonwealth Before Application of 5% Cap | N/A |
| Manager's Security Draw for the Commonwealth After Application of 5% Cap | N/A |

| **Example of Contract Year in which Actual Profit is less than Annual Profit Commitment** | **$** |
|---|---|
| Annual Profit Commitment | 100 |
| Tier 1 Upper Bound | 101 |
| Actual Profit Achieved | 85 |
| | |
| Tier 1 Incentive Compensation Payable to Manager | 0 |
| Tier 2 Incentive Compensation Payable to Manager | 0 |
| Total Incentive Compensation Payable to Manager Before Application of 5% Cap | 0 |
| Total Incentive Compensation Payable to Manager After Application of 5% Cap | 0 |
| | |
| Net Profit to the Commonwealth | 89.25 |
| Manager's Security Draw for the Commonwealth Before Application of 5% Cap | 15 |
| Manager's Security Draw for the Commonwealth After Application of 5% Cap | 4.25 |

# SCHEDULE 10.2

# FORM OF INVOICE

# SCHEDULE 12.1.2

## STANDARD COMPLIANCE PROVISIONS

It is essential that those who seek to contract with the Commonwealth observe high standards of honesty and integrity and conduct themselves in a manner that fosters public confidence in the integrity of the Commonwealth procurement process.

In furtherance of this policy, Manager agrees to the following:

1. Manager acknowledges and agrees that compliance with this Schedule 12.1.2 (Standard Compliance Provisions) is a material requirement and condition of the Agreement. By executing the Agreement, Manager certifies compliance with Section 12.1.2 (Performance of the Services) and is under a continuing obligation to remain in compliance and report any non-compliance.

2. This Schedule also applies to Subcontractors and Vendors used in connection with the Agreement. Manager shall include these Standard Compliance Provisions (substituting "Manager" for the applicable Subcontractor or Vendor as appropriate) in any Subcontract and Vendor Contract used in the performance of the Agreement.

3. As part of each certification, Manager acknowledges and agrees that should Manager or its Subcontractors and Vendors provide false information, or fail to be or remain in compliance with the requirements of the Standard Compliance Provisions, one or more of the following sanctions will apply:

- the applicable contract may be void by operation of law,
- the Commonwealth may void the applicable contract, and
- Manager and its Subcontractors or Vendors may be subject to one or more of the following: suspension, debarment, denial of payment, civil fine, or criminal penalty.

Identifying a sanction or failing to identify a sanction in relation to any of the specific provisions does not waive imposition of other sanctions or preclude application of sanctions not specifically identified.

Manager Integrity

4. Manager shall maintain the highest standards of honesty and integrity during the performance of the Agreement and shall take no action in violation of state or federal laws or regulations or any other applicable laws or regulations, or other requirements applicable to Manager or that govern contracting with the Commonwealth.

5. Manager, its Affiliates, agents and employees shall not influence, or attempt to influence, any Commonwealth employee to breach the standards of ethical conduct for Commonwealth employees set forth in the Public Official and Employees Ethics Act, 65 Pa.C.S. §§1101 et seq.; the State Adverse Interest Act, 71 P.S. §776.1 et seq.; and the Governor's Code of Conduct, Executive Order 1980-18, 4 Pa. Code §7.151 et seq., or to breach any other state or federal law or regulation.

6. Manager, its Affiliates, agents and employees shall not offer, give, or agree or promise to give any gratuity to a Commonwealth official or employee or to any other person at the direction or request of any Commonwealth official or employee.

7. Manager, its Affiliates, agents and employees shall not offer, give, or agree or promise to give any gratuity to a Commonwealth official or employee or to any other person, the acceptance of which would violate the Governor's Code of Conduct, Executive Order 1980-18, 4 Pa. Code §7.151 et seq. or any statute, regulation, statement of policy, management directive or any other published standard of the Commonwealth.

8. Manager, its Affiliates, agents and employees shall not, directly or indirectly, offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for the decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty by any Commonwealth official or employee.

9. Manager, its Affiliates, agents, employees, or anyone in privity with Manager shall not accept or agree to accept from any person, any gratuity in connection with the performance of work under the contract, except as provided in this Agreement.

10. Manager shall not have a financial interest in any other Manager, Subcontractor, or supplier providing services, labor, or material on this project, unless the financial interest is disclosed to the Commonwealth in writing and the Commonwealth consents to Manager's financial interest prior to Commonwealth's execution of the contract. Manager shall disclose the financial interest to the Commonwealth no later than Manager's submission of the Agreement signed by Manager.

11. In addition to Section 2.2.4 (Disqualification Criteria) of the Operating Standards, Manager also certifies that neither it nor any of its officers, directors, associates, partners, limited partners or individual owners has been officially notified of, charged with, or convicted of any of the following and agrees to immediately notify the Commonwealth in writing if and when it or any officer, director, associate, partner, limited partner or individual owner has been officially notified of, charged with, convicted of, or officially notified of a governmental determination of any of the following:

(a) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property.

(b) Commission of fraud or a criminal offense or other improper conduct or knowledge of, approval of or acquiescence in such activities by Manager or any affiliate, officer, director, associate, partner, limited partner, individual owner, or employee or other individual or entity associated with:

1. obtaining;

2. attempting to obtain; or

3. performing a public contract or subcontract.

Manager's acceptance of the benefits derived from the conduct shall be deemed evidence of such knowledge, approval or acquiescence.

4. Violation of federal or state antitrust statutes.

5. Violation of any federal or state law regulating campaign contributions.

6. Violation of any federal or state environmental law.

7. Violation of any federal or state law regulating hours of labor, minimum wage standards or prevailing wage standards; discrimination in wages; or child labor violations.

8. Violation of the Act of June 2, 1915 (P.L.736, No. 338), known as the Workers' Compensation Act, 77 P.S. 1 et seq.

9. Violation of any federal or state law prohibiting discrimination in employment.

10. Debarment by any agency or department of the federal government or by any other state.

11. Any other crime involving moral turpitude or business honesty or integrity.

Manager acknowledges that the Commonwealth may, in its sole discretion, terminate this Agreement for cause upon such notification or when the Commonwealth otherwise learns that Manager has been officially notified, charged, or convicted.

12. Manager shall comply with requirements of the Lobbying Disclosure Act, 65 Pa.C.S. § 13A01 et seq., and the regulations promulgated pursuant to that law. Manager employee activities prior to or outside of formal Commonwealth procurement communication protocol are considered lobbying and subjects Manager employees to the registration and reporting requirements of the law. Actions by outside lobbyists on Manager's behalf, no matter the procurement stage, are not exempt and must be reported.

13. When Manager has reason to believe that any breach of ethical standards as set forth in law, the Governor's Code of Conduct, or in these provisions has occurred or may occur, including but not limited to contact by a Commonwealth officer or employee which, if acted upon, would violate such ethical standards, Manager shall immediately notify the Commonwealth in writing.

14. Manager, by submission of its bid or proposal and/or execution of this Agreement and by the submission of any bills, invoices or requests for payment pursuant to the Agreement, certifies and represents that it has not violated any of these Manager integrity provisions in connection with the submission of the bid or proposal, during any contract negotiations or during the Term of the Agreement.

