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GOVERNOR Margaret Wood Hassan
CHAIRMAN Debra M. Douglas
COMMISSIONER Paul J. Holloway
COMMISSIONER Doug Scamman
EXECUTIVE DIRECTOR Charles R. McIntyre

April 7, 2014

Her Excellency, Governor Margaret Wood Hassan
and the Honorable Council
State House
Concord, New Hampshire 03301

REQUESTED ACTION

The New Hampshire Lottery Commission® requests authorization to amend a contract (#3000062) with McLane, Graf, Raulerson & Middleton of Manchester, NH (Vendor #154963) by exercising the one (1) two-year option to extend, for the period of July 1, 2014 through June 30, 2016, for trademark and legal services, at a maximum cost of \$15,000; effective upon Governor and Council approval. Original contract was approved by the Governor and Council on July 11, 2012 (item #93) 100% Lottery Funds.

FY 15/16 funding for this request is available in account titled Lottery Division, subject to legislative approval in the budget as follows:

	<u>FY 15</u>
06-83-83-830013-10290000-046-500464 Consultants	\$7,500
	<u>FY 16</u>
06-83-83-830013-10290000-046-500464 Consultants	\$7,500

EXPLANATION

The trademark process is very complex and requires an experienced trademark and patent attorney to not only correctly apply for appropriate trademarks, but to also constantly monitor their use and provide guidance and litigation assistance.

The New Hampshire Lottery Commission in partnership with the Department of Justice issued a Request for Proposal (RFP) for legal services on March 12, 2012. Legal notices announcing the availability of the RFP were posted on the Lottery's website on March 9, 2012, in the Union Leader and Concord Monitor on March 11, 2012, and in the March edition of the New Hampshire Bar Association's newsletter and on their website. Written responses to the RFP were due on April 27, 2012. A total of three proposals

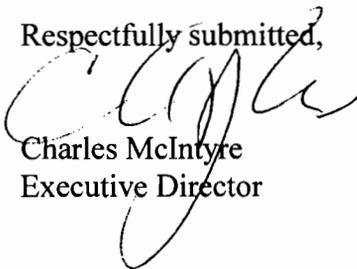


Her Excellency, Governor Margaret Wood Hassan
And the Honorable Council

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were submitted. After a thorough evaluation of all proposals the McLane, Graf, Raulerson & Middleton firm was selected based on their trademark experience and lowest bid.

On July 11, 2012, the Governor and Council approved the contract with McLane, Graf, Raulerson & Middleton of Manchester, New Hampshire (Vendor #71891) effective upon Governor and Council approval through June 30, 2014, with one (1) two-year option to extend the contract, at a maximum cost of \$15,000. The Lottery is requesting the approval to exercise the one (1) two-year extension option for the period of July 1, 2014 through June 30, 2016.

Respectfully submitted,

Charles McIntyre
Executive Director

CM:dc
Attachment

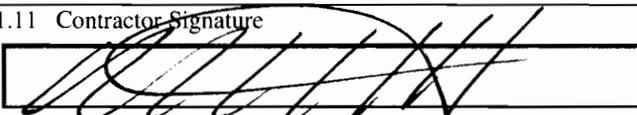
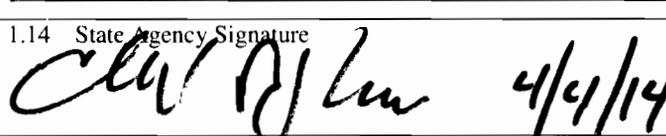
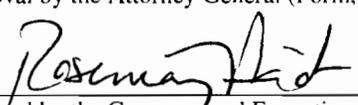
Subject: Trademark & Legal Services FORM NUMBER P-37 (version 1/09)

AGREEMENT

The State of New Hampshire and the Contractor hereby mutually agree as follows:

GENERAL PROVISIONS

1. IDENTIFICATION.

1.1 State Agency Name <u>New Hampshire Lottery Commission</u>		1.2 State Agency Address <u>14 Integra Drive, Concord, NH 03301</u>	
1.3 Contractor Name <u>McLane, Graf, Raulerson & Middleton, P.A.</u>		1.4 Contractor Address <u>900 Elm Street, Manchester, NH 03105-0326</u>	
1.5 Contractor Phone Number <u>603-625-6464</u>	1.6 Account Number <u>AU#10290000 AC#500464</u>	1.7 Completion Date <u>June 30, 2016</u>	1.8 Price Limitation <u>\$15,000</u>
1.9 Contracting Officer for State Agency <u>Charles McIntyre, Executive Director</u>		1.10 State Agency Telephone Number <u>603-271-3391</u>	
1.11 Contractor Signature 		1.12 Name and Title of Contractor Signatory <u>Mark A. Wright, Vice President and Director</u>	
1.13 Acknowledgement: State of <u>NH</u> , County of <u>Hillsborough</u> On <u>4-3-14</u> , before the undersigned officer, personally appeared the person identified in block 1.12, or satisfactorily proven to be the person whose name is signed in block 1.11, and acknowledged that s/he executed this document in the capacity indicated in block 1.12.			
1.13.1 Signature of Notary Public or Justice of the Peace [Seal] 			
1.13.2 Name and Title of Notary or Justice of the Peace <u>Patricia A. Dolbard Notary Public Expires: 8/10/16</u> <i>My Commission</i>			
1.14 State Agency Signature  <u>4/4/14</u>		1.15 Name and Title of State Agency Signatory <u>Charles McIntyre, Executive Director</u>	
1.16 Approval by the N.H. Department of Administration, Division of Personnel (if applicable) By:  Director, On:			
1.17 Approval by the Attorney General (Form, Substance and Execution) By:  On: <u>4-8-14</u>			
1.18 Approval by the Governor and Executive Council By: On:			

2. EMPLOYMENT OF CONTRACTOR/SERVICES TO BE PERFORMED. The State of New Hampshire, acting through the agency identified in block 1.1 ("State"), engages contractor identified in block 1.3 ("Contractor") to perform, and the Contractor shall perform, the work or sale of goods, or both, identified and more particularly described in the attached EXHIBIT A which is incorporated herein by reference ("Services").

