



## FRANCHISE AGREEMENT

FOR OUTLET NUMBER: XXXXX

AT: TRADING NAME  
ADDRESS  
SUBURB STATE PCODE

BETWEEN

**(FRANCHISOR)**

AND

THE PERSON OR PERSONS SPECIFIED IN ITEM 2 OF SCHEDULE 1

**(FRANCHISEE)**

AND

THE PERSON OR PERSONS SPECIFIED IN ITEM 3 OF SCHEDULE 1

**(GUARANTOR)**

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**THIS AGREEMENT** is made on

**BETWEEN**

The entity specified in Item 1 of Schedule 1 (**Franchisor**)

AND

The person or persons specified in Item 2 of Schedule 1 (**Franchisee**)

AND

The person or persons specified in Item 3 of Schedule 1 (**Guarantor(s)**)

**RECITALS**

- A. The Franchisor operates and conducts Public Lotteries in the jurisdictions specified in Item 4 of Schedule 1 pursuant to Lottery Licences and has certain exclusive rights in respect of the Lottery Franchise System.
- B. The Lottery Franchise System includes the use of the Intellectual Property, Lottery Terminals, and access to certain know-how and trade secrets relating to the operation and conduct of Public Lotteries and of retail locations.
- C. The Franchisee acknowledges the great value of the publicity, reputation and Goodwill associated with the Trade Marks, Lottery Franchise System, Dedicated Area and Retail Image and that all of these are distinctive.
- D. The Franchisee desires to obtain and the Franchisor is prepared to grant a Lottery Franchise to the Franchisee.
- E. The Franchisee has previously entered into an agreement with the Franchisor to sell Lottery Products Lotteries from the Outlet.
- F. The Franchisor and the Franchisee agree that a Lottery Franchise will be granted in the form and upon the terms and conditions contained in this Agreement and solely for the purposes set out in this Agreement.

**NOW IT IS AGREED** as follows:

**1 DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

In this Agreement, unless the contrary intention appears or the context otherwise requires:

**Accounting Week** means a calendar week being a period of seven days commencing at 00.00.01 AM on the day specified in the Manuals;

**Act** means the act referred to in Item 5 of Schedule 1 and the Regulations;

**Additional Conditions** means the terms and conditions (if any) specified in Schedule 2;

**Agency Agreement** means the agreement referred to in Recital E;

**Agreement** means this agreement including the Schedules and any amendment or extension thereof;

**Australian Business Number** has the same meaning as in the GST Act;

**Average Weekly Sales** means at any time the sales of Lottery Products from the Outlet calculated for the relevant period stated in Clause 15.4 and then averaged over that same period;

**Bank** means an authorised deposit-taking institution in relation to which an authority to carry on banking business in Australia is in force under the *Banking Act 1959* (Cth);

**Business Day** means a day that is not a Saturday, Sunday or a public holiday in the jurisdiction in which the Outlet is located;

**Claim** means any claim, action, proceeding, litigation, obligation, investigation or demand made against the person concerned however it arises and whether it is present or future, fixed or unascertained, actual or contingent;

**Code** means the Franchising Code of Conduct as prescribed under the *Competition and Consumer Act 2010* (Cth), as varied from time to time;

**Commencement Date** means the date specified in Item 6 of Schedule 1;

**Commission** is the handling fee or amount payable to the Franchisee upon the sale of Lottery Products as set in the Lottery Rules as varied by the Franchisor in accordance with the terms of this Agreement and approved by the Minister from time to time;

**Confidential Information** means, without limiting the scope of Clause 17, the following information, regardless of its form and whether the Franchisee becomes aware of it before or after the date of this Agreement:

- (a) all information treated by the Franchisor as confidential including without limitation the provisions of this Agreement, all information in connection with the Lottery Franchise System, Lottery Products and the Manuals; or
- (b) disclosed by the Franchisor to the Franchisee or of which the Franchisee becomes aware except information:
  - (c) the Franchisee creates independently of the Franchisor;
  - (d) that is public knowledge (otherwise than as a result of a breach of confidentiality by the Franchisee or any of the Franchisee's permitted disclosees); or
  - (e) is required to be disclosed by Law;

**Dedicated Area** means the area inside and outside the Outlet which is dedicated to the promotion and/or sale of Lottery Products and which forms part of the Retail Image and includes but is not limited to the Franchisor's minimum areas as set out in the Manuals;

**DigiPOS Equipment** means equipment installed as part of the Retail Image, whether the same is owned by the Franchisee or not and capable of displaying digital signage and complying with the specifications set out in the Manuals and includes without limitation digital media players, point of sale screens and transmitters;

**Email Address** means the email address of the Franchisee approved or provided by the Franchisor;

**Employee(s)** means and includes any Manager, Supervisor, employee, servant, agent, contractor or representative of the Franchisee;

**Entry** is an entry in a Public Lottery conducted by the Franchisor as evidenced by an Entry Ticket;

**Entry Coupon** means a form containing all relevant numbers and instructions to effect an Entry in a Public Lottery through a Lottery Terminal;

**Entry Ticket** is an acknowledgment of an Entry in a Public Lottery as recorded in the lottery system of the Franchisor;

**Establishment Fee** means the amount set out in Item 1 of Table B of Schedule 3 payable by the Franchisee upon the commencement of this Agreement for the establishment of a new Lottery Franchise at the Outlet;

**Events of Default** means those events described in Clause 15.3;

**Events of Termination** means those events described in Clause 15.2;

**Expiration Date** means the date specified in Item 7 of Schedule 1;

**Franchise Fee** means the amount specified in Table B of Schedule 3;

**Franchisee** means the person or persons specified in Item 2 of Schedule 1;

**Franchisor** means the entity specified in Item 1 of Schedule 1;

**Franchisor's Intellectual Property** means all Intellectual Property in connection with the Lottery Franchise System including the Trade Marks, the Goodwill, the Website, the Confidential Information,

Promotional Materials, Manuals, Retail Image and all other Intellectual Property disclosed or provided by the Franchisor to the Franchisee to be utilised by the Franchisee in the operation of the Dedicated Area in the Outlet and the telephone phone numbers, websites and email addresses associated with the Lottery Franchise;

**Goodwill** means all goodwill, reputation, value and commercial advantage in connection with the Franchisor, the Franchisor's Intellectual Property, Manuals and the Lottery Franchise System;

**GST** has the meaning it does in section 195-1 of the GST Act;

**GST Act** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any related or similar legislation;

**Guarantor** means the natural person or persons specified in Item 3 of Schedule 1;

**Induction Training** means the training to be undertaken:

- (a) with the Franchisor's training department or a training provider nominated by the Franchisor for the minimum period prescribed by the Franchisor in the Manual; and
- (b) in locations endorsed and nominated by the Franchisor for the minimum period prescribed by the Franchisor in the Manual;

**Intellectual Property** means all present and future intellectual property rights conferred by statute, at common law or in equity, including without limitation patents, copyright, rights in circuit layouts, registered designs, trade marks, know how, domain names, inventions, moral rights, product names, trade secrets, the right to have Confidential Information kept confidential, whether or not registered or capable of registration, any application or right to apply for registration of any of those rights and renewals and extensions of those rights;

**Internet** means the world-wide connection of computer networks providing for the transmission of electronic mail, online information, information retrieval and file transfer protocol;

**Internet Facility** means an internet capability and facility to receive electronic communications from the Franchisor provided via an Asymmetric Digital Subscriber Line service (**ADSL**) or wireless connection and a digital modem located at the Outlet;

**Law** includes the provisions of any statute, rule, regulation, proclamation, ordinance or by-law, present or future, whether state, federal or otherwise;

**Liability** means any debt or other monetary liability or obligation however it arises and whether it is present or future, fixed or unascertained, actual or contingent of whatever description;

**Loss** includes any direct, indirect or consequential loss, loss of chance, damage, Liability, cost or expense however it arises and whether it is present or future, fixed or unascertained, actual or contingent;

**Lottery Franchise** means the non-exclusive licence (without the right to sub-licence) to use the Franchisor's Intellectual Property including the Trade Marks, the Lottery Franchise System and the other rights in connection with the sale of Lottery Products in accordance with this Agreement and the Manuals and solely in connection with the operation of the Dedicated Area within the Outlet;

**Lottery Franchise System** means the system, know-how and trade secrets presently used and in the future developed or acquired by, or licensed or otherwise authorised for use in conjunction with the Lottery Franchise and the selling of Lottery Products including any one or more present and future concepts for the Retail Image, marketing, sale and delivery of services and products under the Trade Marks and including the use of the Intellectual Property, and the rights granted under a Lottery Franchise;

**Lottery Licence** means the licence, permit or approval granted (including any agreement associated with that licence, permit or approval) to the Franchisor by the government authorising it to conduct Public Lotteries in the jurisdictions specified in Item 4 of Schedule 1;

**Lottery Products** means Entries in all Public Lotteries conducted by the Franchisor (unless otherwise provided in Item 15 of Schedule 1), Player Cards and such other goods and services supplied by the Franchisor relating to Public Lotteries conducted by the Franchisor;

**Lottery Property** means all those items in and on an Outlet for the purposes of this Agreement and installed or provided by or on behalf of the Franchisor, whether the same are owned by the



Franchisor or not and includes without limitation Software, Lottery Terminals, telecommunication lines, Manuals and Promotional Material;

**Lottery Rules** means rules made by the Franchisor for the conduct of Public Lotteries conducted by the Franchisor available to be accessed at:

- Lotto - <https://tatts.com/nswlotteries/games/lotto/game-rules-and-odds>
- Oz Lotto - <https://tatts.com/nswlotteries/games/oz-lotto/game-rules-and-odds>
- Powerball - <https://tatts.com/nswlotteries/games/powerball/games-rules-and-odds>
- Lucky Lotteries - <https://tatts.com/nswlotteries/games/lucky-lotteries/game-rules-and-odds>
- The Pools - <https://tatts.com/nswlotteries/games/the-pools/games-rules-and-odds>
- Lotto Strike - <https://tatts.com/nswlotteries/games/lotto-strike/game-rules-and-odds>
- Instant Scratch-Its - <https://tatts.com/nswlotteries/games/instant-scratch-its/odds-of-winning-and-rules>

or such other or additional places as specified in the Manual;

**Lottery Terminal** means a point of sale system with a lottery sales function (including Software and hardware) being such model of computer terminal or assembly of components provided or approved by the Franchisor and installed at the Outlet from time to time to be utilised by the Franchisee for processing and verifying Entries in Public Lotteries conducted by the Franchisor, managing and selling Lottery Products and for training, advertising and notification purposes;

**Lottery Trust Account** means the account described in Clause 7.1;

**Maintenance** means such emergency or remedial maintenance of the Lottery Terminals as may from time to time be determined by the Franchisor to be reasonably necessary or desirable;

**Manager** means the manager of the Outlet nominated by the Franchisee and approved by the Franchisor pursuant to Clause 4.1 of this Agreement and specified in Item 9 of Schedule 1;

**Manual(s)** means the manual developed by the Franchisor which describes the Lottery Franchise System and operating procedures including any information relating to operational, management, service, administration, quality control, training and promotional matters and any rules, signage, fit – out (including the Retail Image Design Manual), methods and instructions in connection with any aspects of establishing and operating the Lottery Franchise at the Outlet which is supplied to the Franchisee in written or electronic form and as updated, amended or varied by the Franchisor from time to time;

**Manual Outlet Syndicate** means an Entry purchased by a Franchisee on behalf of a group of persons;

**Minister** means the responsible Minister of the Crown for the time being administering the Act;

**Outlet** means the place of business of the Franchisee, as described in Item 8 of Schedule 1;

**Obligations** means all of the obligations and resultant liabilities of the Franchisee to the Franchisor and resultant liabilities arising under or by reason of this Agreement and includes any liabilities or obligations which:

- (i) are liquidated or unliquidated;
- (ii) are present, prospective or contingent;
- (iii) are in existence before or come into existence before or come into existence on or after the date of this Agreement; or

(iv) relate to the payment of money or the performance or omission of any act:

and irrespective of:

- (v) the circumstances in which each liability or obligation comes to be secured by this Agreement;

(vi) the capacity in which the Franchisee comes to owe such liability or obligation.

**Outlet Website** means any website specified as such by the Franchisor in the Manual(s) and accessible on the Internet by Franchisees which is now or in future operated or licensed to be operated by the Franchisor or a nominee of the Franchisor and which provides information for the benefit of Franchisees concerning the Lottery Franchise System;

**Personal Information** has the same meaning as it does in the Privacy Act;

**Player** means a person who purchases an Entry in a Public Lottery;

**Player Card** is a membership card which enables the holder to, amongst other things, register and record entries in a Public Lottery in accordance with the terms of that membership;

**Privacy Act** means the *Privacy Act 1988* (Cth), as amended from time to time;

**Promotional Materials** means such point of sale advertising, sales collateral and marketing materials as are provided or made available to the Franchisee by the Franchisor from time to time;

**Public Lotteries** means lotteries conducted by the holder of a Lottery Licence granted pursuant to the Act;

**Recipient Created Tax Invoice** has the same meaning as in the GST Act;

**Records** means all records, books, accounts, statements and documents relating to the conduct of the Lottery Franchise by the Franchisee including cash register receipts or their equivalent, daily sales reports, profit and loss statements, balance sheets, statutory records required to be kept by the Franchisee under any Law and such other records as set out in the Manuals or as prescribed by the Franchisor in writing to the Franchisee from time to time;

**Regulations** means regulations made under the Act (if any);

**Regulator** means the government body responsible for regulating Public Lotteries;

**Related Bodies Corporate** has the same meaning as it does in the *Corporations Act 2001* (Cth);

**Retail Image** means the design and appearance of the Dedicated Area of the Outlet including any DigiPOS Equipment, Signage, Promotional Materials, fixtures, fittings, furniture, floors, walls and ceilings and the space in between the walls and ceiling and to the standards set out in the Manuals;

**Retail Image Design Manual** means the document or set of documents (as varied, amended or replaced by the Franchisor from time to time) describing general fit out requirements and standards including specifications, appearance, colour scheme and required components for a Retail Image of the Dedicated Area of an Outlet;

**Schedule** means a schedule to this Agreement;

**Serious Offence** means an offence defined as such by the Code;

**Shareholders** means the persons specified in Item 11 of Schedule 1 if applicable;

**Signage** means all signs including without limitation fascia signs, light box facings, window decals installed or to be installed in the Outlet as set out in the Manuals or as reasonably directed by the Franchisor;

**Software** means the software used by the Franchisor in conjunction with Lottery Terminals;

**Special Conditions** means the terms and conditions (if any) specified in Schedule 5;

**Subscription** is the cost of an Entry in a Public Lottery excluding Commission;

**Supervisor** means the supervisor of the Outlet nominated by the Franchisee and approved by the Franchisor pursuant to Clause 4.1 of this Agreement;

**Temporary Operator** means a person (if any) appointed under the Act to conduct the lottery operations of the Franchisor following suspension or cancellation of the Lottery Licence;

**Term** means the period of time commencing on the Commencement Date and ending on the Expiration Date, subject to the terms of this Agreement;

**Trade Marks** means the Franchisor name and any associated logos and such other names, marks and logos as are used for and/or applied to Lottery Products or prescribed by the Franchisor from time to time, whether registered or unregistered;

**Trading Hours** means the times specified in Item 12 of Schedule 1 and as varied from time to time by the Franchisor; and

**Website** means any website specified as such by the Franchisor in the Manual(s) and accessible on the Internet which is now or in future operated or licensed to be operated by the Franchisor or the Franchisor's nominee.

## 1.2 Interpretation

In the interpretation of this Agreement, unless the contrary intention appears or the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) reference to a person includes a reference to a firm, corporation, other corporate body or legal entity;
- (c) a reference to a:
  - (i) natural person includes the heirs, executors, administrators and permitted assigns of that person; and
  - (ii) corporate body includes the successors and permitted assigns of that corporate body;
  - (iii) a reference to a person or corporate body includes that person or body acting in a trustee or other representative capacity;
  - (iv) a reference to two (2) or more persons means those persons jointly and severally;
  - (v) where a word or expression is defined, other parts of speech and grammatical forms of that word or expression have corresponding meanings;
  - (vi) headings are for ease of reference and do not affect the construction of this document;
  - (vii) a reference to a statute includes all amendments for the time being in force and any other replacement statute and all regulations and for the time being in force under that statute together with any notice, demand, order, direction, requirement or obligation pursuant to or under that statute or those regulations;
  - (viii) reference to a recital, clause, schedule, attachment or annexure is to a recital, clause, schedule, attachment or annexure of or to this Agreement;
  - (ix) unless stated to the contrary in this Agreement, a reference to a consent approval or discretion of a party means the prior written consent or approval of that party in its absolute and unfettered discretion or the exercise of the absolute and unfettered discretion of the party which consent or approval may be granted on conditions;
  - (x) a reference to money means the lawful currency of Australia;
  - (xi) a reference that something is to be done in writing includes electronic communication; and
  - (xii) a provision of this document must not be construed to the disadvantage of a party because that party (or its advisers) was responsible for the preparation of the document (or a portion of the document).

