

## CONTRACT FOR PROFESSIONAL SERVICES

THIS CONTRACT FOR PROFESSIONAL SERVICES ("Contract") is made this 2nd day of March, 2018, in the Territory of the Virgin Islands, by and between the Government of the Virgin Islands, Department of Property and Procurement (hereinafter referred to as the "Government"), on behalf of the Virgin Islands Lottery (hereinafter referred to as the "Lottery"), and Caribbean Lottery Services, Inc. (hereinafter referred to as the "Contractor").

### WITNESSETH:

WHEREAS, the Government is in need of the services of a Contractor to establish, setup, operate, administer, promote and maintain online/lotto and instant/scratch ticket Lottery Games in the USVI, which duties and responsibilities are more particularly described in Addendum I (Scope of Work) attached hereto;

WHEREAS, the Contractor represents that it is willing and capable of providing such services;

WHEREAS, defined terms used herein without definition shall have the meanings ascribed to such terms on Addendum III (Definitions) attached hereto and made a part of this Contract; and

WHEREAS, the Government and Contractor have agreed upon the compensation set forth in Addendum II (Compensation) attached hereto and made a part of this Contract;

NOW, THEREFORE, in consideration of the mutual covenants herein contained, and intending to be legally bound by this written instrument, the parties hereto do covenant and agree as follows:

### 1. SERVICES

The Contractor will provide the services described in Addendum I (Scope of Work) attached hereto and made a part of this Contract.

### 2. TERM

This Contract shall commence upon the execution of this Contract by the Governor of the Virgin Islands, and shall continue for a period of ten (10) years thereafter (the "Initial Term"), with renewal options for two (2) successive terms of five (5) years each (each, a "Renewal Term", and with the Initial Term, collectively the "Term"), each such Renewal Term may be exercised at the mutual agreement of the Contractor and the Lottery not later than Ninety (90) days prior to the expiry of the Initial Term or then-applicable Renewal Term, unless earlier terminated in accordance with the provisions hereof.

### 3. COMPENSATION

- (a) The Contractor shall, in consideration of the Master Agent designation accorded to the Contractor by the Government pursuant to this Contract, pay the Government the following fees calculated as a percentage of the Gross Revenue for those Lottery Games authorized pursuant to this Agreement:

<u>Lottery Game</u>	<u>Percentage of Gross Revenue for Lottery Game</u>
(i) Powerball™	16% of Gross Revenue
(ii) Mega Millions™	12% of Gross Revenue
(iii) Super Lotto	12% of Gross Revenue
(iv) Lucky Pick	12% of Gross Revenue
(v) Pick 3	12% of Gross Revenue
(vi) Pick 4	12% of Gross Revenue
(vii) Caribbean Keno	12% of Gross Revenue
(viii) Express Cash*	12% of Gross Revenue
(ix) Instant/Scratch Tickets	10% of Gross Revenue
(x) New Online/Lotto category games to be developed	10% of Gross Revenue

- \* Express Cash to be provided as a New Lottery Game pursuant to Section 4 of Addendum I (Scope of Work).

The fees provided for in this Section 3 shall be paid by the Contractor as compensation hereunder to the Lottery on the 25<sup>th</sup> day of each month in respect of sales of the Lottery Games during the preceding month after deduction of amounts due to the Contractor for sales of the Lottery Games conducted by the Lottery's employees over the terminals supplied hereunder by the Contractor at the Lottery's offices.

- (b) The Contractor shall accrue for prize liability in respect of the Lottery Games of at least 50% of Gross Revenue.
- (c) Except in relation to the Powerball™ and Mega Millions™ games, the Contractor shall pay the costs, liabilities and expenses incurred in connection with conducting the Lottery Games including, without limitation, Sales Agents' commissions, employees, staff, administrative expenses, advertising and media expenses.
- (d) All product sales and associated equipment and services provided by the Contractor hereunder to the retailers and players shall remain exempt from sales tax, importation customs duties and related taxation.
- (e) In relation to the Powerball™ and Mega Millions™ games, the Contractor shall be responsible for paying:

- (i) Sales Agents' commissions;
  - (ii) lower tier prizes worth \$599.00 or less (which shall be deducted from the remittances due to the Lottery in accordance with (iii) below);
  - (iii) Jackpot remittances due to MUSL (the Multi-State Lottery Association) by depositing such amounts to the Lottery's bank account upon receipt of invoices from the Lottery;
  - (iv) Press advertisements which the Contractor in its sole discretion deems appropriate; and
  - (v) The costs associated with developing and producing point of purchase materials which the Contractor in its sole discretion deems appropriate.
- (f) Any revenue generated by the Lottery Games which is received by the Contractor and not paid in accordance with this Section 3, shall be retained by the Contractor. The Contractor shall be irrevocably empowered and entitled to retain any such remaining revenue if any, from time to time, after its payments have been satisfied pursuant to this Section 3.
- (g) The Contractor and the Government/Lottery remise, waive, forego and discharge as against each other any and all accrued rights, claims, suits or liabilities which predate this Agreement.
- (h) The Contractor shall not become liable, in whole or in part, for any existing or future debts or obligations not directly contracted by it in relation to its conduct of the Lottery Games, or as required in accordance with the provisions of this Agreement. Without limiting the foregoing, no term or condition of this Agreement or any act or omission by the Contractor or any person acting in connection with the Lottery Games shall be interpreted to be an assumption by the Contractor, in whole or in part, of any existing or future debt or liability of the Lottery, except as specifically set forth in this Section 3 or Paragraphs 3 or 4 of Addendum I (Scope of Work).

#### 4. TRAVEL EXPENSES

Inclusive of the compensation for services as specified in Section 3 (Compensation) above, the Government agrees to pay documented transportation, subsistence, lodging and other travel expenses, while in travel status, for trips which have been authorized in writing, in advance, by the Government. These costs shall be advanced or reimbursed on the same basis as is applicable to non-contract employees of the Government, or as agreed to by an addendum to this Contract, however, said costs and expenses shall not exceed     N/A     (\$ N/A).

## **5. RECORDS**

The Contractor when applicable, will present documented precise records of time and/or money expended under this Contract. The Lottery may audit or review all records and operations and inspect all equipment and machines utilized in any Lottery Game or in the administration of any Lottery Game whenever it reasonably determines it should do so, and such audits or reviews shall be at the Lottery's expense solely.

The Contractor agrees to perform SOC 1 Type 1 Audits every five (5) years during the Term to complement the ICS transaction balancing solutions currently in place.

## **6. PROFESSIONAL STANDARDS**

The Contractor agrees to maintain the professional standards applicable to its profession and to consultants doing business in the United States Virgin Islands.

## **7. DOCUMENTS, PRINTOUTS, ETC.**

All documents, books, records, instructional materials, programs, printouts and memoranda of every description derived therefrom and pertaining to this Contract shall become the property of the Government and shall be turned over to it at the termination of this Contract, except for files containing source code or other highly proprietary information of the Contractor, the transfer of which would be consistent with industry standards, shall become the property of the Government and shall be turned over to it, or at its discretion, a successor contractor, at the termination of this Contract. The above described materials shall not be used by Contractor or by any other person or entity except upon the written permission of the Government.

## **8. LIABILITY OF OTHERS**

Nothing in this Contract shall be construed to impose any liability upon the Government to persons, firms, associations, or corporations engaged by Contractor as servants, agents, or independent contractors, or in any other capacity whatsoever, or make Government liable to any such persons, firms associations, or corporations for the acts, omissions, liabilities, obligations and taxes of Contractor of whatsoever nature, including but not limited to unemployment insurance and social security taxes for Contractor, its servants, agents or independent contractors, except where such liability has accrued by reason of protracted inaction or delays on the part of the Government, provided, however, that delays attributable to the procedures employed by the Government, as mandated under USVI laws, are not grounds upon which liability may be based.

## **9. ASSIGNMENT**

The Contractor shall not subcontract or assign any part of the services under this Contract, except with respect to the obligations of its Sales Agents and except for assignment to its affiliates, without the prior written consent of the Government, such approval not to be

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unreasonably withheld, but in any event, the Contractor shall remain accountable to the Government for all of its obligations hereunder. For purposes of this provision, the term "affiliate" shall mean International Game Technology PLC ("IGT") or any subsidiary of IGT.

#### **10. INDEMNIFICATION**

Contractor agrees to indemnify, defend and hold harmless Government from and against any and all loss, damage, liability, claims, demands, detriments, cost, charges and expense (including attorney's fees) and causes of action of whatsoever character (collectively, "Claims and Losses") which the Government may incur, sustain or be subjected to, to the extent such Claims and Losses are caused by the negligence of the Contractor in the performance of its obligations under this Contract or result from the Material Breach by the Contractor of its representations, warranties and covenants hereunder; provided, however, the Contractor shall have no obligation to indemnify, defend or hold harmless the Government or the Lottery to the extent the Claims and Losses result from the negligence of the Government or Lottery, or their employees or agents.

