

AGREEMENT

THIS AGREEMENT is entered by and between WMS Gaming Inc., with a principal place of business at 800 South Northpoint Blvd., Waukegan, IL 60085 ("WMS"), and the Delaware State Lottery, an agency created pursuant to 29 Del. - chapter 48, with a principal place of business at 1575 McKee Road, Suite 102, Dover, DE 19904 ("Lottery").

WHEREAS, the Lottery issued a Request for Proposals on April 5, 2013 (the "RFP") to invite interested manufacturers of video lottery terminals to submit proposals for the implementation and operation of video lottery terminals ("VLTs") (hereinafter, as more fully defined in section 1.10 of the RFP);

WHEREAS, WMS submitted to the Lottery its responsive proposal to supply VLTs (the "Proposal") on or about May 3, 2013;

WHEREAS, the Lottery desires to obtain certain services from WMS: and

WHEREAS, WMS desires to provide such services to the Lottery on the terms set forth below;

WHEREAS, the Lottery and WMS represent and warrant that each party has full corporate right, power and authority to enter into and perform under this Agreement;

FOR AND IN CONSIDERATION OF the premises and mutual agreements herein, the Lottery and WMS agree as follows:

1.0 Definitions

Capitalized terms used herein but not otherwise defined herein shall have the meanings set forth in section 1.10 of the RFP, incorporated by reference.

2.0 Lease of VLT Units

WMS agrees to lease to the Lottery for an operational term of five (5) years ("Lease Term") the number of VLTs that the Lottery deems appropriate based on the Lottery's goal of maximizing revenue while protecting the public welfare and security of the operations, with the understanding that any increase or decrease in such number from 743 (the number of VLTs leased by the Lottery from WMS as of the date of this Agreement) shall be carried out in accordance with the terms and conditions set forth below. The Lottery reserves the right to request WMS lease to the Lottery an additional number of VLTs and/or decrease the number of VLTs leased, subject to the terms of the agreement, the RFP and the Proposal. VLTs will consist of the models as described in WMS's Proposal and any new models that WMS may develop during the term of the Agreement subject to Section 2.31(b).

2.1 Governing Law

The proposal process, the award procedure, and this Agreement resulting from the RFP shall be governed by the laws of the State of Delaware. The RFP is subject to 29 Del. C. §§4820(b), 6981-82 of the Delaware Code. Any and all litigation arising under the RFP or the Agreement shall be instituted in the appropriate court of the State of Delaware; and, by submitting a proposal, WMS is deemed to waive access to any other court which may have concurrent jurisdiction within or without Delaware.

2.2 Contract Elements

2.2.1 Any conflict or inconsistency between the provisions of the following documents shall be resolved by giving precedence to such documents in the following order: (a) this Agreement (including any amendments or modifications thereto); (b) the Lottery's request for proposals, attached hereto as Appendix A; and (c) WMS's response to the request for proposals, attached hereto as Exhibit B. The aforementioned documents are specifically incorporated into this Agreement and made a part hereof.

2.2.2 The Lottery may, at any time, by written order, request that the parties make changes in the scope of this Agreement and in the services or work to be performed. No services for which additional compensation may be charged by WMS shall be furnished without the written authorization of the Lottery. When the Lottery desires any addition or deletion to the deliverables or a change in the services to be provided under this Agreement, it shall notify WMS, who shall then submit to the Lottery a "Change Order" for approval authorizing said change. The Change Order shall state whether the change shall cause an alteration in the price or the time required by WMS for any aspect of its performance under this Agreement. Pricing of changes shall be consistent with those established within this Agreement, where applicable and commercially reasonable. Any alterations, variations, changes, modifications or waivers of or to provisions of this Agreement shall only be valid when they have been reduced to writing and duly executed and approved by each of the parties.

2.3 Term of Agreement

2.3.1 This Agreement will be in effect for a five (5) year operational term, or such shorter period as the Lottery may determine due to causes such as contract termination or loss of State funding by the Lottery. The Agreement will be in effect from the date of execution until September 1, 2018 which the parties expect to be five years after the date of installation and operation of the first new VLT under this Agreement.

2.3.2 The Lottery reserves the right to extend this Agreement, with the concurrence of WMS, for up to three, two-year periods, at a rate of compensation negotiated by the parties. Any extension of the Agreement or any notice by the Lottery of intent to solicit new bids must be noticed ninety (90) days prior to the expiration of the Agreement term or at any time mutually agreed upon by both parties.

2.3.3 The Lottery further reserves the right to reactivate or further extend the initial Agreement, or any extension thereof, on thirty days' notice for ninety day periods if a different bidder's terminals are chosen for subsequent contracts and WMS's terminals do not meet the requirements of the Lottery.

2.3.4 Exercising this right shall not be construed as obligating the Lottery to repeat the procurement process for any subsequent contracts or conferring any right or expectation for WMS to continue operating their video lottery terminals after the expiration of any such 90 day period.

2.4 WMS's Responsibilities as Prime Contractor

2.4.1 WMS will assume sole responsibility for delivery, installation and maintenance of all equipment, software and support services offered in its proposal. The Lottery will consider WMS to be the sole point of contact with regard to contractual matters.

2.4.2 It shall be the duty of WMS to assure that all products of its effort are technically sound in the context of WMS' Proposal and in conformance with all pertinent Federal, State and Local statutes, codes, ordinances, resolutions and other regulations.

2.4.3 Permitted or required approval by the Lottery of any products or services furnished by WMS shall not in any way relieve WMS of responsibility for its work. The Lottery's review, approval, acceptance, or payment for any of WMS's services herein shall not be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement, and WMS shall be and remain liable in accordance with the terms of this Agreement and applicable law for all damages to the Lottery caused by WMS's performance or failure to perform under this Agreement, subject to the terms of this Agreement.

2.4.4 WMS shall appoint a Project Manager who will manage the performance of services. All of the services specified by this Agreement shall be performed by the Project Manager, or by WMS's associates and employees under the personal supervision of the Project Manager.

2.5 Lottery Responsibilities

2.5.1 The Lottery shall, without charge, furnish to or make available for examination or use by WMS as it may request, any data which the Lottery has available, including as examples only and not as a limitation:

- a. Copies of reports, surveys, records, and other pertinent documents;
- b. Copies of previously prepared reports, job specifications, surveys, records, ordinances, codes, regulations, other document, and information related to the services specified by this Agreement.

WMS shall return any original data provided by the Lottery.

2.5.2 The Lottery shall assist WMS in obtaining data on documents from public officers or agencies and from private citizens and business firms whenever such material is necessary for the completion of the services specified by this Agreement.

2.5.3 WMS will not be responsible for accuracy of information or data supplied by the Lottery or other sources.

2.5.4 The Lottery agrees not to use WMS's name, either express or implied, in any of its advertising or sales materials. WMS reserves the right to reuse the nonproprietary data and the analysis of industry-related information in its continuing analysis of the industries covered.

2.6 Independent Contractor

2.6.1 It is understood that in the performance of the services herein provided for, WMS shall be, and is, an independent contractor, and is not an agent or employee of Delaware and shall furnish such services in its own manner and method except as required by this Agreement. WMS shall be solely responsible for, and shall indemnify, defend and save the Lottery and the State of Delaware harmless from all matters relating to the payment of its employees, including compliance with social security, withholding and all other wages, salaries, benefits, taxes, exactions, and regulations of any nature whatsoever.