## 1.3 Time

If the day on which any act, matter or thing is to be done under or pursuant to this Agreement is not a Business Day, that act, matter or thing:

- (a) if it involves a payment other than a payment which is due on demand, must be done on the preceding Business Day; and
- (b) in all other cases, must be done no later than the next Business Day.

## 1.4 GST

Unless the contrary intention appears or the context otherwise requires, in this Agreement the following conditions apply:

**(a) Franchisee Responsibilities**

The Franchisee must:

- (i) be registered under the provision of the GST Act;
- (ii) have a registered Australian Business Number; and
- (iii) pay all GST owing pursuant to the provisions of the GST Act when and as required by the GST Act.

**(b) Franchisor Responsibilities**

The Franchisor will forward a Recipient Created Tax Invoice in lieu of the Franchisee providing the Franchisor with a tax invoice as required by the GST Act. Such Recipient Created Tax Invoice will:

- (i) accord with and be in the form required by the GST Act and Australian Taxation Office rulings;
- (ii) be produced on such day as is nominated by Franchisor; and
- (iii) show the amount of GST payable in respect of Commission earned by the Franchisee pursuant to Clause 6 during the period indicated by the Recipient Created Tax Invoice.

**(c) Acknowledgement of the parties**

Each party acknowledges as follows:

- (i) that it is registered for GST;
- (ii) that it will notify the other party in writing if it ceases to be registered for GST;
- (iii) the Franchisee will not issue tax invoices to Franchisor;
- (iv) Franchisor will issue Recipient Created Tax Invoices to the Franchisee; and
- (v) it will notify the other party if it ceases to satisfy any of the requirements of any rulings issued by the Australian Taxation Office in respect of Recipient Created Tax Invoices.

**1.5 Recitals**

Each of the parties to this Agreement acknowledges and agrees that the Recitals are true and correct in every material particular and form part of this Agreement.

**1.6 Cooling Off Period**

- (a) The Franchisee may terminate this Agreement without cause by giving written notice of termination to the Franchisor within seven (7) days after the earlier of:
  - (i) the Franchisee entering into this Agreement; or
  - (ii) the Franchisee making any payment (whether of money or of other valuable consideration) under this Agreement.
- (b) The Franchisor must within fourteen (14) days of the termination of this Agreement pursuant to Clause 1.6(a), repay to the Franchisee all payments made by the Franchisee to the Franchisor under this Agreement less the Franchisor's reasonable expenses.

- (c) For the purposes of Clause 1.6(b), reasonable expenses are those costs associated with the processing of the Franchisee's application, the Induction Training provided by the Franchisor and the administrative costs associated with the drawing up of all franchise documentation.
- (d) This Clause 1.6 does not apply to the renewal, extension or transfer of this Agreement.

## **2 GRANT OF FRANCHISE**

### **2.1 Lottery Franchise**

In consideration of the Franchisee:

- (a) paying the Franchise Fee;
- (b) paying the Establishment Fee; and
- (c) otherwise complying with this Agreement,

the Franchisor grants to the Franchisee and the Franchisee accepts for the Term and on the conditions set out in this Agreement, a Lottery Franchise.

### **2.2 Non Exclusive Territory**

The grant in Clause 2.1 by the Franchisor to the Franchisee is not exclusive to any territory and the Franchisee acknowledges and agrees upon entering into this Agreement that the Franchisor may, at any time, grant a Lottery Franchise to any person to operate a Lottery Franchise using the Lottery Franchise System at any location, whether proximate to the Outlet or not and that nothing in this Agreement will be or be taken as a promise by the Franchisor to the Franchisee, whether express or implied, that any exclusivity in respect of the Outlet, whether geographical or temporal, applies or shall apply to the area or region in which the Outlet is located and in addition that:

- (a) the Franchisor may itself (or through an agent or other similar appointee) offer Lottery Products or any other products for sale via the Internet and/or the Website or any other means it determines; and
- (b) the Franchisee is not entitled to any fee or other payment in connection with any sales described in Clause 2.2(a).

### **2.3 Location of the Outlet**

The Franchisee:

- (a) is authorised to establish and operate the Lottery Franchise from the Dedicated Area only at the Outlet and only in the position in the Outlet as approved by the Franchisor under this Agreement for the Term;
- (b) must not:
  - (i) operate any parts of the Lottery Franchise at or from any location other than the Outlet without the prior written approval of the Franchisor;
  - (ii) commit any other act or suffer any omission which could lessen the value of the Goodwill; or
  - (iii) display, promote, advertise or offer for sale or sell entries in any Public Lottery within or from the Dedicated Area of the Outlet other than the Public Lotteries conducted by the Franchisor without the prior written approval of the Franchisor;
- (c) acknowledges and agrees that no exclusive rights are granted to the Franchisee in respect of the marketing and sale of Lottery Products; and
- (d) must:

- (i) comply with all reasonable directions of the Franchisor's representatives given in relation to the Dedicated Area;
- (ii) at all times during the Term retain the right to occupy the Outlet;
- (iii) provide the Franchisor with a copy of any lease agreement relating to the Outlet within ten (10) Business Days of a written request by the Franchisor;
- (iv) only use the Trade Marks in the Dedicated Area in accordance with the Manuals and any lawful directions given by the Franchisor;
- (v) not alter the appearance or location or size of the Dedicated Area of the Outlet from that approved pursuant to this Agreement without the Franchisor's prior written approval;
- (vi) provide to the Franchisor, upon written request made by the Franchisor at any time during the Term, a list of its Employees who are involved in the conduct of the Lottery Franchise together with a proposed roster of working hours for those Employees; and
- (vii) not sell Lottery Products via the Internet or via any other telecommunications device, however for the avoidance of doubt, this does not prevent the Franchisee from advertising on the Internet subject to otherwise complying with the terms of this Agreement.

### **3 TERM AND RENEWAL**

#### **3.1 Commencement**

The Agency Agreement will terminate immediately prior to the commencement of this Agreement which will commence on the Commencement Date, and:

- (a) subject to Clause 3.2(e); and
- (b) unless terminated earlier in accordance with the terms of this Agreement,

will end on the Expiration Date.

#### **3.2 Renewal/Further Franchise Agreement**

- (a) The Franchisee must notify the Franchisor in writing no sooner than ten (10) months and no later than eight (8) months prior to the expiration of the Term if it wishes to enter into a further franchise agreement with the Franchisor.
- (b) The Franchisor will notify the Franchisee in writing no later than six (6) months prior to the expiration of the Term if it agrees to the Franchisee's request to enter into a further franchise agreement with the Franchisee.
- (c) The Franchisor will agree to enter into a further franchise agreement with the Franchisee if the Franchisee:
  - (i) has not been provided with more than four (4) notices of any breach of this Agreement during the Term;
  - (ii) has not received a notice of any breach of this Agreement which breach remains unremedied at the time the Franchisee provides notice to the Franchisor under clause 3.2(a)

provided however the Franchisor may waive compliance by the Franchisee with sub-clauses 3.2(c)(i) and (ii).

- (d) Should the parties decide to enter into a further franchise agreement, the Franchisor will, as a condition of its agreement to enter into a new franchise agreement, require the Franchisee to execute the then-current franchise agreement, and the Franchisee acknowledges that the franchise agreement may contain terms and conditions that differ from those of this Agreement including those relating to the renewal of that franchise agreement but excluding the length of the term which will be for a period of five (5) years.

- (e) If the Franchisee continues to act pursuant to this Agreement following the expiration of the Term, the parties agree that the provisions of this Agreement shall continue to apply. In these circumstances, either party may terminate such holdover by giving the other party twenty (20) Business Days written notice.
- (f) If the Franchisor decides to enter into a further franchise agreement with the Franchisee pursuant to this Clause 3.2 then the Franchisee must pay any applicable legal and administration costs of the Franchisor incurred in relation to the renewal.
- (g) The Franchisor acknowledges that it is in the Franchisee's absolute discretion as to whether it will enter into a further franchise agreement with the Franchisor.

## **4 OPERATION OF THE OUTLET**

### **4.1 Managers and Supervisors**

- (a) The Franchisee must if requested by the Franchisor appoint a Manager or a Manager and a Supervisor to supervise the conduct of the business at the Outlet.
- (b) Subject to Clause 4.1(a), the Franchisee or its Manager or Supervisor must be actively present at the Outlet during the Trading Hours or such longer hours during which the Outlet is open for business and be actively involved in the conduct and the active management and operation of the Lottery Franchise carried on at the Outlet and without limiting the generality of the foregoing, the Franchisee or its Manager or Supervisor must carry out and/or supervise all functions associated with the conduct of the Lottery Franchise.
- (c) Any Manager or Supervisor appointed by the Franchisee pursuant to the terms of this Agreement:
  - (i) must be approved by the Franchisor; and
  - (ii) must attend and successfully complete Induction Training and any other training specified by the Franchisor, at the expense of the Franchisee.
- (d) Any Manager appointed by the Franchisee pursuant to the terms of this Agreement:
  - (i) must be the person responsible for ensuring the compliance of the Franchisee with this Agreement;
  - (ii) must be the person with whom the Franchisor will communicate for the purposes of this Agreement and such communications will be deemed to be with the Franchisee; and
  - (iii) unless advised in writing to the contrary to the Franchisor, shall be deemed to have authority to make decisions for and on behalf of the Franchisee in respect of the conduct of the Lottery Franchise conducted at the Outlet.
- (e) If the Franchisee wishes to nominate a substitute or additional Manager or Supervisor the Franchisee may do so with the prior written consent of the Franchisor, which consent must not be unreasonably withheld where the proposed person attends and successfully completes Induction Training and any other training requested by the Franchisor at the expense of the Franchisee.

### **4.2 Business Operational Requirements**

During the Term and during any holdover period the Franchisee must conduct business at the Outlet in a reputable and business like manner and actively and diligently promote the Lottery Franchise and the sale of Lottery Products. Without limiting the generality of the foregoing the Franchisee must:

- (a) ensure that the Dedicated Area of the Outlet is at all times operated under the direct supervision and management of the Franchisee and/or the Manager and/or the Supervisor;
- (b) ensure that the Outlet is at all times operated and maintained in good condition and repair (including keeping it well lit, clean, safe and sanitary) and in compliance with the Manuals;

- (c) ensure that the Outlet is at all times operated in compliance with the Franchisor customer service standards as set out in the Manuals;
- (d) keep the Outlet open for business during the Trading Hours;
- (e) employ sufficient Employees in order to operate the Lottery Franchise efficiently;
- (f) require and ensure all Employees wear a uniform at all times when engaged in the conduct of the Lottery Franchise at the Outlet. Such uniform shall be as prescribed by the Franchisor in the Manuals or as otherwise agreed between the Franchisee and the Franchisor;
- (g) if specified in the Manuals:
  - (i) make available a complete copy of the Lottery Rules for inspection free of charge by any person on request and ensure that such Lottery Rules are at all times the most current Lottery Rules as provided by the Franchisor; and
  - (ii) display a notice stating that the Lottery Rules are available for inspection;
- (h) conduct the Lottery Franchise at the Outlet in a manner consistent with the Law, the Act, the Lottery Rules, the Lottery Licence, the Manuals and if applicable:
  - (i) directions of the Regulator;
  - (ii) codes of conduct and/or codes to which the Franchisor is a signatory;
  - (iii) Responsible Gambling Conditions; and
  - (iv) Responsible Gambling Code of Conduct,

all of which, if applicable, are contained in the Manuals and are available to view on the Outlet Website;
- (i) provide all services in a prompt, competent, courteous and efficient manner;
- (j) be governed by the highest standards of honesty, integrity, fair dealing and ethical conduct;
- (k) do nothing that would or would tend to discredit, dishonour, reflect adversely upon or in any manner injure the reputation of the Lottery Franchise System and Goodwill at any time either during the Term or following its termination or expiry;
- (l) regularly (at least once daily) download and read any email sent to the Email Address;
- (m) use the Email Address only for the purpose of the business carried on at the Outlet;
- (n) obtain and at all times maintain in operation at the Outlet:
  - (i) a computer and colour printer;
  - (ii) an Internet Facility and the Email Address;
  - (iii) DigiPOS Equipment (once installed as part of the Retail Image)
- (o) actively participate in a positive manner in the Lottery Franchise including but not limited to attending meetings, complying with the Franchisor promotional and marketing requirements and attending training programs;
- (p) deal with the Franchisor's staff and representatives in a professional and courteous manner;
- (q) not, and ensure that any of its Related Bodies Corporate do not, have an influence (whether directly or indirectly) on the outcome of a Public Lottery where the Public Lottery is determined by reference to an event;
- (r) not provide any credit to a Player in respect of Lottery Products (whether directly or indirectly), including where the Franchisee provides an Entry to a Player but has not received full payment in respect of that Entry;



- (s) assist and do everything necessary or appropriate to cooperate with any Temporary Operator in the exercise of any rights granted to such Temporary Operator;
- (t) not take any action which, if it was done under the Lottery Licence by the Franchisor, would amount to a breach of the Lottery Licence by the Franchisor; and
- (u) make prize payments to Players in the manner specified in the Lottery Rules, the Manuals and the Act.

#### 4.3 Business Development Plan and Business Plan

- (a) The Franchisee must annually or as otherwise directed by the Franchisor, and in conjunction with the Franchisor, prepare a comprehensive business development plan for the Lottery Franchise at the Outlet and submit it for approval in a form reasonably prescribed by the Franchisor at the expense of the Franchisee.
- (b) The Franchisee must thereafter follow any such business development plan at its own expense and fully implement the same within any time periods referred to therein and continually review and update such plan as reasonably required by the Franchisor.
- (c) If a business plan has been prepared by the Franchisee at the request of the Franchisor prior to the commencement of this Agreement, the Franchisee:
  - (i) must submit it for approval in a form reasonably prescribed by the Franchisor at the expense of the Franchisee; and
  - (ii) must adhere to and implement the same as if it were a plan referred to in Clause 4.3(a).

#### 4.4 Retail Image Requirements and the Dedicated Area

- (a) The Franchisee must:
  - (i) comply with Retail Image standards in the Dedicated Area as set out in the Manuals and any other Retail Image specifications that may be communicated to the Franchisee by the Franchisor from time to time;
  - (ii) carry out installations or upgrades of the Retail Image in the Dedicated Area in accordance with the Additional Conditions; and
  - (iii) keep the Dedicated Area clean and tidy and in good repair including all aspects of the Retail Image and Signage.
- (b) If any part of the Retail Image or Signage;
  - (i) becomes damaged;
  - (ii) falls into disrepair; or
  - (iii) is changed by the Franchisor (not being an **Upgrade Notice** to install or upgrade to the latest Retail Image in accordance with the Additional Conditions set out in Schedule 2),

the Franchisee must immediately at its own cost attend to its replacement, repair, restoration or change failing which the Franchisor may, having first given ten (10) Business Days prior written notice to the Franchisee, arrange for such replacement, repair, restoration or change and the reasonable costs of doing so will be borne by the Franchisee and the Franchisee authorises the Franchisor to deduct such reasonable costs from the Lottery Trust Account, after the Franchisor having first given prior written notice to the Franchisee of such deduction.

- (c) Only Public Lotteries conducted by the Franchisor are to be displayed, advertised or sold from within the Dedicated Area as more fully explained in the Manuals.

#### 4.5 Relocation and Damaged/Destroyed Dedicated Area

- (a) If the Dedicated Area is damaged or destroyed, the Franchisee must, at its own cost, repair, replace or reconstruct the Dedicated Area in accordance with plans and specifications either

supplied or approved in writing by the Franchisor, within the time reasonably prescribed by the Franchisor.