15. Manager shall cooperate with the Office of Inspector General in its investigation of any alleged Commonwealth employee breach of ethical standards and any alleged Manager non-compliance with these provisions. Manager agrees to make identified Manager employees available for interviews at reasonable times and places. Manager, upon the inquiry or request of the Office of Inspector General, shall provide, or if appropriate, make promptly available for inspection or copying, any information of any type or form deemed relevant by the Inspector General to Manager's integrity and compliance with these provisions. Such information may include, but shall not be limited to, Manager's business or financial records, documents or files of any type or form that refers to or concern this contract.

16. For violation of any of these Standard Compliance Provisions, the Commonwealth may terminate this and any other contract with Manager, claim liquidated damages in an amount equal to the value of anything received in breach of these provisions, claim damages for all additional costs and expenses incurred in obtaining a replacement Third Party provider to perform the Services contemplated by this Agreement, and debar and suspend Manager from doing business with the Commonwealth. These rights and remedies are cumulative, and the use or non-use of any one shall not preclude the use of all or any other. These rights and remedies are in addition to those the Commonwealth may have under law, statute, regulation, or otherwise.

17. For purposes of these Standard Compliance Provisions, the following terms shall have the meanings found in this Section.

(a) "Financial interest" means:

1. Ownership of more than a five percent interest in any business; or

2. Holding a position as an officer, director, trustee, partner, employee, or holding any position of management.

(b) "Gratuity" means tendering, giving or providing anything of more than nominal monetary value including, but not limited to, cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind. The exceptions set forth in the Governor's Code of Conduct, Executive Order 1980-18, 4 Pa. Code §7.153(b), shall apply.

(c) "Immediate family" means a spouse and any unemancipated child.

(d) "Political contribution" means any payment, gift, subscription, assessment, contract, payment for services, dues, loan, forbearance, advance or deposit of money or any valuable thing, to a candidate for public office or to a political committee, including but not limited to a political action committee, made for the purpose of influencing any election in the Commonwealth of Pennsylvania or for paying debts incurred by or for a candidate or committee before or after any election.

Manager Responsibility Provisions

18. Unless otherwise set forth in the Agreement, the Manager certifies, in writing, for itself and its Subcontractors required to be disclosed or approved by the Commonwealth, that as of the date of its execution of this Agreement, that neither the Manager, nor any such Subcontractors, are under suspension or debarment by the Commonwealth or any governmental entity, instrumentality, or authority and, if the Manager cannot so certify, then it agrees to submit, along with its responsive bid, a written explanation of why such certification cannot be made.

19. The Manager's obligations pursuant to these provisions are ongoing from and after the effective date of the Agreement through the termination date thereof. Accordingly, the Manager shall have an obligation to inform the Commonwealth if, at any time during the term of the Agreement, it becomes delinquent in the payment of taxes, or other Commonwealth obligations, or if it or, to the best knowledge of the Manager, any of its Subcontractors are suspended or debarred by the Commonwealth, the federal government, or any other state or governmental entity. Such notification shall be made within 15 days of the date of suspension or debarment.

20. The failure of the Manager to notify the Commonwealth of its suspension or debarment by the Commonwealth, any other state, or the federal government shall constitute an event of default of the Agreement with the Commonwealth.

21. The Manager agrees to reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of State Inspector General for investigations of the Manager's compliance with the terms of this or any other agreement between the Manager and the Commonwealth that results in the suspension or debarment of the 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. The Manager shall not be responsible for investigative costs for investigations that do not result in the Manager's suspension or debarment.

22. The Manager may obtain a current list of suspended and debarred Commonwealth contractors by either searching the Internet at http://www.dgs.state.pa.us/ or contacting the:

Department of General Services
Office of Chief Counsel
603 North Office Building
Harrisburg, PA 17125
Telephone No: (717) 783-6472
FAX No: (717) 787-9138

Nondiscrimination and Prevention of Sexual Harassment Obligations

23. In the hiring of any employee(s) for the manufacture of supplies, performance of work, or any other activity required under this Agreement or any subcontract, Manager, each subcontractor, or any person acting on behalf of Manager or subcontractor shall not, by reason of gender, race, creed, or color, discriminate against any citizen of this Commonwealth who is qualified and available to perform the work to which the employment relates.

24. Neither Manager nor any subcontractor nor any person on their behalf shall in any manner discriminate against or intimidate any employee involved in the manufacture of supplies, the performance of work, or any other activity required under the Agreement on account of gender, race, creed, or color.

25. Manager and each Subcontractor or Vendor shall establish and maintain a written sexual harassment policy and shall inform their employees of the policy. The policy must contain a notice that sexual harassment will not be tolerated and employees who practice it will be disciplined.

26. Manager and each subcontractor shall not discriminate by reason of gender, race, creed, or color against any subcontractor or supplier who is qualified to perform the work to which the Agreement relates.

27. Manager shall include these Nondiscrimination and Prevention of Sexual Harassment Obligations in every subcontract so that those provisions applicable to subcontractors will be binding upon each subcontractor.

28. The Commonwealth may cancel or terminate this Agreement and all money due or to become due under the Agreement may be forfeited for a violation of the terms and conditions of these Nondiscrimination and Prevention of Sexual Harassment Obligations. In addition, the agency may proceed with debarment or suspension and may place Manager in Manager Responsibility File.

Obligations under the Americans with Disabilities Act

Pursuant to federal regulations promulgated under the authority of The Americans With Disabilities Act, 28 C.F.R. § 35.101 et seq., Manager understands and agrees that it shall not cause any individual with a disability to be excluded from participation in this Agreement or from activities provided for under this Agreement on the basis of the disability. As a condition of accepting this contract, Manager agrees to comply with the "General Prohibitions Against Discrimination," 28 C.F.R. § 35.130, and all other regulations promulgated under Title II of The Americans With Disabilities Act which are applicable to all benefits, services, programs, and activities provided by the Commonwealth of Pennsylvania through contracts with outside contractors. Manager shall be responsible for and agrees to indemnify and hold harmless the Commonwealth of Pennsylvania from all losses, damages, expenses,

claims, demands, suits, and actions brought by any party against the Commonwealth of Pennsylvania as a result of Manager's failure to comply with the provisions of this Section above.

# SCHEDULE 14.2.2

## DISENTANGLEMENT SERVICES PLAN

## [TO BE INCLUDED AS PART OF THE ANNUAL BUSINESS PLAN]

# SCHEDULE 17.1

## INSURANCE COVERAGES

**1.1 General**. During the Term 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 in effect at least the following types of insurance and minimum limits of coverage, in addition to any other insurance required by Commonwealth Policies and Rules.

**1.1.1 Workers' Compensation and Employer's Liability Insurance**. Manager shall provide and maintain Workers' Compensation insurance of the type and amount required by Commonwealth Policies and Rules. Manager shall provide and maintain Employer's Liability insurance with limits not less than One Million Dollars ($1,000,000) for each accident for bodily injury and not less than One Million Dollars ($1,000,000) for each employee for bodily injury by disease.