2.6.2 WMS acknowledges that WMS and any subcontractors, agents or employees employed by WMS shall not, under any circumstances, be considered employees of Delaware, and that they shall not be entitled to any of the benefits or rights afforded employees of Delaware, including, but not limited to, sick leave, vacation leave, holiday pay, Public Employees Retirement System benefits, or health, life, dental, long-term disability or workers' compensation insurance benefits. Delaware will not provide or pay for any liability or medical insurance, retirement contributions or any other benefits for or on behalf of WMS or any of its officers, employees or other agents.

2.6.3 As an independent contractor, WMS has no authority to bind or commit the Lottery or the State of Delaware. Nothing herein shall be deemed or construed to create a joint venture, partnership, fiduciary or agency relationship between the parties for any purpose.

2.7 Background Investigations

2.7.1 The Lottery may initiate investigations into the backgrounds of any officers, principals, investors, owners, subcontractors, employees, or any other associates of WMS as it deems appropriate. Such background investigations may include fingerprint identification by the Delaware State Police and the Federal Bureau of Investigation, or the appropriate non-U.S. equivalent, with all investigation expenses to be paid by WMS.

2.7.2 By submission of a proposal, WMS consents to such investigations, and to

cooperate with such investigations. The Lottery may reject a proposal or terminate an agreement based upon the results of these background checks.

2.8 Minority/Women-Owned Business Participation

It has been and remains the policy of the State of Delaware to promote equality of economic opportunity for minority and women-owned business enterprises (MBE/WBEs) in contracting activities. Accordingly, WMS is strongly encouraged to utilize MBE/WBE subcontractors in the performance of this Agreement.

2.9 Termination

2.9.1 This Agreement may be terminated in whole or in part by either party in the event of substantial failure of the other party to fulfill its obligations under this Agreement through no fault of the terminating party; but only after the other party is given:

- a. Not less than 30 calendar days written notice of intent to terminate; and
- b. An opportunity for consultation with the terminating party prior to termination.

2.9.2 This Agreement may be terminated in whole or in part by the Lottery for its convenience, but only after WMS is given:

- a. Not less than 30 calendar days written notice of intent to terminate; and
- b. An opportunity for consultation with the Lottery prior to termination.

2.9.3 If termination is effected by either party, the Lottery will pay WMS that portion of the compensation which has been earned as of the effective date of termination, but if such termination was effected by the Lottery for default:

- a. No amount shall be allowed for anticipated profit on performed or unperformed services or other work, and
- b. Any payment due to WMS at the time of termination may be adjusted to the extent of any additional costs occasioned to the Lottery by reason of WMS's default.

2.9.4 If after termination for failure of WMS to fulfill contractual obligations it is determined that WMS has not so failed, the termination shall be deemed to have been effected for the convenience of the Lottery.

2.9.5 The rights and remedies of the Lottery and WMS provided in this section are in addition to any other rights and remedies provided by law (subject to the terms of this Agreement) or under this Agreement.

2.9.6 Gratuities.

2.9.6.1 Delaware may, by written notice to WMS, terminate this Agreement if it is found after notice and hearing by the Lottery that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by WMS or any agent or representative of WMS to any officer or employee of the Lottery with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending or making of and determinations with respect to the performance of this Agreement.

2.9.6.2 In the event this Agreement is terminated as provided in 2.9.6.1 hereof, the Lottery shall be entitled to pursue the same remedies against WMS it could pursue in the event of a breach of this Agreement by WMS.

2.9.6.3 The rights and remedies of the Lottery provided in Section 2.9.6 shall not be exclusive and are in addition to any other rights and remedies provided by law (subject to the terms of this Agreement) or under this Agreement.

2.10 Covenant Against Contingent Fees

WMS warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, or a percentage, brokerage or contingent fee. For breach or violation of this warranty, the Lottery shall have the right to annul this agreement without liability or at its discretion deduct from the contract price or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

2.11 Accounting Records

WMS is required to maintain books, records and all other evidence pertaining to this Agreement in accordance with generally accepted accounting principles (GAAP) and such other procedures specified by the Lottery. These records shall be available to the Lottery, and its internal or external auditors (and other designees) at all times during the agreement period and any extension thereof, and for three (3) full years from the expiration date and/or final payment on the agreement or extension thereof, whichever is later, subject to the Lottery or any such auditor entering into reasonable confidentiality obligations prior to examining such records.

2.12 Audit Requirements

WMS must meet the following specific auditing obligations during the term of this Agreement:

- a. WMS will have a complete financial audit conducted annually. A copy of WMS's certified financial statements shall be provided to the Lottery annually. The requirements of this Section 2.12(a) may be met by WMS' publicly-traded parent, rather than WMS.

- b. In addition, a complete internal control audit of WMS's Delaware operations may be required by the Lottery, to be conducted annually by an independent certified public accounting firm. This audit shall be conducted pursuant to Statement on Auditing Standards No. 70, as issued by the American Institute of Certified Public Accountants. The Lottery reserves the right to specify the type of report and the control objectives to be examined. The Lottery also reserves the right to approve the accounting firm chosen to perform the internal control audit and reserves the right to designate the annual period to be covered by the report and the date by which the report is due. "Delaware operations" refers to local and corporate support of this Agreement, not including WMS's business in general. The Lottery hereby approves Berry, Dunn, McNeil & Parker as an accounting firm that may conduct this audit.
- c. The Lottery reserves the right to require the first internal control audit to be conducted within 90 days of installation of WMS's first terminal.
- d. Both the aforementioned types of audits shall be conducted at the expense of WMS.
- e. The Lottery's certified public accounting firm or other designate will be given the right to review the work papers of the audits conducted under Section 2.12(b), if considered necessary by the Lottery, subject to the Lottery and any such firm or designate entering into reasonable confidentiality obligations prior to examining such work papers.
- f. The Lottery and its independent certified public accountants shall be given a copy of all reports including any management letters issued as a result of the specified audits conducted under Section 2.12(b) , subject to the Lottery and any such accountants entering into reasonable confidentiality obligations prior to examining such reports and letters.
- g. WMS is required to provide, upon request, copies of filings to the Securities and Exchange Commission.

2.13 Intentionally left blank.

2.14 Authority of the Lottery

On all questions concerning the interpretation of specifications, the acceptability and quality of material furnished and/or work performed, the classification of material, the execution of the work, the assessment of liquidated damages, and the determination of payment due or to become due, the decision of the Lottery shall be final and binding.

2.15 Cooperation of the Parties

WMS and the Lottery agree that their officers and employees will cooperate fully

in the performance of services under this Agreement and will be available for consultation at such reasonable times with advance notice as to not conflict with their other responsibilities. Neither party will unreasonably withhold its approval of any act or request of the other to which its approval is necessary or desirable.

2.16 Indemnification

2.16.1 WMS shall indemnify and hold harmless the Lottery, the State, its agents and employees, from any and all third party suits, actions or claims against them, together with all reasonable costs and expenses (including attorneys' fees) of such suits, actions or claims, to the extent directly arising out of (A) the negligence or other wrongful conduct of WMS, its agents or employees, or (B) WMS's breach of any material provision of this Agreement not cured after due notice and opportunity to cure, provided as to (A) or (B) that (i) WMS shall have been notified promptly in writing by the Lottery of any notice of such a suit, action or claim; and (ii) WMS shall have the sole control of the defense of any action on such suit, action or claim and all negotiations for its settlement or compromise.