To the extent permitted by USVI laws, the Government and Lottery agree to indemnify, defend and hold harmless the Contractor and its affiliates from and against any and all Claims and Losses the Contractor may incur, sustain or be subjected to, to the extent such Claims and Losses are caused by the negligence of the Government or the Lottery in the performance of its obligations under this Contract or result from the Material Breach by the Government or Lottery of its representations, warranties and covenants hereunder; provided, however, the Government and Lottery shall have no obligation to indemnify, defend or hold harmless the Contractor and its affiliates to the extent the Claims and Losses result from the negligence of the Contractor, or its employees or agents.

#### **11. INDEPENDENT CONTRACTOR**

The Contractor shall perform this Contract as an independent contractor and nothing herein contained shall be construed to be inconsistent with this relationship or status.

#### **12. GOVERNING LAW**

This Contract shall be governed by the laws of the United States Virgin Islands and jurisdiction shall remain in the United States Virgin Islands.

#### **13. WAIVERS AND AMENDMENTS**

No waiver, modification or amendment of any term condition or provision of this Contract shall be valid or of any force or effect unless made in writing, signed by the parties hereto or their duly authorized representatives, and specifying with particularity the nature and extent of such waiver, modification or amendment. Any such waiver, modification or amendment in any instance or instances shall in no event be construed to be a general waiver, modification or amendment of any of the terms, conditions or provisions of this

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Contract, but the same shall be strictly limited and restricted to the extent and occasion specified in such signed writing or writings. The failure of any party to enforce any of the provisions hereof shall not be construed to be a waiver of the right of such party thereafter to enforce such provisions.

#### **14. ENTIRE AGREEMENT**

This Contract constitutes the entire agreement of the parties relating to the subject matter addressed in this Contract. This Contract supersedes all prior communications, contracts, or agreements between the parties with respect to the subject matter addressed in this Contract, whether written or oral. Upon this Contract becoming effective in accordance with Section 21 below, all prior agreements among the parties shall be terminated and this Contract shall govern the Contractor's obligations with respect to the Government.

#### **15. RIGHT TO WITHHOLD**

If work under this Contract is not performed in accordance with the terms hereof, Government will have the right to withhold out of any payment due to Contractor, such sums as Government may in good faith deem ample to protect it against loss or to assure payment of claims arising therefrom, and, at its option, Government may apply such sums in such manner as Government may deem proper to secure itself or to satisfy such claims. Government will immediately notify the Contractor in writing in the event that it elects to exercise its right to withhold.

No such withholding or application shall be made by Government if and while Contractor either disputes in good faith such withholding or application or gives satisfactory assurance to Government that such claims will be paid by Contractor or its insurance carrier, if applicable in the event that such contest is not successful. If the Contractor notifies the Government that it disputes such withholding or application, the parties shall meet and discuss the issue in good faith within five (5) business days.

#### **16. CONDITION PRECEDENT**

This Contract shall be subject to the availability and appropriation of funds and to the approval of the Governor.

#### **17. TERMINATION**

Either party will have the right to terminate this Contract for cause in the event of a Material Breach committed by the other party by providing written notice to the other party specifying the nature of the Material Breach complained of and the date of termination.

Upon delivery of a notice pursuant to Section 22 hereof, if the Material Breach complained of in such notice is not cured within thirty (30) days following such notice, termination



shall take effect upon the date ninety (90) days after the terminating party gives written notice to the other party of its intention to exercise such termination option.

Upon the effective date of any termination or expiry of this Contract for any reason whatsoever, the Contractor's obligation to supply the Lottery System, including, without limitation, the equipment, Software and communications infrastructure necessary to operate and manage the lottery as herein contemplated, shall come to an end.

## **18. PARTIAL TERMINATION**

## **INTENTIONALLY OMITTED**

## **19. NON-DISCRIMINATION**

No person shall be excluded from participating in, be denied the proceeds of or be subject to discrimination in the performance of this Contract on account of race, creed, color, sex, religion, disability or national origin.