**1.1.2 Commercial General Liability Insurance**. Manager shall provide and maintain general liability insurance written on an occurrence basis and covering all operations performed by or on behalf of the Manager arising out of or in connection with this Agreement, in an amount not less than Two Million Dollars ($2,000,000) per occurrence and Two Million Dollars ($2,000,000) in the annual aggregate. Such insurance shall provide coverage for: (a) **premises** and **operations**; (b) bodily injury; (c) **broad form property damage**, including **products and completed operations**; (d) personal injury and advertising injury; (e) contractual liability for bodily injury, property damage, personal injury and advertising injury; and, (f) cross-liability. Any exclusion for property damage to "your work" shall include an exception providing that such exclusion does not apply if damaged work or the work out of which the damage arises was performed on Manager's behalf by a Subcontractor. Any exclusion otherwise applicable to Manager's liability for rendering or failing to render "professional services" shall accept Manager's means and methods.

**1.1.3 Business Automobile Liability Insurance.** Manager shall provide and maintain Business Automobile Liability insurance, including bodily injury, passenger liability (where applicable), and property damage, covering all of Manager's owned, rented (or hired) and non-owned vehicles, and mobile equipment used in connection with the goods and services provided, including any other coverages in types and amounts in accordance with Commonwealth Policies and Rules. Such insurance shall have limits of not less than One Million Dollars ($1,000,000) each accident for bodily injury and property damage and Two Million Dollars ($2,000,000) each accident for uninsured and underinsured motorists. Such insurance shall provide defense coverage, with costs of defense outside the limits of liability.

**1.1.4 Umbrella/Excess Liability**. Manager shall provide and maintain Umbrella or Excess Liability insurance written on an occurrence basis and in an amount not less than Thirty Million Dollars ($30,000,000) per occurrence and in the annual aggregate, excess of the limits provided by Manager's Employer's Liability, Commercial General Liability and Business Automobile Liability insurance policies. The coverage terms of the Umbrella or Excess Liability insurance shall be at least as broad as the underlying Employer's Liability, Commercial General Liability and Business Automobile Liability insurance required by this **Schedule 17.1 (Insurance Coverages)**. The Umbrella or Excess Liability insurance shall include contractual liability coverage.

**1.1.5 Professional Liability (E&O) Insurance**. Manager shall provide and maintain Professional Liability Errors and Omissions (E&O) Insurance with an aggregate limit of liability not less than Fifteen Million Dollars ($15,000,000). Such insurance shall cover any and all acts, errors, omissions or negligence in the delivery, performance or non-performance of products or services under this

Agreement. Such E&O Insurance shall include coverage for claims and losses with respect to network or data risks (such as data breaches, release of confidential unauthorized access/use, ID theft, invasion of privacy, damage/loss/theft of data, degradation, downtime, etc.) and intellectual property infringement, such as copyrights, trademarks, service marks and trade dress (provided, however, such intellectual property infringement coverage may be self-insured by Manager**,** subject to the self-insurance limitations of the Commonwealth set forth in this **Schedule 17.1 (Insurance Coverages)**). The E&O Insurance retroactive coverage date shall be no later than the Effective Date. Manager shall maintain an extended reporting period providing that claims first made and reported to the insurance company within two (2) years after termination of the agreement will be deemed to have been made during the policy period.

**1.1.6 Property Insurance**. Manager shall provide and maintain Property Insurance with limits no less than the full replacement value, of all structural and business personal property elements owned by Manager or required by contract to be insured by them. Such insurance shall be provided on an all-risk basis and shall include, without limitation, coverage against the perils of fire, theft, vandalism, malicious mischief, collapse, earthquake, flood and windstorm. Such insurance also shall include coverage for business interruption, extra expense, expediting expense and soft costs, including architects' and management services required as a result of an insured loss. If not otherwise covered, Manager shall effect and maintain similar property insurance on assets stored off-site or in transit, as well as all tools, equipment and other items provided for use by Manager or any Subcontractor, whether owned, leased, rented, or borrowed.

**1.1.7 Crime or Fidelity Bond Insurance**. Manager shall provide and maintain a fidelity bond or policy of crime insurance, with a limit of liability not less than Ten Million Dollars ($10,000,000) covering loss of the Commonwealth's funds and property, including products in Managers care, custody or control and caused by dishonesty, theft, depositor's forgery, disappearance or destruction on the part of any personnel of Manager.

**1.2 Certificates**. On or before the Effective Date, and at any time thereafter following the Commonwealth's request, Manager shall furnish and deliver to the Commonwealth certificates of insurance evidencing the insurance required by the Agreement and this **Schedule 17.1 (Insurance Coverages)**. Any receipt of insurance certificates or insurance policies (including endorsements) by the Commonwealth that do not comply with the requirements above, or the Commonwealth's failure to receive certificates or insurance policies, will not limit or relieve Manager of the duties and responsibilities with respect to obtaining and maintaining insurance required by this Agreement, nor will such a failure constitute a waiver or modification of these requirements.

**1.3 Notice, Approved Companies**. Except for the E&O Insurance and Workers' Compensation and Employer's Liability Insurance (which, for purposes of clarification, shall not name the Commonwealth Indemnitees as an additional insured), all other insurance required by this **Schedule 17.1 (Insurance Coverages)** shall name each of the Commonwealth Indemnitees as Additional Insureds (including coverage for liability arising out of work performed by or on behalf of Manager under this Agreement at least as broad as that provided pursuant to the ISO CG 20 10 (1984) form), and each such certificate must provide that the insurer will provide the Commonwealth with at least thirty (30) days advance written notice of cancellation, lapse, material reduction or other material adverse change to the coverage. Any cancellation, lapse, material reduction or other material alteration will not relieve Manager of its continuing obligation to maintain insurance coverage in accordance with the Agreement. All policies described in **Sections 1.1.1**, **1.1.2**, and **1.1.3** above must be "occurrence" type policies. The insurance policies described in **Section 1.1.4** may be a "claims made" type policies. All insurance policies must be issued by companies having a minimum A.M. Best Financial Strength Rating of "A" or better.

**1.4 Primary Coverage**. Manager's coverage shall be primary and non-contributory with respect to any other insurance or self-insurance program of the Commonwealth.

**1.5 Subcontractors**. Manager further agrees that any Subcontractors having a Subcontract with a value in excess of five hundred thousand dollars ($500,000) shall carry insurance of the types set forth in this Schedule at least customary and appropriate for the types and volumes of services being provided by such Subcontractor (and provide such certificates of insurance to the Commonwealth on or prior to the commencement of any services), including additional insured coverage in favor of the Commonwealth Indemnitees, unless a written waiver is obtained from the Commonwealth modifying the requirements for any subcontractor.

**1.6 Covenant to Reconsider and Modify Insurance**. The Commonwealth may require such other insurance requirements that it deems reasonably necessary (with reference to the industry and the scope of services being provided by Manager) after consultation with its insurance broker. Within one (1) year of the Effective Date, or as part of the Annual Business Plan review thereafter, the Commonwealth reserves the right to reconsider the types of insurance and minimum limits of coverage, in addition to any other insurance set forth in this **Schedule 17.1 (Insurance Coverages)**, and modify this **Schedule 17.1** (**Insurance Coverages**) as the Commonwealth deems reasonably necessary (with reference to the industry and the scope of services being provided by Manager), and Manager shall comply with such modified insurance requirements. In addition, prior to the Annual Business Plan review, the Commonwealth may require modifications to the minimum limits of coverage that it deems reasonably necessary (with reference to the industry and the scope of services being provided by Manager), after consultation with its insurance broker.