2.16.2 If the Lottery promptly notifies WMS in writing of a third party claim against the Lottery that any deliverable infringes a copyright, patent or a trade secret of any third party, WMS will defend such claim at its expense and will pay any costs or damages that may be finally awarded against the Lottery provided the Lottery gives WMS sole control of such defense and all negotiations for its settlement or compromise. WMS will not indemnify the Lottery, however, if the claim of infringement is caused by (1) the Lottery's misuse or modification of the deliverable; (2) the Lottery's failure to use corrections or enhancements made available by WMS; (3) the Lottery's use of the deliverable in combination with any product or information not owned or developed by WMS; (4) the Lottery's distribution, marketing or use for the benefit of third parties of the deliverable or (5) information, direction, specification or materials provided by a third party. If any deliverable is, or in WMS's opinion is likely to be, held to be infringing, WMS shall at its expense and option either (a) procure the right for the Lottery to continue using it, (b) replace it with a noninfringing equivalent, (c) modify it to make it noninfringing. The foregoing remedies constitute the Lottery's sole and exclusive remedies and WMS's entire liability with respect to infringement.

2.16.3 The Lottery agrees that WMS'S TOTAL LIABILITY TO THE LOTTERY FOR ANY AND ALL DAMAGES WHATSOEVER ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT FROM ANY CAUSE, INCLUDING BUT NOT LIMITED TO CONTRACT LIABILITY OR WMS NEGLIGENCE, ERRORS, OMISSIONS, STRICT LIABILITY, BREACH OF CONTRACT OR BREACH OF WARRANTY SHALL NOT, IN THE AGGREGATE, EXCEED FEES PAID TO WMS.

2.16.4 IN NO EVENT SHALL WMS BE LIABLE FOR SPECIAL, INDIRECT, INCIDENTAL, ECONOMIC, CONSEQUENTIAL OR PUNITIVE DAMAGES, including but not limited to lost revenue, lost profits, replacement goods, loss of technology rights or services, loss of data, or interruption or loss of use of software or any portion thereof regardless of the legal theory under which such damages are sought, and

even if WMS has been advised of the likelihood of such damages. WMS DISCLAIMS ALL EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES ON ITS PART TO THE LOTTERY OR TO ANY OTHER PERSON WITH RESPECT TO THE TERMINALS, SOFTWARE OR EQUIPMENT, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, WMS MAKES NO REPRESENTATIONS AS TO PAR VALUES OR HOLD PERCENTAGES. ANY MODIFICATIONS MADE BY ANYONE OTHER THAN WMS TO ANY TERMINAL, SOFTWARE OR EQUIPMENT SHALL VOID ALL WARRANTIES PROVIDED BY WMS.

2.17 Bonds and Insurance

All required bonds and insurance must be issued by companies which are at least 'A' rated by A.M. Best & Co., are duly licensed, admitted, and authorized to do business in the State of Delaware and are acceptable to the Lottery. Required coverage must be put into effect as of the effective date of the agreement and must remain in effect throughout the term. WMS must submit copies of each required insurance contract or certificates attesting to such insurance coverage, and any renewals thereof, to the Lottery. The Lottery must receive thirty (30) days advance written notice of cancellation, termination, or failure to renew any policy.

WMS shall purchase adequate insurance for the performance of the agreement and, by submission of a bid, agrees pursuant to Section 2.16.1 to indemnify and save harmless and to defend all legal or equitable actions brought against the State, any agency, officer and/or employee of the State, for and from all claims of liability which is or may be the result of WMS's actions during the performance of the agreement. The purchase or nonpurchase of such insurance or the involvement of WMS in any legal or equitable defense of any action brought against WMS based upon work performed pursuant to the agreement will not waive any defense which the State, its agencies and their respective officers, employees and agents might otherwise have against such claims, specifically including the defense of sovereign immunity where applicable, and the State and all agencies, officers and employees thereof shall not be financially responsible for the consequences of work performed, pursuant to said agreement.

2.17.1 Insurance

WMS shall purchase and maintain insurance for claims set forth below which may arise out of or result from WMS's operations under the Agreement, whether such operations be by WMS or by any subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- a. Claims under workers' compensation, disability benefit and other similar employee benefit acts per statute in each state in which WMS does business
- b. Claims for damages because of bodily injury, occupational sickness or

disease, or death of WMS's employees

- c. Claims for damages because of bodily injury, sickness or disease, or death of any person other than WMS's employees
- d. Claims for damages because of injury to or destruction of tangible property, including loss of use resulting there from
- e. Comprehensive General Liability Insurance coverage with limits of not less than \$1,000,000.
- f. Property Insurance on all buildings, furniture, fixtures, computer and communications equipment used in operating and supporting the video lottery terminals in an amount equal to or greater than the actual replacement cost thereof. Coverage shall include an All Risk Property Floater to insure personal property including contents, equipment, and mobile items against fire, theft, collision, and flood. The State of Delaware, the Lottery, and Lottery agents will not be responsible for insuring any equipment or facilities included in or associated with the agreement.
- g. Automotive Liability Insurance covering drivers and vehicles employed in connection with the operation of the Agreement with limits of not less than \$300,000 for personal injury to each person and \$25,000 for property damage
- h. Professional Liability/Errors and Omissions/Product Liability Insurance with limits of not less than \$1,000,000 per claim, to be in force and effect at all times which will indemnify WMS and the Lottery for direct loss which may be incurred due to any error caused by WMS, its officers, employees, agents, subcontractors or assigns regardless of negligence

A STATEMENT OF SELF-INSURANCE TO COVER THE ABOVE REQUIREMENTS
SHALL BE CONSIDERED NON-RESPONSIVE.

Errors and Omissions Insurance must continue until one year past the term of the Agreement. All other insurance covered by this section must be effective when performance commences under the Agreement and continue through the life of the Agreement and any authorized extensions.

Certificates of insurance must be furnished to the Lottery Director on date of contract execution, with the exception of the certificate for Errors and Omissions Insurance, which must be furnished to the Lottery Director prior to installation of the first terminal.

The required insurance coverage shall be written for not less than any limits of liability as required by the Agreement, and shall include contractual liability as applicable

to WMS's obligations under the Indemnification clause of the agreement.

In no event shall the State of Delaware be named as an additional insured on any policy required by this agreement.

2.17.2 Litigation Bond

Pursuant to the RFP, WMS must maintain a litigation bond in the amount of \$250,000. A claim upon the bond may be made by the Lottery if the following two conditions are met:

- a. WMS sues the Lottery, the State of Delaware, or any of their officers, employees, or agents with regard to any matter relating to the award of contracts pursuant to this RFP.
- b. The Lottery is the prevailing party in such suit.

The purpose of the bond is to discourage unwarranted litigation by permitting the Lottery to recover damages, including reasonable attorneys' fees, resulting from such litigation. The litigation bond shall remain in effect for a period of two (2) years from the date of Proposal submission.

Upon execution of this Agreement, the litigation bond may be released with the approval of the Lottery if WMS completes a covenant not to sue.