3. EFFECTIVE DATE/COMPLETION OF SERVICES.
3.1 Notwithstanding any provision of this Agreement to the contrary, and subject to the approval of the Governor and Executive Council of the State of New Hampshire, this Agreement, and all obligations of the parties hereunder, shall not become effective until the date the Governor and Executive Council approve this Agreement ("Effective Date").
3.2 If the Contractor commences the Services prior to the Effective Date, all Services performed by the Contractor prior to the Effective Date shall be performed at the sole risk of the Contractor, and in the event that this Agreement does not become effective, the State shall have no liability to the Contractor, including without limitation, any obligation to pay the Contractor for any costs incurred or Services performed. Contractor must complete all Services by the Completion Date specified in block 1.7.

4. CONDITIONAL NATURE OF AGREEMENT. Notwithstanding any provision of this Agreement to the contrary, all obligations of the State hereunder, including, without limitation, the continuance of payments hereunder, are contingent upon the availability and continued appropriation of funds, and in no event shall the State be liable for any payments hereunder in excess of such available appropriated funds. In the event of a reduction or termination of appropriated funds, the State shall have the right to withhold payment until such funds become available, if ever, and shall have the right to terminate this Agreement immediately upon giving the Contractor notice of such termination. The State shall not be required to transfer funds from any other account to the Account identified in block 1.6 in the event funds in that Account are reduced or unavailable.

5. CONTRACT PRICE/PRICE LIMITATION/PAYMENT.
5.1 The contract price, method of payment, and terms of payment are identified and more particularly described in EXHIBIT B which is incorporated herein by reference.
5.2 The payment by the State of the contract price shall be the only and the complete reimbursement to the Contractor for all expenses, of whatever nature incurred by the Contractor in the performance hereof, and shall be the only and the complete compensation to the Contractor for the Services. The State shall have no liability to the Contractor other than the contract price.
5.3 The State reserves the right to offset from any amounts otherwise payable to the Contractor under this Agreement those liquidated amounts required or permitted by N.H. RSA 80:7 through RSA 80:7-c or any other provision of law.

5.4 Notwithstanding any provision in this Agreement to the contrary, and notwithstanding unexpected circumstances, in no event shall the total of all payments authorized, or actually made hereunder, exceed the Price Limitation set forth in block 1.8.

6. COMPLIANCE BY CONTRACTOR WITH LAWS AND REGULATIONS/ EQUAL EMPLOYMENT OPPORTUNITY.
6.1 In connection with the performance of the Services, the Contractor shall comply with all statutes, laws, regulations, and orders of federal, state, county or municipal authorities which impose any obligation or duty upon the Contractor, including, but not limited to, civil rights and equal opportunity laws. In addition, the Contractor shall comply with all applicable copyright laws.
6.2 During the term of this Agreement, the Contractor shall not discriminate against employees or applicants for employment because of race, color, religion, creed, age, sex, handicap, sexual orientation, or national origin and will take affirmative action to prevent such discrimination.
6.3 If this Agreement is funded in any part by monies of the United States, the Contractor shall comply with all the provisions of Executive Order No. 11246 ("Equal Employment Opportunity"), as supplemented by the regulations of the United States Department of Labor (41 C.F.R. Part 60), and with any rules, regulations and guidelines as the State of New Hampshire or the United States issue to implement these regulations. The Contractor further agrees to permit the State or United States access to any of the Contractor's books, records and accounts for the purpose of ascertaining compliance with all rules, regulations and orders, and the covenants, terms and conditions of this Agreement.

7. PERSONNEL.
7.1 The Contractor shall at its own expense provide all personnel necessary to perform the Services. The Contractor warrants that all personnel engaged in the Services shall be qualified to perform the Services, and shall be properly licensed and otherwise authorized to do so under all applicable laws.
7.2 Unless otherwise authorized in writing, during the term of this Agreement, and for a period of six (6) months after the Completion Date in block 1.7, the Contractor shall not hire, and shall not permit any subcontractor or other person, firm or corporation with whom it is engaged in a combined effort to perform the Services to hire, any person who is a State employee or official, who is materially involved in the procurement, administration or performance of this Agreement. This provision shall survive termination of this Agreement.
7.3 The Contracting Officer specified in block 1.9, or his or her successor, shall be the State's representative. In the event of any dispute concerning the interpretation of this Agreement, the Contracting Officer's decision shall be final for the State.

Contractor Initials MAW
Date 4/3/14

8. EVENT OF DEFAULT/REMEDIES.

8.1 Any one or more of the following acts or omissions of the Contractor shall constitute an event of default hereunder ("Event of Default"):

- 8.1.1 failure to perform the Services satisfactorily or on schedule;
- 8.1.2 failure to submit any report required hereunder; and/or
- 8.1.3 failure to perform any other covenant, term or condition of this Agreement.

8.2 Upon the occurrence of any Event of Default, the State may take any one, or more, or all, of the following actions:

- 8.2.1 give the Contractor a written notice specifying the Event of Default and requiring it to be remedied within, in the absence of a greater or lesser specification of time, thirty (30) days from the date of the notice; and if the Event of Default is not timely remedied, terminate this Agreement, effective two (2) days after giving the Contractor notice of termination;
- 8.2.2 give the Contractor a written notice specifying the Event of Default and suspending all payments to be made under this Agreement and ordering that the portion of the contract price which would otherwise accrue to the Contractor during the period from the date of such notice until such time as the State determines that the Contractor has cured the Event of Default shall never be paid to the Contractor;
- 8.2.3 set off against any other obligations the State may owe to the Contractor any damages the State suffers by reason of any Event of Default; and/or
- 8.2.4 treat the Agreement as breached and pursue any of its remedies at law or in equity, or both.

9. DATA/ACCESS/CONFIDENTIALITY/PRESERVATION.

9.1 As used in this Agreement, the word "data" shall mean all information and things developed or obtained during the performance of, or acquired or developed by reason of, this Agreement, including, but not limited to, all studies, reports, files, formulae, surveys, maps, charts, sound recordings, video recordings, pictorial reproductions, drawings, analyses, graphic representations, computer programs, computer printouts, notes, letters, memoranda, papers, and documents, all whether finished or unfinished.