- (b) If the Franchisee wishes to relocate the Dedicated Area within the Outlet or the location of the Outlet (for any reason including damage or destruction), it must notify the Franchisor and provide the Franchisor with all information reasonably requested by the Franchisor in relation to the proposed relocation at least ninety (90) days prior to the proposed relocation date.
  - (c) Within forty-five (45) days after receiving all information in accordance with Clause 4.5(b), the Franchisor must notify the Franchisee in writing either that:
    - (i) it approves the proposed relocation, in which case:
      - (A) for a relocation of the Dedicated Area within the Outlet, the proposed new location will be deemed to be the Dedicated Area under this Agreement;
      - (B) for a relocation of the location of the Outlet, the proposed new location will be deemed to be the Outlet under this Agreement; and
      - (C) the Franchisee will fit-out at its own cost, the new location in accordance with the Manuals and the Franchisor directions; or
    - (ii) the Franchisor does not approve the proposed relocation, in which case:
      - (A) the Franchisor will provide written reasons of its decision to the Franchisee;
      - (B) the Franchisee must not relocate the Dedicated Area within the Outlet nor relocate the location of the Outlet;
      - (C) the Franchisor may (upon written prior written request from the Franchisee) agree that the operation of this Agreement be suspended from the date the Franchisee ceases to conduct the Lottery Franchise at the Outlet until the later of:
        - (i) the date the Franchisee recommences the conduct of the Lottery Franchise at a location approved by the Franchisor; or
        - (ii) the date that is six (6) months after the date the Franchisee ceases to conduct the Lottery Franchise at the Outlet
- following which the Agreement will:
- (iii) continue for the Term if the Lottery Franchise recommences at a location approved by the Franchisor;
  - (iv) will terminate if the Lottery Franchise does not recommence at a location approved by the Franchisor.
- (d) The Franchisee must pay all costs associated with any reconstruction, repair, replacement or relocation of the Dedicated Area within the Outlet or relocation of the location of the Outlet, including but not limited to the costs of repairing, replacing or relocating the existing Retail Image, communication lines and removal and installation of Lottery Terminal(s), unless otherwise agreed between the Franchisee and the Franchisor.
  - (e) After receiving the Franchisor's consent to the relocation of the location of the Outlet, the Franchisee must, at the time of the relocation or as otherwise notified by the Franchisor, remove from the Outlet, at the Franchisee's expense, all Signage, Promotional Materials, the Retail Image, Trade Marks, Records, coupons and sales materials and any other feature or item distinguishing the Outlet as a Lottery Franchise.

#### **4.6 Power Supply**

The Franchisee must cause to be installed and maintained at the Outlet at its own expense, a quality clean and uninterrupted power supply with the number of power outlets advised by the Franchisor from time to time which must be dedicated as the power supply for any Lottery Terminal(s) at the Outlet and the Franchisee must not cause or allow any interruption to such supply.

#### 4.7 Lottery Property

- (a) The Franchisee agrees that other than the express rights herein granted to the Franchisee, no property, title, rights or interest in any Lottery Property (including without limitation all the Franchisor's Intellectual Property whether registered or unregistered) shall be or is passed to the Franchisee by reason of the operation of the Lottery Franchise by the Franchisee notwithstanding that the whole or parts of the same may be or become fixtures.
- (b) The Franchisee must take all steps necessary to protect and keep safe all Lottery Property for so long as any remains in or on the Outlet.
- (c) Without limiting Clauses 4.7(a) and 4.7(b), the Franchisee:
  - (i) shall not damage or allow or cause to be damaged, or move or remove or allow or cause to be moved or removed, any Lottery Property;
  - (ii) must not allow Lottery Property or any part thereof to be charged with any debt of the Franchisee (including by creation of a security interest) or be seized or taken in purported satisfaction of any debt owed or allegedly owed by the Franchisee; and
  - (iii) shall and does hereby indemnify the Franchisor at all times against any loss or damage suffered by the Franchisor in respect of Lottery Property as is occasioned by any act or default or negligence on the part of the Franchisee or its Employees but not to the extent that such loss or damage is caused by any act or default or negligence on the part of the Franchisor.
- (d) Notwithstanding anything to the contrary in this Agreement, certain Signage and/or the Retail Image (or parts thereof) may form part of the Lottery Property where:
  - (i) the Franchisor has paid for the relevant Signage and/or Retail Image; and
  - (ii) the Franchisor has notified the Franchisee that the relevant Signage and/or Retail Image forms part of the Lottery Property.

#### 4.8 Lottery Terminals

- (a) The Franchisor:
  - (i) shall provide Lottery Terminal(s) to the Franchisee in the number determined and notified by the Franchisor and shall cause the same to be installed at the Outlet;
  - (ii) may vary the number of Lottery Terminals at any time discretion upon giving the Franchisee twenty (20) Business Days written notice if:
    - (A) necessary to protect the legitimate business interests of Franchisor in managing the distribution of Lottery Terminals throughout the network of lottery outlets; or
    - (B) the variation would not be materially detrimental to the lottery business being carried by the Franchisee; and
  - (iii) will use its reasonable endeavours to maintain and repair the Lottery Terminals (or cause to be maintained and repaired by a third party) and keep them in proper working order.
- (b) Lottery Terminals or their components must:
  - (i) be operated in accordance with the training provided by the Franchisor and in the manner described in the Manuals;
  - (ii) not be operated by persons who have not been trained:
    - (A) by the Franchisor; or
    - (B) in the manner as prescribed in the Manual; and
  - (iii) not be used for any purpose other than that described in the Manuals.

- (c) The Franchisee must:
- (i) promptly notify the Franchisor of any fault or defect in or perceived need for Maintenance of the Lottery Terminals;
  - (ii) install any new or updated versions of the Software as and when directed to do so by the Franchisor; and
  - (iii) ensure that no additional software or hardware not supplied by the Franchisor is added to the Lottery Terminals or DigiPOS Equipment including without limitation any games, communication lines, data cables, joysticks or third party software,
- in accordance with the procedures set out in the Manuals or as directed by the Franchisor.
- (d) The Franchisee and its Employees must not:
- (i) tamper with or perform or attempt to perform any function associated with the Maintenance or repairs of Lottery Terminals other than minor or preventative maintenance;
  - (ii) reverse engineer or decompile the Software;
  - (iii) modify the Software;
  - (iv) provide a copy of the Software to any third party;
  - (v) sell the Software to a third party, or purport to do so;
  - (vi) create derivative works based on, or translations of, the Software;
  - (vii) remove, obscure, or fail to include any copyright, trade mark or confidentiality notices, or any other proprietary marking, on the Software; or
  - (viii) disconnect any Lottery Terminal or DigiPOS Equipment such that the Franchisor is unable to remotely access the Lottery Terminal or DigiPOS Equipment at any time.
- (e) If any Lottery Terminal or its components is destroyed or otherwise rendered inoperative or in need of repair or replacement through:
- (i) the negligence of the Franchisee or its Employees, such repairs or replacements shall be at the expense of the Franchisee and may be deducted by the Franchisor from the Lottery Trust Account; or
  - (ii) no fault of the Franchisee and provided the Franchisee has adequate security measures in place, the Franchisor will replace the same at its expense.
- (f) The Franchisee acknowledges and agrees that the Franchisor may remotely access the Lottery Terminals or DigiPOS Equipment at any time and without notice to the Franchisee, for any purposes relating to this Agreement which may include but not be limited to uploading or downloading information or data to or from the Lottery Terminals and DigiPOS Equipment.

#### **4.9 Upgrades to the Lottery Terminals**

The Franchisor may from time to time upgrade its Lottery Terminals and systems by substituting hardware, Software or other equipment, or by adding the same to existing Lottery Terminals, associated Software or peripheral equipment. In this event the Franchisor will advise the Franchisee of the proposed upgrading and:

- (a) the Franchisee must co-operate fully with the Franchisor in the upgrading;
- (b) any Lottery Property substituted for any previous Lottery Property then in or on the Outlet shall thereafter be subject to the terms of this Agreement;
- (c) the Franchisee and/or Manager and Supervisor must attend such training as is deemed necessary by the Franchisor, at the expense of the Franchisee; and

- (d) subject to Clause 4.9(c), the cost of providing any upgrades to the Lottery Terminals and Software will be borne by the Franchisor.

#### 4.10 Manual(s)

- (a) The Franchisee acknowledges that:
- (i) the purpose of the Manuals is to achieve;
    - (A) consistency and efficiency in operation of each and every Lottery Franchise for the benefit of the Franchisor, its franchisees and Players; and
    - (B) compliance with the Lottery Franchise System and the Law; and
  - (ii) in order to ensure that the purpose of the Manuals is achieved throughout the Term, it may be necessary for the Franchisor to change the Manuals if reasonably required to protect the legitimate business interests of the Franchisor in its conduct of the Lottery Franchise System provided that such change(s) are not inconsistent with, and do not detract from, the Franchisee's rights under this Agreement and the Franchisee is given ten (10) Business Days' notice of such change by either:
    - (A) placing same on the Outlet Website, or
    - (B) advising the Franchisee in writing.
- (b) If the change to the Manuals is materially detrimental to the lottery business of the Franchisee, the Franchisee may terminate this Agreement without penalty of any nature or payment of any amount of loss or damage suffered by the Franchisor as a result of the early termination of this Agreement, by giving the Franchisor twenty (20) Business Days written notice.
- (c) All Manuals provided to the Franchisee by the Franchisor are by way of loan only and remain the property of the Franchisor and any replacement of the same will be at the expense of the Franchisee and may be deducted by the Franchisor from the Lottery Trust Account.
- (d) Without limiting the foregoing provisions of Clause 4.10, the Franchisee must:
- (i) comply with, and regularly refer to, the Manuals;
  - (ii) at all times comply with the latest procedures, practices, policies and notifications of the Franchisor as advised from time to time or as set out in the Manuals;
  - (iii) comply with the Franchisor's reasonable requirements in relation to the Manuals (including without limitation any requirements relating to updating the Manuals); and
  - (iv) cause such compliance to be achieved within any notified time limits or otherwise as soon as practicable.
- (e) If there is any inconsistency between the terms of this Agreement and the Manuals, the terms of this Agreement prevail (but only to the extent of such inconsistency).
- (f) The Franchisee acknowledges and agrees that the content of the Manuals is proprietary and confidential to the Franchisor. If the Manuals are provided in the form of:
- (i) "hardcopy" - the Franchisee must retain and maintain one copy of the Manuals at all times; or
  - (ii) "softcopy" - the Franchisee must, if directed by the Franchisor, print one copy for its use and reference.
- (g) Immediately upon the expiration or termination of this Agreement or upon any reasonable request by the Franchisor, the Franchisee must cease using the Manuals and if the Manuals are provided in the form of:
- (i) "hardcopy" – return the Manuals to the Franchisor; or

- (ii) "softcopy" – delete any down loaded version/copy and destroy any printed hardcopy thereof.
- (iii) The Franchisee must use the Manuals only in connection with the Lottery Franchise at the Outlet and may not use the Manuals in connection with any other business or commercial enterprise.

## **5 SALE OF LOTTERY PRODUCTS**

### **5.1 Specific Obligations**

The Franchisee must operate the Dedicated Area as a retail sales outlet for the sale of Lottery Products. The parties agree that for this purpose:

- (a) the Franchisor shall provide to the Franchisee supplies of Entry Coupons, Entry Tickets (including paper rolls used to produce certain Entry Tickets) and any other material determined by the Franchisor as necessary to enable the Franchisee to sell Entries and it is the responsibility of the Franchisee to submit all restock orders in accordance with the procedures set out in the Manuals to ensure that the Franchisee has adequate supply of such items at all times;
- (b) the Franchisee must, at its expense, provide at the Outlet all facilities necessary (other than Lottery Property) to enable potential Players to purchase Lottery Products during Trading Hours;
- (c) the price charged to Players by the Franchisee for Lottery Products must not exceed the Subscription amounts notified by the Franchisor from time to time plus Commission;
- (d) the Franchisee must make available for sale at the Dedicated Area those products and services associated with Public Lotteries conducted by the Franchisor which the Franchisor requires to be made available and stock the minimum product range required by the Franchisor at all times;
- (e) the Franchisee must, upon the request of a Player, attend to the:
  - (i) checking of Entry Tickets and Player Cards; and
  - (ii) payment of all prizes to Players to the limits,
 in the manner set out in the Manuals;
- (f) the Franchisee shall be the agent of the Franchisor solely for the purposes of:
  - (i) making available Lottery Products for purchase by the public strictly in accordance with the Lottery Rules, this Agreement, the Manuals and the Act; and
  - (ii) paying prizes in Public Lotteries conducted by the Franchisor strictly in accordance with the Lottery Rules, the Manuals and the Act and to the limit advised by the Franchisor from time to time; and
- (g) other than acting as the agent for the Franchisor as provided in Clause 5.1(f), the Franchisee is an independent contractor and has no authority to bind the Franchisor by contract or otherwise and the Franchisor shall not be liable for the negligence of the Franchisee or acts of the Franchisee which extend beyond the scope of the agency created by Clause 5.1(f). The Franchisee shall not represent itself as the agent of the Franchisor otherwise than in accordance with the agency described in Clause 5.1(f).

### **5.2 Prohibition on the conducting of Manual Outlet Syndicates**

- (a) The Franchisee must not organise or conduct Manual Outlet Syndicates or purchase an Entry Ticket for the purposes of organising and conducting a Manual Outlet Syndicate.
- (b) The Franchisee indemnifies the Franchisor from and against any Claim, Loss or Liability arising directly or indirectly out of the Franchisee or Employees organising or conducting a Manual Outlet Syndicate.

### 5.3 Promotion

The Franchisee must:

- (a) actively participate in all sales promotions, incentive campaigns and the like in such manner as reasonably required by the Franchisor from time to time and the Franchisee may be required by the Franchisor to pay the reasonable costs associated with such promotions upon having first received written advice of the costs from the Franchisor;
- (b) actively and efficiently display, promote and effect the sale of Lottery Products from the Dedicated Area or elsewhere as agreed in accordance with the Manuals and directions issued by the Franchisor from time to time;
- (c) participate in any customer loyalty program that is implemented or promoted by the Franchisor; and
- (d) display all Promotional Material in the Dedicated Area, or elsewhere as agreed, in the manner directed by the Franchisor and ensure it is clearly visible to Players and not obstructed from view in any way.

### 5.4 Outlet Website

The Franchisee or its Manager or Supervisor must regularly, and at least once per day, log on to the Outlet Website by accessing the Internet Facility to check, read and implement (including by informing Employees who are involved in the conduct of the Lottery Franchise) communications, information and releases made by the Franchisor relevant to the conduct of the Lottery Franchise.

### 5.5 Performance

The Franchisee must:

- (a) notify the Franchisor in writing immediately if the Franchisee becomes aware of or anticipates any matter or circumstance reasonably likely to have a material adverse effect on the Franchisee's ability to pay its debts as and when they fall due (including without limitation rent and any amounts due to the Franchisee's suppliers, or any amounts due to the Franchisor);
- (b) within ten (10) Business Days of being requested by the Franchisor, cause a director of the Franchisee to provide a statement as to the solvency of the Franchisee if the Franchisor believes on reasonable grounds that the Franchisee may not be able to pay its debts as and when they fall due;
- (c) conduct itself in the operation of the Lottery Franchise in accordance with this Agreement, the Manuals and all other instructions that the Franchisor may reasonably provide to the Franchisee from time to time concerning the operation of the Lottery Franchise;
- (d) not engage in fraudulent, dishonest, unconscionable, false, misleading or deceptive conduct;
- (e) not represent or pass-off that it is the Franchisor;
- (f) on request by the Franchisor from time to time and in addition to its obligations under the Manuals, provide information relating to the Franchisee's activities and conduct of the Lottery Franchise as reasonably required by the Franchisor;
- (g) provide to the Franchisor, within seven (7) days, details of notices received by or proceedings commenced against the Franchisee or its Employees (who are involved in the conduct of the Lottery Franchise) under or relating to a breach or alleged breach of any Law; and
- (h) strictly comply with the Additional Conditions and Special Conditions (if any), which will prevail over any other terms and conditions of this Agreement to the extent of any inconsistency with them.

### 5.6 Insurance

- (a) The Franchisee will at its cost procure as of the Commencement Date and maintain during the Term (including any holdover period) workers' compensation and employees liability insurance as required by Law;
- (b) Prior to the commencement of this Agreement and prior to 1 August in each year of the Term, the Franchisor will notify the Franchisee in writing or via the Web Site:
  - (i) whether the Franchisor will procure a master insurance policy insuring the Franchisee (together with all other franchisees who have been appointed by the Franchisor to operate a lottery franchise) in respect of the matters set out in Schedule 4, or
  - (ii) whether the Franchisee must procure and maintain a valid insurance policy insuring the Franchisee in respect of the matters set out in Schedule 4

for the period of 12 months commencing and expiring on the dates stated in the Manual in the relevant year.
- (c) The Franchisee must in respect of all policies procured by the Franchisee in accordance with clause 5.6(b)(ii):
  - (i) ensure that such policies are in a sum and with an insurance company approved by the Franchisor and have an expiry date each year as stated in the Manual;
  - (ii) deliver certificates of insurance to the Franchisor which demonstrate the Franchisee's compliance with clause 5.6(b)(ii).
- (d) The Franchisee acknowledges that the Franchisor will insure Lottery Property located at the Outlet. The Franchisee agrees to co-operate and join in with the Franchisor to any extent necessary to effect such insurance and thereafter:
  - (i) the Franchisee must not do or allow any act or thing to be done or not done in or on the Outlet whereby any insurance policy effected by the Franchisor may be vitiated or rendered void or voidable or whereby the rate of premium payable therefore is liable to increase;
  - (ii) the Franchisee shall pay all extra premiums for insurances effected by the Franchisor if such extra premiums are required on account of extra risks caused by the use to which the Outlet is put by the Franchisee; and
  - (iii) the Franchisee must, at its own expense, adopt and comply with any standards prescribed by the Franchisor from time to time, including but not limited to fire protection standards, for the better protection of Lottery Property.
- (e) If any part or all of the Outlet is damaged or destroyed, the Franchisor may require and the Franchisee must ensure that the proceeds of any insurance policy or policies be first applied towards restoring or replacing the Outlet and Dedicated Area to recommence full operation of the Lottery Franchise at the Outlet in accordance with this Agreement.
- (f) If the Franchisee fails to maintain in effect any insurance coverage under clause 5.6(b)(ii), the Franchisor will be entitled, but not obliged, to obtain any such insurance coverage on behalf of the Franchisee and the Franchisee must promptly execute any applications or other forms or instruments required to obtain such insurance. The Franchisee must pay to the Franchisor any costs incurred including any premiums paid by the Franchisor in respect of such insurance. For the avoidance of any doubt, the Franchisor will not be liable for any Loss or Liability suffered as a result of or in connection with any insurance coverage not being maintained in effect as required by this Agreement.