2.18 Liquidated Damages

WMS acknowledges:

- a. If WMS does not fulfill the obligations of the Agreement, damage to the Lottery will result. Establishing the precise value of such damage would be costly, difficult, and time consuming.
- b. The liquidated damage amounts specified herein are good faith efforts to quantify the damages that could be reasonably anticipated at the time of the making of the Agreement.
- c. The Lottery may, therefore, in its discretion, deduct liquidated damages from the compensation otherwise due to WMS. All assessments of liquidated damages shall be within the discretion of the Lottery and shall be in addition to, and not in lieu of, the right of the Lottery to terminate the Agreement or to pursue other appropriate remedies.
- d. The Lottery shall notify WMS in writing of the assessment of liquidated damages for any default specified herein and payment of such damages shall be initiated within thirty (30) days of receipt of the assessment notice

by deducting such damages from the compensation otherwise due to WMS. If timely payment is not made, the Lottery may collect such damages by making a claim against the professional liability insurance or by any other lawful method.

- e. Excessive liquidated damages, and events leading to such, in the sole discretion of the Lottery, may be grounds for termination of the agreement.

2.18.1 Notification of Liquidated Damages

All assessments of liquidated damages shall be made by the Lottery Director. Upon determination that liquidated damages are to be or may be assessed, the Lottery shall notify WMS of the potential assessment in writing.

2.18.2 Conditions for Termination of Liquidated Damages

As determined appropriate by the Director, the following are the conditions under which WMS may obtain relief from the continued assessment of liquidated damages that have been imposed:

- a. Except as waived in writing by the Director, no liquidated damages imposed shall be terminated or suspended until WMS issues a written notice verifying the correction of the condition(s) for which liquidated damages were imposed, and all the corrections have been subjected to system testing or other verification at the discretion of the Director.
- b. If appropriate, WMS shall conduct systems testing of any correction as the Director deems necessary. Such testing shall be developed jointly by the Lottery and WMS, and approved by the Lottery, including the test script, test environment, and test results.
- c. The documentation necessary for verification and approval shall be determined by the Director. The Director shall be the sole judge of the accuracy of any documentation provided.

WMS's notice of correction will not be accepted until the correction is verified by the Lottery.

2.18.3 Severability of Individual Liquidated Damages

If any portion of the liquidated damages provisions is determined to be unenforceable in one or more applications, that portion remains in effect in all applications not determined to be invalid and is severable from the invalid applications. If any portion of the liquidated damages provisions is determined to be unenforceable, the other provision or provisions shall remain in full force and effect.

2.18.4 Waivers of Liquidated Damages

It is expressly agreed that the waiver of any liquidated damages due the Lottery shall constitute a waiver only as to such liquidated damages and not a waiver of any future liquidated damages. Failure to demand payment of liquidated damages within any period of time shall not constitute a waiver of such claim by the Lottery.

2.18.5 Payment of Liquidated Damages

All assessed liquidated damages will be deducted from any moneys owed WMS by the Lottery and in the event the amount due from WMS is not sufficient to satisfy the amount of the liquidated damages, WMS shall pay the balance to the Lottery within thirty (30) calendar days of written notification. If the amount due is not paid in full, the balance will be deducted from subsequent payments to WMS. At the Lottery's sole option, the Lottery may obtain payment of assessed liquidated damages through one (1) or more claims upon the professional liability insurance.

2.18.6 Applicability of Liquidated Damages

WMS shall not be required to pay liquidated damages for delays solely due to matters as enumerated in the section entitled "Force Majeure," for outages related solely to regulated communications carriers, due solely to the Lottery's central system provider, nor for time delays specifically due to, or approved by, the Lottery.

2.18.7 Late Installation

If WMS does not have the ordered quantities of terminals installed and accepted by the Lottery by a date specified by the Lottery, the Lottery may assess liquidated damages in the amount of two hundred dollars (\$200) per terminal for each day of delay. The units will be considered operational when they have been installed, tested and accepted by the Lottery and are ready to be activated by the central computer system for customer play. Any additional shipments of video lottery terminals may be subject to a reasonable penalty schedule to be established by the Lottery.

2.18.8 Untimely Terminal Repair

2.18.8.1 WMS shall ensure that all terminals are repaired or replaced and operational within the "maximum repair time." "Maximum repair time" shall be measured from the time of receipt of a service call, and a repair shall be considered completed when the technician who completed the repair informs the central system provider that the terminal is repaired and ready to be activated for play.

2.18.8.2 For the purposes of this provision, "maximum repair time" shall be defined as follows: Two Hours for any video lottery terminal.

2.18.8.3 If terminal maintenance is not completed within the "maximum repair

time," liquidated damages may be assessed at the rate of one hundred dollars (\$100) per hour or a fraction thereof that the terminal remains unrepaired beyond the "maximum repair time."

2.18.9 Lack of Video Lottery Terminal Preventive Maintenance

Each type of terminal delivered shall have a preventive maintenance cycle established by WMS and accepted by the Lottery. For each event of neglected preventive maintenance, liquidated damages of one hundred dollars (\$100) per terminal, per day, may be assessed.

2.18.10 Deficient Terminal Field Service

2.18.10.1 WMS shall employ sufficient resources and inventory to meet the performance standards for terminal field service specified in this RFP. Within thirty (30) calendar days after notification from the Lottery that a performance standard is not being met, WMS shall employ such additional resources as are necessary to meet the performance standard.

2.18.10.2 If WMS does not bring deficient performance up to the standards specified within thirty (30) calendar days of notification, the Lottery may impose liquidated damages in the amount of five hundred dollars (\$500) per day until performance is in compliance with the Agreement.

2.18.11 Failure to Provide Enhancements

2.18.11.1 During the term of this Agreement, the Lottery and WMS may agree in writing to a schedule for developing, testing, and implementing or installing a modification or enhancement of an existing game or report or an addition of a new game or report.

2.18.11.2 If WMS fails to meet any date specified in such a schedule, the Lottery may assess liquidated damages of \$1,000 per day for each day of delay regarding the modification, enhancement, or addition of a game and \$500 per day for each day of delay regarding the modification, enhancement, or addition of a report, or other system change.

2.18.11.3 In addition, at its sole discretion, the Lottery may require WMS to retain and compensate a third party firm to complete system development tasks in order to ensure timely delivery. The third party firm must be approved by the Lottery, and if necessary, will be selected by the Lottery. WMS must ensure that the third party retained under these circumstances properly complies with non-disclosure agreements regarding proprietary materials and Lottery business plans.

2.18.12 Unauthorized Modifications

2.18.12.1 WMS shall not modify any software, firmware, or hardware in the video lottery terminals without the prior written consent of the Lottery.

2.18.12.2 If an unauthorized modification occurs, the Lottery may assess initial liquidated damages of \$25,000 and additional liquidated damages of \$5,000 per day for each day between the issuance of a removal order and the actual removal of the unauthorized modification and restoration of the device to its previous operating state.

2.18.13 Unauthorized Access

2.18.13.1 WMS shall prevent persons not authorized by the Lottery from accessing the terminals or computer systems.

2.18.13.2 If WMS fails to prevent unauthorized access, the Lottery may impose liquidated damages of \$10,000 for each incident of unauthorized access by an unauthorized person.

2.19 Ownership of Materials and Right of Use

2.19.1 Ownership of all data, documentary material, and operating reports originated and prepared for the Lottery pursuant to this Agreement shall belong exclusively to the Lottery.

2.19.2 Ownership of the video lottery equipment and software shall be retained by WMS at the close of the Agreement or any extension thereto.

