

In these Terms and Conditions and the Guarantee and Indemnity Terms and Conditions:

1. Definitions

1.1. unless the subject or context is inconsistent, each of the following expressions shall have the following meanings:

'Act' means the Lotteries Commission Act 1990 (as amended).

'Authorised Lottery Products' means the Online Products and the Instant Lottery Products as may be specified in the Manual or by Lotterywest from time to time by notice to the Retailers, or both.

'Agreement' means the agreement between Lotterywest and the Retailer made up of the Letter, the Schedule, the Manual, these Terms and Conditions and the Guarantee and Indemnity Terms and Conditions (if applicable).

'Bank Guarantee' means the financial instrument referred to in Clause 7.1(aa) in the amount specified in Item 9 of the Schedule.

'Commission' means remuneration in money paid to the Retailer for the conduct of the Lottery at the Lottery Outlet.

'Commencement Date' means the date specified in Item 1 of the Schedule.

'Competing Activities' includes the sale or promotion of any transaction or activity which consists of, or involves, a degree of gaming, gambling or betting, whether or not a degree of skill or knowledge is required.

'Customer' means a person who purchases entries in a Lottery.

'Event of Insolvency' means:

- (a) a receiver, manager, receiver and manager, trustee, administrator or controller is appointed in respect of the Retailer or any asset of the Retailer;
- (b) a liquidator or provisional liquidator is appointed in respect of a corporation;
- (c) any application is made to a court or a resolution passed to appoint a person referred to in (a) or (b) or proposing a winding up of a corporation or proposing a scheme of arrangement;
- (d) any event occurs which would enable a court to grant a petition, or an order is made, for the bankruptcy of an individual or their estate within the operation of any Law relating to bankruptcy;
- (e) a moratorium of debts of a person or an official assignment, composition or arrangement with a person's creditors;
- (f) a person becomes or adverts in writing that they are unable to pay its debts; or
- (g) the Retailer not remitting to Lotterywest as required by Lotterywest moneys from the sale of entries in a Lottery.

'Force Majeure' means any cause or circumstance outside the reasonable control of a party which could not be avoided by the exercise of due diligence and includes acts of God, war, strikes and labour disputes, riot, civil disturbance, amendment, suspension or termination of Lotterywest's right to conduct a Lottery, and amendment to the Act. In the case of the Retailer this includes any temporary shutdown of the Retailer's Business due to a requirement of the lessor of the Lottery Outlet under the terms of a lease to relocate or carry out renovations.

'Gaming System' means Lotterywest's gaming operating system.

'Gaming Terminal' means a terminal, its peripherals and interconnects, connected to Lotterywest's gaming operating system, to enable the conduct of a Lottery.

'Guarantee and Indemnity Agreement' means the specific terms and conditions detailing the obligations of the Guarantor.

'Guarantor' means the person or persons specified in Item 7 of the Schedule (if any).

'Instant Lottery Products' means instant lottery products issued by Lotterywest under the Act (including the products known as Scratch'n'Win) and conducted in accordance with the Rules.

'Intellectual Property Rights' means any patents, trademarks, trade or brand names registered, designed or any other industrial or intellectual property rights owned or controlled by Lotterywest.

'Law' means all laws rules regulations and other ordinances issued by any governmental or other state authority relating to the subject matter of this Agreement and the performance of the parties under it.

'Letter' means the letter of offer (including the Schedule) from Lotterywest to the Retailer to conduct the Retailer's Business, as accepted by the Retailer and the Guarantor (if any).

'Lottery' means a scheme or device in which the success or otherwise of participants is governed by numbers, tickets, events, etc., drawn or determined in a manner involving a degree of randomness or chance; conducted by Lotterywest.

'Lottery Area' means that part of the Lottery Outlet approved by Lotterywest and allocated for the conduct of a Lottery.

'Lottery Outlet' means the place of business of the Retailer approved by Lotterywest described in Item 3 of the Schedule.

'Lottery Property' means all property owned by Lotterywest, including but not limited to advertising and promotional material, posters, brochures, external poster frames, window films and decals, tickets, Gaming Terminals, communications equipment, software manuals, the Manual, paper rolls for terminals, and any power supply units.