## 5.7 Security

The Franchisee must comply with the Manuals and any other directions of the Franchisor from time to time with respect to minimum security standards to be maintained in the operations of the Outlet. Such compliance must be attained within twenty (20) Business Days of the date of each direction or such further time as the Franchisor may allow.



## 5.8 Training

- (a) The Franchisee must ensure that all Employees who are involved in the Lottery Franchise successfully complete, at the Franchisee's expense (in respect of the costs incurred by its own representatives in attending at and participating, including without limitation all travel and accommodation costs):
  - (i) the Induction Training; and
  - (ii) such additional training as is reasonably directed by the Franchisor from time to time.
- (b) If the Franchisee is the franchisee of more than one Lottery Franchise, the Franchisee must, if directed by the Franchisor, undergo separate training approved by the Franchisor designed to provide the Franchisee with the skills necessary to effectively manage multiple franchises of the Franchisor, at the expense of the Franchisee.

## 5.9 Other Events

The Franchisee or Manager or Supervisor must, if advised by the Franchisor, attend meetings and other workshops, conferences, functions and the like as advised or conducted by the Franchisor from time to time at the Franchisee's expense (in respect of the costs incurred by its own representatives in attending at and participating in the events, including without limitation all travel and accommodation costs) as reasonably required.

## 5.10 Privacy

- (a) The Franchisee must:
  - (i) comply with the Australian Privacy Principles as set out in the Privacy Act;
  - (ii) comply with all reasonable directions of the Franchisor which the Franchisor considers necessary to assist the Franchisor in its compliance with the Privacy Act; and
  - (iii) when collecting Personal Information from customers, Employees or other providers of goods or services to the Franchisee (actual and potential) that may be transferred or made available to the Franchisor by the Franchisee, notify the individual to whom the Personal Information relates of the following matters:
    - (A) the Personal Information may be disclosed to the Franchisor;
    - (B) the Franchisor's address and telephone number, as notified to the Franchisee from time to time; and
    - (C) that the Franchisor may use and disclose the Personal Information for various purposes including:
      - (i) to contact the individual to ask about experiences with or impressions of the Outlet and Lottery Products;
      - (ii) to contact the individual to inform them about new or existing Public Lotteries, which may include sending them information, for example a newsletter; and
      - (iii) that the individual may gain access to the Personal Information the Franchisor holds about them.
- (b) The Franchisee acknowledges that:
  - (i) the Code requires the Franchisor to provide name, location and contact details of the Franchisee to each prospective franchisee; and
  - (ii) the Franchisor will provide such information unless the Franchisee requests in writing that the details not be disclosed.

## 5.11 Records

The Franchisee must preserve and store all original Records for at least seven (7) years after the year in which the Records were created (or such longer period as may be required by Law).

## 6 REMUNERATION OF FRANCHISEE

### 6.1 Commission

In consideration of the services provided by the Franchisee to the Franchisor pursuant to this Agreement and provided that the Franchisee has complied with all obligations on its part contained in this Agreement, the Franchisor shall arrange for the payment of a Commission to the Franchisee in respect of Lottery Products sold at the Outlet.

### 6.2 Changes in Commission

- (a) The Franchisor reserves the right to vary the amount of Commission by increasing the Commissions payable to the Franchisee in respect of:
  - (i) the Public Lotteries conducted by the Franchisor, provided (if necessary) the Minister has approved of such changes; and
  - (ii) Lottery Products, other than the Public Lotteries conducted by the Franchisor, by providing 10 Business Days (10) notice by either:
    - (iii) placing same on the Outlet Website, or
    - (iv) advising the Franchisee in writing.

## 7 PROCEEDS MANAGEMENT

### 7.1 Lottery Trust Account

- (a) The Franchisee must:
  - (i) have and maintain a nominated account operated at a Bank in the name of the Franchisee and to be known as or called "**Lottery Trust Account**" for the purpose of:
    - (A) depositing the proceeds from the sale of Lottery Products;
    - (B) depositing other amounts owing to the Franchisor by the Franchisee; and
    - (C) payment of prizes to Players;
  - (ii) provide to the Bank with whom the Lottery Trust Account is held, a form of a continuing authority approved by the Franchisor and sufficient to enable the Franchisor to deduct from the Lottery Trust Account by means of direct debit all sums due or owing to the Franchisor pursuant to this Agreement; and
  - (iii) not close or transfer the Lottery Trust Account without first advising and obtaining the written approval of the Franchisor.
- (b) The Lottery Trust Account:
  - (i) must only be used for the purposes of the Lottery Franchise;
  - (ii) can be an interest bearing account;
  - (iii) must not be used for the Franchisee's own purposes or have an overdraft facility; and
  - (iv) must not have amounts withdrawn from it save for the Commission due to the Franchisee and amounts required for payment of prizes to Players,

unless the Franchisee is advised in writing to the contrary by the Franchisor.

- (c) The Franchisor shall not require any further authorisation than that contained in this Agreement to deduct from the Lottery Trust Account by means of direct debit all sums due or owing to the Franchisor pursuant to this Agreement.

## 7.2 Depositing of proceeds

- (a) The proceeds of the sale of Lottery Products shall be received by the Franchisee on behalf of the Franchisor and shall be and remain the property of the Franchisor.
- (b) The Franchisee must regularly, or as frequently as directed by the Franchisor, pay into the Lottery Trust Account a sum or sums equal to the proceeds resulting from the sale by the Franchisee of Lottery Products less prize amounts properly paid by the Franchisee (**Net Proceeds**).
- (c) The Franchisor may direct that the Franchisee comply with other reasonable measures nominated by the Franchisor, including but not limited to, the depositing of the Net Proceeds in a bank night security safe or with security personnel.
- (d) Bank deposits made by the Franchisee as required by Clause 7.2(b) shall accumulate in the Lottery Trust Account so as to enable the Franchisor to deduct the Net Proceeds from the Lottery Trust Account by means of direct debit on such days and as frequently as specified in the Manual.

## 8 CHARGES AND FEES

### 8.1 Charges

- (a) The Franchisee must pay to the Franchisor the following charges:
  - (i) an amount per Accounting Week in respect of the sale of Lottery Products at the Outlet (excluding Player Cards) calculated at the rate and in the manner set out in Table A of Schedule 3; and
  - (ii) such other charges or expense reimbursement notified to the Franchisee in writing prior to the Commencement Date;
  - (iii) such other reasonable additional charges or expenses that arise from an increase in costs or expenses associated with the Franchisor conducting the Lottery Franchise System.
- (b) The Franchisor may vary any of the amounts set out in Clause 8.1(a) in circumstances where such variation is reasonably required to:
  - (i) pass on increases in costs or expenses associated with the Franchisor conducting the Lottery Franchise System;
  - (ii) pass on increases in costs or expenses to account for a reduction in profitability of the Franchisor associated with the Franchisor complying with the Law

by giving the Franchisee twenty (20) Business Days written notice of any variation to the above charges.
- (c) If the imposition of the additional charges or expenses or variation of the amounts set out in Clause 8.1(a) is materially detrimental to the lottery business of the Franchisee, the Franchisee may terminate this Agreement without penalty of any nature or payment of any amount of loss or damage suffered by the Franchisor as a result of the early termination of this Agreement by the Franchisee, by giving the Franchisor twenty (20) Business Days written notice.

### 8.2 Fees

- (a) The Franchisee must pay to the Franchisor the following fees:
  - (i) an Establishment Fee (if applicable) payable at least five(5) days prior to the Commencement Date; and

- (ii) a Franchise Fee calculated at the rate and payable in the manner set out in Item 2 of Table B of Schedule 3 (as applicable); and
  - (iii) a Franchise Fee (Change of Ownership Fee) (if applicable) calculated at the rate and payable in the manner set out in Item 3 of Table B of Schedule 3;
- (b) No part of either the Establishment Fee or Franchise Fee (as applicable) will be refundable to the Franchisee upon the sale of the business by the Franchisee or upon termination of this Agreement.

## **9 PAYMENT OF NET PROCEEDS, CHARGES AND FEES**

### **9.1 Weekly Statements**

- (a) The Franchisor will make statements of account available to the Franchisee setting out the Net Proceeds together with all charges, fees and other amounts owing to the Franchisor by the Franchisee from time to time.
- (b) The Franchisee must deposit a sum no less than that indicated on the statement of account into the Lottery Trust Account to enable the Franchisor to deduct from that account the sum owing to the Franchisor.
- (c) The Net Proceeds together with all charges, fees and other amounts owing to the Franchisor (save and except for the Establishment Fee) will be deducted by the Franchisor from the Lottery Trust Account by direct debit on such days and as frequently as specified in the Manuals.
- (d) If the Franchisor incorrectly calculates the amount of the Net Proceeds, charges, fees and other amounts owing to the Franchisor at any time, the Franchisor will make an adjustment of those amounts as soon as possible so as to rectify such error. Such adjustment shall be reflected on a subsequent statement of account provided to the Franchisee and the amount deducted from the Lottery Trust Account will be adjusted accordingly.

### **9.2 Insufficiency of funds in Lottery Trust Account**

- (a) If the Lottery Trust Account does not contain sufficient funds to enable successful completion by direct debit of the Net Proceeds and all charges, fees and other amounts owing to the Franchisor under this Agreement, then without limitation to any other remedy available to the Franchisor, the Franchisor may require the Franchisee to pay liquidated damages to cover costs, expenses, bank charges and administration costs incurred by the Franchisor relating to the Franchisee's failure to comply with Clauses 7.2, 8 or 9 in the amounts set out in the Manual.
- (b) The liquidated damages payable by the Franchisee pursuant to Clause 9.2 may be recovered by the Franchisor, in its sole discretion:
  - (i) as a sum of money payable by the Franchisee;
  - (ii) as a credit against any sum of money which may subsequently be due to the Franchisee under this Agreement, or
  - (iii) by deduction from the Lottery Trust Account.
- (c) The Franchisee acknowledges that the amounts payable under Clause 9.2 and as set out in the Manual are genuine pre-estimates of the damages that the Franchisor is likely to suffer as a result of Franchisee's failure to comply with Clauses 7.2, 8 or 9.
- (d) This Clause 9.2 operates without prejudice to any other rights that the Franchisor has or may accrue and does not operate as a waiver of any of the Franchisor's rights under this Agreement or at law.

## **10 SUPPORT, ASSISTANCE AND INFORMATION**

### **10.1 Support**

The Franchisor covenants with the Franchisee that it shall use its reasonable endeavours to:

- (a) develop and promote its lottery business through regular marketing and advertising campaigns by way of media, merchandising and trade promotions selected by the Franchisor;
- (b) make available financial data and reports to the Franchisee concerning the performance of Lottery Franchise at the Outlet;
- (c) make available ongoing advice to the Franchisee regarding the positioning and location of Promotional Materials at the Outlet;
- (d) provide ongoing advice to the Franchisee concerning areas of operation to improve the lottery business at the Outlet;
- (e) provide advice to the Franchisee concerning promotions, campaigns, advertising, local area marketing, incentive programmes for Players and merchandising methods;
- (f) provide assistance with the location of suppliers, contractors and consultants who demonstrate the ability to meet the Franchisor's standards and specifications for equipment, supplies, Signage, Retail Image, promotions, marketing and other relevant services;
- (g) make available a representative from the Franchisor to offer advice to the Franchisee to assist the Franchisee to enhance the lottery business at the Outlet;
- (h) permit the use of the Trade Marks in the operation of the Lottery Franchise at the Outlet in accordance with the Manuals or as otherwise first agreed in writing by the Franchisor;
- (i) provide training programs which may be at the expense of the Franchisee;
- (j) make available and organise ongoing courses and training for Employees who are involved in the Lottery Franchise, at the expense of the Franchisee;
- (k) provide "contact centre" support to the Franchisee and its staff relating to any queries or problems arising from Lottery Property installed at the Outlet during such hours as are specified in the Manuals or are as otherwise advised;
- (l) provide Maintenance services for Lottery Property installed at the Outlet;
- (m) conduct performance reviews of the Outlet;
- (n) conduct compliance audits and retail and service standard audits of the Outlet and furnish the Franchisee with the results; and
- (o) provide a regular newsletter containing information relating to Lottery Franchise System.

## **10.2 Assistance of the Franchisee**

The Franchisee must provide the Franchisor with all assistance and dedicated time necessary to enable the Franchisor to carry out the support referred to in Clause 10.1.

## **11 INTELLECTUAL PROPERTY**

### **11.1 Ownership**

The Franchisee acknowledges that:

- (a) the Franchisor owns or has the right to use all of the Franchisor's Intellectual Property; and
- (b) the Goodwill vests absolutely in the Franchisor and all such rights will at all times and for all purposes remain vested in the Franchisor.

### **11.2 Use of the Trade Marks**

- (a) The Franchisor grants the Franchisee the right to use the Trade Marks and the Franchisor's Intellectual Property but only:
  - (i) in connection with the Outlet during the Term;

- (ii) in the manner specified in the Manuals; and
- (iii) in conjunction with the promotion and sale of Lottery Products,

and otherwise as required and prescribed in writing from time to time by the Franchisor and subject to the condition that the Franchisee may not modify the Trade Marks or the Franchisor's Intellectual Property without the Franchisor's prior written consent.

- (b) If the Franchisor alters the Trade Marks or the Franchisor's Intellectual Property the Franchisee must immediately comply with all directions of the Franchisor including without limitation carrying out all necessary modifications to the Outlet and Dedicated Area at its expense as are necessary to reflect such alteration(s) failing which the Franchisor may arrange for such necessary modifications and the reasonable costs of doing so will be borne by the Franchisee and the Franchisee authorises the Franchisor to deduct such reasonable costs from the Lottery Trust Account.

### 11.3 Prohibited Use

- (a) The Franchisee must not:
  - (i) use any of the Franchisor's Intellectual Property, Lottery Property, any Lottery Products, DigiPOS Equipment or Trade Marks in:
    - (A) connection with the provision of any product or service not authorised by the Franchisor or in any other manner not explicitly authorised by the Franchisor in writing;
    - (B) connection with the sale of any products or services that are not Lottery Products; or
    - (C) any modified form or design, or in combination with any other words or names; or
  - (ii) apply for or seek to register any name, word or words as a trade mark, domain name, company name or business name anywhere in Australia or elsewhere which is the same as, or similar to, the Trade Marks,

without the prior written consent of the Franchisor.

- (b) Without prejudice to Clause 11.3(a)(ii), if the Franchisee acquires or uses any domain name that in whole or part incorporates any of the Trade Marks or the Franchisor's Intellectual Property or any word or words or logo deceptively similar to them, the Franchisee must upon receipt of written notice from the Franchisor, immediately discontinue the use of such domain names(s) and at the option of the Franchisor either:
  - (i) assign all its rights to such domain names to the Franchisor (or its nominated entity); or
  - (ii) deregister such domain names.

### 11.4 Infringement by other than the Franchisee

The Franchisee must immediately notify the Franchisor in writing and provide full details of any actual, potential or suspected infringement of the Franchisor's Intellectual Property by any third party of which the Franchisee becomes aware.

### 11.5 No Action

- (a) The Franchisee must not take any action or steps of whatever nature in conjunction with any third party which would result in the infringement of the Franchisor's Intellectual Property.
- (b) The Franchisee must not contest or oppose, or assist any persons to contest or oppose, the Franchisor's exclusive rights to use any of the Franchisor's Intellectual Property.

## 11.6 Acknowledgment

The Franchisee acknowledges that the Franchisor is not obliged to take any action against any infringement by a third party of the Franchisor's Intellectual Property but has the exclusive right to control any such action or related litigation.