2.19.3 If for any reason other than a breach of agreement by the Lottery, WMS loses the ability to comply with the terms of the Agreement, the Lottery shall retain the right to use the equipment, source program instructions and documentation for those items owned by WMS and that are necessary to provide contractual services. Said right shall be limited to the right of the Lottery to possess and make use of such solely for the use and benefit of the Lottery in maintaining, altering and improving the operational characteristics of the programs and systems being used under the Agreement.

2.19.4 If the Lottery exercises its right to use the contract items, all software programs, documentation, operating instructions, hardware, and the like, including modifications or alterations thereof, shall be kept in confidence and shall be returned together with all copies to WMS when their use has been completed.

2.20 Game Playing and Prize Payment Restrictions

No officer or employee of WMS or of any subcontractor or owner of a 10% or greater share of either who is involved in Delaware operations shall play the video lottery games of the Delaware State Lottery or be paid a prize in any video lottery game. WMS shall ensure that this requirement is made known to each applicable officer and employee of WMS and of any subcontractor.

2.21 Force Majeure

2.21.1 A Force Majeure occurrence is an event or effect that cannot be reasonably anticipated or controlled. As herein used, Force Majeure means acts of war, terrorism, action of the elements, governmental interference, rationing, or any other cause which is beyond the control of the party affected and which by the exercise of reasonable diligence said party is unable to prevent.

2.21.2 Neither WMS nor the Lottery shall be liable to the other for any delay in or failure of performance under the Agreement due to a Force Majeure occurrence. Any such delay in or failure of performance shall not constitute default or give rise to any liability for damages. The existence of such causes of such delay or failure shall extend the period for performance to such extent as determined by the Lottery Director to be necessary to enable complete performance by WMS if reasonable diligence is exercised after the cause of delay or failure has been removed.

2.21.3 If Force Majeure conditions for WMS shall be expected to continue unabated for an indefinite period and WMS cannot service the Agreement, the Lottery retains the right to operate the terminals (see RFP 2.16) and/or to terminate the Agreement so that business continuity can be restored.

2.22 Security Program

2.22.1 Prior to operations under the Agreement, WMS shall establish a physical and software security program for its equipment, subject to the prior written approval of the Lottery.

2.22.2 The Lottery reserves the right to require at any time such further and additional security measures as deemed necessary or appropriate to ensure the integrity of the equipment or the games.

2.22.3 The Lottery reserves the right, at any time and without prior notice, to inspect and otherwise evaluate all phases of performance specified in the Agreement and the premises in which such work is performed.

2.23 Taxes, Fees and Assessments

2.23.1 WMS shall pay all taxes, fees and assessments upon the terminals, however designated, levied or based.

2.23.2 Delaware is a sovereign entity and shall not be liable for the payment of federal, state and local sales, use and excise taxes, including any interest and penalties from any related deficiency, which may become due and payable as a consequence of the Agreement.

2.24 News Releases

WMS shall not issue any news releases pertaining to the award of or performance of the Agreement without prior approval by the Lottery, and then only in cooperation with the Lottery.

2.25 Advertising

WMS agrees not to use the Lottery's name, logos, images, nor any data or results arising from the RFP process or this Agreement as a part of any commercial advertising without prior written approval by the Lottery.

2.26 Hiring of Lottery Personnel

At all times during the proposal evaluation period for the RFP and continuing for one year following either the award of contracts or the rejection of all proposals under the RFP, WMS is prohibited from officially or unofficially making any employment offer or proposing any business arrangement whatsoever to any Evaluation Committee personnel, advisors and Lottery employees involved in the evaluation of proposals, the contract awards, or contract negotiations. Making such an offer or proposition may result in the termination of the agreement.

2.27 Code of Conduct

The Delaware State Lottery is an extremely sensitive enterprise because of the nature of the business and because it is government-affiliated. Therefore, it is essential that its operation, and the operation of other enterprises that would be linked to it in the public mind, avoid not only impropriety but also the appearance of impropriety. Because of this, WMS is expected to:

- a. Offer goods and services only of the highest standards
- b. Use its best efforts to prevent the industry from becoming embroiled in unfavorable publicity
- c. Make sales presentations in a responsible manner. When pointing out the perceived superiority of their goods or services over those of competitors, WMS shall do so in such a manner as to avoid unfavorable publicity for the industry
- d. Avoid promotional activities which could be interpreted as improper and provide embarrassment to the industry
- e. Report security problems or potential security problems immediately and only to the Lottery

- f. Comply with all Video Lottery Regulations.

2.28 Tests Following Award

- a. Certification Tests. The Lottery requires that the game algorithms be certified by an independent laboratory (The Lottery currently contracts with Gaming Laboratories International). WMS must cooperate in submitting chips and/or other appropriate materials for the testing. Certification is an expense that must be borne by WMS.
- b. Functional Tests. The Lottery will conduct a series of acceptance tests to fully determine WMS's equipment's communication functionality with the Lottery's central system. Failure of WMS to pass these tests may result in WMS paying liquidated damages under Section 2.18.7. Cooperation of WMS in these tests is required. WMS will not be responsible for expenses resulting from this form of testing.

The terminals will be tested for each and every requirement in the RFP. WMS's assistance in arranging tests will be necessary. The Lottery, at its sole discretion, will determine whether performance against the acceptance tests is adequate, and installation can proceed.

2.29 End of Contract Conversion

2.29.1 At the end of this Agreement, the Lottery shall be solely responsible for identifying the milestones and dates of conversion for video lottery terminals, and WMS shall cooperate fully and in good faith in said conversion.

2.29.2 WMS shall remove all its equipment and materials from each agent location on a Lottery-specified schedule of calendar days.

2.30 Funding Out Clause

If sufficient funds are not appropriated by the Delaware General Assembly or other appropriate Federal or State agency to sustain, in whole or in part, the Lottery's performance under this Agreement, or if such support is reduced such that it is insufficient to sustain said performance, then the Agreement shall be null and void at the insistence of the Lottery, provided that Sections 2.9.3 and 2.29.2 shall continue to apply.

2.31 Equipment and Software Changes and Upgrades

- a. WMS's services shall include software changes, including fixes to all software errors and design defects, improved versions of the software, software enhancements and new gaming features WMS elects to develop, new games from WMS's library (subject to Section 2.31(b)), and changes to reports. WMS is further

required to maintain the video terminal software with supported releases for any third party products incorporated (subject to Section 2.31(b)).

All these changes and upgrades shall be included in WMS's base price.

- b. Changes and enhancements that exceed contract-specified requirements (and which are not otherwise accommodated by the above or by the pricing method in RFP Part 4) will have the terms and price negotiated. These include newly available terminal peripherals, new agent user interface equipment, new capital equipment, facilities, additional third-party content, products or software licenses, or substantive maintenance and/or service additions or changes.

Any equipment (including, without limitation, new terminal types) or games made available to any of WMS's other clients shall also be made available to the Lottery for its evaluation. The Lottery shall have access to any new WMS equipment or games offered in other gaming venue and compatible to the Lottery system, with the exception of those games in the testing phase. However, the Lottery agrees and acknowledges that some WMS equipment or games offered in other gaming venues may not be compatible to the Lottery system. In the event that the Lottery desires any such equipment or games, WMS shall use its commercially reasonable efforts to modify such equipment and games for use by the Lottery. The Lottery acknowledges that WMS has the right to designate any new equipment and/or games as Franchise Games

- c. Unless otherwise specifically agreed to by the Lottery Director, WMS agrees to provide game conversions for a minimum of 15% per year of the total number of VLTs leased under this Agreement for the initial five (5) year term of the Agreement. A conversion will be considered a change in game theme software.
- d. Unless otherwise specifically agreed to by the Lottery Director, WMS agrees to replace a minimum of 50% of the total number of VLTs leased under this Agreement in the first year of the Agreement and another 50% of the total number of VLTs leased under this Agreement in the second year of the Agreement.