9.2 All data and any property which has been received from the State or purchased with funds provided for that purpose under this Agreement, shall be the property of the State, and shall be returned to the State upon demand or upon termination of this Agreement for any reason.

9.3 Confidentiality of data shall be governed by N.H. RSA chapter 91-A or other existing law. Disclosure of data requires prior written approval of the State.

10. TERMINATION. In the event of an early termination of this Agreement for any reason other than the completion of the Services, the Contractor shall deliver to the Contracting Officer, not later than fifteen (15) days after the date of termination, a report ("Termination Report") describing in detail all Services performed, and the contract price earned, to and including the date of termination. The form, subject matter, content, and number of copies of the Termination

Report shall be identical to those of any Final Report described in the attached EXHIBIT A.

11. CONTRACTOR'S RELATION TO THE STATE. In the performance of this Agreement the Contractor is in all respects an independent contractor, and is neither an agent nor an employee of the State. Neither the Contractor nor any of its officers, employees, agents or members shall have authority to bind the State or receive any benefits, workers' compensation or other emoluments provided by the State to its employees.

12. ASSIGNMENT/DELEGATION/SUBCONTRACTS. The Contractor shall not assign, or otherwise transfer any interest in this Agreement without the prior written consent of the N.H. Department of Administrative Services. None of the Services shall be subcontracted by the Contractor without the prior written consent of the State.

13. INDEMNIFICATION. The Contractor shall defend, indemnify and hold harmless the State, its officers and employees, from and against any and all losses suffered by the State, its officers and employees, and any and all claims, liabilities or penalties asserted against the State, its officers and employees, by or on behalf of any person, on account of, based or resulting from, arising out of (or which may be claimed to arise out of) the acts or omissions of the Contractor. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant in paragraph 13 shall survive the termination of this Agreement.

14. INSURANCE.

14.1 The Contractor shall, at its sole expense, obtain and maintain in force, and shall require any subcontractor or assignee to obtain and maintain in force, the following insurance:

14.1.1 comprehensive general liability insurance against all claims of bodily injury, death or property damage, in amounts of not less than \$250,000 per claim and \$2,000,000 per occurrence; and

14.1.2 fire and extended coverage insurance covering all property subject to subparagraph 9.2 herein, in an amount not less than 80% of the whole replacement value of the property.

14.2 The policies described in subparagraph 14.1 herein shall be on policy forms and endorsements approved for use in the State of New Hampshire by the N.H. Department of Insurance, and issued by insurers licensed in the State of New Hampshire.

14.3 The Contractor shall furnish to the Contracting Officer identified in block 1.9, or his or her successor, a certificate(s) of insurance for all insurance required under this Agreement. Contractor shall also furnish to the Contracting Officer identified in block 1.9, or his or her successor, certificate(s) of insurance for all renewal(s) of insurance required under this Agreement no later than fifteen (15) days prior to the expiration date of each of the insurance policies. The certificate(s) of insurance and any renewals thereof shall be

attached and are incorporated herein by reference. Each certificate(s) of insurance shall contain a clause requiring the insurer to endeavor to provide the Contracting Officer identified in block 1.9, or his or her successor, no less than ten (10) days prior written notice of cancellation or modification of the policy.

15. WORKERS' COMPENSATION.

15.1 By signing this agreement, the Contractor agrees, certifies and warrants that the Contractor is in compliance with or exempt from, the requirements of N.H. RSA chapter 281-A (*"Workers' Compensation"*).

15.2 To the extent the Contractor is subject to the requirements of N.H. RSA chapter 281-A, Contractor shall maintain, and require any subcontractor or assignee to secure and maintain, payment of Workers' Compensation in connection with activities which the person proposes to undertake pursuant to this Agreement. Contractor shall furnish the Contracting Officer identified in block 1.9, or his or her successor, proof of Workers' Compensation in the manner described in N.H. RSA chapter 281-A and any applicable renewal(s) thereof, which shall be attached and are incorporated herein by reference. The State shall not be responsible for payment of any Workers' Compensation premiums or for any other claim or benefit for Contractor, or any subcontractor or employee of Contractor, which might arise under applicable State of New Hampshire Workers' Compensation laws in connection with the performance of the Services under this Agreement.

16. WAIVER OF BREACH. No failure by the State to enforce any provisions hereof after any Event of Default shall be deemed a waiver of its rights with regard to that Event of Default, or any subsequent Event of Default. No express failure to enforce any Event of Default shall be deemed a waiver of the right of the State to enforce each and all of the provisions hereof upon any further or other Event of Default on the part of the Contractor.

17. NOTICE. Any notice by a party hereto to the other party shall be deemed to have been duly delivered or given at the time of mailing by certified mail, postage prepaid, in a United States Post Office addressed to the parties at the addresses given in blocks 1.2 and 1.4, herein.

18. AMENDMENT. This Agreement may be amended, waived or discharged only by an instrument in writing signed by the parties hereto and only after approval of such amendment, waiver or discharge by the Governor and Executive Council of the State of New Hampshire.

19. CONSTRUCTION OF AGREEMENT AND TERMS.

This Agreement shall be construed in accordance with the laws of the State of New Hampshire, and is binding upon and inures to the benefit of the parties and their respective successors and assigns. The wording used in this Agreement is the wording chosen by the parties to express their mutual

intent, and no rule of construction shall be applied against or in favor of any party.

20. THIRD PARTIES. The parties hereto do not intend to benefit any third parties and this Agreement shall not be construed to confer any such benefit.

21. HEADINGS. The headings throughout the Agreement are for reference purposes only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

22. SPECIAL PROVISIONS. Additional provisions set forth in the attached EXHIBIT C are incorporated herein by reference.

23. SEVERABILITY. In the event any of the provisions of this Agreement are held by a court of competent jurisdiction to be contrary to any state or federal law, the remaining provisions of this Agreement will remain in full force and effect.

24. ENTIRE AGREEMENT. This Agreement, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire Agreement and understanding between the parties, and supersedes all prior Agreements and understandings relating hereto.