## 11.7 Protective Covenants

- (a) The Franchisee acknowledges that:
  - (i) the Lottery Franchise System, the Franchisor's Intellectual Property, Lottery Property and Goodwill is distinct, unique and valuable and has been developed by the Franchisor at great effort and expense requiring significant investment over a period of many years;
  - (ii) one of the reasons the Franchisor has entered into this Agreement with the Franchisee is the Franchisor's reasonable expectation that the Goodwill will increase in value by virtue of the Franchisee diligently marketing and selling Lottery Products from the Outlet; and
  - (iii) the Franchisee will have regular and continuing access to and knowledge of the Franchisor's Intellectual Property.
- (b) Consequential to the Franchisee's acknowledgments in Clause 11.7(a), the Franchisee agrees it will not commit any other act or suffer any omission which could lessen the value of the Goodwill.
- (c) The Franchisee represents to the Franchisor that as at the date of execution of this Agreement the Franchisee is not a party to nor otherwise bound by any one or more other agreements which are inconsistent with or would interfere with the Franchisee's performance of this Agreement.

## 12 INSPECTION

### 12.1 Right to Inspect

- (a) In order to determine the Franchisee's compliance with this Agreement, the Manuals, the Lottery Rules, the Lottery Licence and the Act, the Franchisor, its agents and representatives and representatives of the Minister or the Regulator and any Temporary Operator may enter the Outlet and inspect the Records at:
  - (i) any time during the Trading Hours, or
  - (ii) any reasonable time, provided that at least twenty-four (24) hours written notice is given to the Franchisee

except in the event of an emergency, suspected fraud, breach of the Act or the Licence or other suspected criminal activity (based on reasonable grounds) on the part of the Franchisee and/or a Player in which case no prior notice will be required.

### 12.2 Scope of the Inspection

- (a) During an inspection conducted under Clause 12.1, any of the persons referred to in Clause 12.1, may without limitation:
  - (i) make and take copies or extracts of any Records, and view and take any films, videos, closed-circuit television (CCTV) footage and photographs;
  - (ii) inspect Lottery Property and DigiPOS Equipment; and
  - (iii) audit the Franchisee's compliance with the terms of this Agreement, the Manuals, the Lottery Rules, the Lottery Licence and the Act.
- (b) The Franchisee will, and will instruct its Employees and any other persons or companies under its control to fully co-operate during such inspection and copying.

### 12.3 Report and Correction

- (a) After an inspection by the Franchisor under Clause 12.1, the Franchisor may issue a written evaluation report.
- (b) After the Franchisee's receipt of such report, the Franchisee will correct or repair to the satisfaction of the Franchisor, any deficiency or unsatisfactory condition identified in the evaluation report:
  - (i) where reasonable, within forty eight (48) hours; or
  - (ii) in all other cases, the Franchisee will commence the relevant work within forty eight (48) hours and complete same within a timeline reasonably approved by the Franchisor.
- (c) It will be deemed a breach of this Agreement if the Franchisee does not correct the deficiency or unsatisfactory condition within the approved timeline.

### 12.4 Franchisor's rights to enter the Outlet

- (a) In addition to the rights of the Franchisor under Clauses 12.1, 12.2 and 12.3, the Franchisor or its agents and representatives may enter the Outlet upon:
  - (i) providing the Franchisee with 48 hours prior written notice; or
  - (ii) written consent of the Franchisee
 for the purpose of:
  - (A) upgrading its Lottery Terminals and systems as contemplated by Clause 4.9;
  - (B) removing Lottery Property;
  - (C) maintaining and repairing Lottery Property;
  - (D) providing support to the Franchisee pursuant to Clause 10; or
  - (E) as otherwise permitted by the Terms of this Agreement.
- (b) The rights granted under Clause 12.4 constitute an irrevocable licence from the Franchisee to the Franchisor to enter the Outlet for these purposes, which will survive the expiration or termination of this Agreement.

## 13 INDEMNIFICATION AND LIABILITY

### 13.1 Franchisee to indemnify the Franchisor

- (a) The Franchisee will indemnify and keep indemnified the Franchisor and its Related Bodies Corporate and its officers, directors, employees, agents, successors and assigns from and against any and all causes of action, Claims, demands, Losses, damages, Liabilities, costs and expenses in respect of or directly or indirectly arising out of or in connection with:
  - (i) the Franchisee's breach of any one or more terms or conditions of this Agreement including without limitation the Franchisee's breach of the Manuals;
  - (ii) the Franchisee's breach of any one or more terms or conditions of any agreement entered into by the Franchisee and any other person in connection with the performance of this Agreement, including without limitation any agreement with any suppliers, or failure to observe any of its obligations to any third parties in connection with the operation of its business;
  - (iii) any violation of Law by the Franchisee; and
  - (iv) any negligent act or omission by the Franchisee or any of its Employees including without limitation, any negligent act or omission by any of them resulting in the sale of Entries in



Public Lotteries conducted by the Franchisor being effected other than strictly in accordance with the Lottery Rules.

### 13.2 Exclusion and Limitation of Liability

- (a) To the extent permitted by Law, all implied terms, conditions and warranties (statutory or otherwise) as to any goods or services to be supplied by the Franchisor pursuant to this Agreement are hereby excluded.
- (b) The Franchisor does not exclude or limit the application of any provision of any statute (including the *Competition and Consumer Act 2010 (Cth)*), where to do so would:
  - (i) contravene that statute; or
  - (ii) cause any part of Clause 13.2 to be void.
- (c) To the extent permitted by Law the Franchisor's liability to the Franchisee:
  - (i) for any breach of any express or implied provision of this Agreement (other than an implied warranty of title);
  - (ii) for any Loss sustained by the Franchisee as a result of the operation or failure of a Lottery Terminal or Lottery Property, at any time; and
  - (iii) in respect of the Franchisor's conduct in relation to the Franchisee (which conduct includes, without limitation the provision by the Franchisor to the Franchisee of any advice, assistance or recommendations),

is limited, at the Franchisor's option, to any one of supplying, replacing or repairing the goods or supplying again the services in respect of which the breach occurred.
- (d) Notwithstanding any provision of this Agreement, the Franchisor does not warrant that the Lottery Terminals will be available for the sale of Entries at the Outlet during those hours during which the Outlet is open to the public or for any minimum period. The Franchisor will not be liable for any Loss incurred by the Franchisee arising from the Lottery Terminals being unavailable for some or any time whatsoever whether caused by the Franchisor's negligence or otherwise.

## 14 CORPORATE AND TRUST PROVISIONS

### 14.1 Corporate Provisions

Where the Franchisee is a corporation:

- (a) the Franchisor may require that the Franchisee nominates in writing a natural person who is a director of the Franchisee to be the Manager of the business conducted pursuant to this Agreement;
- (b) the Franchisee must produce any statutory register or other documents which the Franchisee is required by Law to maintain if requested in writing by the Franchisor; and
- (c) the Franchisee represents and warrants that:
  - (i) unless indicated in Item 13 of Schedule 1 or consented to in writing by the Franchisor, it holds and will always hold the rights granted under this Agreement in its own right and not on trust for any other person;
  - (ii) as at the Commencement Date the:
    - (A) directors of the Franchisee are the persons identified in Item 10 of Schedule 1; and
    - (B) shareholders of the Franchisee are the persons identified in Item 11 of Schedule 1 and in the proportions identified therein;
  - (iii) the beneficial holders of all of the issued shares in the Franchisee are the Shareholders; and

- (iv) it will not during the Term:
  - (A) issue any further shares in;
  - (B) transfer the ownership of any shares in; or
  - (C) approve or permit the transfer of ownership in the shareholders of
 the Franchisee to any other person without the prior written consent of the Franchisor.

## 14.2 Trust Provisions

Where the Franchisee is a trustee of a trust, the Franchisee (both personally and in its capacity as trustee of that trust):

- (a) acknowledges that this Agreement is binding on the Franchisee personally and in its capacity as trustee;
- (b) must cause any successor of the Franchisee as trustee of the trust to execute such documents as the Franchisor may require to ensure that this Agreement is binding on that successor;
- (c) must on demand by the Franchisor exercise any right of indemnity in relation to the trust fund and any right against the beneficiaries to pay moneys payable under this Agreement or otherwise hold such rights for the Franchisor;
- (d) represents and warrants that, unless the Franchisee has disclosed the contrary to the Franchisor in writing prior to the execution of this Agreement:
  - (i) it will, upon request, provide the Franchisor with a true copy of the relevant executed and stamped trust deed (and any amendments);
  - (ii) the Franchisee is, without restriction or limitation, empowered by the deed establishing the trust (**Deed**) to execute this Agreement;
  - (iii) the Franchisee is currently the only trustee of the trust and during the Term, the Franchisee will remain the sole trustee of the trust;
  - (iv) during the Term, there will be no alterations to the Deed or the beneficiaries of the trust (or the potential beneficiaries of a discretionary trust) or the interests of the beneficiaries (or the potential beneficiaries of a discretionary trust) nor any advancement of the vesting date or revocation of the Deed without the approval of the Franchisor in writing, which such approval must not be unreasonably withheld;
  - (v) if the trust is a fixed trust, the beneficiaries are those persons named in Item 13 of Schedule 1;
  - (vi) the Franchisee has an unrestricted right of indemnity out of the trust's assets in respect of the moneys payable pursuant to this Agreement;
  - (vii) the Deed, as provided to the Franchisor prior to the date of execution of this Agreement, is current and has not been altered in any way;
  - (viii) no powers conferred on the Franchisee by the Deed have been delegated;
  - (ix) no vesting date has been determined under the provisions of the Deed;
  - (x) the Franchisee is not in default under the provisions of the Deed;
  - (xi) there are no claims (whether legal or equitable) against the assets of the trust;
  - (xii) no notice has been given under any legislation relating to trustees such as may be given by a court in an administration action for creditors, beneficiaries and others to make claims against the trust fund, as a prelude to distribution of the trust fund having regard to notified claims; and

- (xiii) each of the above representations and warranties will remain true as long as this Agreement remains in force;
- (e) agrees that:
  - (i) it will not commit a default under the provisions of the Deed;
  - (ii) it will not suffer any restriction or limitation on its right of indemnity or subrogation; and
  - (iii) the Deed will not be altered or varied in any way whatsoever or revoked without the consent in writing of the Franchisor; and
- (f) agrees not to, otherwise than in the ordinary course of business:
  - (i) dispose or part with the possession of the trust fund; or
  - (ii) permit the delegation of any of the powers of the trustee of the trust.

### **14.3 Changes to Corporation and/or Trust**

- (a) If the Franchisee is a body corporate or the trustee of any trust and any change occurs in:
  - (i) the shareholding of the Franchisee or any holding company or ultimate parent company of the Franchisee;
  - (ii) the beneficial ownership of any shares of the Franchisee or any holding company or ultimate parent company of the Franchisee;
  - (iii) the beneficial ownership of the business or assets of the Franchisee or part thereof as a result of which the voting, income or capital participation rights in the Franchisee or the voting rights at meetings of directors of the Franchisee are after the change effectively controlled by a person or persons who at the date hereof did not effectively control the same;
  - (iv) the directors of the Franchisee; and/or
  - (v) the beneficiaries of or unit holder in any trust of which the Franchisee is a Trustee,

the Franchisor may terminate this Agreement immediately by notice in writing to the Franchisee.
- (b) Clause 14.3(a) shall not apply if the Franchisor gives its prior written consent to any change described in Clause 14.3(a). The Franchisor will not unreasonably refuse to give its written consent, if the proposed new person is respectable, responsible and solvent person and is commercially acceptable to the Franchisor in the reasonable opinion of the Franchisor based on the Franchisor's criteria and taking into account the proposed person's record in the lotteries industry (if any), general commercial experience, financial resources and business plans for the Outlet.

## **15 TERMINATION**

### **15.1 Consequences of Termination of the Lottery Licence**

The Franchisor and the Franchisee may terminate this Agreement immediately by written notice to the other party if a Lottery Licence expires or is cancelled, revoked or suspended.

### **15.2 Immediate Termination**

Notwithstanding the notice provisions of Clause 15.3, the Franchisor may terminate this Agreement effective immediately upon delivery to the Franchisee of a written notice issued by the Franchisor to the Franchisee, which written notice the Franchisor will be entitled to serve if one or more of the following events occur:

- (a) the Franchisee becomes bankrupt, insolvent under administration or an externally administered body corporate;

- (b) the Franchisee is convicted of a Serious Offence;
- (c) without the prior written approval of the Franchisor, the Franchisee voluntarily abandons the Outlet or the franchise relationship
- (c) the Franchisee fails to fully cure any breach of this Agreement or Event of Default in accordance with any written notice issued pursuant to Clause 15.3;
- (d) the Franchisee is fraudulent in connection with the operation of the Outlet;
- (e) the Franchisee operates the Outlet in a way that endangers public health or safety; or
- (f) the Franchisee no longer holds a licence that is necessary to carry on business at the Outlet.

### 15.3 Termination for Breach

- (a) A party may terminate this Agreement where:
  - (i) the other party has breached a term or condition of this Agreement (“**Defaulting Party**”);
  - (ii) the Defaulting Party has been given written notice of:
    - (A) the breach by the other party;
    - (B) the fact that it is proposed to terminate the Agreement as a result of the breach unless it is rectified within a reasonable period;
    - (C) the action required to rectify the breach; and
    - (D) the reasonable period in which the Defaulting Party has to rectify the breach; and
  - (iii) the Defaulting Party fails to rectify the breach within the reasonable period.
- (b) A party may terminate this Agreement by written notice effective immediately in the event that:
  - (i) the Defaulting Party's breach is incapable of being remedied and the other party has suffered or is likely to suffer substantial loss or damage either in a monetary sense or in a reputational sense; or
  - (ii) the Defaulting Party acts in a manner which would permit immediate termination at law.
- (c) In addition to the rights contained in Clauses 15.3(a) and (b) and without limiting the generality of this Clause 15.3, the Franchisor may terminate this Agreement in accordance with Clause 15.3(a)(ii) and (iii) if the Franchisee:
  - (i) fails to comply with the Manuals in a manner which is important to the proper conduct of the Lottery Franchise System and/or the Franchisor's conduct of Public Lotteries;
  - (ii) acts in any manner which in the reasonable opinion of the Franchisor may damage or injure the Goodwill, business and/or reputation of the Franchisor;
  - (iii) is an individual, engages in or is alleged to have engaged in any theft in relation to the conduct of the Lottery Franchise or deceives or attempts to deceive any customer or Player in any manner;
  - (iv) is a body corporate, if any of its directors, officers or Employees engage in or are alleged to have engaged in any theft in relation to the conduct of the Lottery Franchise or deceives or attempts to deceive any customer or Player;
  - (v) has its rights to possession of the Outlet terminated;
  - (vi) fails to maintain normal and continuous operation of the Outlet for a period in excess of five (5) consecutive Business Days;
  - (vii) is or states that it is unable to pay its debts when they fall due;

- (viii) employs a person to work in the Dedicated Area of the Outlet who has been convicted of a Serious Offence or any offence involving dishonesty or fraud; or
- (ix) ceases to operate the Outlet; or
- (x) commits breaches of any four(4) of the matters contained in:
  - (A) Clauses 15.3 (c) (i) to (ix)(inclusive); or
  - (B) Clause 4.2.

of this Agreement (excluding breaches of Clauses 4.2(f), (i), (l), (m), (n), (o) and (p) and which by their nature are incapable of being remedied, in any period of 730 days;

- (xi) commits four (4) breaches of this Agreement of the same nature or of a very similar nature whether or not such breaches have been remedied or whether or not they were capable of being remedied in any period of 730 days

(all of the above being ("**Events of Default**"));

- (d) The Franchisor shall be entitled to immediately suspend the operation of some or all of the Lottery Terminals installed in the Outlet if the Franchisor serves a notice on the Franchisee pursuant to Clause 15.3(a)(ii):
  - (i) on the giving of the first notice of a breach or an Event of Default, until
    - (A) such time as the Franchisee has rectified the breach or Event of Default if the breach is capable of being remedied; or
    - (B) for such period of time as is reasonably determined by the Franchisor given the nature and severity of the breach if the breach is incapable of being remedied; or
  - (ii) for each subsequent giving of a notice of a breach or an Event of Default, for the later of the following:
    - (A) a period not exceeding ten (10) Business Days after the date of the notice, or
    - (B) the time the Franchisee rectifies the breach or Event of Default;
- (e) If a breach or Event of Default is remedied by the Franchisee outside of the normal business hours of the Franchisor or not on a Business Day, the suspension of the Lottery Terminals will not be removed by the Franchisor until the next Business Day.
- (f) Subject to Clauses 15.3(b), 15.3(g) and 15.3(h), it is agreed that the reasonable period of notice required by this Agreement and the Code is twenty (20) Business Days.
- (g) Where the Franchisee is provided with written notice in accordance with Clause 15.3(a)(ii) on more than two occasions in any twelve (12) month period, it is agreed that the reasonable period of notice required by this Agreement and the Code for any subsequent breach or Event of Default of the same or a similar nature is two (2) Business Days.
- (h) Where the Franchisor determines on reasonable grounds that any breach of this Agreement or Event of Default has been deliberate and calculated to cause damage to the Franchisor, the parties agree and accept that the reasonable period of notice required under this Agreement and the Code is five (5) Business Days or such shorter period as the Franchisor determines as necessary to avoid the Franchisor suffering material Loss or damage to reputation.