'Lotterywest' means the Lotteries Commission of 74 Walters Drive, Osborne Park, Western Australia.

'Manual' means the Retail Manual prepared by Lotterywest setting out Lotterywest's requirements relating to the Retailer's Business as varied by Lotterywest in its sole discretion from time to time by notice to the Retailers.

'Online Products' means the lottery products offered for sale from time to time by Lotterywest by way of a Gaming Terminal.

'Prescribed Items' means the following:

- (a) 'bongs, hookah, shisha, lula, lulava, Ghalyoon, ghalyun' or any kind of water-pipe used for smoking marijuana or other illegal substances;
- (b) any dangerous or offensive weapon; and
- (c) any other item Lotterywest notifies the Retailer of from time to time.

'Primary Business' means the business described in Item 4 of the Schedule.

'Prizes' means moneys, tickets in a Lottery or other property determined by Lotterywest.

'Retailer' means a person or persons appointed under the Agreement with Lotterywest for the conduct of a Lottery.

'Retailer's Business' means the business of the Retailer operated from the Lottery Outlet.

'Rules' means the rules relating to Authorised Lottery Products made by Lotterywest under the Act.

'Schedule' means the schedule to the Letter.

'Staff' means any person who conducts a Lottery at the Lottery Outlet with the express or implied permission of the Retailer.

'Terms and Conditions' means these terms and conditions as updated from time to time by Lotterywest.

'Trading Hours' means the trading hours for the Lottery Outlet described in Item 8 of the Schedule.

2. Interpretation

2.1. Unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) a reference to any thing is a reference to the whole or any part of it and a reference to a group of things or persons is a reference to any one or more of them;
- (c) a reference to a gender includes other genders;
- (d) a reference to a person includes a Public Authority, a public body, a company and an incorporated or unincorporated association or body of persons;
- (e) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including, but not limited to, a person taking by novation) and permitted assigns;
- (f) if the Retailer consists of a partnership or joint venture, then:
 - (i) an obligation imposed on the Retailer under the Agreement binds each person who comprises the Retailer jointly and severally;
 - (ii) each person who comprises the Retailer agrees to do all things necessary to enable the obligations imposed on the Retailer under the Agreement to be undertaken; and
 - (iii) the act of one person who comprises the Retailer binds the other persons who comprise the Retailer;

- (g) an agreement, representation or warranty on the part of or in favour of two (2) or more persons binds, or is for the benefit of, them jointly and severally;
- (h) a reference to the Agreement or another instrument includes all variations and replacements of either of them despite any change of, or any change in the identity of, Lotterywest or the Retailer;
- (i) a reference to a clause, schedule, attachment or appendix is a reference to a clause, schedule, attachment or appendix to the Agreement;
- (j) all the provisions in any schedule, attachment or appendix to the Agreement are incorporated in, and form part of, the Agreement and bind Lotterywest and the Retailer;
- (k) headings are included for convenience and do not affect the interpretation of the Agreement;
- (l) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of it;
- (m) no rule of interpretation is to be applied to disadvantage Lotterywest and the Retailers on the basis that it was responsible for preparing the Agreement;
- (n) if a word or phrase is defined, other grammatical forms of that word or phrase have a corresponding meaning;
- (o) if the word 'including' or 'includes' is used, the words 'without limitation' are taken to immediately follow;
- (p) a reference to writing includes any means of representing or reproducing words in visible form;
- (q) a reference to a liability includes all obligations to pay money and all other losses, costs and expenses of any kind;
- (r) a reference to a month is to a calendar month and a reference to a year is to a calendar year;
- (s) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated inclusive of that day;
- (t) if a date stipulated for payment or for doing an act is not a business day, the payment must be made, or the act must be done, on the next business day;
- (u) a reference to a monetary amount means that amount in Australian currency, and
- (v) a reference to time means the time observed in Perth, Western Australia.