EXHIBIT A

SCOPE OF SERVICES

Contractor agrees to perform the following services for the Commission for the period of July 1, 2014 through June 30, 2016, exercising the one 2 year contract renewal option:

- A. Perform an annual trademark watch service for federally registered service marks owned now or in the future by the Commission. The Contract shall review all watch notices, provide the Commission with an analysis of any potential infringement and provide recommendations on proceeding.
- B. Prepare and file any Powers of Attorney as needed to continue use and renewal of filings for service mark registrations.
- C. To the extent the contract permits, provide assistance, counseling and litigation support pertaining to other intellectual property law related issues and matters including, but not limited to pending or threatened litigation, web site domain issues, and patent registration and infringement matters.

EXHIBIT B

FINANCIAL ARRANGEMENTS

The maximum amount of the two year contract renewal is \$15,000 (7,500.00 per year). All invoices are to be sent to the New Hampshire Lottery Commission, 14 Integra Drive, Concord, New Hampshire, 03301.

EXHIBIT C

SPECIAL PROVISIONS

To the extent that any provision(s) of this exhibit may be construed to conflict with any provision(s) of the State contract, the provision(s) of the state contract shall be controlling and shall take precedence over the conflicting provision(s) of this exhibit.



McLane, Graf,
Raulerson & Middleton
Professional Association

900 Elm Street | P.O. Box 326 | Manchester, NH 03105-0326
Tel: 603.625.6464 | Fax: 603.625.5650 | www.mclane.com

OFFICES IN:
MANCHESTER
CONCORD
PORTSMOUTH
WOBURN, MA

MARGARET R. KEROUAC
Direct Dial: 603-628-1330
Email: margaret.kerouac@mclane.com
Licensed in NH

March 31, 2014

Maura McCann
Marketing Director
NH Lottery Commission
14 Integra Drive
Concord, NH 03301

RE: NH Lottery Contract

Dear Ms. McCann:

I, Margaret R. Kerouac, am the Secretary of McLane, Graf, Raulerson & Middleton, Professional Association. This letter is confirmation that Mark A. Wright is a Vice President and Director of the McLane Law Firm and that Mr. Wright's signature on a contract with the State of New Hampshire will have the effect of binding the McLane Law Firm on said contract.

Should you have any questions, please do not hesitate to contact me.

Sincerely yours,



Margaret R. Kerouac

Enclosure

State of New Hampshire Department of State

CERTIFICATE

I, William M. Gardner, Secretary of State of the State of New Hampshire, do hereby certify that McLane, Graf, Raulerson & Middleton, Professional Association is a New Hampshire corporation duly incorporated under the laws of the State of New Hampshire on December 30, 1975. I further certify that all fees and annual reports required by the Secretary of State's office have been received and that articles of dissolution have not been filed.



In TESTIMONY WHEREOF, I hereto
set my hand and cause to be affixed
the Seal of the State of New Hampshire,
this 1st day of April, A.D. 2014

A handwritten signature in black ink, appearing to read "William M. Gardner".

William M. Gardner
Secretary of State



AXIS PRO[®] LP LAWYERS PROFESSIONAL LIABILITY INSURANCE POLICY

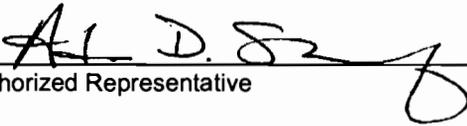
DECLARATIONS

THIS POLICY IS WRITTEN ON A CLAIMS MADE BASIS AND COVERS ONLY CLAIMS FIRST MADE AGAINST THE INSURED DURING THE POLICY PERIOD OR THE EXTENDED REPORTING PERIOD, IF APPLICABLE. THE LIMIT OF LIABILITY AVAILABLE TO PAY JUDGMENTS OR SETTLEMENTS SHALL BE REDUCED AND MAY BE TOTALLY EXHAUSTED BY AMOUNTS INCURRED AS CLAIM EXPENSES. PLEASE READ THIS POLICY CAREFULLY.

COMPANY: AXIS Surplus Insurance Company	POLICY NUMBER: EGN 718541/01/2013		
Item 1. Firm: McLane, Graf, Raulerson & Middleton, Professional Association 900 Elm Street Manchester, NH 03101	Item 2. Policy Period: (A) Inception Date July 1, 2013 (B) Expiration Date July 1, 2014 <i>Both dates at 12:01 a.m. at the address listed in Item 1.</i>		
Item 3. Limits of Liability (Inclusive of Claim Expenses): a. \$ <u>10,000,000</u> each Claim b. \$ <u>10,000,000</u> Aggregate			
Item 4. Retentions: \$ <u>150,000</u> each Claim			
Item 5. Premium: \$ <u>198,030</u>			
Item 6. Notices to Company : <table><tr><td><u>Notice of Claim(s) To Be Sent To:</u> AXIS Professional Insurance Address: 300 Connell Drive, Suite 8000 P.O. Box 357 Berkeley Heights, NJ 07922-0357 Facsimile: (908) 508-4389 USClaimNoticeBH@axiscapital.com</td><td><u>All Other Notices To Be Sent To:</u> AXIS Professional Insurance Address: One State Street, Suite 1700 Hartford, CT 06103 Facsimile: (860) 707-1725</td></tr></table>		<u>Notice of Claim(s) To Be Sent To:</u> AXIS Professional Insurance Address: 300 Connell Drive, Suite 8000 P.O. Box 357 Berkeley Heights, NJ 07922-0357 Facsimile: (908) 508-4389 USClaimNoticeBH@axiscapital.com	<u>All Other Notices To Be Sent To:</u> AXIS Professional Insurance Address: One State Street, Suite 1700 Hartford, CT 06103 Facsimile: (860) 707-1725
<u>Notice of Claim(s) To Be Sent To:</u> AXIS Professional Insurance Address: 300 Connell Drive, Suite 8000 P.O. Box 357 Berkeley Heights, NJ 07922-0357 Facsimile: (908) 508-4389 USClaimNoticeBH@axiscapital.com	<u>All Other Notices To Be Sent To:</u> AXIS Professional Insurance Address: One State Street, Suite 1700 Hartford, CT 06103 Facsimile: (860) 707-1725		
Item 7. Endorsements Effective at Inception: No. 1 MANU Amend Definition of Professional Services Endorsement · No. 2 LP 1110 201 (MANU) Controlled Enterprise Exclusion Amendatory Endorsement No. 3 SOS-CW (08-03) Service of Suit Clause			

The company issuing this policy has not been licensed by the state of New Hampshire and the rates charged have not been approved by the Commissioner of Insurance. If the company issuing this policy becomes insolvent, the New Hampshire Insurance Guaranty Fund shall not be liable for any claims made against the policy.