2.32 Intentionally Left Blank

2.33 Lottery Approval of Staffing

The Lottery reserves the right to review and if perceived necessary, reject an employee's assignment to this Agreement, either at contract inception or during the term. In addition, the Lottery may require WMS to provide minimum levels of staffing or service to meet the requirements as set out in this Agreement.

2.34 Subcontract Approval

Any proposed subcontracts shall be subject to the prior approval of the Lottery and

shall include such contracting and purchasing requirements as shall be binding on agencies of the Lottery. The proposal and agreement shall identify proposed subcontractors by name. Notwithstanding anything to the contrary in this Agreement, WMS may carry out its obligations under this Agreement through its own employees and those of its affiliates, provided that for purposes of this Agreement WMS shall take responsibility for the employees of WMS' affiliates as if they were the employees of WMS.

2.35 Compensation During Contract

WMS will be compensated by the Lottery in accordance with the pricing in the Agreement, based on management and accounting reports generated by central system data. Method of payment will be via weekly electronic funds transfer, based on a percentage of net proceeds generated by WMS's video lottery terminals.

2.36 Replacement of Under-Performing Video Lottery Terminals

2.36.1 The purpose of installing video lottery terminals is to maximize revenues for the Lottery. If it becomes clear that a population of WMS terminals is under-performing with regard to generating net proceeds, the Lottery reserves the right to alter the mix of video lottery terminals. The following procedure will apply for determining the need for, and carrying out of, replacement of under-performing WMS terminals.

2.36.2 The Lottery shall maintain reports that define the performance of video lottery terminals. The reports will apply to the overall population of video lottery terminals, to terminals provided by individual successful bidders, and to distinct groups within the population provided by individual successful bidders. Typical groups of "similar" terminals to be compared using such performance data will include, but will not be limited to, video display terminals against other video display terminals, and reel-type terminals against other reel-type terminals.

2.36.3 For comparison purposes, the Lottery will use a rolling eight (8) week review of performance data for identifying under-performing terminals. The Lottery will exercise several tests of the following nature based on the results of these reviews, including:

- a. If a group of similar terminals from WMS are under-performing average net proceeds of the total terminal population by 10% or more
- b. If a group of terminals from WMS are under-performing the average net proceeds of a comparable set of terminals with a similar play style by 10% or more
- c. If a group of terminals from WMS are under-performing the average net proceeds of a comparably located set of terminals by 10% or more.

2.36.4 As a result of such performance tests the Lottery will make a determination whether the group of terminals is "under-performing" and correction or replacement is

prudent.

2.36.5 For a group of terminals determined to be "under-performing," WMS shall have thirty (30) days in which to perform adjustments that are acceptable to the Lottery. At the end of the afforded adjustment period the terminals will be monitored for forty-five (45) days. If the adjustments include the replacement of terminals, then WMS shall have forty five (45) days in which to perform the adjustments.

2.36.6 If the "under-performing" tests still indicate that the population is "under-performing," then the Lottery reserves the right to order that those video lottery terminals be removed within thirty (30) days. The Lottery may then opt to replace the removed terminals with terminals from WMS or a different successful bidder, based on favorable net proceeds experience as determined from the net proceeds reviews described above, or other selection criteria. (Replacement with terminals from another successful bidder will still be subject to the stipulation that no provider may furnish over 65% of the terminals at any one venue.)

2.36.7 For removed terminals, WMS shall receive no further compensation from the Lottery, either related to net proceeds or to the effort and/or expense of removal. For removed terminals, the Lottery will award those terminals as necessary to other successful bidders pursuant to 29 Del. C. §4820(b).

The above described "under-performing" tests and procedures shall not apply to the Franchise Games described in the Agreement. In the case of such Franchise Games, the Lottery shall determine that they are not profitable using the following procedure:

Should the Franchise Games not perform at one hundred forty percent (140%) of the average net proceeds generated by the same zone and denomination non-Franchise Games supplied by all providers for any thirty (30) day period, the Lottery may provide WMS with notice of determination that such units are not profitable and afford WMS thirty (30) days in which to perform adjustments acceptable to the Lottery. Subsequent to such thirty (30) day adjustment period, the units will be monitored for an additional thirty (30) days. If the units still do not perform at the one hundred forty percent (140%) times the average net proceeds as described above, the Lottery may require such under-performing units to be removed, at which time and upon notice to WMS the Agents will no longer be liable for compensation to WMS for such units.

2.37 Reduction of Video Lottery Terminals

It is the Lottery's intent to maintain a sufficient number of VLTs at each Agent's location to maximize revenues for the Lottery while maintaining the highest possible performance levels in the most efficient manner possible. In the event it becomes necessary to reduce the number of terminals at any of the Agents' locations, the Lottery reserves the right to remove terminals based on performance levels of terminals provided by WMS and other individual successful bidders and to distinct groups within the population provided by WMS and individual successful bidders, as determined by the review of performance

data as described in section 2.36.

Notwithstanding anything in this Agreement to the contrary, the Lottery may not terminate the lease of a terminal until ninety (90) days after the operation thereof at a video lottery operation facility commences; provided, however, that this shall not apply to termination under Section 2.9.1.

2.38 Patented Devices, Materials and Processes

2.38.1 WMS shall only provide for the use of any patented design, material, or process to be used or furnished under this Agreement by suitable legal agreement with the patentee or owner. Sections 2.16.2 and termination of the Agreement shall be the Lottery's sole remedy for WMS' breach of this requirement, notwithstanding anything to the contrary in the Agreement. As provided in Section 2.16.2, WMS shall save and hold harmless the State of Delaware, the Lottery, the Director, the Lottery staff and agents from any and all claims arising out of the use of such patented design, device, material, or process in connection with the work agreed to be performed under this Agreement.

2.38.2 Should patentable or licensable designs, devices, materials, or processes arise from WMS's work under this Agreement, WMS shall retain the right to possess, develop, and commercialize such items. The Lottery shall be granted the right or license to employ said items indefinitely in the execution of Lottery business; however, the Lottery shall not license, distribute, or otherwise commercialize such items.

2.39 Use of Copyrighted or Trademarked Materials

2.39.1 WMS shall have the obligation to ensure that use of materials does not infringe on copyright, trademark, or other intellectual property rights of third parties. This may require WMS to obtain permission for use, including payments made for such, to third parties. In particular, WMS is required to pay all franchise and/or licensing fees for use of games employing symbols or names involving intellectual property rights of third parties. Sections 2.16.2 and termination of the contract shall be the Lottery's sole remedy for WMS' breach of this requirement, notwithstanding anything to the contrary in this Agreement.

2.39.2 If it is determined that use of certain materials constitutes infringement, then WMS is obligated pursuant to Section 2.16.2 to obtain permission or to cease such infringing use and provide the Lottery with an equivalent product. Pursuant to Section 2.16.2, WMS must indemnify the Lottery and the State of Delaware from any damages sought as a result of infringement.