3. Term of Appointment

- 3.1. Subject to sub-clause 3.2, the Retailer is appointed until 31 December 2031.
- 3.2. Lotterywest may on every fifth anniversary of the Commencement Date of this Agreement terminate this Agreement by giving the Retailer not less than 6 months prior notice.
- 3.3. The Agreement can be terminated by the Retailer by giving one month's notice to Lotterywest.
- 3.4. Lotterywest may terminate this Agreement in certain circumstances (see clause 10).
- 3.5. Lotterywest may suspend the Retailer's appointment under this Agreement in certain circumstances (see clause 11).

4. Appointment of Retailer

- 4.1. Lotterywest appoints the Retailer to act as its agent:
 - (a) for the purpose of contracting with any party who wishes to purchase the Authorised Lottery Products;
 - (b) for the purpose of receiving payment of amounts due by members of the public to Lotterywest in respect of the purchase of the Online Products; and
 - (c) for the purpose of payment of Prizes in respect of the Authorised Lottery Products (to such amounts as Lotterywest requires and in accordance with the Rules and in compliance with the Manual).

For all other purposes of the Agreement the Retailer is an independent contractor.
- 4.2. The Retailer can only sell Authorised Lottery Products at the prices determined by Lotterywest.
- 4.3. The appointment of the Retailer is non-exclusive and non-territorial.

- 4.4. Lotterywest shall have no liability whatsoever to the Retailer in respect of:
- (a) any reduction in the turnover of the Retailer's Business; or
 - (b) any financial loss whatsoever (including any reduction in the amount of remuneration or commission payable by Lotterywest to the Retailer);
- which may be suffered by the Retailer as a consequence either directly or indirectly of:
- (c) the establishment by Lotterywest of another distribution outlet in proximity to the Lottery Outlet; or
 - (d) the setting up by Lotterywest of any other distribution network or system which competes with the Retailer's Business, including an internet or electronic distribution system.
- 4.5. The Retailer may only sell and process entries in a Lottery and pay Prizes from the Lottery Area in the Lottery Outlet.
- 4.6. The Retailer cannot sell entries in a Lottery via the internet or by other electronic means.
- 4.7. Any conduct involving a Lottery can only be upon the terms set from time to time by Lotterywest.
- 4.8. The Retailer agrees not to change the nature of the Primary Business without the prior written approval of Lotterywest.
- 4.9. Expiry or lawful termination of this Agreement by Lotterywest does not entitle the Retailer to any compensation in respect of such expiry or lawful termination.
- 4.10. The title (if any) in the Authorised Lottery Products shall be retained by Lotterywest until purchased by any person.
- 4.11. The risk (if any) in the Authorised Lottery Products shall pass to the Retailer upon delivery from Lotterywest to the Retailer.
- 4.12. The Retailer has a responsibility to account (remit funds) to Lotterywest for:
- (a) Online Products, when the entry is registered in the Gaming System unless the entry is cancelled as per the Manual; and
 - (b) Instant Lottery Products, when a book of instant tickets is activated in the Gaming System.
- 4.13. If an entry in a Lottery is registered in the Gaming System, howsoever caused, as a result of a terminal transaction from the Retailer's Lottery Area, the Retailer is liable to account to Lotterywest for the cost of that entry, irrespective as to whether or not that entry was as a result of a negligent, wilful or unlawful act of any person.

5. Commissions Payable to Retailer

- 5.1. The Retailer shall receive from Lotterywest Commission for meeting its obligations as a Retailer. The current rates of Commission are in the Manual.
- 5.2. The Commission is paid in accordance with the accounting and settlement procedures contained in the Manual.
- 5.3. The amount and method of paying the Commission may be changed by Lotterywest from time to time. Any changes will be notified to the Retailer.

6. Fees Payable to Lotterywest

- 6.1. The Retailer shall pay fees to Lotterywest in relation to its appointment under this Agreement. The current fees are in the Manual.
- 6.2. Lotterywest may change the amount and when payment is to be made of the fees. Any changes will be notified to the Retailer.