The Insurer has caused this Policy to be signed and attested by its authorized officers, but it shall not be valid unless also signed by another duly authorized representative of the Insurer.


Authorized Representative

July 12, 2013
Date

IN WITNESS WHEREOF, the Company has caused the facsimile signatures of its President and Secretary to be affixed hereto.



Secretary
Andrew Weissert



President
Carlton W. Maner

New Hampshire Resident Surplus Lines Agent Identification Number: 388953



McLane, Graf,
Raulerson & Middleton
Professional Association

900 Elm Street | P.O. Box 326 | Manchester, NH 03105-0326
Tel: 603.625.6464 | Fax: 603.625.5650 | www.mclane.com

OFFICES IN:
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WOBURN, MA

MARK A. WRIGHT
Direct Dial: (603) 628-1311
Internet: mark.wright@mclane.com
Licensed in NH and MA

April 3, 2014

Charles McIntyre
Executive Director
NH Lottery Commission
14 Integra Drive
Concord, NH 03301

Rosemary Wiant, Esq.
State of New Hampshire
Attorney Generals Office
214 N. Main Street
P.O. Box 1415
Concord, NH 03301

**RE: New Hampshire Lottery Commission – Trademark Maintenance/Protection
Legal Services**

Dear Ms. McCann and Attorney Wiant:

I am pleased that you have elected to continue using McLane, Graf, Raulerson & Middleton, Professional Association, to represent the State of New Hampshire and the New Hampshire Lottery Commission ("NH Lottery Commission") with regards to trademark maintenance/protection services. Despite an increase in my hourly billable rate to \$400.00, we have agreed to continue providing the Commission with a discounted hourly rate of \$150/hour for all attorneys.

This letter will describe the basis on which our firm will provide legal services to you and how we will be compensated for those services. I will be the attorney responsible for your representation but I will utilize other attorneys and legal assistants in our firm as necessary to meet our agreed upon objectives. If, at any time, you have questions, concerns, or criticisms concerning these choices or our performance, please contact me at once.

The scope of services provided by McLane and the annual contract fees are set forth on Exhibit A and B of the State Contract P-37, a copy of which is attached hereto.

Maura McCann, Director of Marketing
NH Lottery Commission
Rosemary Wiant, Assistant Attorney General
State of New Hampshire
April 3, 2014
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We will take into account many factors in billing for services rendered, and I will review all statements before they are issued to be sure the amount charged is appropriate. Generally, our statements for services are the product of the hours worked multiplied by the hourly rates for the attorneys and legal assistants who did the work. The hourly rates we have discussed include the support services that the firm provides. We will, however, bill and expect payment for out-of-pocket expenses related to travel, filing fees, proprietary data base access, and any other costs which are not an ordinary part of our services to clients such as long-distance phone calls, FAX transmissions or printing costs. As discussed in my prior email, my hourly rate will be discounted to \$150/hour (my current rate is \$400/hour).

Our statements will generally be prepared and mailed during the month following the month in which services are rendered. We rely upon and expect our clients to pay their bills upon receipt, and we are not in the business of providing credit to our clients. If we have not received payment of our statement within 30 days, you will be contacted by a member of our accounting staff. If the matter cannot be resolved as a result of this contact, you should expect that it may impact our willingness to continue to serve your needs. Statements that are not paid within 30 days of the date on which they are mailed to you are subject to a monthly late charge of 1.5% on the unpaid balance. If a collection action is necessary to obtain payment, the Company will also be responsible for all costs of collection, including attorneys' fees.

We reserve the right to withdraw from the representation described in this letter at any time, but, barring unusual circumstances, we will discuss such withdrawal with you before doing so and expect to do so only if there are good reasons for such withdrawal, such as nonpayment of fees, significant differences between our professional judgment and your judgment, or concerns which may arise under the ethical rules by which we are bound. If the matters for which you have retained us have been completed, you should consider our representation to be ongoing or continuing only if we have had a specific discussion of that and it is confirmed in a letter or other writing.

Our firm can provide communications in various forms, depending upon your requirements. In addition to the telephone and fax numbers listed on the letterhead, each attorney has an electronic mail address, such as mine shown above, that may be accessed from mail accounts on Internet and other electronic networks. These communications services, including fax, are used with your understanding that while our firm will use appropriate measures to protect confidentiality, these mediums may be subject to security risks. Should you not wish our firm to use any or all of the above methods, you agree to immediately advise us of such in writing, and our firm will use the communication services you specify.

The McLane Law Firm very much appreciates the opportunity to represent the State of NH Lottery Commission with respect to trademark maintenance/protection issues. As I have

Maura McCann, Director of Marketing
NH Lottery Commission
Rosemary Wiant, Assistant Attorney General
State of New Hampshire
April 3, 2014
Page 3

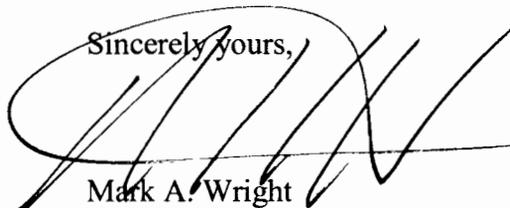
explained, McLane could only represent the NH Lottery Commission if the NH Lottery Commission and the State of New Hampshire waive current and future conflicts of interest with respect to the various persons and entities that this firm represents, or may represent, who have or may have interests adverse to the NH Lottery Commission specifically or the State of New Hampshire, including any agency, body or department.