## **20. CONFLICT OF INTEREST**

- (a) Contractor covenants that it has no interest and will not acquire any interest direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Contract.
- (b) Contractor further covenants that it is not a territorial officer or employee (i.e., the Governor, Lieutenant Governor, member of the Legislature, or any other elected territorial official; or an officer or employee of the legislative, executive or judicial branch of the Government or any agency, board, commission or independent instrumentality of the Government, whether compensated on a salary, fee or contractual basis).

## **21. EFFECTIVE DATE**

The effective date of this Contract shall be the day of execution of the Contract by the Governor.

## **22. NOTICE**

Any notice required to be given by the terms of this Contract shall be in writing and, unless otherwise provided in this Contract, shall be deemed effective: (a) upon delivery when delivered personally, (b) on the second (2nd) business day, if sent by a nationally-recognized overnight delivery service (unless the records of the delivery service indicate otherwise), (c) five (5) business days after deposit in the mail, certified and with proper postage prepaid, or (d) upon delivery if sent by electronic mail (with a delivery receipt) during a business day (or on the next business day if sent by electronic mail after the close of normal business hours or on a non-business day), to the following addresses:

**GOVERNMENT**

Lloyd Bough, Jr.  
~~Commissioner~~ **Nominee**  
Department of Property and Procurement  
Sub Base, Building No. 1, Third Floor  
St. Thomas, VI 00802  
Email: \_\_\_\_\_

Juan Figueroa  
Executive Director  
Virgin Islands Lottery  
5800 Kronprindsens Gade  
St. Thomas, VI 00802-6912  
Email: [Juan.Figueroa@vilottery.vi](mailto:Juan.Figueroa@vilottery.vi)

**CONTRACTOR**

Account Development Manager  
Caribbean Lottery Services, Inc.  
2135 (11A) Company Street  
Christiansted  
St. Croix, 00820  
Email: [Jacqueline.James@IGT.com](mailto:Jacqueline.James@IGT.com)

**With a Copy to:**

Legal Department, NALO and LAC Lottery  
IGT Global Solutions Corporation  
10 Memorial Boulevard  
Providence, RI 02903 USA  
Email: [LegalNotices@IGT.com](mailto:LegalNotices@IGT.com)

**23. LICENSURE**

Pursuant to the authority contained in Title 32 V.I.C. Chapter 13, and in particular in accordance with 32 V.I.C. §§ 246 and 247, the Government hereby grants to the Contractor a Master Agent License to operate the Lottery Games contemplated herein upon payment by the Contractor of an annual license fee, as directed by the Executive Director of the Lottery, of Six Thousand Dollars (\$6,000.00) per annum. The Contractor covenants that it has:

- (a) obtained all of the applicable licenses or permits, permanent, temporary or otherwise as required by Title 27 of the Virgin Islands Code; and
- (b) familiarized itself with the applicable provisions of Title 27 of the Virgin Islands Code pertaining to professions and occupations.

The Contractor and its agents shall be subject to the administrative oversight and regulation of the Lottery Commission and the Executive Director of the Lottery and shall adhere to



and remain in compliance with all applicable laws, rules and regulations pertaining generally to doing business in the USVI.

The revenue earned by the Contractor as a "Master Agent" and all Sales Agents (as sub-agents), employees and contractors operating pursuant to this Master Agent License shall be considered as and is hereby deemed to be "commissions" within the meaning of Title 33 V.I.C. Section 43(a).


#### **24. OTHER PROVISIONS**

- (a) Addenda attached hereto are a part of this Contract and are incorporated herein by reference.
- (b) The Government and the Lottery understand that information communicated, directly or indirectly, to the staff as a result of the Contractor's implementation of this Contract is, in part, of proprietary nature and must be protected if the Contractor is to be free from injury and damages. The Government and the Lottery, therefore, agree:
  - (i) to keep confidential all information provided, directly or indirectly, to the officers, directors, staff, employees or agents which the Contractor specifically identifies as proprietary in writing and which is in fact recognized as confidential under the laws of the United States or the USVI; and
  - (ii) to be responsible within the limits of the USVI laws for any material breaches or injuries to the Contractor for any losses occasioned by reason of any material breach of this Contract.