#### **15.4 Termination for failure to maintain Average Weekly Sales**

The Franchisor may terminate this Agreement if:

- (a) Average Weekly Sales of the Franchisee at the Outlet for the 26 Accounting Weeks immediately following 1 July in any year are less than the amount specified in Item 14 of Schedule 1 (as adjusted);

- (b) the Franchisee has been given written notice that it is proposed to terminate the Agreement unless upon the expiration of twenty six (26) Accounting Weeks from the date of service of such notice, the Average Weekly Sales at the Outlet during those twenty six (26) Accounting Weeks do not equal or exceed the amount specified in Item 14 (as adjusted); and
- (c) Average Weekly Sales at the Outlet during those twenty six (26) Accounting Weeks do not equal or exceed the amount specified in Item 14 (as adjusted).

### **15.5 No Compensation**

Unless expressly provided for by this Agreement, termination or non-renewal of this Agreement by the Franchisor will not entitle the Franchisee to any payment or compensation or to make a Claim for any Loss suffered by the Franchisee.

### **15.6 Duties upon Termination and Expiry**

Immediately upon the expiration or termination of this Agreement:

- (a) the Franchisee will pay any and all amounts owing to the Franchisor pursuant to this Agreement;
- (b) the Franchisor will pay any and all amounts owing to Franchisee pursuant to this Agreement;
- (c) all the rights under this Agreement granted to the Franchisee will automatically revert to the Franchisor;
- (d) the Franchisor shall be entitled to remove all Lottery Property from the Outlet;
- (e) the Franchisee will, at its expense:
  - (i) discontinue any use of the Franchisor's Intellectual Property (including but not limited to the Retail Image); and
  - (ii) remove from the Outlet all Signage, corporate identification, Trade Marks, Entry Coupons, Promotional Materials and sales materials and any other feature or item distinguishing the Outlet as a Lottery Franchise; and
  - (iii) either return, or if so instructed by the Franchisor destroy and in writing confirm to the Franchisor the destruction of, any and all materials which are comprised of, convey, bear, display, incorporate or refer to the Intellectual Property or the Confidential Information; and
  - (iv) cancel or transfer to the Franchisor or its nominee all registrations relating to the Franchisee's use of the Intellectual Property, and any business or corporate name of the Franchisee including signing and lodging with the appropriate authority any necessary deed or document.
- (f) if the Franchisee does not comply with Clause 15.6(e)(iii), the Franchisee authorises the Franchisor or its employees, representatives or agents to (at the Franchisee's expense) upon providing the Franchisee with 24 hours written notice:
  - (i) enter the Outlet and remove all Signage, corporate identification, Trade Marks, Entry Coupons, Promotional Materials and sales materials and any other feature or item distinguishing the Outlet; and
  - (ii) carry out any other work necessary to ensure the Franchisee's compliance with this Clause 15.6; and
- (g) the Franchisee will otherwise refrain from doing business under any name or in any manner that might give the impression that the Franchisee operates a Lottery Franchise and is a franchisee of the Franchisor, or is otherwise affiliated or associated with the Franchisor.

### **15.7 Goodwill**

- (a) The Franchisee acknowledges and agrees that:

- (i) the Goodwill and any increase in value of the Goodwill vests absolutely in the Franchisor;
  - (ii) the Franchisee is not entitled to any payment or other compensation whatsoever from the Franchisor for any increase in value in the Goodwill that occurred during the Term; and
  - (iii) the Franchisee is not entitled to any payment or other compensation whatsoever from the Franchisor for any value that may be attributed to goodwill of the Franchisee that occurred during the Term.
- (b) The Franchisor acknowledges and agrees that Clause 15.7(a) does not limit the Franchisee from selling the business it operates under this Agreement and the goodwill in connection with the operation of that business (provided that the Franchisor has previously approved the sale in writing in accordance with the terms of this Agreement).

### 15.8 Rights upon Termination

- (a) The rights of either party are not affected (either pursuant to this Agreement or otherwise at Law) regarding any breaches of this Agreement by the other party which as at the date of termination have not been remedied.
- (b) For the avoidance of doubt:
- (i) after the termination of this Agreement, the Franchisor may continue to use any information relating to customers or clients of the Franchisee that was provided to the Franchisor by the Franchisee during the Term; and
  - (ii) the Franchisee will not be entitled to any payment or compensation in relation to the Franchisor's use of the information referred to in Clause 15.8(b)(i).
- (c) All obligations of the parties which expressly or by their nature survive the expiration or termination of this Agreement will continue in full force and effect notwithstanding the expiration or termination of this Agreement.

## 16 SALE OF BUSINESS AND ASSIGNMENT

### 16.1 Franchisor's rights to assign

The rights and obligations of the Franchisor under this Agreement (including the right conferred by this Clause) may be assigned by the Franchisor to any Related Body Corporate of the Franchisor (as that term is defined in the *Corporations Act 2001* (Cth)) which is authorised by the Act to conduct Public Lotteries and the Franchisee consents to any such assignment.

### 16.2 No assignment or otherwise of benefit of Agreement

The Franchisee must not assign, transfer, create a security interest in, charge, mortgage or otherwise encumber or in any way part with the Lottery Property or the benefit of this Agreement, including, without limitation, the grant of the Lottery Franchise or any part thereof, other than in accordance with the terms of this Agreement.

### 16.3 Sale of Business/Lottery Franchise

- (a) The Franchisee must not sell, transfer or dispose of (or allow the sale, transfer or disposal of) the Lottery Franchise at the Outlet or any assets used in its operation including, but not limited to, the Franchisee's rights under this Agreement, any database of customers or clients of the Lottery Franchise at the Outlet, ("**Franchise Assets**") without:
- (i) notifying the Franchisor of its intention to do so in writing and in advance of the Lottery Franchise being advertised for sale; and
  - (ii) giving details of the identity of the proposed purchaser.
- (b) The Franchisee acknowledges and agrees that the Franchisor reserves its right not to enter into a franchise agreement with the proposed purchaser, however the Franchisor will consider the proposed purchaser if:

- (i) there has been no persistent material breach of the provisions of this Agreement by the Franchisee and no breach whatsoever of which the Franchisee has been notified by the Franchisor that remains unremedied; and
  - (ii) the Franchisee and proposed purchaser complete the then current application form and submit to the Franchisor all information reasonably required by the Franchisor to assess whether the proposed purchaser satisfies the then current criteria for being granted a Lottery Franchise.
- (c) The Franchisor will notify the Franchisee whether or not it preliminarily approves of any proposed purchaser within a reasonable time after receiving information referred to in Clause 16.3(b).
- (d) If the Franchisor does not approve of any proposed purchaser, the Franchisor will give to the Franchisee written notice that approval is withheld within forty two (42) days after receiving the information.
- (e) The Franchisor will not unreasonably refuse to process the preliminary approval, grant a Lottery Franchise and enter into a franchise agreement with the proposed purchaser if:
- (i) payment is made by the Franchisee of all outstanding fees and charges owing during the Term by the Franchisee;
  - (ii) the proposed purchaser is a respectable, responsible and solvent person and is commercially acceptable to the Franchisor in the reasonable opinion of the Franchisor based on the Franchisor's selection criteria and taking into account the proposed purchaser's record in the lotteries industry (if any), general commercial experience, financial resources and business plans for the Outlet;
  - (iii) all required application costs and fees are paid by the proposed purchaser;
  - (iv) the proposed purchaser executes any documentation required by the Franchisor including but not limited to the then current franchise agreement;
  - (v) the purchaser enters into such arrangements at that time with the Franchisor as are designed to ensure payment of all sums due to the Franchisor by the Franchisee pursuant to this Agreement, up to the date of settlement of the sale of the business;
  - (vi) the managers, officers and employees of the proposed purchaser who are involved in the Lottery Franchise successfully complete the Induction Training and any other training deemed necessary by the Franchisor, at the proposed purchaser's expense (in respect of the costs incurred by its own representatives in attending at and participating in the training, including without limitation all travel and accommodation costs); and
  - (vii) the Franchisee fulfils any other requirements that may be reasonably requested by the Franchisor during the course of the approval process including but not limited to an undertaking to complete an upgrade of the Retail Image if necessary and to hand over to the purchaser all Records relating to the Lottery Franchise.
- (f) No part of the Franchise Fee will be refundable to the Franchisee upon the sale of the business by the Franchisee or upon termination of this Agreement.
- (g) The Franchisor reserves the right to offer the proposed purchaser either a new term or an assignment of this Agreement for the remainder of the existing Term.

#### **16.4 General Application**

- (a) If the Franchisee consists of more than one person, Clause 16.3 applies to a sale by all or any of them.
- (b) If the Franchisee breaches any part of Clause 16.3 and the Franchisor does not terminate this Agreement:



- (i) the purported sale by the Franchisee of its rights and obligations under this Agreement and/or assets of the Lottery Franchise or used in the conduct of the Lottery Franchise at the Outlet will be void as against the Franchisor; and
- (ii) the rights and obligations of the Franchisee under this Agreement will continue.

## **17 CONFIDENTIALITY**

### **17.1 Confidential Information**

The Franchisee must keep confidential the Confidential Information whether or not it is in a material form. The Franchisee acknowledges that the Lottery Franchise System including all, methods, specifications, procedures, Manuals, all Software, trade secrets, designs, advertising and publicity material, all information regarding the Franchisor's methods of business and any financial information provided to the Franchisee by the Franchisor at any time are the confidential and valuable property of the Franchisor.

### **17.2 Use of Confidential Information**

The Franchisee must use the Confidential Information solely in relation to the operation of the Lottery Franchise at the Outlet.

### **17.3 Disclosure by Franchisee**

- (a) The Franchisee may disclose the Confidential Information only to Employees and suppliers who:
  - (i) have a need to know the Confidential Information in order to carry out their duties in relation to the Outlet; and
  - (ii) have been instructed by the Franchisee to keep the Confidential Information confidential and are bound by obligations of confidentiality at least to the same extent as this Agreement.
- (b) Any Confidential Information disclosed under this Clause must only be disclosed to the extent that the Employee or supplier has a need to know the Confidential Information to carry out their duties in relation to the Lottery Franchise.

### **17.4 Disclosure by the Franchisor**

The Franchisee acknowledges and agrees that:

- (a) the Franchisor may disclose to other franchisees and the Minister (including representatives of the Minister), information regarding the trading performance of the Outlet, which may include without limitation the sales figures and the gross profit margin percentage achieved by the Franchisor for the Outlet;
- (b) any information disclosed by the Franchisor to the Franchisee regarding the trading performance of another Lottery Franchise will constitute Confidential Information for the purposes of this Agreement; and
- (c) both the Franchisee and the Franchisor must comply with the Privacy Act in relation to the collection, use and storage of Personal Information.

## **18 GUARANTEE AND INDEMNITY**

### **18.1 Guarantee of Directors**

- (a) In consideration of the Franchisor, at the Guarantor's request, granting a Lottery Franchise to the Franchisee, the Guarantor unconditionally and irrevocably separately guarantees to the Franchisor and to the Franchisee the due and punctual performance and satisfaction of all of the Obligations of the Franchisee.
- (b) If the Franchisee defaults in the performance of any of its Obligations, the Guarantor will, if required to do so by Franchisor on demand, immediately perform any of the Obligations then

required to be performed by the Franchisee in the same manner as the Franchisee is required to perform the Obligations;

- (c) The Guarantor agrees to unconditionally and irrevocably indemnify the Franchisee with respect to any liability that may arise in respect of its Obligations.
- (d) The Guarantor as a separate and additional and primary liability unconditionally and irrevocably agrees to indemnify the Franchisor (and each of its respective representatives, members, officers, employees, contractors and agents) (**Indemnified Parties**) and at all times keep indemnified the Indemnified Parties against any Loss suffered or incurred by the Indemnified arising out of or in any way in connection with:
  - (i) any failure by the Franchisee to perform any of the Franchisee's Obligations; or
  - (ii) an obligation that the Franchisee would otherwise have under this Agreement if this Agreement being found to be void, voidable or unenforceable as a consequence of an act, error, omission or breach of this Agreement by the Franchisee.
- (e) For the avoidance of doubt, the Guarantor unconditionally and irrevocably agrees to indemnify the Indemnified Parties and at all times keep indemnified the Indemnified Parties against any Loss suffered or incurred by the Indemnified Parties arising out of or in any way in connection with the Franchisee's obligation (or any failure by the Franchisee to observe or perform any obligation) to pay any amounts owing under this Agreement.
- (f) The guarantee and indemnity given under this Agreement remains and is not affected by:
  - (i) any part payment or performance of obligations by the Franchisee or the Guarantor;
  - (ii) the Franchisor granting any time, credit, compromise or indulgence to the Franchisee or the Guarantor, or waiving any breach or default of this Agreement;
  - (iii) the occurrence of any one or more of the Events of Termination or Events of Default;
  - (iv) any change to this Agreement or the Manuals; or
  - (v) any other act, event or omission which but for this Sub-Clause (f) would operate to discharge the Guarantor's liability under this Agreement.
- (g) The guarantee and indemnity under this Agreement will remain in force until all Obligations under this Agreement have been satisfied and thereafter, without any further action being required by any party, this guarantee and indemnity will terminate.
- (h) Any reference in this Clause 18.1 to the obligations and liabilities of the Guarantor will be construed as a reference to its obligations or liabilities, whether as a guarantor or indemnifier or both under this Clause 18.1. The use of the expression "Guarantor" in this Clause 18.1 in relation to a party is not to be construed as diminishing that party's obligations as and indemnifier under this Clause 18.1.
- (i) The Guarantor will not be discharged, released or excused from this Agreement by an arrangement made between the Franchisee and the Guarantor or between the Franchisor and the Guarantor with or without the consent of the Guarantor, or by any other inference arising out of the conduct between the parties.
- (j) The Guarantor acknowledges and agrees that:
  - (i) the Guarantor entered into this Agreement for valuable consideration;
  - (ii) it has not entered into this this guarantee as a result of any representation, promise, warranty, statement or inducement made by or on behalf of the Franchisor, the Franchisee or any other person;
  - (iii) the Franchisor may exercise its rights against the Guarantor at any time after the Franchisee fails to comply with this Franchise Agreement, without the Franchisor first having to take any action or enforce any of its rights against the Franchisee;
  - (iv) the Guarantor is liable for all of the Guarantor's obligations under this Franchise Agreement both separately and jointly with any one or more other persons that is a guarantor under this Agreement;

- (v) the Guarantor must pay any amount payable to the Franchisor under this Clause 18.1 by the date the Franchisor specifies;
  - (vi) the Guarantor must promptly do anything required by the Franchisor to bind himself or herself under this Clause 18.1;
  - (vii) the Guarantor must pay the Franchisor for its reasonable costs, charges and expenses in administering, enforcing, attempting to enforce and/or terminating the guarantee and indemnity under this Clause 18.1;
  - (viii) the Guarantor must not exercise any rights of indemnity, contribution or subrogation against the Franchisee or any other Guarantor until that Guarantor has satisfied its obligations under the guarantee and indemnity under this Clause 18.1;
  - (ix) the Guarantor may not assign any of the Guarantor's obligations under this Franchise Agreement;
  - (x) it shall not be necessary for the Franchisor to make any claim or demand on, or to take any action or proceedings against, the Franchisee before calling on the Guarantor to perform any obligations or deposit or pay any moneys as aforesaid; and
  - (xi) the Franchisor has advised the Guarantor to seek independent legal advice before signing this form of guarantee and indemnity and that documents of this nature vary significantly in form and effect and the obligations contained herein should be fully understood.
- (k) The Guarantor may receive payments from, or enforce a claim against, the Franchisee, or another guarantor, to the extent that such payment or enforcement does not prejudice the rights of the Franchisor under this document.
- (l) The Guarantor agrees to pay or reimburse the Franchisor on demand for the Franchisor's cost in enforcing this Clause 18.1 including legal costs in accordance with any written agreement as to legal costs or, if no agreement, whichever is the higher of a full indemnity basis lawyer or own client basis.
- (m) The Guarantor agrees to make payment under this Clause 18.1 in full without set-off counterclaim, and without any deduction in respect of taxes unless prohibited by Law.
- (n) Each guarantee and indemnity in this Clause 18.1:
- (i) is a continuing obligation despite any intervening payment, settlement or other thing;
  - (ii) extends to all of the Franchisee's Obligations;
  - (iii) is separate and independent from the other obligations of the parties; and
  - (iv) survives termination, completion or expiration of this Agreement, in respect of any accrued rights of the Franchisor.
  - (v) Each provision of this Clause 18.1 is individually separable. If any provision becomes illegal, unenforceable or invalid it is to be treated as being separate from this Clause 18.1, but the rest of this Clause 18.1 will not be affected.