7. Responsibility of Retailer

- 7.1. The Retailer must meet the following essential obligations. Failure to do so allows Lotterywest to terminate this Agreement (see clause 10.1):
- (a) not do anything that brings Lotterywest or the Government into disrepute;
 - (b) actively promote Lotterywest and its values, its products and responsible gaming;
 - (c) comply with all Laws concerning the conduct of the Retailer's Business;
 - (d) not advertise, display or sell any Prescribed Items within 2 metres of the Lottery Area;
 - (e) keep correct books of account required by the Manual;
 - (f) pay Prizes in a Lottery to such amounts as Lotterywest requires and in accordance with the Rules;
 - (g) comply with the Manual;

- (h) receive moneys for sales of Online Products on behalf of Lotterywest, hold those moneys on trust for Lotterywest until remitted, and remit those moneys as directed by Lotterywest;
 - (i) observe all instructions given and policies made by Lotterywest relating to the Lottery Outlet, Lotterywest's Intellectual Property Rights and Lottery Property, for example, displaying promotional material, participating in activities to promote a Lottery, products that are no longer available for sale;
 - (j) provide and maintain the Lottery Area at its own expense and to the satisfaction of Lotterywest, including continuous electrical supply for the Gaming Terminal and a continuous telephone and email connection;
 - (k) comply with the retail image detailed in the Manual. The retail image may be changed from time to time. Any changes will be notified to the Retailer;
 - (l) meet the customer services levels detailed in the Manual;
 - (m) Retailer and Staff to participate in and successfully complete, to Lotterywest's satisfaction, ongoing training from Lotterywest. The training requirements are detailed in the Manual. These requirements may be changed from time to time. Any changes will be notified to the Retailer. All travel, lodging, meals and other living expenses incurred by the Retailer and its Staff in attending training program/s shall be paid for by the Retailer, and Lotterywest shall not be liable to compensate the Retailer for any loss of business suffered by the Retailer whilst the Retailer and Staff attend such training programs;
 - (n) ensure the Lottery Outlet is staffed at all times by a person who has successfully completed training to Lotterywest's satisfaction;
 - (o) keep secure in the Lottery Outlet all Lottery Property;
 - (p) effect and keep current those insurances as specified in the Manual;
 - (q) have the Lottery Outlet open for business for at least the Trading Hours listed in the Schedule;
 - (r) allow during Trading Hours Lotterywest representatives to inspect the Lottery Outlet, Lottery Property, and all records relating to the Agreement;
 - (s) pass on promptly to Lotterywest all information useful to the business of Lotterywest, including that relating to marketing, sales, Customer feedback or complaints, and unauthorised use by any person of Intellectual Property Rights of Lotterywest;
 - (t) keep confidential and not disclose to any person any information nominated as such by Lotterywest;
 - (u) not register, use or permit to be used by any person under the Retailer's control any Intellectual Property Rights of Lotterywest without the prior written consent of Lotterywest;
 - (v) not incur any liabilities on behalf of Lotterywest;
 - (w) not make any representation or give any warranty on behalf of Lotterywest; not take part in any dispute or institute or defend any proceedings or settle or make any admission concerning any dispute or proceedings relating to a Lottery or the affairs or business of Lotterywest;
 - (x) not charge or encumber Lottery Property;
 - (y) not use, or permit the use of, any part of the Lottery Area for Competing Activities;
 - (z) if the Retailer sells its Lottery Outlet it must comply with the Manual if seeking an assignment of this Agreement;
 - (aa) if required by Lotterywest, must have in place a continuous and irrevocable Bank Guarantee as described in the Manual; and
 - (bb) if the Retailer is a corporation, its Guarantor (being natural persons) will enter into a separate Guarantee and Indemnity Agreement in consideration of Lotterywest entering into the Agreement with the Retailer.
- 7.2. The Retailer indemnifies and keeps Lotterywest indemnified against all liabilities, expenses, claims, actions and judgements of any kind arising from or relating to the Retailer's actions as an agent or any breach by the Retailer of this Agreement and including any liability to pay Lotterywest under clause 4.13.