We now understand the following to be true: the McLane Law Firm has no current or anticipated conflicts of interest with the NH Lottery Commission. However, given the reduced rate agreed to herein, the State of New Hampshire and the NH Lottery Commission waive any current or future conflicts where this Firm represents a client with any interest that is or may be adverse to the State of New Hampshire or to any agency, board or department thereof except for matters related to the scope of this representation or which pertain directly to the NH Lottery Commission. The McLane Law Firm will obtain the consent of the State of New Hampshire and the NH Lottery Commission before representing clients who may have any such adverse legal interests to the NH Lottery Commission.

In order to memorialize the consent of the State of New Hampshire and the NH Lottery Commission to our representation in the terms outlined in this letter, I ask that both of you sign this letter and return it to me.

Please process the letters and send it back to me at your earliest convenience.

Sincerely yours,



Mark A. Wright

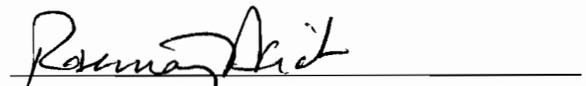
ACCEPTED AND AGREED TO:



Charles McIntyre, Executive Director
on behalf of the New Hampshire Lottery
Commission

Date: 4/4, 2014

STATE OF NEW HAMPSHIRE



Rosemary Wiant, Assistant Attorney General
On behalf of the State of New Hampshire

Date: 4-8, 2014

MAW:afs



Over \$1 billion to education

GOVERNOR John H. Lynch
CHAIRMAN Debra M. Douglas
COMMISSIONER Paul J. Holloway
COMMISSIONER Doug Scamman
EXECUTIVE DIRECTOR Charles R. McIntyre

June 13, 2012

G & C 7/11/12

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His Excellency, Governor John H. Lynch
and the Honorable Council
State House
Concord, New Hampshire 03301

REQUESTED ACTION

The New Hampshire Lottery Commission (NHLC)® requests authorization from the Governor and Council to enter into a contract with McLane, Graf, Raulerson & Middleton of Manchester, New Hampshire (Vendor No. 71891), effective upon Governor and Council approval through June 30, 2014, with the NHLC retaining the sole option to extend the contract, at its discretion, for one period of two (2) years at the same hourly price as the first two (2) years. This contract request is for the purpose of applying for and monitoring trademarks for New Hampshire Lottery Commission products and provide assistance, counseling and litigation support pertaining to other intellectual property law related issues and matters including, but not limited to pending or threatened litigation, web site domain issues, and patent registration and infringement matters.

FY 13/14 funding for this request is available as follows:

Account FY 13
06-083-8300-10290000-500464 Class 046 \$7,500

Account FY14
06-083-8300-10290000-500464 Class 046 \$7,500 (Subject to legislative approval in the budget)

EXPLANATION

The trademark process is very complex and requires an experienced trademark and patent attorney to not only correctly apply for appropriate trademarks, but to also constantly monitor their use and provide guidance and litigation assistance.

The New Hampshire Lottery Commission in partnership with the Department of Justice issued a Request for Proposal (RFP) for legal services on March 12, 2012. Legal notices announcing the availability of the RFP were posted on the Lottery's website on March 9, 2012, in the Union Leader and Concord Monitor on March 11, 2012, and in the March edition of the New Hampshire Bar Association's newsletter and on their website. Written responses to the RFP were due on April 27, 2012.



A total of three proposals were submitted from the following law firms with the following price quotes:

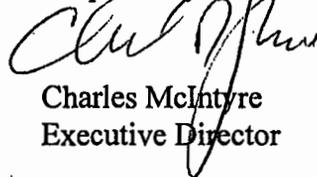
- Vernon C. Maine, PLLC., D.B.A. Maine Cernota & Rardin, Nashua, NH quoted a rate of \$275.00 per hour.
- Mesmer & Deleault, PLCC, Manchester, NH quoted a rate of \$200 (non-litigation); \$250 (litigation)
- McLane, Graf, Raulerson & Middleton of Manchester, New Hampshire quoted a rate of \$100 per hour Paralegals; \$150 per hour Director.

A three person evaluation committee, consisting of Charles McIntyre, Executive Director; Maura McCann, Director of Marketing; and Georges Roy, Administrator III, reviewed the submitted written proposals. The committee determined that all met the RFP requirements. The committee then evaluated the proposals based on two criteria:

- The first included prior experience, knowledge and qualifications for the assigned attorney and supporting staff.
- The second criterion was cost.

The committee unanimously agreed that McLane, Graf, Raulerson and Middleton should be awarded the contract based on the strength of their proposal, and lowest bid. The Commission respectfully requests Governor and Executive Council approval of the two (2) year legal services contract with McLane, Graf, Raulerson & Middleton. The contract allows for one period of two (2) years to renew.

Respectfully submitted,



Charles McIntyre
Executive Director

CM:dc
Attachment

Subject:

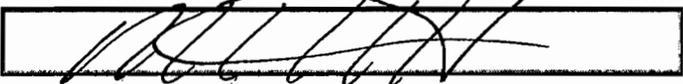
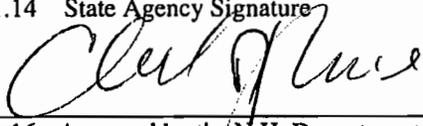
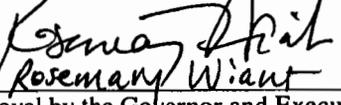
Trademark & Legal Services

AGREEMENT

The State of New Hampshire and the Contractor hereby mutually agree as follows:

GENERAL PROVISIONS

1. IDENTIFICATION.

1.1 State Agency Name New Hampshire Lottery Commission		1.2 State Agency Address 14 Integra Drive, Concord, NH 03301	
1.3 Contractor Name McLane, Graf, Raulerson & Middleton, P.A.		1.4 Contractor Address 900 Elm Street, Manchester, NH 03105-0326	
1.5 Contractor Phone Number 603-625-6464	1.6 Account Number AU#10290000 AC#500464	1.7 Completion Date June 30, 2014	1.8 Price Limitation \$15,000
1.9 Contracting Officer for State Agency Charles McIntyre, Executive Director		1.10 State Agency Telephone Number 603-271-3391	
1.11 Contractor Signature 		1.12 Name and Title of Contractor Signatory Mark A. Wright, Vice President & Director	
1.13 Acknowledgement: State of NH , County of Hillsborough On June 6, 2012 , before the undersigned officer, personally appeared the person identified in block 1.12, or satisfactorily proven to be the person whose name is signed in block 1.11, and acknowledged that s/he executed this document in the capacity indicated in block 1.12.			
1.13.1 Signature of Notary Public or Justice of the Peace [Seal] 			
1.13.2 Name and Title of Notary or Justice of the Peace Patricia A. Dollard Notary Public My Commission Expires 8/10/16			
1.14 State Agency Signature 		1.15 Name and Title of State Agency Signatory Charles McIntyre, Executive Director	
1.16 Approval by the N.H. Department of Administration, Division of Personnel (if applicable) By: _____ Director, On: _____			
1.17 Approval by the Attorney General (Form, Substance and Execution) By:  Rosemary Wiant On: 6-19-12			
1.18 Approval by the Governor and Executive Council By: _____ On: _____			

2. EMPLOYMENT OF CONTRACTOR/SERVICES TO BE PERFORMED. The State of New Hampshire, acting through the agency identified in block 1.1 ("State"), engages contractor identified in block 1.3 ("Contractor") to perform, and the Contractor shall perform, the work or sale of goods, or both, identified and more particularly described in the attached EXHIBIT A which is incorporated herein by reference ("Services").

3. EFFECTIVE DATE/COMPLETION OF SERVICES.

3.1 Notwithstanding any provision of this Agreement to the contrary, and subject to the approval of the Governor and Executive Council of the State of New Hampshire, this Agreement, and all obligations of the parties hereunder, shall not become effective until the date the Governor and Executive Council approve this Agreement ("Effective Date").

3.2 If the Contractor commences the Services prior to the Effective Date, all Services performed by the Contractor prior to the Effective Date shall be performed at the sole risk of the Contractor, and in the event that this Agreement does not become effective, the State shall have no liability to the Contractor, including without limitation, any obligation to pay the Contractor for any costs incurred or Services performed. Contractor must complete all Services by the Completion Date specified in block 1.7.

4. CONDITIONAL NATURE OF AGREEMENT.

Notwithstanding any provision of this Agreement to the contrary, all obligations of the State hereunder, including, without limitation, the continuance of payments hereunder, are contingent upon the availability and continued appropriation of funds, and in no event shall the State be liable for any payments hereunder in excess of such available appropriated funds. In the event of a reduction or termination of appropriated funds, the State shall have the right to withhold payment until such funds become available, if ever, and shall have the right to terminate this Agreement immediately upon giving the Contractor notice of such termination. The State shall not be required to transfer funds from any other account to the Account identified in block 1.6 in the event funds in that Account are reduced or unavailable.

5. CONTRACT PRICE/PRICE LIMITATION/PAYMENT.

5.1 The contract price, method of payment, and terms of payment are identified and more particularly described in EXHIBIT B which is incorporated herein by reference.

5.2 The payment by the State of the contract price shall be the only and the complete reimbursement to the Contractor for all expenses, of whatever nature incurred by the Contractor in the performance hereof, and shall be the only and the complete compensation to the Contractor for the Services. The State shall have no liability to the Contractor other than the contract price.

5.3 The State reserves the right to offset from any amounts otherwise payable to the Contractor under this Agreement those liquidated amounts required or permitted by N.H. RSA 80:7 through RSA 80:7-c or any other provision of law.

5.4 Notwithstanding any provision in this Agreement to the contrary, and notwithstanding unexpected circumstances, in no event shall the total of all payments authorized, or actually made hereunder, exceed the Price Limitation set forth in block 1.8.

6. COMPLIANCE BY CONTRACTOR WITH LAWS AND REGULATIONS/ EQUAL EMPLOYMENT OPPORTUNITY.

6.1 In connection with the performance of the Services, the Contractor shall comply with all statutes, laws, regulations, and orders of federal, state, county or municipal authorities which impose any obligation or duty upon the Contractor, including, but not limited to, civil rights and equal opportunity laws. In addition, the Contractor shall comply with all applicable copyright laws.

6.2 During the term of this Agreement, the Contractor shall not discriminate against employees or applicants for employment because of race, color, religion, creed, age, sex, handicap, sexual orientation, or national origin and will take affirmative action to prevent such discrimination.

6.3 If this Agreement is funded in any part by monies of the United States, the Contractor shall comply with all the provisions of Executive Order No. 11246 ("Equal Employment Opportunity"), as supplemented by the regulations of the United States Department of Labor (41 C.F.R. Part 60), and with any rules, regulations and guidelines as the State of New Hampshire or the United States issue to implement these regulations. The Contractor further agrees to permit the State or United States access to any of the Contractor's books, records and accounts for the purpose of ascertaining compliance with all rules, regulations and orders, and the covenants, terms and conditions of this Agreement.

7. PERSONNEL.

7.1 The Contractor shall at its own expense provide all personnel necessary to perform the Services. The Contractor warrants that all personnel engaged in the Services shall be qualified to perform the Services, and shall be properly licensed and otherwise authorized to do so under all applicable laws.

7.2 Unless otherwise authorized in writing, during the term of this Agreement, and for a period of six (6) months after the Completion Date in block 1.7, the Contractor shall not hire, and shall not permit any subcontractor or other person, firm or corporation with whom it is engaged in a combined effort to perform the Services to hire, any person who is a State employee or official, who is materially involved in the procurement, administration or performance of this Agreement. This provision shall survive termination of this Agreement.

7.3 The Contracting Officer specified in block 1.9, or his or her successor, shall be the State's representative. In the event of any dispute concerning the interpretation of this Agreement, the Contracting Officer's decision shall be final for the State.

8. EVENT OF DEFAULT/REMEDIES.

8.1 Any one or more of the following acts or omissions of the Contractor shall constitute an event of default hereunder ("Event of Default"):

8.1.1 failure to perform the Services satisfactorily or on schedule;

8.1.2 failure to submit any report required hereunder; and/or

8.1.3 failure to perform any other covenant, term or condition of this Agreement.