## 18.2 Guarantee of additional Directors

If the Franchisee is a body corporate, the Franchisor may require the Franchisee to procure the execution of the Guarantee and Indemnity contained in Schedule 6 of this Agreement by each and any director appointed during the Term.

## 18.3 Bank Guarantee

If the Franchisee fails to comply with Clause 7.2, 8 or 9 at any time during the Term, the Franchisor may subsequently require, at any time during the Term, the Franchisee to provide a Bank guarantee in favour of the Franchisor, for an amount, in a form acceptable to the Franchisor at the cost of the Franchisee. At any time during the currency of this Agreement the Franchisor may review the amount of the Bank guarantee and if so required by the Franchisor, the Franchisee must provide a further Bank guarantee in a higher or lower amount than originally provided.

## 19 MEDIATION

### 19.1 Disputes

If a dispute arises out of or in relation to this Agreement during the Term (including any dispute as to breach of this Agreement) (“**Dispute**”) a party to this Agreement must not commence any court or arbitration proceedings in respect of the Dispute (except where that party seeks urgent interlocutory relief) unless it has first complied with the following sub-clauses and been unsuccessful in resolving the Dispute:

- (a) a party claiming that a Dispute has arisen (“**Complainant**”) must notify the other party (“**Respondent**”) giving the following details of the Dispute in writing:
  - (i) the nature of the dispute;
  - (ii) what outcome the Complainant wants; and
  - (iii) what action the Complainant thinks will settle the Dispute;
- (b) after receiving notice under Clause 19.1(a), the Complainant and the Respondent must each nominate in writing a representative authorised to settle the Dispute on their behalf and those representatives must thereafter endeavour in good faith to resolve the Dispute expeditiously by negotiation or such other means as they may mutually agree;
- (c) if the parties cannot agree under Clause 19.1(b) within three (3) weeks after the Respondent received notice under Clause 19.1(a) then:
  - (i) either party may refer the matter to a mediator agreed by the parties;
  - (ii) and if the parties cannot agree about who should be the mediator, within five (5) Business Days after the Respondent received notice under Clause 19.1(a), either party may ask the mediation adviser under the Code to appoint a mediator;
- (d) the terms on which the mediation is conducted and the procedure for the mediation will, unless otherwise agreed in writing be those of the Office of the Mediation Adviser;
- (e) the role of the mediator is to assist in negotiating a resolution of the Dispute and a mediator may not make a decision that is binding on a party unless the parties have so agreed in writing;
- (f) the mediator may decide the time and place (within the jurisdiction in which the Outlet is situated) for the mediation;
- (g) the parties must:
  - (i) ensure that they or their duly authorised representatives attend the mediation;
  - (ii) ensure that their duly authorised representatives have authority to enter into an agreement to settle the Dispute on their behalf; and
  - (iii) instruct their representatives to try to resolve the Dispute;
- (h) if at least thirty (30) days have elapsed after the start of mediation of a Dispute and the Dispute has not been resolved, either party may ask the appointed mediator to terminate the mediation;
- (i) if either party breaches any term contained in Clause 19 then the other party need not comply with the procedure set out herein;
- (j) the parties acknowledge and agree that any documents prepared solely for the mediation or anything said by either party’s representative during the mediation will remain confidential between the parties and without prejudice;
- (k) the parties are equally liable for the costs of mediation under this Clause; and
- (l) the parties must pay their own costs of attending the mediation.

## 20 MISCELLANEOUS PROVISIONS

### 20.1 Proprietary Interest

Nothing in this Agreement shall create or be taken as creating any proprietary interest in Lottery Property on the part of the Franchisee.

## 20.2 Survival upon Termination

The Franchisor's rights and the Franchisee's obligations will not merge or be extinguished on the expiration or termination of this Agreement where such rights or obligations are necessary to protect the Goodwill, the Manuals, the Franchisor's Intellectual Property or the Dedicated Area.

## 20.3 Notices

- (a) Subject to Clause 20.3(b), all notices, requests, consents and other documents authorised or required to be given by or pursuant to this Agreement must be addressed as follows:
  - (i) for notices to the Franchisee: to the Manager or Franchisee, to the address specified in Item 8 of Schedule 1;
  - (ii) for notices to the Franchisor: to the address specified in Item 1 of Schedule 1;
- (b) Each party notifying or giving notice under this Agreement must notify or give notice:
  - (i) in writing and signed by a person duly authorised by the sending party; and
  - (ii) hand delivered or delivered by courier or sent by pre-paid post to the address of the recipient or sent to the recipient by facsimile transmission or by email to the facsimile number or email address (as applicable) last notified by the intended recipient to the sender (which for an email to the Franchisee, will be the Email Address).
- (c) A notice given in accordance with Clause 20.3(a), will be deemed received:
  - (i) if hand delivered by courier or otherwise, on the date of delivery;
  - (ii) if sent by pre-paid post, two (2) Business Days after the date of posting;
  - (iii) if sent by facsimile transmission, on the day the transmission is sent (as long as the sender has a confirmation report specifying the correct facsimile number and pages sent and the date of the transmission); or
  - (iv) if sent by email, twenty-four (24) hours after sending provided that the sender has not in that time received a notice indicating that delivery of the notice was unsuccessful.

## 20.4 Own Investigations

The Franchisee acknowledges, agrees and confirms that:

- (a) while certain details relating to the past level of sales of Lottery Products from the Outlet may have been made available to the Franchisee by the Franchisor, such details do not constitute forecasts of the future level of sales of Lottery Products from the Outlet or guarantee the future financial performance of the Outlet and/or the Lottery Franchise, or the Public Lotteries business conducted by the Franchisor as a whole; and
- (b) the Franchisee has undertaken and relied upon its own investigations and inquiries about the Lottery Franchise and its potential for the Franchisee.

## 20.5 Further Acts

The Franchisee will do, execute and perform all such acts, deeds, matters and things (including the execution of documents) as may be reasonably required by the Franchisor to enable the Franchisor to obtain the full benefit and advantage of this Agreement and the transactions contemplated by this Agreement.

## 20.6 Force Majeure

- (a) Notwithstanding any provision of this Agreement a party shall not be liable for any failure or delay in performance in any of its obligations under this Agreement if or to the extent that such failure or delay results from causes beyond the reasonable control of that party, including but not limited to, telecommunication issues or malfunction, computer malfunction, Lottery Terminal malfunction, transportation delays, natural calamity including fire, flood, tempest, explosion, earthquake and

the like, out-break of war, terrorism, insurgency, riots, any criminal acts, any action of any government including changes in the law, orders, decrees or directions of any competent authority or Court, strikes lockouts or other labour disputes or the delay in supply of any items the subject of this Agreement.

- (b) Clause 20.6(a) does not apply to any failure on the part of the Franchisee to make deposits as required by Clauses 7.2, 8 or 9 in accordance with those Clauses regardless of the cause of any such failure.

## **20.7 Severability**

- (a) If the whole or any part of any Clause of this Agreement is void or voidable by either party or illegal or unenforceable in a jurisdiction, but would not be if it were read down and it is capable of being read down, it shall be read down accordingly. If, notwithstanding such reading down any provision is still void, voidable, illegal or unenforceable in a jurisdiction:
  - (i) if the provision would not be void, voidable, illegal or unenforceable if a word or words were omitted, such word or words are hereby severed for that jurisdiction; and
  - (ii) in any other case the whole of any such provision is hereby severed for that jurisdiction, and the remainder of this Agreement retains full force and effect.
- (b) Any delay or failure on the part of either party in exercising or relying upon any of its rights contained in this Agreement shall not constitute a waiver or abandonment of such right, provided the same is thereafter capable of being exercised or relied upon.

## **20.8 Amendment**

- (a) Unless provided to the contrary in this Agreement, the terms and conditions of this Agreement may be amended or varied only in writing signed by the Franchisee and the Franchisor except that the Franchisor may exercise its rights under this Agreement to unilaterally amend the Manuals without the necessity of obtaining the Franchisee's signature or approval provided it has notified the Franchisee of such amendments (such notice may be by way of publication on the Outlet Website, in which case it shall be deemed to be received by the Franchisee 48 hours after the time of publication).
- (b) The Franchisor has the right by notice delivered to the Franchisee to amend, modify or change this Agreement in order to ensure compliance with any changes to any Law, or the Lottery Licence, or permits or approvals or any other changes in circumstances beyond the control of the Franchisor which might affect the operation of the Franchisor, the Lottery Franchise System or the Lottery Franchise.
- (c) Prior to varying the terms of this Agreement, the Franchisor will, if lawful to do so, consult with franchisee representative groups that operate in the jurisdictions specified in Item 4 of Schedule 1 about the proposed variation to explain the intended variation and discuss the views of such groups.

## **20.9 No Employment Relationship**

The Franchisee is an independent contractor and not an employee of the Franchisor.

## **20.10 Obligation and Liabilities**

If at any time the Franchisee is constituted by two or more persons, all obligations and liabilities of the Franchisee arising hereunder shall be joint and several as between those persons.

## **20.11 Stamp Duty**

The Franchisee must pay all stamp, transaction, registration and other duties and taxes including, but not limited to, any fines or penalties which may be payable or determined to be payable in relation to the execution, delivery or performance of this Agreement.

**20.12 Governing Law**

This Agreement shall be governed and construed in accordance with the Law(s) for the time being in force in the State of New South Wales and the Commonwealth of Australia. The parties agree to submit to the non-exclusive jurisdiction of the Courts of that State and any proceedings commenced in the Federal Court of Australia shall be issued out of the registry in capital city of that State.

IN WITNESS WHEREOF the parties have executed this Agreement the day that appears on page 1:

SIGNED for and on behalf of ) .....  
the Franchisor )  
) Signature  
ANTONY MOORE  
.....  
Print Name  
.....  
Date

**Insert Execution Clause**

**Insert Guarantors**



## SCHEDULE 1 - DETAILS

ITEM	DETAILS REQUIRED	PARTICULARS																								
1	FRANCHISOR	New South Wales Lotteries Corporation Pty Ltd ABN: 27 410 374 474 1 Figtree Drive, Sydney Olympic Park, NSW, 2127																								
2	FRANCHISEE	Entity Name ABN: XX XXX XXX XXX Registered Business Address (if a company)																								
3	GUARANTOR(S)	Directors of the Company, if applicable Not Applicable – Replaced with Bank Guarantee																								
4	JURISDICTIONS	New South Wales and the Australian Capital Territory																								
5	ACT	Public Lotteries Act 1996 (NSW) and includes any regulations in force and any amendments thereto																								
6	COMMENCEMENT DATE	DATE or such date as is agreed in writing between the parties																								
7	EXPIRATION DATE	5 years after the Commencement Date																								
8	ADDRESS OF OUTLET	XXXXX																								
9	MANAGER	Insert the name of the Manager (Director) of the business																								
10	DIRECTOR DETAILS	NAME AND ADDRESS																								
11	SHAREHOLDERS DETAILS	Name and Address and percentage proportion of shares held i.e Fred Smith of 6 Jones Avenue, Fountaintown - 50% Nora Smith of 6 Jones Avenue, Fountaintown - 50%																								
12	TRADING HOURS	<table border="1"> <thead> <tr> <th></th> <th>OPEN</th> <th>CLOSED</th> </tr> </thead> <tbody> <tr> <td>Monday</td> <td></td> <td></td> </tr> <tr> <td>Tuesday</td> <td></td> <td></td> </tr> <tr> <td>Wednesday</td> <td></td> <td></td> </tr> <tr> <td>Thursday</td> <td></td> <td></td> </tr> <tr> <td>Friday</td> <td></td> <td></td> </tr> <tr> <td>Saturday</td> <td></td> <td></td> </tr> <tr> <td>Sunday</td> <td></td> <td></td> </tr> </tbody> </table>		OPEN	CLOSED	Monday			Tuesday			Wednesday			Thursday			Friday			Saturday			Sunday		
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13	BENEFICIAL OWNERSHIP UNDER TRUST	Name of Trust (if applicable) and percentage of units held If a fixed trust or fixed unit trust, list beneficiaries and percentage of units held																								

14	<b>Minimum amount required for Average Weekly Sales - See Clause 15.4</b>	<p>\$2,400/\$750</p> <p>For Community Outlets state: Not applicable</p> <p>DELETE ONE</p>
15	<b>Limitations on Lottery Products</b>	<p>For NSW Lotteries Instants only agents, state:</p> <p>In this Agreement, for the purpose of the definition of Lottery Products, the Public Lotteries which are the subject of this Agreement are limited to the Public Lottery conducted by the Franchisor known as "Instant Scratch-Its"</p> <p>For all other Franchisees where there is no limitation state: Not applicable</p>

## SCHEDULE 2 – ADDITIONAL CONDITIONS

### 1 Upgrade to the latest Retail Image

#### 1.1 At any time after 1 July 2015:

- (a) Franchisor may issue a notice to the Franchisee requiring the Franchisee; or
- (b) the Franchisee may issue a notice to the Franchisor advising the Franchisor that it wishes, to install or upgrade to the latest Retail Image in the Dedicated Area within the Outlet (**Upgrade Notice**).

#### 1.2 Within sixty (60) Business Days of the date the Upgrade Notice is issued, the Franchisee must provide to the Franchisor a copy of plans for the upgrade to the latest Retail Image and quote for works from a shopfitter approved by the Franchisor.

#### 1.3 In carrying out the upgrade to the latest Retail Image the Franchisee must:

- (a) obtain the Franchisor's prior written approval of plans, drawings and specifications of the proposed upgrade to the latest Retail Image;
- (b) comply with all requirements set out in the Manuals including the Retail Image Design Manual, and any other update or communication from the Franchisor in relation to Retail Image;
- (c) use only those standard approved components that have been approved by the Franchisor;
- (d) obtain the Franchisor's written approval of completion of the upgrade to the latest Retail Image; and
- (e) only use shopfitters that have been approved by the Franchisor, provided the Franchisor is entitled to impose this restriction under the *Competition and Consumer Act 2010* (Cth),

all at the cost of the Franchisee.

#### 1.4 If an Upgrade Notice is issued to the Franchisee by the Franchisor in accordance with Additional Condition 1.1, the Franchisee must cause the upgrade to the latest Retail Image to be completed at the Outlet at the cost of the Franchisee within six (6) months of the date the Upgrade Notice is issued (unless a longer period is specified in the Upgrade Notice or is agreed between the parties).

#### 1.5 If the upgrade to the latest Retail Image is not completed within the required or agreed time, the Franchisor may issue a further notice to the Franchisee advising that unless the upgrade to the latest Retail Image is completed within a further thirty (30) days from the date of such further notice, the operation of the Lottery Terminals installed at the Outlet will be suspended by disconnection or disablement on the first day after the further thirty (30) day period has expired until the upgrade to the latest Retail Image has been completed.

#### 1.6 If upon completion of the upgrade to the latest Retail Image:

- (a) it has not been carried out in accordance plans, drawings and specifications approved by the Franchisor;
- (b) it does not comply with all requirements set out in the Manuals including the Retail Image Design Manual;
- (c) comprises components other than standard components approved by the Franchisor; or
- (d) it has not been carried out by a shopfitter approved by the Franchisor,

the Franchisor may issue a notice to the Franchisee requiring rectification within thirty (30) days from the date of such notice, failing which, the Franchisor may immediately suspend the operation of the Lottery Terminals installed at the Outlet by disconnection or disablement until such noncompliance has been rectified.

#### 1.7 The Franchisor will not require the Franchisee to carry out an upgrade to the latest Retail Image within the period of seven (7) years from completion of any previous upgrade to the latest Retail Image at the

Outlet by the Franchisee which has been approved in writing by the Franchisor whether under this Agreement or the Agency Agreement.

- 1.8 An Upgrade Notice will be issued to the Franchisee by the Franchisor in accordance with Additional Condition 1.1 requiring the Franchisee to upgrade to the latest Generation One DigiPOS Retail Image by 30 June YEAR prior to the Commencement Date.

## 2 Consumer Price Index (CPI) adjustment

On 1st July in each calendar year commencing on 1 July in the year that is at least 12 months after the Commencement Date, the minimum amount required for Average Weekly Sales as set out in Item 14 of Schedule 1 will be adjusted in accordance with the following formula:

$$A = \frac{B \times C}{D}$$

Where:

- A = the relevant amount immediately after CPI adjustment;
- B = the relevant amount immediately before CPI adjustment;
- C = the All Groups Consumer Price Index weighted average of the eight capital cities published by the Australian Bureau of Statistics in respect of the March quarter immediately before the relevant 1st July; and
- D = the All Groups Consumer Price Index weighted average of the eight capital cities published by the Australian Bureau of Statistics in respect of the March quarter immediately before either the date of the previous CPI adjustment or the relevant 1st July, whichever applies.

If the Australian Bureau of Statistics or equivalent authority ceases to issue the All Groups Consumer Price Index weighted average of the eight capital cities then the published index, which most closely resembles it must be used.