**1.7 Self-Insurance**. Other than as specifically set forth in **Section 1.1.5** of this Schedule, Manager may not elect to provide entirely or in part for the insurance protections described in this **Schedule 17.1 (Insurance Coverages)** through self-insurance. A deductible provision contained in an insurance policy that meets the requirements of this **Schedule 17.1 (Insurance Coverages)** is not considered as self-insurance unless the deductible amount exceeds ten percent (10%) of the face amount of the insurance policy.

# SCHEDULE 20.1.2

# THIRD PARTY MEDIATORS / PROFESSIONALS

# EXHIBIT A

## FORM OF GUARANTY

This Payment and Performance Guaranty (this "Guaranty"), dated as of _____, _____, 20__, (**"Effective Date"**), is made by [_____], a company incorporated in [_____] (the "Guarantor") in favor of THE COMMONWEALTH OF PENNSYLVANIA DEPARTMENT OF REVENUE (the "Beneficiary").

**WITNESSETH:**

WHEREAS, contemporaneously with the execution of this Guaranty, [_____] (the "Company") and the Beneficiary are entering into that certain Private Management Agreement dated [ ] (as amended, restated, supplemented or otherwise modified from time to time, the "PMA"); and

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

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

ARTICLE 1
GUARANTY

Section 1.1 Payment Guaranty. The Guarantor hereby unconditionally, absolutely and irrevocably guarantees to the Beneficiary and its successors and assigns the full and prompt payment when due of all of the payment obligations of the Company under the Agreement, including all indemnification obligations of the Company thereunder (the "Payment Obligations").

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

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

Section 1.4 Guaranty Absolute. The Guarantor, as the sole and independent obligor hereunder, hereby guarantees that the Payment Obligations will be paid and the Performance Obligations will be performed strictly in accordance with the terms of the Agreement. This is a present and continuing guaranty of payment and performance and not of collection, and is in no way conditioned upon (and Guarantor in any case hereby waives) any requirement that the Beneficiary first attempt to collect or enforce any of the Obligations from the Company or resort to any security or any other means of obtaining payment or performance of any of the Obligations which the Beneficiary now has or may acquire after the date of this Guaranty, or upon any other contingency whatsoever. The Guarantor hereby further waives all notices to

which the Guarantor might otherwise be entitled and any demand for payment or performance under this Guaranty. The liability of the Guarantor under this Guaranty shall be absolute, unconditional, present and continuing until all of the Obligations have been indefeasibly paid in full or performed, as applicable, irrespective of the validity, regularity or enforceability of any Obligation, and constitutes the full recourse obligations of the Guarantor enforceable against it to the full extent of all its assets and properties. The obligations of the Guarantor set forth in this Guaranty shall not be affected by any action taken under the Obligations in the exercise of any right or remedy therein conferred, or by any failure or omission on the part of the Beneficiary to enforce any right given under the Agreement or hereunder or any remedy conferred thereby or hereby. The Guarantor's liability under this Guaranty will not be discharged or impaired by:

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

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

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

d. *any absence of any notice to, or knowledge by, the Guarantor, of the existence or occurrence of any of the matters or events set forth in the foregoing subsections (a) through (c);*

e. *all notices and demands whether of presentment, protest, dishonor or otherwise, other than any notices and demands expressly set forth in this Guaranty;*

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

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

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

i. *any other circumstance that might otherwise constitute a defense available to, or a discharge of, a guarantor.*

Section 1.5 Subrogation Waiver. The Guarantor agrees that it shall not have any rights (direct or indirect) of subrogation, contribution, reimbursement, indemnification, or other rights of payment or recovery from the Company for any payments made by the Guarantor hereunder until all of the Obligations have been

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

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

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

## ARTICLE 2
## REPRESENTATIONS AND WARRANTIES

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

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

(b) This Guaranty has been duly authorized, executed and delivered by the Guarantor and constitutes a legal, valid, binding and enforceable obligation of the Guarantor.

(c) The consummation by the Guarantor of the transactions contemplated by this Guaranty does not and will not, in any material respect, violate or conflict with:

i. its governing documents;

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

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

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

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

ARTICLE 3
MISCELLANEOUS

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

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

Section 3.3 No Waiver. No failure or delay on the part of the Beneficiary in exercising any right, power, or remedy under this Guaranty shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power, or remedy.

Section 3.4 Notices. All notices and other communications provided for in this Guaranty ("Notices") shall be in writing. The "Notice Addresses" of the parties for purposes of this Guaranty are as follows:

The Guarantor: [_____]

The Beneficiary: [_____]

Pennsylvania Department of Revenue
[_____]

With a copy to:

[_____]
Pennsylvania Department of Revenue

[_____]

or such other address as a party may designate by notice duly given in accordance with this Section to the other parties. A Notice to a party shall be effective when delivered to such party's Notice Address by any means, including personal delivery by the party giving the Notice, delivery by United States regular,

certified or registered mail, or delivery by a commercial courier or delivery service. If the Notice Address of a party includes a facsimile number or electronic mail address, Notice given by facsimile or electronic mail shall be effective when delivered at such facsimile number or email address. If delivery of a Notice is refused, it shall be deemed to have been delivered at the time of such refusal of delivery. The party giving a Notice shall have the burden of establishing the fact and date of delivery or refusal of delivery of a Notice.

Section 3.5 Applicable Law. This Guaranty shall be governed by and construed under the laws of the Commonwealth of Pennsylvania without regard to its principles pertaining to conflict of laws.

Section 3.6 Litigation Provisions.

(a) THE GUARANTOR CONSENTS AND SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE COURTS LOCATED IN THE COMMONWEALTH OF PENNSYLVANIA.

(b) THE GUARANTOR AGREES THAT PROCESS IN ANY LEGAL PROCEEDING RELATING TO THIS GUARANTY MAY BE SERVED ON THE GUARANTOR AT ANY LOCATION.

(c) THE GUARANTOR AGREES THAT ANY LEGAL PROCEEDING RELATING TO THIS GUARANTY MAY BE BROUGHT AGAINST THE GUARANTOR IN ANY COURT LOCATED IN THE COMMONWEALTH OF PENNSYLVANIA. THE GUARANTOR WAIVES ANY OBJECTION TO VENUE IN ANY SUCH COURT AND WAIVES ANY RIGHT THEY MAY HAVE TO TRANSFER OR CHANGE THE VENUE FROM ANY SUCH COURT.

(d) THE GUARANTOR AGREES THAT ANY DISPUTE HEREUNDER SHALL BE FINALLY RESOLVED EXCLUSIVELY IN ACCORDANCE WITH THE PENNSYLVANIA [BOARD OF CLAIMS ACT (62 PA. CONS. STAT. § 1721 ***et seq***.)].

Section 3.7 Severability. If any part, term or provision of this Guaranty shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other part, term or provision of this Guaranty and this Guaranty shall be construed as if such invalid, illegal or unenforceable provision had never been contained in this Guaranty.