2.40 Licensing as a Technology Provider

The Lottery can make an award only to vendors that obtain a Technology Provider license, pursuant to 29 Del. C. §4805(a)(17). The denial of a license application will result in the elimination of WMS as a technology provider regardless of the recommendations or

findings of the Lottery Evaluation Committee or the Lottery Director. The failure of WMS to maintain its status as a licensed technology provider during the term of the Agreement will result in the termination of the Agreement. WMS must reimburse the Lottery for the cost of periodic background checks related to licensing. This Agreement may be awarded contingent on WMS being awarded a license.

2.41 Removal of Unapproved Equipment and Loss of License

Any video lottery terminal from WMS that does not conform to the VLTs previously provided by WMS for testing and acceptance will be disconnected. If any modification to a video lottery terminal that has not been approved by the Lottery is supplied by WMS and operated at a Video Lottery Agent location, the Lottery may disconnect all of WMS's VLTs and may suspend its Technology Provider License.

2.42 Assignment

This Agreement may not be assigned, transferred, conveyed, sublet, or otherwise disposed of without previous written approval of the Lottery. Any purported assignment in violation of this section shall be null and void. Further, WMS may not assign the right to receive moneys due under the Agreement without the prior written consent of the Lottery.

2.43 Confidential Information

2.43.1 WMS, its officers, employees, agents, representatives, and subcontractors, shall not disclose to any other person or entity any information pertaining to the Lottery's methods, systems, programs, procedures, or operations at any time without prior written approval of the Lottery, except as may be necessary in its performance of the Agreement. The Lottery, its officers, employees, agents, representatives, and contractors, to the extent permitted by law shall not disclose to any other person or entity any confidential, secret, or proprietary information or know-how, concerning the equipment, programming, software, trademarks, trade or commercial secrets, of WMS or its subcontractors, except as may be necessary in its performance of the Agreement.

2.43.2 In the event that any demand, claim, action, or proceeding of any nature whatsoever is made, asserted, or instituted that has as its purpose or object, or may have as its consequence, the disclosure to any person of any of the information referred to herein, each party shall immediately: notify the other party thereof; and, if legal action is successfully taken by a party to prevent disclosure, the other party shall not disclose such information unless, until, and only to the extent required to do so, by the final order of a judicial, legislative, executive or administrative authority having actual jurisdiction thereof.

2.44 Scope of Agreement

If the scope of any provision of this Agreement or the RFP are declared to be too broad in any respect whatsoever to permit enforcement to its full extent, then such provision shall be enforced to the maximum extent permitted by law, and WMS hereto

consents and agrees that such scope may be judicially modified accordingly and that the whole of such provisions of this Agreement or the RFP shall not thereby fail, but the scope of such provisions shall be curtailed only to the extent necessary to conform to law.

2.45 Statutory Provisions

2.45.1 The Lottery may require WMS to execute truth-in-negotiation certificates stating that the prices bid and other costs supporting the compensation are accurate, complete, and current at the time of contracting. Under 29 Del. C. §6982(b)(3), the original contract price and any additions thereto shall be adjusted to exclude significant sums where the Lottery determines the contract price was increased due to inaccurate, incomplete, or noncurrent price information. All such contract adjustments shall be made within one (1) year following the end of the contract.

2.45.2 No Agreement shall be executed until WMS has provided the Lottery with its taxpayer identification number or its Delaware business license number.

2.46 Miscellaneous Provisions

2.46.1 In performance of this Agreement, WMS shall comply with all applicable federal, state and local laws, ordinances, codes and regulations. WMS shall solely bear the costs of permits and other relevant costs required in the performance of this Agreement.

2.46.2 Neither this Agreement nor any appendix may be modified or amended except by the mutual written agreement of the parties. No waiver of any provision of this Agreement shall be effective unless it is in writing and signed by the party against which it is sought to be enforced.

2.46.3 The delay or failure by either party to exercise or enforce any of its rights under this Agreement shall not constitute or be deemed a waiver of that party's right thereafter to enforce those rights, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right.

2.46.4 Intentionally left blank.

2.46.5 WMS acknowledges that the Lottery has an obligation to ensure that public funds are not used to subsidize private discrimination. WMS recognizes that if they refuse to hire or do business with an individual or company due to reasons of race, color, gender, ethnicity, disability, national origin, age, or any other protected status, the Lottery may, as its sole remedy, terminate the Agreement pursuant to Section 2.9.1.

2.46.6 This Agreement was drafted with the joint participation of both parties and shall be construed neither against nor in favor of either, but rather in accordance with the fair meaning thereof.

3.0 Services. The Lottery acknowledges and agrees that as of the date of this Agreement Units are in place at the Premises of the Agents in accordance with the prior agreement between WMS and the Lottery and accordingly WMS has already performed and met the requirements of Sections 3.1 and 3.2 with respect thereto.

3.1 Delivery

3.1.1 The Units to be delivered to the Lottery are described in WMS's proposal. The allocation as to locations of the units shall be determined by the Lottery. WMS shall be responsible for the assembly and initial operation of the Units and all associated equipment in a manner to be approved by the Lottery. The Units are to be delivered and installed at the direction of the Lottery to the Premises of any one or more of the following video lottery agents in Delaware: Delaware Park in Wilmington, Dover Downs in Dover, Harrington Raceway in Harrington, or any other locations authorized by the Lottery subject to WMS' internal gaming compliance suitability review process as to such other locations.

3.1.2 WMS also agrees to deliver up to two units of each terminal model to the offices of Scientific Games, located at 1575 McKee Road, Suite 101, Dover, DE for the purpose of acceptance testing as previously described in Section 2.28. WMS also agrees to provide sufficient Unit parts and sufficient information as is required for performance of necessary testing by Gaming Laboratories International ("GLI"), 600 Airport Road, Lakewood, New Jersey.

3.1.3 WMS agrees that the technical specifications detailed in the RFP and this Agreement must be met before the VLTs are approved for use in Delaware.

3.1.4 All game software must be approved and certified by an independent testing laboratory under contract with the Lottery (currently GLI). WMS will be responsible for the costs of independent testing.

3.2 Gaming System Training Program

At the request of the Lottery, WMS shall provide training for agent, subcontractor and/or Lottery staff in the operation of video lottery terminals. WMS must provide the materials, equipment, and personnel for this training effort. Training must be conducted on-site at each of the three (3) Agent locations.

3.3 Gaming Systems Field Maintenance Program

WMS shall maintain a maintenance center and depot in the state to fully support the terminal maintenance and repair program and provide spare parts and technical services to maintain the VLTs. (For purposes of this section, the term "video lottery terminal" or "VLT" shall include all attachments that are provided or serviced by WMS.)

a. Video Lottery Terminal Maintenance Items

WMS will be required during any service call to routinely check mechanical security, safety, electronic reader, and any other attachments provided by WMS. WMS shall be responsible for maintaining the video lottery terminals in the highest level of appearance including, but not limited to cleaning of equipment and a refurbishing of covers.

b. Response Requirements

WMS shall be responsible to determine that all gaming terminals are operable and shall take positive action when hardware malfunction is indicated to ensure that the affected terminal is returned to an operational state within the required time as defined in Section 2.18.8 of this Agreement. In all cases, the Lottery reserves the right to make the determination under Section 2.18.8 as to whether a VLT is operable and whether WMS responded within the time period specified.

c. Service Documentation

Operating and service manuals for all gaming terminals shall be kept updated and accessible to the Lottery.

d. Parts Supply

WMS shall maintain an adequate supply of parts to sustain the service of terminals that it has supplied and/or is required to maintain.

e. Trouble Tracking and Reporting System

WMS shall maintain and manage a data base and reporting system that fulfills the following criteria:

1. Tracking and various reporting of all video lottery terminals and other problems whether or not actual problems were found. Records on any particular terminal serial number must be maintained lifelong and must include VLTs in reserve or returned for maintenance.
2. Information for various reports is to be available in real time. The real time retrieval will not be limited to inquiries for the current day only but must include up to twelve (12) months of activity by date.
3. Various reports shall include, but are not limited to:
 - a) By licensed agent for a given period
 - b) By part or component
 - c) Others as defined by the Lottery

4. Data shall include, but not be limited to:

- a) Terminal serial number.
- b) Component, sub-component, part identifiers.
- c) Time and date of reported problem.
- d) Nature of problem reported.
- e) Field service person identifier.
- f) Problem resolution and date and time.
- g) Elapsed time for notification to completed repair (down time).