Notwithstanding the foregoing provisions, this Section 24(b) shall not apply to information which:

- (1) is or becomes public knowledge without the fault of the Lottery or any of its officers, directors, employees or agents;
  - (2) is or becomes available to the Lottery from a source other than the Contractor, provided such source is not under a duty of confidentiality with respect to such information; or
  - (3) is disclosed by the Lottery or any of its officers, directors, employees or agents under obligation imposed by a court, duly constituted legislative body or governmental action.
- (c) The Government or Lottery may require that the Contractor and all officers, principals, shareholders, directors and such key employees of the Contractor, as the Lottery Commission or the Executive Director shall determine, shall fill out such


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applications as the Lottery Commission or the Executive Director may prescribe and may be subject to an appropriate criminal and financial background check to determine their fitness and suitability to perform the service contemplated herein on behalf of the Lottery Commission and the Government, but in any event, not more than one background check shall be required hereunder for an individual described by this provision in a calendar year. The background check may be conducted simultaneous with the execution of this Contract, provided that, any findings of material misrepresentation in the application process or other significant or material findings of a negative nature which would rise to the level of a disqualifying factor under Title 32 V.I.C. Section 436, as determined applicable by the Lottery Commission or the Executive Director, shall be grounds to void this Contract without recourse. In the event of a determination of the need to void the Contract, the Contractor shall be entitled to a written, "Notice of Intent to Void", issued within ten (10) days of the completion of the background check. Upon the Contractor's written request, delivered within five (5) days of the Contractor's receipt of the "Notice of Intent to Void", the Contractor shall also be entitled to a hearing before the Executive Director prior to a final decision.

- (d) The Contractor shall maintain appropriate books and records in the USVI to ensure that the parties contemplated under Section 6 hereof receive their payments, prizes and fees. The Contractor shall also have its financial records audited on an annual basis by an internationally recognized accounting firm. The Contractor shall submit the audited financial statement covering its operations including its gross revenue to the Lottery within thirty (30) days following the completion and receipt by the Contractor of its annual audited financial statement.
- (e) This Contract may be executed in one or more counterparts, and by any of the parties hereto on separate counterparts, each of which when so executed shall be deemed to be an original, and all of which together shall constitute one and the same instrument. Execution and delivery of this Contract by electronic exchange bearing the copies of a party's signature shall constitute a valid and binding execution and delivery of this Contract by such party. Such electronic copies shall constitute enforceable original documents.
- (f) All "Article", "Paragraph", "Clause" and/or "Section" headings in this Contract are for convenience and reference only and shall not be deemed to limit, alter or affect the meaning or interpretation of any of the provisions of this Contract. Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter gender. The word "person" shall mean any individual, corporation, venture, joint venture, partnership, association, joint stock company, trust or unincorporated organization. The words "hereof", "herein", "hereby" and "hereunder" refer to the entire Contract.
- (g) If any provision of this Contract, or the application thereof, shall for any reason and to any extent be invalid or unenforceable, the remainder of this Contract and application of such provision to other persons or circumstances shall be interpreted

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so as to best reasonably effect the intent of the parties hereto. The parties further agree to replace such void or unenforceable provision of this Contract with a valid and enforceable provision which will achieve to the extent possible, the economic business and other purposes of the void or unenforceable provision.

- (h) Except as otherwise expressly provided in this Contract, nothing in this Contract, whether expressed or implied, is intended or shall be construed to confer upon or to give any person other than the parties hereto any legal or equitable right, remedy or claim under or in respect of this Contract.

## **25. DEBARMENT CERTIFICATION**

By execution of this Contract, the Contractor certifies that it is eligible to receive contract awards using federally appropriated funds and that it has not been suspended or debarred from entering into contracts with any federal agency. The Contractor shall include this provision in each of its subcontracts hereunder and shall furnish its subcontractors with the current "LIST OF PARTIES EXCLUDED FROM FEDERAL PROCUREMENT OR NON PROCUREMENT". In the event the Contractor or any subcontractor misrepresents its eligibility to receive contract awards using federal funds, the Contractor or subcontractor agrees that it shall not be entitled to payment for any work performed under this Contract or any subcontract and that the Contractor or subcontractor shall promptly reimburse the Government of the Virgin Islands for any progress payments heretofore made.

## **26. FALSE CLAIMS**

Contractor warrants that it shall not, with respect to this Contract, make or present any claim upon or against the Government of the Virgin Islands, or any officer department, board, commission, or other agency thereof, knowing such claims to be false, fictitious or fraudulent. Contractor acknowledges that making such a false, fictitious or fraudulent claim is an offence under Virgin Islands law.

## **27. NOTICE OF FEDERAL FUNDING**

**INTENTIONALLY OMITTED**

**[SIGNATURE PAGE TO FOLLOW]**

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