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

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

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

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

(END OF PAGE; SIGNATURE ON THE FOLLOWING PAGE)

**IN WITNESS WHEREOF**, this Guaranty is issued by the Guarantor as of the date first written above.

**GUARANTOR:**

By: _____
Name:
Title:

# EXHIBIT B

# FORM OF ASSIGNMENT AGREEMENT

# EXHIBIT C

## EMPLOYMENT TRANSITION AGREEMENT

This Employment Transition Agreement (the "**ETA**") is entered into as of this ___ day of _____, 201__ by and between the Commonwealth of Pennsylvania acting through the Department of Revenue (the "**Commonwealth**") and _____ ("**Manager**"), (the Commonwealth and Manager sometimes are individually each referred to herein as a "**Party**", and collectively referred to herein as the "**Parties**").

## RECITALS

**WHEREAS**, in accordance with **Article VI (Employees)** of the Private Management Agreement ("**PMA**"), Manager shall utilize the services of certain Employees (as defined below) to assist Manager in the administration and operation of the Pennsylvania Lottery during the Employment Transition Period (as defined below); and

**WHEREAS**, the Parties desire to establish the terms and conditions pursuant to which such Employees shall assist Manager; and

**WHEREAS,** the terms and conditions set forth below apply only to Employees assigned to work with the Manager pursuant to this ETA, and do not apply to Manager Personnel or Transferred Employees, as defined herein.

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

**1. Definitions**. For purposes of the ETA, the capitalized terms have the meanings specified below. Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the PMA.

**"Commonwealth Employee Benefit Plans"** means the employee benefits plans available to Employees in the same Lottery job classifications as ETA Employees.

**"Commonwealth Lottery Employees"** means Current Lottery Employees who shall remain employed with the Lottery following the end of the Employment Transition Period.

**"Current Lottery Employees"** means those Lottery Employees who, as of the Effective Date of this Agreement, are employed by the Commonwealth.

**"ETA Employees"** means the Current Lottery Employees, who may be assigned by the Commonwealth to assist Manager in the administration and operation of the Lottery during the Employment Transition Period in accordance with A**rticle VI (Employees)** of the PMA.

"**ETA Effective Date**" means the Effective Date of the PMA.

**"Lottery Lead"** means the person set forth in the PMA as the primary individual to communicate with the Manager.

"**PMA**" has the meaning set forth in the recitals.

"**Transferred Employee**" means an ETA Employee who has: (a) accepted an offer of direct employment with Manager, and (b) severed his/her employment relationship with the Commonwealth. After such ETA Employee is employed by the Manager, such Transferred Employee is deemed Manager Personnel.

**2. Private Management Agreement.** This ETA is entered into pursuant to and in accordance with the PMA, and subject to all of the terms and conditions of the PMA, except the term of the ETA, which is set forth in below Section 8. To the extent this ETA contains additional or different terms and conditions (including any different terms and conditions that may be required by applicable local Regulatory Requirements), the order of precedence between such terms and conditions and the terms and conditions of the PMA shall be first the Agreement and second the ETA.

**3. The Commonwealth's Responsibilities.**

**3.1 Provision of ETA Employees.** During the Employment Transition Period, the Commonwealth shall assign certain Employees to assist and work with Manager in the administration and operation of the Lottery in accordance with this ETA. The Commonwealth shall determine, in consultation with Manager, which Employees shall become ETA Employees, and the time period of each Employee's service as an ETA Employee during the Employment Transition Period, which may be intermittent ("**ETA Period**"). At any time, the Commonwealth reserves the right to transfer an ETA Employee to a position not covered by the ETA, and to terminate an ETA Employee's employment. The Commonwealth shall provide Manager prior written notice of such ETA Employee's termination, transfer or other non-discretionary leave of absence as soon as practicable. Nothing in this ETA shall limit the Commonwealth's right to eliminate a job classification or terminate a Commonwealth Lottery Employee during or after the termination of the Employment Transition Period in its sole discretion

**3.2 Status.** The Commonwealth shall be the employer of all ETA Employees assigned to assist and work with Manager during the Employment Transition Period. ETA Employees shall operate under the same employment policies, rules, regulations, and procedures as Commonwealth Lottery Employees, and in accordance with the Commonwealth Policies and Rules and Regulatory Requirements governing the employment relationship between Commonwealth Lottery Employees and the Commonwealth including, without limitation, the Pennsylvania Department of Revenue Standards of Conduct for Employees of the Department of Revenue, and the Governor's Code of Conduct, Executive Order 1980-18 Amended, and where applicable, with any collective bargaining agreement.

(a) With regard to the ETA Employees, the Commonwealth shall: (i) administer the payroll, and determine and pay all applicable wages and salaries, including applicable overtime and other premium pay; (ii) fulfill all payroll tax and benefit withholding and depositing obligations (iii) comply with applicable tax Regulatory Requirements, including income tax and employment tax withholding Regulatory Requirements; (iv) comply with all applicable Regulatory Requirements governing the employment relationship between the Commonwealth 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; (v) comply with all workers' compensation insurance coverage Regulatory Requirements; (vi) ensure that all ETA Employees are appropriately licensed and/or supervised to perform their assigned duties in accordance with applicable Regulatory Requirements; and (vii) maintain all required employment records, including I-9, personnel and medical files consistent with the Commonwealth's applicable Policies and Rules and Regulatory Requirements.

(b) To the extent necessary for an ETA Employee to perform his/her duties and assist the Manager, the Commonwealth shall provide ETA Employee(s) with the use of a

Commonwealth automobile in accordance with the Commonwealth Policies and Rules, including the appropriate insurance coverage for such automobile, gasoline and maintenance for that automobile (together the "**Automobile Expenses**"). Manager Personnel are prohibited from using Commonwealth automobiles provided to ETA Employees.

(c) The Commonwealth shall reimburse ETA Employees' authorized business expenses arising out of their assistance to and work with Manager during the Employment Transition Period, consistent with the Commonwealth Policies and Rules, Regulatory Requirements, and, where applicable, the terms of any collective bargaining agreement.

(i) Manager shall obtain the Commonwealth's prior written approval for ETA Employee business expenses for travel outside the Commonwealth, and for any ETA Employee's business expense in excess of one hundred dollars ($100.00).

(ii) At the Commonwealth's request, Manager shall provide any necessary information and documentation reasonably available to Manager, to the Commonwealth regarding the ETA Employees' business expense reimbursement requests.

**4. Manager's Responsibilities.**

**4.1 Direction and Scope of ETA Employees' Work.** Manager shall utilize each ETA Employee assigned by the Commonwealth to assist and work with Manager during the Employment Transition Period. During their respective ETA Periods, the ETA Employees' assistance to and work with Manager shall be directed by the Commonwealth, and shall include duties and responsibilities substantially similar to the work the ETA Employee performed for the Commonwealth prior to the Effective Date of the PMA, or such other duties and responsibilities as Manager may request, provided that such duties and responsibilities are consistent with the Commonwealth Policies and Rules and Regulatory Requirements and, where applicable, any collective bargaining agreement.