**SCHEDULE 3 - FEES AND CHARGES**

**Table A**

<b>Item</b>	<b>Charge</b>	<b>Amount (Excluding GST)</b>	<b>Applicable/ Not Applicable</b>
	<b>Charge in respect of the sale of Lottery Products, excluding Player Cards</b> [Clause 8.1(a)(i)]	1% of Subscriptions in respect of all Lottery Products other than for Instant Scratch-Its which is 0.9% of Subscriptions and Player Cards where no amount is payable  PLUS an amount equivalent to 0.05% of Subscriptions for all Entries in all Public Lotteries conducted by the Franchisor upon commencement of the operation of DigiPOS Equipment in the Outlet.	Applicable

**Table B**

<b>Item</b>	<b>Fee</b>	<b>Amount (Excluding GST)</b>	<b>Applicable/ Not Applicable</b>
<b>1</b>	<b>Establishment Fee</b> (New Lottery Franchise at the Outlet)	\$25,000	Applicable / Not Applicable
<b>2</b>	<b>Franchise Fee</b> (New Outlet) <b>OR</b> (New Outlet for change of ownership that occurs within 36 months of the start date of the Outlet)	<b>YEARS 1, 2 &amp; 3</b> (being the period of 36 months from the Commencement Date - 1.0% of the value of Subscriptions sold at the Outlet during each Accounting Week of Years 1, 2 & 3 (or part thereof) payable twice weekly.  <b>OR (for change of ownership that occurs within 36 months of start date of outlet)</b>  1.0% of the value of Subscriptions sold at the Outlet during each Accounting Week of Years 1, 2 & 3 (being the period from the Commencement Date until <b>DATE</b> or part thereof) payable twice weekly.	Applicable / Not Applicable
<b>3</b>	<b>Franchise Fee</b> (Established Outlet)	YEAR 1 (being the period of 12 months from the Commencement Date) - 1.0% of the value of Subscriptions sold at the Outlet during each Accounting Week of Year 1 (or part thereof) payable weekly.  <b>OR (for addition of shareholders / partner to agreement)</b> <b>XX%</b> of 1% of the value of Subscriptions sold at the Outlet during the 12 month period prior to the Commencement Date.	Applicable / Not Applicable

## SCHEDULE 4 – INSURANCE

### LOTTERIES SPECIAL RISKS INSURANCE

#### Material Damage

The Franchisee must have sufficient insurance to cover the maximum amount of cash held at any one time in respect of the proceeds of the sale of Lottery Products from the Outlet.

Physical loss, destruction or damage of or to cash and tickets at the Outlet or in transit occasioned by or happening through:

- Fire, lightning, thunderbolt or explosion;
- Aircraft and/or other aerial devices and/or articles dropped or falling therefrom;
- Earthquake, subterranean fire and/or volcanic eruption;
- Acts of rioters, strikers, locked out workers, persons taking part in civil commotions or labour disturbances, or malicious persons;
- Storm, tempest, flood, cyclone, wind and/or rainwater;
- Water and/or other substance discharges, overflowing and/or leaking from apparatus, appliances, pipes, sprinkler and/or any other systems;
- Impact by waterborne craft, vehicles or animals;
- Robbery, burglary and theft (including theft by deception).

### PROFESSIONAL INDEMNITY INSURANCE

#### Civil Liability

The scope of the policy must indemnify the Franchisee and the Franchisor against civil liability for compensation, loss or damage resulting from the conduct of the professional services in connection with the sale of Lottery Products.

This is to include, but not be limited to, any civil liability arising:

- (a) In respect of failure to detect or include a valid entry into any of the Authorised Lotteries due to:
- Error in the processing or scanning of tickets;
  - Negligence of the insured or its employees;
  - Machine/lottery terminal malfunction.
- (b) Fraud or dishonest acts by any person(s) employed by the Franchisee.

#### Defamation

Policy to include loss arising from any claim for libel, slander or defamation made against the Franchisee or the Franchisor.

### Minimum Requirements for Professional Indemnity Insurance

- Minimum policy limit in the amount specified in the Manuals which shall not exceed \$1,000,000.
- The Franchisor must be named as an additional insured (interested party is not sufficient).
- A cross liability clause must be included in the policy.
- The policy must include 6 months automatic run-off cover to cover circumstances where the Franchisee either sells its business or discontinues selling lottery tickets.

If the Outlet is an Endorsed Training Outlet the scope of the cover must include trainees.

**NOTE: The insurer must be fully authorised and have a minimum Standard & Poors rating of A.**

## SCHEDULE 5 – SPECIAL CONDITIONS

### ACT AND PUBLIC LOTTERY LICENCES

The Franchisee acknowledges and agrees that:

- 1 the Minister pursuant to the provisions of the Act may terminate this Agreement pursuant to sections 59 and 60 of the Act (reproduced below).
- 2 both the Franchisor and the Franchisee are subject to the provisions of the Act.

### Public Lotteries Act 1996 (NSW)

#### 59 Prejudice to integrity of public lottery involving licensees or other persons

- (1) The Minister may give a direction under this section if the Minister is of the opinion that the integrity or apparent integrity of a public lottery conducted by a licensee is likely to be seriously prejudiced because of:
  - (a) any irregularity or alleged irregularity of any kind, or
  - (b) the character or reputation of any person concerned in the management or supervision of the public lottery, or
  - (c) any other fact or circumstance reported to the Minister.
- (2) The Minister may, for the purpose of avoiding the prejudice referred to in this section, by notice in writing, direct:
  - (a) the licensee, or
  - (b) any other person engaged, in whatever capacity, in the conduct of a public lottery on the licensee's behalf,
 to take (or to refrain from taking) any action specified in the notice in relation to all or any specified public lottery conducted by the licensee.
- (3) A person who does not comply with a direction given to the person under this section is guilty of an offence.

Maximum penalty: 50 penalty units.

#### 60 Minister may direct licensee to terminate certain agency arrangements

- (1) If a person who is an agent does not comply with a direction given to the person under section 59, the Minister may, by notice in writing, direct the licensee by whom the person is engaged to terminate, within a time specified in the notice, the arrangement under which the person is appointed as the agent of the licensee.
- (2) A licensee who does not comply with a notice given to the licensee under this section is guilty of an offence.
 

Maximum penalty: 50 penalty units.
- (3) It is taken to be a condition of any arrangement entered into between a licensee and an agent that the licensee has the rights required to enable the licensee to give effect to a direction to which this section applies.
- (4) The termination of an arrangement in accordance with this section has effect despite any other Act or law and neither the State nor the Minister incurs any liability by reason of that termination.

## SCHEDULE 6 – DEED OF GUARANTEE AND INDEMNITY

Date

### PARTIES

THE PERSON OR PERSONS SPECIFIED IN ITEM 1 OF SCHEDULE A

**FRANCHISOR**

AND

THE PERSON OR PERSONS SPECIFIED IN ITEM 3 OF SCHEDULE A

**(GUARANTOR)**

### RECITALS

- A. The Franchisor and the Franchisee has entered into the Franchise Agreement in relation to the conduct of a Lottery Franchise at the Outlet.
- B. The Franchise Agreement requires the Franchisee to procure the Guarantor to execute this document.

### 1 Definitions and Interpretation

- (a) **Franchise Agreement** means the agreement entered into or to be entered into between the Franchisor and the Franchisee;
- (b) **Franchisee** means the person or persons identified as such in Schedule A of this Deed;
- (c) **Franchisor** means the person or persons identified as such in Schedule A of this Deed;
- (d) **Obligations** means all of the obligations and resultant liabilities of the Franchisee to the Franchisor and resultant liabilities arising under or by reason of the Franchise Agreement and includes any liabilities or obligations which:
  - (i) are liquidated or unliquidated;
  - (ii) are present, prospective or contingent;
  - (iii) are in existence before or come into existence before or come into existence on or after the date of this Deed; or
  - (iv) relate to the payment of money or the performance or omission of any act:
 

and irrespective of:

    - (v) the circumstances in which each liability or obligation comes to be secured by this Deed;
    - (vi) the capacity in which the Franchisee comes to owe such liability or obligation.
- (e) Words not otherwise defined in this document have the same meaning as in the Franchise Agreement, except where the contrary intention appears;
- (f) In the interpretation of this document clause 1.2 of the Franchise Agreement applies.



## 2 Guarantee

- (a) The Guarantor unconditionally and irrevocably separately guarantees to the Franchisor and to the Franchisee the due and punctual performance and satisfaction of all of the Obligations of the Franchisee.
- (b) If the Franchisee defaults in the performance of any of its Obligations, the Guarantor will, if required to do so by Franchisor on demand, immediately perform any of the Obligations then required to be performed by the Franchisee in the same manner as the Franchisee is required to perform the Obligations.

## 3 Indemnity

- (a) The Guarantor agrees to unconditionally and provocatively indemnify the Franchisee with respect to any liability that may arise in respect of its Obligations.
- (b) The Guarantor as a separate and additional and primary liability unconditionally and irrevocably agrees to indemnify the Franchisor (and each of its respective representatives, members, officers, employees, contractors and agents) (**Indemnified Parties**) and at all times keep indemnified the Indemnified Parties against any Loss suffered or incurred by the Indemnified Parties arising out of or in any way in connection with:
  - (i) any failure by the Franchisee to perform any of the Franchisee's Obligations; or
  - (ii) an obligation that Franchisee would otherwise have under the Franchise Agreement if the Franchise Agreement being found to be void, voidable or unenforceable as a consequence of an act, error, omission or breach of the Franchise Agreement by the Franchisee.
- (c) For the avoidance of doubt, the Guarantor unconditionally and irrevocably agrees to indemnify the Indemnified Parties and at all times keep indemnified the Indemnified Parties against any Loss suffered or incurred by the Indemnified Parties arising out of or in any way in connection with the Franchisee's obligation (or any failure by the Franchisee to observe or perform the obligation) to pay any amounts owing under the Franchise Agreement.

## 4 Preservation of liability

- (a) The guarantee and indemnity given under document remains and is not affected by:
  - (i) any part payment or performance of Obligations by the Franchisee or the Guarantor;
  - (ii) the Franchisor granting any time, credit, compromise or indulgence to the Franchisee or the Guarantor, or waiving any breach or default of the Franchise Agreement;
  - (iii) the occurrence of any one or more of the Events of Termination or Events of Default;
  - (iv) any change to the Franchise Agreement or the Manuals; or
  - (v) any other act, event or omission which but for this Sub-Clause (a) would operate to discharge the Guarantor's liability under the Franchise Agreement.

## 5 Continuing Guarantee and Indemnity

- (a) The guarantee and indemnity under this document will remain in force until all Obligations under the Franchise Agreement have been satisfied and thereafter, without any further action being required by any party, this Deed will terminate.

## 6 Liability as Guarantor and Indemnifier

- (a) Any reference in this document to the obligations and liabilities of the Guarantor will be construed as a reference to its obligations or liabilities, whether as a guarantor or indemnifier or both under this document. The use of the expression "Guarantor" in this document in relation to a party is not to be construed as diminishing that party's obligations as and indemnifier under this document.

- (b) The Guarantor will not be discharged, released or excused from this Deed by an arrangement made between the Franchisee and the Guarantor or between the Franchisor and the Guarantor with or without the consent of the Guarantor, or by any other inference arising out of the conduct between the parties.

## **7 Acknowledgements**

The Guarantor acknowledges and agrees that:

- (a) the guarantor has entered into the Franchise Agreement for valuable consideration;
- (b) it has received a copy of the Franchise Agreement;
- (c) it has not entered into this document as a result of any representation, promise, warranty, statement or inducement made by or on behalf of the Franchisor, the Franchisee or any other person;
- (d) the Franchisor may exercise its rights against the Guarantor at any time after the Franchisee fails to comply with the Franchise Agreement, without the Franchisor first having to take any action or enforce any of its rights against the Franchisee;
- (e) the Guarantor is liable for all of the Guarantor's Obligations under the Franchise Agreement both separately and jointly with any one or more other persons that is a Guarantor under the Franchise Agreement;
- (f) the Guarantor must pay any amount payable to the Franchisor under this document by the date the Franchisor specifies;
- (g) the Guarantor must promptly do anything required by the Franchisor to bind himself or herself under this document;
- (h) the Guarantor must pay the Franchisor for its reasonable costs, charges and expenses in administering, enforcing, attempting to enforce and/or terminating the guarantee and indemnity under this document;
- (i) the Guarantor must not exercise any rights of indemnity, contribution or subrogation against the Franchisee or any other Guarantor until that Guarantor has satisfied its obligations under the guarantee and indemnity under this document; and
- (j) the Guarantor may not assign any of the Guarantor's obligations under this Franchise Agreement;
- (k) it shall not be necessary for the Franchisor to make any claim or demand on, or to take any action or proceedings against, the Franchisee before calling on the Guarantor to perform any obligations or deposit or pay any moneys as aforesaid; and
- (l) the Franchisor has advised the Guarantor to seek independent legal advice before signing this form of guarantee and indemnity and that documents of this nature vary significantly in form and effect and the obligations contained herein should be fully understood.

## **8 General**

- (a) The Guarantor may receive payments from, or enforce a claim against, the Franchisee, or another guarantor, to the extent that such payment or enforcement does not prejudice the rights of the Franchisor under this document.
- (b) No party may assign or novate its rights, interests or obligations under this document except with the prior written consent of the other party (which other party may grant or withhold consent in its absolute and unfettered discretion).
- (c) Each party must pay its own costs and expenses in relation to preparing, negotiating and executing this document and any document related to this document.
- (d) The Guarantor agrees to pay or reimburse the Franchisor on demand for the Franchisor's cost in enforcing this document including legal costs in accordance with any written agreement as to

legal costs or, if no agreement, whichever is the higher of a full indemnity basis or lawyer and own client basis.

- (e) The Guarantor agrees to make payment under this document in full without set-off or counterclaim, and without any deduction in respect of taxes unless prohibited by Law.
- (f) This document is governed by the law of the jurisdiction in the jurisdiction in which the Outlet is located. The parties submit to the non-exclusive jurisdiction of its courts and Court of Appeal from them. The parties will not object to the exercise of jurisdiction by those courts on any basis.
- (g) Each guarantee and indemnity in this document:
  - (i) is a continuing obligation despite any intervening payment, settlement or other thing;
  - (ii) extends to all of the Franchisee's Obligations;
  - (iii) is separate and independent from the other obligations of the parties; and
  - (iv) survives termination, completion or expiration of the Franchise Agreement, in respect of any accrued rights of the Franchisor.
- (h) Each provision of this document is individually separable. If any provision is or becomes illegal, unenforceable or invalid it is to be treated as being separate from this document, but the rest of this document will not be affected.
- (i) This document may be executed in any number of counterparts and by the different parties on different counterparts, each of which constitutes an original of this Deed, and all of which together constitute one and the same instrument.
- (j) Any dispute arising out of or in connection with this document or the interpretation or construction of this document will be resolved in accordance with the dispute resolution process set out in the Franchise Agreement.

## 9 Notices

- (a) All notices, requests, consents and other documents authorised or required to be given by or pursuant to this Deed must be addressed as follows:
  - (i) for notices to the Franchisor: to the address specified in Item 1 of Schedule A of this Deed;
  - (ii) for notices to the Franchisee: to the Manager or Franchisee, to the address specified in Item 2 of Schedule A of this Deed;
  - (iii) for notices to the Guarantor: to the address specified in Item 3 of Schedule A of this Deed;
- (b) Each party notifying or giving notice under this Agreement must notify or give notice:
  - (i) in writing and signed by a person duly authorised by the sending party; and
  - (ii) hand delivered or delivered by courier or sent by pre-paid post to the address of the recipient or sent to the recipient by facsimile transmission or by email to the facsimile number or email address (as applicable) last notified by the intended recipient to the sender (which for an email to the Franchisee, will be the Email Address).
- (c) A notice given in accordance with this Clause, will be deemed received:
  - (i) if hand delivered by courier or otherwise, on the date of delivery;
  - (ii) if sent by pre-paid post, two (2) Business Days after the date of posting;
  - (iii) if sent by facsimile transmission, on the day the transmission is sent (as long as the sender has a confirmation report specifying the correct facsimile number and pages sent and the date of the transmission); or

- (iv) if sent by email, twenty-four (24) hours after sending provided that the sender has not in that time received a notice indicating that delivery of the notice was unsuccessful.

**SCHEDULE A – DETAILS**

ITEM	DETAILS REQUIRED	PARTICULARS
1	<b>FRANCHISOR</b>	New South Wales Lotteries Corporation Pty Ltd ABN: 27 410 374 474 1 Figtree Drive, Sydney Olympic Park, NSW, 2127
2	<b>FRANCHISEE</b>	
3	<b>GUARANTOR(S)</b>	<p>..... Name of Director</p> <p>..... Name of Director</p> <p>..... Name of Director</p> <p>..... Name of Director</p>

Executed as a deed and delivered on the date shown on the first page of this Deed:

*(Signing clauses to be inserted when relevant)*