8. Responsibilities of Lotterywest

8.1. Lotterywest will comply with the following obligations:

- (a) pay Commission to the Retailer in accordance with this Agreement;
- (b) provide the Retailer with such Lottery Property as Lotterywest considers necessary for the Retailer to carry out this Agreement. Lotterywest will carry out at its cost maintenance or replacement of Lottery Property. Lotterywest is not liable for any loss or damage to the Retailer which results from delay in supplying or maintaining Lottery Property;
- (c) use reasonable endeavours to keep the Gaming System operational during such hours as Lotterywest determines from time to time. However Lotterywest is not liable for any loss to the Retailer if the Gaming System is not available for any reason including but not limited to failure of the communications network or power supply;
- (d) provide the Retailer with promotional and point of sale material with respect to a Lottery as it considers necessary;
- (e) provide the Retailer with the Manual. Lotterywest may change the Manual from time to time. Any change will be notified to the Retailer;
- (f) provide the Retailer with regular and timely statements on sales achieved, Prizes paid, Commission and fees payable;
- (g) from time to time review the performance of the Retailer under this Agreement and advise the Retailer of areas of the Retailer's responsibility of which Lotterywest is aware where performance by the Retailer could be improved or which are not meeting the terms of this Agreement or the standards required by Lotterywest. Lotterywest will provide an opportunity to discuss such matters with the Retailer;
- (h) give regular advice to the Retailer on activities for promotion of a Lottery and directions to the Retailer on how to support those activities;
- (i) comply with its obligations under the Law;
- (j) provide training to the Retailer and Staff as determined by Lotterywest from time to time.

9. Warranties by Retailer

9.1. The Retailer warrants to Lotterywest that:

- (a) the Retailer has the power and has done all necessary things to enter into this Agreement and carry out the obligations of this Agreement; and
- (b) all information given to Lotterywest in its application to Lotterywest to be a Retailer or entering into this Agreement is complete and accurate.

10. Termination of Agreement

10.1. Lotterywest may terminate this Agreement by notice to the Retailer if:

- (a) any Event of Insolvency occurs in relation to the Retailer;
- (b) the Retailer ceases or threatens to cease to carry on the Retailer's Business or ceases to have effective control over the management or ownership of the Retailer's Business;
- (c) the Retailer fails to remedy any breach of this Agreement which is capable of being remedied within 30 days of notice from Lotterywest;
- (d) the Retailer breaches any term of the Agreement which is not capable of being remedied; and
- (e) the Retailer does anything that brings Lotterywest or the Government into disrepute including but not limited to being convicted of a criminal offence which is punishable by more than 1 years imprisonment or detention.

10.2. If this Agreement is terminated by Lotterywest or expires then the Retailer must stop acting as an agent for Lotterywest and immediately return all Lottery Property to Lotterywest, pay to Lotterywest all moneys owing to it and stop using any Intellectual Property Rights of Lotterywest.

10.3. If the Retailer fails to return any Lottery Property then Lotterywest may at any time thereafter enter the Lottery Outlet to recover Lottery Property.

10.4. Termination of this Agreement does not affect the rights and liabilities of Lotterywest or the Retailer which subsisted at the date of termination.

11. Suspension of Operations of the Lottery Outlet

- 11.1. If,
- (a) the Retailer breaches its obligations under this Agreement; or
 - (b) any of the events in clause 10.1(a), 10.1(b), 10.1(c), 10.1(d) or 10.1(e) occur;
- then, Lotterywest may by notice to the Retailer suspend the operation of the Lottery Outlet for up to 90 days and otherwise on such conditions as it thinks fit.
- 11.2. If Lotterywest suspends the operation of the Lottery Outlet then Lotterywest will disconnect the Gaming Terminal. Upon suspension the Retailer must cease selling and processing entries in a Lottery and paying Prizes. Lotterywest is not liable for any loss or damage to the Retailer which results from suspension of the operations of the Lottery Outlet.