3.4 Technical Support Services

3.4.1 WMS shall identify at least one staff member to have priority for Delaware service relative to all related aspects of video lottery operations during the term of this Agreement. This responsibility includes the software and mechanical engineering of the products. When no Lottery project requests are outstanding, such an individual can then and only then conduct work for other clients and purposes of WMS.

3.4.2 WMS shall have at least one service technician present at each of the Video Lottery Agents' locations during all operational hours. Technicians must be authorized and capable of conducting all maintenance requirements for WMS's terminals. The Lottery may require WMS to provide minimum levels of on-site staffing based on the number of terminals an individual technician is responsible for, day of the week, time of day, etc. Any exceptions to this requirement must be approved in advance by the Lottery.

4.0 Compensation

The Lottery agrees to compensate WMS by weekly payments for the leased VLTs according to the following schedule:

For the period from the commencement of this Agreement and through the subsequent five (5) year initial term of the Agreement, the Lottery agrees to compensate WMS by weekly payments equal to the following;

Six point nine five percent (6.95%) of the net proceeds of each VLT leased by WMS to the Lottery.

Net proceeds are to be determined in accordance with the definition set forth in the RFP.

The Lottery acknowledges that WMS shall charge the Agents additional payments for Franchise Games, and that WMS shall have the right to replace Franchise Games with non-Franchise Games where the Agents fail to timely make such payments.

5.0 TITO License

The Lottery acknowledges the following condition on WMS' lease of terminals to the Lottery: Because the Lottery intends to utilize or enable the cashless gaming technology covered by the Licensed Patents (defined below) on all terminals obtained under this Agreement, the Lottery agrees to permit WMS to apply any necessary license tags to the terminals.

Each gaming machine obtained with cashless capability (a "Licensed Cashless Gaming Machine") is provided under a limited license (the "IGT/Anchor Cashless License") to one or more of the following U.S. Patent Nos. 5,290,033; 5,265,874; 5,429,361; 5,470,079; 6,048,269; 6,729,957; 6,729,958 and 6,736,725 (the "Licensed Patents"). Any use of a Licensed Cashless Gaming Machine constitutes the acknowledgement of and agreement to the following "Limited License":

- a. Licensed Cashless Gaming Machine License Rights. Licensed Cashless Gaming Machines are licensed for use solely in connection with a cashless gaming system that is separately licensed under the Licensed Patents (a "Licensed Cashless Gaming System"). The use of a Licensed Cashless Gaming Machine with an unlicensed gaming system that has cashless capability is an unlicensed use.
- b. Other License Limitations. Each Limited License is expressly limited to the original Licensed Cashless Gaming Machine (*i.e.*, one serial number per license) and personal to Distributor. A license may not be transferred from one gaming machine to another or from one customer (*e.g.*, casino) to another. Any unauthorized transfer voids this Limited License.
- c. Permitted Transfers to Affiliated Properties for Gaming Machines. Upon payment of a transfer fee (which fee is \$50 per gaming machine per transfer – and is subject to change), a customer may obtain authorization to transfer a Licensed Cashless Gaming Machine between Affiliated Properties by obtaining a transfer authorization certificate from IGT. For purposes of this Limited License, Affiliated Properties are properties with a common owner who has a majority interest in both properties.

6.0 Amendments/Merger

This Agreement constitutes the entire Agreement between the Lottery and WMS with respect to the subject matter hereof. The Agreement may be amended only by the signed, written agreement of both parties thereto.

7.0 Release of Bond

Pursuant to section 2.17.2 of the Agreement, the Lottery agrees to release the litigation bond posted by WMS pursuant to the RFP after this Agreement is signed by both parties should WMS complete a covenant not to sue.

8.0 Assignment of Antitrust Claims.

As consideration for the award and execution of this agreement by the Lottery, WMS hereby agrees to grant, convey, sell, assign, and transfer to the Lottery all of its right, title and interest in and to all known or unknown causes of action it presently has or may now or hereafter acquire under the antitrust laws of the United States and the State of Delaware, relating to the particular goods or services purchased or acquired by the Lottery pursuant to this agreement. Notwithstanding the foregoing, (i) in the event WMS is damaged as a result of antitrust violations referenced herein, the Lottery consents to WMS pursuing its own cause(s) of action for said damages, and (ii) to the extent WMS would violate a covenant with a third party(ies) by complying with this section, WMS shall not be required to comply with this section, but WMS shall use reasonable efforts to obtain a waiver of such covenant from such third party(ies) to permit WMS to comply with this section.

9.0 Benefit

This Agreement is solely for the benefit of the Lottery and WMS.

10.0 Notice

The parties agree that all notices given pursuant to the terms of this Agreement shall be sufficient if in writing and sent by certified mail or overnight courier service with receipt acknowledged. Any such notice shall be sent to the following address or such other address as may be designated from time to time by the parties in writing:

As to the Lottery:

Vernon A. Kirk, Director
Delaware State Lottery Office
McKee Business Park
Suite 102
1575 McKee Road
Dover, DE 19904-1903

As to WMS:

General Counsel
WMS Gaming Inc.
800 S. Northpoint Blvd.
Waukegan, IL 60085

11.0 REPRESENTATIONS, WARRANTIES AND COVENANTS. The Lottery represents, warrants and covenants to WMS as follows: (1) all information furnished by the Lottery to WMS in connection with WMS' due diligence and compliance review process is complete and accurate; (2) the Lottery shall, in connection with this agreement, (a) maintain complete and accurate books and records and (b) comply with all applicable laws,

rules and regulations, including, but not limited to, those relating to anti-corruption, anti-money laundering, competition, licensing and registration; and (3) the Lottery has not offered or paid, and will not offer or pay, directly or indirectly, (a) anything of value to any public official or candidate for political office, or any relative or agent thereof, for purposes of obtaining any official action or benefit relating in any way to this agreement or (b) any commission or finder's or referral fee to any person or entity in connection with this agreement or any activities on behalf of WMS.

IN WITNESS WHEREOF, the parties hereto have signed this Agreement on the dates indicated below, and the Agreement shall commence upon the later of the two signature dates listed below.

WMS Gaming Inc., a Delaware corporation

By:

Original on File
Steve Angelo
Vice President Northern Division Sales &
Class II/VI.T

1/14/14
Date

Original on File
Witness

1/14/14
Date

Delaware State Lottery

By:

Original on File
Vernon Kirk
Director

24 JAN 2014
Date

Original on File
Witness

01/24/14
Date