**4.2 Manager's Rights**. Manager: (i) shall have the right to introduce new technology that increases operational efficiency; (ii) shall cooperate with the Commonwealth on the utilization and direction of the ETA Employees to perform Lottery work; (iii) shall have the right to consult with the Commonwealth regarding the performance of any ETA Employee; (iv) shall report any professional, technical, or other deficiencies in such ETA Employee's performance to the Lottery Lead; and (v) shall have the right to request that the Commonwealth terminate the ETA Period of any ETA Employee. The Commonwealth shall consider Manager's observations and opinions with respect to management decisions regarding ETA Employees and shall make reasonable efforts to accommodate Manager's business needs and interests in performing Manager's duties and responsibilities with respect to the PMA. Notwithstanding anything to the contrary in this ETA, the Commonwealth shall have the sole authority to make all employment-related decisions with respect to the ETA Employees including, without limitation, the ETA Employees' Annual Performance Reviews, whether to terminate an ETA Employee's ETA Period, or to promote, transfer, discipline or discharge any ETA Employee consistent with the Commonwealth Policies and Rules and Regulatory Requirements and, where applicable, any collective bargaining agreement.

**4.3 Taxes**. Manager shall not account for any state, local, or federal income taxes, FICA, employment taxes or other amounts normally withheld from compensation due to the ETA Employees during the Employment Transition Period.

**4.4 Equal Employment**. With respect to the ETA Employees, Manager and Manager Personnel shall comply, and shall require all of Manager's Subcontractors and Vendors to

comply, with all Regulatory Requirements that pertain to or otherwise touch upon the employment relationship including, without limitation, all Regulatory Requirements pertaining to discrimination against any employee or applicant for employment because of race, color, religion, age, gender, gender identity and expression, 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, including but not limited to the Pennsylvania Human and Relations Act (Act of 1955, P.L. 744, No. 222, as amended June 25, 1997 by Act 34 of 1997, 43 P.S. §§ 951-963); the United States Civil Rights Act of 1964 (as amended) (42 U.S.C. §2000a- §2000h-6); Section; the United States Civil Rights Act of 1964 (as amended) (42 U.S.C. §2000a- §2000h-6); Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §794); the Americans with Disabilities Act of 1990 (42 U.S.C. §12101 et seq.); and, to the extent applicable, Executive Orders 11246 and 11375 (Equal Employment Opportunity) and Executive Order 13160 (2000) Improving Access to Services for Persons with Limited English Proficiency). 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 and Manager shall obtain similar certifications from any Subcontractors and Vendors.

**4.5 Manager Conduct and Compliance**. Manager and Manager Personnel shall with respect to the ETA Employees comply with the Commonwealth Policies and Rules, Regulatory Requirements, including without limitation the Commonwealth's Ethics Act, 65 P.S. §1101, et seq., and, where applicable, any collective bargaining agreement.

**4.6 Costs Related to ETA Employees**. During the Employment Transition Period, the Commonwealth shall be responsible for all ETA Employees' wages, benefits and business expenses including, without limitation, the compensation, payroll taxes, costs and expenses under the Commonwealth Employee Benefit Plans, paid vacation, holiday and sick leave programs, workers' compensation insurance, liability insurance, expense reimbursements for business expenses incurred by ETA Employees pursuant to **Section 3.2(c) (Status)**, and any other direct costs or expenses incurred by the Commonwealth with respect to the ETA Employees. For the avoidance of doubt, Manager shall not be obligated to pay or reimburse the Commonwealth or any Third Party for any of the aforementioned wages, benefits, business expenses, costs and reimbursements provided to ETA Employees with respect to the Employment Transition Period, regardless by whom paid, and regardless whether pursuant to a Commonwealth Employee Benefit Plan or any other "employee benefit plan," as defined in Section 3(3) of Employee Retirement Income Security Act of 1974, or as profit-sharing, bonus, stock option, stock purchase, stock ownership, pension, retirement, severance, deferred compensation, excess benefit, supplemental unemployment, post-retirement medical or life insurance, welfare, incentive, sick leave, long-term disability, medical, hospitalization, life insurance, or other insurance.

**4.7 Books and Records.** Manager shall keep appropriate books and records of account in sufficient detail and with supporting documentation, with respect to Manager's use of each ETA Employee, including the ETA Employee's hours of work, absence or leave from work, business expenses, and any other ETA Employee information reasonably required by the Commonwealth. Such report shall be sent to the Commonwealth within five (5) days after the end of each pay period or a schedule reasonably established by the Commonwealth. Manager shall make available to the Commonwealth, at reasonable times, the books, records and supporting documentation described in this **Section 4.7 (Books and Records)**.

**5. Benefits.**

**5.1 ETA Employee Benefit Plans**. During the Employment Transition Period, the ETA Employees shall continue to participate in the Commonwealth Employee Benefit Plans, as amended from time to time, provided that such ETA Employees were qualified and continue to remain qualified for such the Commonwealth Employee Benefit Plans, subject to such Commonwealth Employee Benefit Plan terms and in accordance with the Commonwealth Policies and Rules, Regulatory Requirements and, where applicable, any collective bargaining agreement. The Commonwealth shall be solely responsible for operating and administering the Commonwealth Employee Benefit Plans for the ETA Employees and for administering all claims incurred during the ETA Period in accordance with the terms and conditions of the applicable the Commonwealth Employee Benefit Plans.

**5.2 Manager Benefit Plans**. During the Employment Transition Period, the ETA Employees shall not participate in any "employee benefit plan," as defined in Section 3(3) of Employee Retirement Income Security Act of 1974, profit-sharing, bonus, stock option, stock purchase, stock ownership, pension, retirement, severance, deferred compensation, excess benefit, supplemental unemployment, post-retirement medical or life insurance, welfare, incentive, sick leave, long-term disability, medical, hospitalization, life insurance, other insurance or employee benefit plan, maintained or contributed to by Manager or any of its affiliates ("**Manager Benefit Plans**"), except upon written authorization by the Commonwealth. For avoidance of doubt, Manager Benefit Plans shall not apply to Commonwealth Lottery Employees, Current Lottery Employees or ETA Employees; and Manager Benefit Plans shall not apply to Transferred Employees before they have terminated their employment relationship with the Commonwealth.

**5.3 Vacation, Holidays, Sick Leave and Other Leaves of Absence.** During the Employment Transition Period, each ETA Employee's vacation days, sick leave and all other leaves of absence shall be administered in accordance with the Commonwealth Policies and Rules, Regulatory Requirements and, where applicable, any collective bargaining agreement. The Commonwealth shall consult with Manager regarding vacation schedules and leaves of absence; provided that the Commonwealth shall have the sole authority to schedule vacations and grant leaves of absence.

**5.4 Workers' Compensation, Unemployment Compensation and Other Legally Required Benefit Programs.** The Commonwealth shall remain responsible and retain liability for, and shall pay, if and when due before or after the commencement of the Employment Transition Period, the expense for all workers' compensation benefits (including weekly benefits, medical and rehabilitation expenses, and any other expenses or obligations) payable on account of any injuries, illnesses or other conditions of ETA Employees that occur during the Employment Transition Period, and all other benefits that are provided to the Commonwealth Lottery Employees in the same job classification as ETA Employees.

**6. Inquiries and Claims**. During the Employment Transition Period, the Commonwealth shall respond to all inquiries from an applicable Governmental Authority, regarding ETA Employee terms and conditions of employment, payroll, data, issues, and history, provided that Manager shall cooperate with the Commonwealth to the extent necessary for the Commonwealth to prepare a response.