12. No Assignment

- 12.1. Unless the Retailer obtains Lotterywest's prior written consent, the Retailer must not sell, transfer, assign, novate, mortgage, charge or otherwise dispose of or deal with any of its rights or obligations under the Agreement.
- 12.2. If Lotterywest consents to an assignment of the remaining term of the Agreement it is acknowledged that the assignment will be effected by:
- (a) a termination of the Agreement; and
 - (b) Lotterywest entering into a new agreement with the assignee for the balance of the term of the Agreement then remaining and otherwise on the same terms and conditions.
- 12.3. If the Retailer is a corporation (other than a public company as defined in the Corporations Act 2001 (Cth)) the Retailer is taken to have assigned the Agreement if:
- (a) there is a change in the directors of the Retailer;
 - (b) anything occurs, the effect of which is to transfer, directly or indirectly, the management or control of the Retailer to another person; or
 - (c) there is any change in control of the Retailer within the meaning of the Corporations Act 2001 (Cth).

The Retailer must immediately notify Lotterywest if any of these events occur.

13. Trustee Retailer

- 13.1. Except with Lotterywest's prior written consent or as expressly set out in the Agreement, the Retailer shall hold the Agreement in the Retailer's own right and shall not hold the same upon trust for the benefit of any other person.
- 13.2. If Lotterywest gives consent under clause 13.1, or the Retailer is expressly described as a trustee in the Agreement, the Retailer covenants and agrees that:
- (a) the Retailer shall remain liable personally and as trustee under the Retailer's covenants, agreements, conditions and obligations contained in the Agreement;
 - (b) at the time of giving such consent the Retailer is the sole trustee under such trust and such trust is in full force and effect and has not been determined and the Retailer is not in default as trustee under such trust;
 - (c) the Retailer is empowered under its constituting document (if applicable) and the deed or other instrument constituting the said trust to enter into the Agreement; and
 - (d) the Retailer shall remain the sole trustee of the said trust and shall not resign nor permit or suffer the Retailer to be removed as trustee and shall not appoint nor permit or suffer the appointment of any other trustee whether in addition to or in replacement of the Retailer.

14. General Clauses

- 14.1. Each party shall not be responsible to the other for a failure or delay in performance of their respective obligations where the failure or delay is due to Force Majeure.
- If a delay or failure to perform due to Force Majeure exceeds 90 days either party may immediately terminate this Agreement by notice to the other party.
- 14.2. This Agreement and any documents referenced in this Agreement is the entire agreement between Lotterywest and the Retailer and supersedes any promise, representation, warranty or other statement and any previous agreements in relation to a Lottery Outlet.

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- 14.3. This Agreement may not be released or changed except by an agreement in writing signed by Lotterywest and the Retailer.
 - 14.4. Nothing in this Agreement creates a partnership or joint venture between Lotterywest and the Retailer.
 - 14.5. A party's waiver of a provision of this Agreement is not a waiver of compliance with that provision in the future, nor a waiver of any other provision of this Agreement. If any provision of this Agreement is held by a Court to be invalid, illegal or unenforceable or any provision is severed from this Agreement then the remaining provisions of this Agreement shall remain in full force and effect. If there is any inconsistency between the Manual and this Agreement then this Agreement prevails to the extent of the inconsistency.
 - 14.6. This Agreement shall be governed by the laws of Western Australia. The parties submit to the exclusive jurisdiction of the Courts of Western Australia and Courts with jurisdiction to hear appeals. Each party waives any objection it has or may have to the venue of any action or proceeding being brought in an inconvenient forum.
 - 14.7. Notice by Lotterywest to the Retailer shall be in writing and be sent by mail, email, fax, Gaming Terminal messaging or hand to the Retailer's address, email address, Gaming Terminal, or facsimile number. Any notice from the Retailer to Lotterywest must be in writing by mail, email, fax, or hand to Lotterywest's address, email address, or facsimile number. The addresses and other contact information for each party is as notified in this Agreement or subsequently advised to the other party.
 - 14.8. Each party shall pay its own costs of entering into this Agreement.
 - 14.9. This Agreement may be signed in counterparts, all of which taken together will be the one document.
 - 14.10. The Retailer's obligations under clauses 4.13, 6, 7.1(f), 7.2 and 10 survive the termination or expiry of this Agreement.