(a) Neither Party shall represent that any ETA Employee is an employee of Manager, or that such ETA Employee's relationship to Manager is other than that of a Commonwealth Employee assisting the Manager in accordance with the ETA.

(b) Not more than five (5) Business Days after Manager's receipt of such inquiry or claim, Manager shall (i) provide the Lottery Lead with written notice of such inquiries or

claims regarding the ETA Employees and (ii) forward copies of any correspondence or other documents related to such inquiries or claims to the Lottery Lead.

**7. Solicitation and Right Hire.** Manager shall comply with the Commonwealth's Ethics Act, 65 P.S. §1101, et seq. when soliciting or hiring Commonwealth Lottery Employees, Current Lottery Employees, and ETA Employees. During the Employment Transition Period, Manager may solicit and hire any ETA Employee, and upon hiring the Transferred Employee shall become Manager Personnel, provided that Manager's offer of employment is conducted in accordance with all Regulatory Requirements. A Transferred Employee shall not retain any right to rehire with the Commonwealth, except as provided under the Commonwealth Policies and Rules and Regulatory Requirements for civil service employees.

**8. Information Sharing and Cooperation Between the Parties.**

(a) Subject to the Commonwealth Policies and Rules, Regulatory Requirements and, where applicable, any collective bargaining agreement, the Commonwealth shall provide to Manager information regarding the ETA Employees not subject to confidentiality or privacy restrictions, and reasonably required for Manager to perform its obligations under the ETA.

(b) Each Party agrees to cooperate with and assist the other in connection with any investigation or defense of any employment claims related to the ETA Employees, including, without limitation any enforcement or investigations pertaining to alleged violations of the Commonwealth Policies and Rules, Regulatory Requirements and, where applicable, any collective bargaining agreement.

(c) For purposes of this ETA each Party hereby appoints the person named below as its primary contact for any and all matters under this ETA:

| **If to the Commonwealth:** | **If to Manager:** |
|---|---|
| **With a copy to:** | **With a copy to:** |

**9. Term; Termination**. This Agreement shall run coterminous with the Employment Transition Period and shall expire at the end of the Employment Transition Period, unless earlier terminated in accordance with the terms and conditions of this ETA or the PMA. Notwithstanding anything contained in this ETA or the PMA to the contrary, this ETA may be terminated at any time by mutual written agreement of Manager and the Commonwealth.

**10. Miscellaneous.**

**10.1 Expenses**. Except as otherwise provided in this ETA, each Party shall pay its own expenses and costs of attorneys, accountants and consultants incurred in connection with the transactions contemplated by this ETA.

**10.2 Disputes.** During the ninety (90) day period prior to the end of the Employment Transition Period, the Parties shall meet and confer as necessary in order to resolve any outstanding issues or disputes related to or arising in connection with the ETA. If the Parties are unable to resolve any dispute related to or arising in connection with the ETA, it shall be resolved in accordance with **Article 20 (Dispute Resolution; Governing Law)** of the PMA.

**10.3 Incorporation of the PMA**. The Parties acknowledge and agree that the terms and conditions of the PMA are hereby incorporated into this ETA by reference including, without limitation, the following Articles and Sections: **Article 6 (Employees)**, **Section 20.2 Governing Law, Venue, and Other Legal Considerations)**, and **Article 22 (Miscellaneous)**.

**[The Remainder of This Page Is Intentionally Left Blank.]**

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

**COMMONWEALTH OF PENNSYLVANIA DEPARTMENT OF REVENUE**

By: _____

Name:

Title:

By:_____

Name:

Title:

**RECOMMENDED:**

By:_____

Name:

Title: General Counsel
Department of Revenue

By:_____

Name:

Title: Chief Fiscal Officer
Department of Revenue

# EXHIBIT D

## FORM OF CONFIDENTIALITY AGREEMENT

***[For informational purposes only – to be revised]***

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

## RECITALS

**WHEREAS**, Manager and the Commonwealth of Pennsylvania, [_____], Pennsylvania Lottery (the "**Department**") entered into an agreement on [_____], 2012 (the "**PMA**") by which Manager shall assist the Department in its operation of the Commonwealth-conducted lottery for a term not to exceed [ ] years (the "**Transaction**");

**WHEREAS**, pursuant to the terms of the PMA, Manager must require all of its Subcontractors and Manager Personnel having access to Commonwealth Confidential Information to be subject to a written agreement of confidentiality and non-disclosure that contains terms and conditions substantially similar to those set forth in **Article 9 (Data Protection, Security, and Confidentiality)** of the PMA;

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

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

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

## AGREEMENT

**1. Definitions**.

**1.1 Confidential Information**. For purposes of this Agreement, "Confidential Information" shall mean (i) all information marked confidential, restricted or proprietary by either Party; and (ii) any other information that is treated as confidential by the Department, Manager, or Company and would reasonably be understood to be confidential, whether or not so marked. In the case of the Department, 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 this Agreement. "Confidential Information" shall not include information which (i) was already rightfully known to the receiving party prior to the time that it is disclosed to the receiving party hereunder; (ii) is in or has entered the public domain through no breach of this Agreement or other wrongful act of the receiving party; or (iii) is required to be disclosed pursuant to a final binding order of a governmental agency or court of competent jurisdiction, provided that the disclosing party has been given reasonable notice of the pendency of such an order and the opportunity to contest it.

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

**2. Obligations of Confidentiality**. Company understands and agrees that it will be deemed in a relationship of confidence with respect to the Confidential Information disclosed to it by Manager. Company agrees to hold the Confidential Information in strict confidence and not to disclose such Confidential Information to any third party or to use it for any purpose other than for the business purpose permitted under this Agreement. Further, Company shall not have any communications whatsoever with any other third party regarding the Confidential Information without the express written consent of Manager. Company will employ all reasonable steps to protect the Confidential Information from unauthorized or inadvertent disclosure, including all steps that it takes to protect its own information that it considers confidential, proprietary, or trade secret. Company may disclose the Confidential Information to its responsible employees, auditors, attorneys, accountants, or permitted consultants, but only where: (i) said individual or entity is authorized to perform work or services by Manager; (ii) such disclosure is necessary for the performance of said individual's or entity's obligations pursuant to this Agreement; and, (iii) and said individual or entity agrees to the confidentiality obligations prescribed by this Agreement. Company agrees to instruct all such responsible employees, auditors, attorneys, accountants, or permitted consultants to perform his, her, or its obligations in accordance with the terms and conditions of this Agreement and not to disclose such Confidential Information to any third parties, and not to use the Confidential Information it for any purpose (other than such business purposes as expressly permitted under this Agreement), without the prior written permission of Manager. Company shall be jointly and severally responsible for any acts or omissions of such responsible employees, auditors, attorneys, accountants, or permitted consultants in conflict with this Agreement or with any of the instructions required to be given in accordance with the foregoing.

**3. Required Disclosure**. In the event that Company, or any of its responsible employees, auditors, attorneys, accountants, or permitted consultants, are required by applicable law, regulation or legal process to disclose any Confidential Information (or if an incident has arisen where Company suspects a disclosure or unauthorized use of Confidential Information), Company will notify Manager immediately so that Manager (or the Department) may seek a protective order or other appropriate remedy or, in its sole discretion, waive compliance with the terms of this Agreement, and Company will not disclose any Confidential Information upon such demand or requests without obtaining an opinion from its legal counsel to the effect that disclosure to the applicable authority is required under penalty of law. Company, and its responsible employees, auditors, attorneys, accountants, or permitted consultants, will at all times cooperate timely and fully with Manager to protect the confidentiality of the Confidential Information and will exercise all reasonable efforts to obtain reliable assurance that confidential treatment will be accorded to the Confidential Information, and will disclose only so much of the Confidential

Information as it is legally compelled to disclose (which shall mean and include an effort to redact or "sanitize" any information required to be disclosed to the maximum extent permitted by law).

**4. Return of Materials**. Upon the termination of the relationship between the Parties as contemplated hereby, including the termination or expiration, for whatever reason, of any Subcontract between the Parties, and in any event upon the written request of Manager at any time, whether before or after the completion or abandonment of such relationship or agreement, Company shall return to Manager (or destroy if requested by Manager), within thirty (30) days, all documents, plans, drawings, specifications or other tangible items representing or embodying Company Confidential Information, and all copies or derivative works thereof. Company shall have an authorized representative execute a written certification of its compliance with this **Section 4 (Return of Materials)**.

**5. Ownership of Confidential Information**. Manager, its Affiliates, or the Department shall be deemed to be the owner of all Confidential Information disclosed by Manager hereunder, including all patent, copyright, trademark, trade secret and other proprietary rights and interests therein, and Company recognizes and agrees that nothing contained in this Agreement shall be construed as granting any rights, by license or otherwise, in or to any Confidential Information disclosed pursuant to this Agreement or in or to any such intellectual property rights therein. Company shall not (a) make any use or copies of the Confidential Information except as contemplated by this Agreement; (b) acquire any right in or assert any lien against the Confidential Information; (c) sell, assign, transfer, lease or otherwise dispose of Confidential Information to third parties or commercially exploit such information; or (d) refuse for any reason to promptly provide the Confidential Information (including copies thereof) to Manager if requested to do so.

**6. Injunctive Relief and Attorneys' Fees**. Company hereby acknowledges that the unauthorized disclosure, use or disposition of Confidential Information would cause irreparable harm and significant injury to Manager or the Department, the damages of which would be difficult to quantify or ascertain. Accordingly, the Parties agree that Manager shall have the right to an immediate injunction in the event of any breach of the obligations set forth in this Agreement, in addition to any other remedies that may be available to Manager at law or in equity. In the event of an action to enforce the provisions of this Agreement, the party seeking such enforcement, if it prevails, shall be entitled, in addition to any other relief granted, to recover from the other party the reasonable costs and expenses of such enforcement, including reasonable attorneys' fees.

**7. Duration; Survival**. This Agreement shall remain in effect until written notice by Manager to terminate this Agreement. Notwithstanding the termination of this Agreement, the confidentiality obligations set forth in this Agreement shall survive the termination of this Agreement until the later to occur of (a) the date that is three (3) years after the date Company last performs work or services for Manager, or (b) the date that is ten (10) years after the expiration or earlier termination of the PMA.

**8. Department As Beneficiary**. The Parties expressly acknowledge and agree that the Department shall be considered a third-party beneficiary under this Agreement, having all of the legal, equitable, or similar rights (or remedies or claims) that Manager may have under this Agreement.

**9. Miscellaneous**. If any provision of this Agreement or any portion of any such provision shall be held invalid or unenforceable by a court of competent jurisdiction, the remaining provisions of the Agreement shall remain in full force and effect, and the provision or portion thereof affected by such holding shall be modified, if possible, so that it is enforceable to the maximum extent permissible. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania without regard to or application of choice of law rules or principles. Nothing contained in this Agreement shall be deemed to obligate Manager to deal exclusively with Company with respect to

the Transaction, or any part thereof, and Manager shall be free to engage other parties to perform the same or similar work as is being requested of Company with respect to the Transaction. This Agreement constitutes the entire agreement of the parties regarding the subject matter of this Agreement and may not be modified except by a written instrument signed by an authorized representative of each party. This Agreement shall be for the benefit of the parties and their respective subsidiaries and affiliates.

**IN WITNESS WHEREOF**, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date.

**"MANAGER"**

[_____],
[_____]

By: _____
Name:
Title:

**"COMPANY"**

[_____],
a _____

By: _____
Name:
Title:

# EXHIBIT E

## FORM OF LETTER OF CREDIT

_____, 2012

Commonwealth of Pennsylvania
c/o Dan Meuser, Secretary
Department of Revenue
1131 Strawberry Square
Harrisburg, PA 17128-1100

Ladies and Gentlemen:

We hereby issue this Irrevocable Standby Letter of Credit No. _____ in your favor for the account of [Name of Applicant] in the amount of US $_____ as the Stated Amount.

Funds under this Standby Letter of Credit are available to you upon your presentation to us at [Eligible Institution Address] of one or more sight drafts drawn on us for a sum or sums in an aggregate amount not exceeding the Stated Amount, specifically referencing this [Name of Eligible Institution] Irrevocable Standby Letter of Credit No. _____, signed by the Secretary of Revenue of the Commonwealth of Pennsylvania (whether acting or actual) or his designee, which sight draft shall contain a statement that the Department of Revenue is entitled to make such draw on behalf of the Commonwealth of Pennsylvania or be accompanied by a signed statement of the Secretary of Revenue of the Commonwealth of Pennsylvania to the same effect.

Our obligations hereunder are primary obligations to the Department of Revenue and shall not be affected by the performance or non-performance by [Name of Applicant] under any agreement with the Department of Revenue or by any bankruptcy, insolvency or other similar proceeding initiated by or against [Name of Applicant]. [Name of Applicant] is not the beneficiary under this Standby Letter of Credit and possesses no interest whatsoever in proceeds of any draw hereon. We agree with you that any draws under this Standby Letter of Credit shall be duly honored on sight if presented to us on or before [Monday, December 31, 2012] (the "**Expiry Date**"). This Standby Letter of Credit shall terminate on the earlier of (i) the close of business on the Expiry Date, [which shall be 5:00 P.M. Eastern Standard/Daylight Time,] or (ii) the date that we have honored one or more draws in the full amount of this Standby Letter of Credit. This Standby Letter of Credit may not be transferred by the Department of Revenue to any other person.

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

Neither non-renewal by us of this Standby Letter of Credit nor the failure or inability of [Name of Applicant] to renew this Standby Letter of Credit for a subsequent year shall constitute a loss to the Commonwealth of Pennsylvania recoverable under this Standby Letter of Credit to the extent that an alternate security instrument approved by you is put in place on a timely basis so that at no time would [Name of Applicant] be in violation of its obligation under any agreement with the Department of

Revenue to maintain in place such security instrument.

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

With respect to any suit, action or proceedings relating to this Standby Letter of Credit ("**Proceedings**"), we irrevocably: (i) submit to the exclusive jurisdiction of courts located in the Commonwealth of Pennsylvania; and (ii) waive any objection which we may have at any time to the laying of venue of any Proceedings brought in any such court, waive any claim that such Proceedings have been brought in an inconvenient forum, and further waive the right to object, with respect to such Proceedings, that such court does not have any jurisdiction over us.

[Name and Address of Eligible Institution]
[Authorized Signature]