8.2 Upon the occurrence of any Event of Default, the State may take any one, or more, or all, of the following actions:

8.2.1 give the Contractor a written notice specifying the Event of Default and requiring it to be remedied within, in the absence of a greater or lesser specification of time, thirty (30) days from the date of the notice; and if the Event of Default is not timely remedied, terminate this Agreement, effective two (2) days after giving the Contractor notice of termination;

8.2.2 give the Contractor a written notice specifying the Event of Default and suspending all payments to be made under this Agreement and ordering that the portion of the contract price which would otherwise accrue to the Contractor during the period from the date of such notice until such time as the State determines that the Contractor has cured the Event of Default shall never be paid to the Contractor;

8.2.3 set off against any other obligations the State may owe to the Contractor any damages the State suffers by reason of any Event of Default; and/or

8.2.4 treat the Agreement as breached and pursue any of its remedies at law or in equity, or both.

9. DATA/ACCESS/CONFIDENTIALITY/PRESERVATION.

9.1 As used in this Agreement, the word "data" shall mean all information and things developed or obtained during the performance of, or acquired or developed by reason of, this Agreement, including, but not limited to, all studies, reports, files, formulae, surveys, maps, charts, sound recordings, video recordings, pictorial reproductions, drawings, analyses, graphic representations, computer programs, computer printouts, notes, letters, memoranda, papers, and documents, all whether finished or unfinished.

9.2 All data and any property which has been received from the State or purchased with funds provided for that purpose under this Agreement, shall be the property of the State, and shall be returned to the State upon demand or upon termination of this Agreement for any reason.

9.3 Confidentiality of data shall be governed by N.H. RSA chapter 91-A or other existing law. Disclosure of data requires prior written approval of the State.

10. **TERMINATION.** In the event of an early termination of this Agreement for any reason other than the completion of the Services, the Contractor shall deliver to the Contracting Officer, not later than fifteen (15) days after the date of termination, a report ("Termination Report") describing in detail all Services performed, and the contract price earned, to include including the date of termination. The form, subject matter, content, and number of copies of the Termination

Report shall be identical to those of any Final Report described in the attached EXHIBIT A.

11. **CONTRACTOR'S RELATION TO THE STATE.** In the performance of this Agreement the Contractor is in all respects an independent contractor, and is neither an agent nor an employee of the State. Neither the Contractor nor any of its officers, employees, agents or members shall have authority to bind the State or receive any benefits, workers' compensation or other emoluments provided by the State to its employees.

12. **ASSIGNMENT/DELEGATION/SUBCONTRACTS.** The Contractor shall not assign, or otherwise transfer any interest in this Agreement without the prior written consent of the N.H. Department of Administrative Services. None of the Services shall be subcontracted by the Contractor without the prior written consent of the State.

13. **INDEMNIFICATION.** The Contractor shall defend, indemnify and hold harmless the State, its officers and employees, from and against any and all losses suffered by the State, its officers and employees, and any and all claims, liabilities or penalties asserted against the State, its officers and employees, by or on behalf of any person, on account of, based or resulting from, arising out of (or which may be claimed to arise out of) the acts or omissions of the Contractor. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant in paragraph 13 shall survive the termination of this Agreement.

14. INSURANCE.

14.1 The Contractor shall, at its sole expense, obtain and maintain in force, and shall require any subcontractor or assignee to obtain and maintain in force, the following insurance:

14.1.1 comprehensive general liability insurance against all claims of bodily injury, death or property damage, in amounts of not less than \$250,000 per claim and \$2,000,000 per occurrence; and

14.1.2 fire and extended coverage insurance covering all property subject to subparagraph 9.2 herein, in an amount not less than 80% of the whole replacement value of the property.

14.2 The policies described in subparagraph 14.1 herein shall be on policy forms and endorsements approved for use in the State of New Hampshire by the N.H. Department of Insurance, and issued by insurers licensed in the State of New Hampshire.

14.3 The Contractor shall furnish to the Contracting Officer identified in block 1.9, or his or her successor, a certificate(s) of insurance for all insurance required under this Agreement. Contractor shall also furnish to the Contracting Officer identified in block 1.9, or his or her successor, certificate(s) of insurance for all renewal(s) of insurance required under this Agreement no later than fifteen (15) days prior to the expiration date of each of the insurance policies. The certificate(s) of insurance and any renewals thereof shall be

attached and are incorporated herein by reference. Each certificate(s) of insurance shall contain a clause requiring the insurer to endeavor to provide the Contracting Officer identified in block 1.9, or his or her successor, no less than ten (10) days prior written notice of cancellation or modification of the policy.

15. WORKERS' COMPENSATION.

15.1 By signing this agreement, the Contractor agrees, certifies and warrants that the Contractor is in compliance with or exempt from, the requirements of N.H. RSA chapter 281-A ("*Workers' Compensation*").

15.2 To the extent the Contractor is subject to the requirements of N.H. RSA chapter 281-A, Contractor shall maintain, and require any subcontractor or assignee to secure and maintain, payment of Workers' Compensation in connection with activities which the person proposes to undertake pursuant to this Agreement. Contractor shall furnish the Contracting Officer identified in block 1.9, or his or her successor, proof of Workers' Compensation in the manner described in N.H. RSA chapter 281-A and any applicable renewal(s) thereof, which shall be attached and are incorporated herein by reference. The State shall not be responsible for payment of any Workers' Compensation premiums or for any other claim or benefit for Contractor, or any subcontractor or employee of Contractor, which might arise under applicable State of New Hampshire Workers' Compensation laws in connection with the performance of the Services under this Agreement.

16. WAIVER OF BREACH. No failure by the State to enforce any provisions hereof after any Event of Default shall be deemed a waiver of its rights with regard to that Event of Default, or any subsequent Event of Default. No express failure to enforce any Event of Default shall be deemed a waiver of the right of the State to enforce each and all of the provisions hereof upon any further or other Event of Default on the part of the Contractor.

17. NOTICE. Any notice by a party hereto to the other party shall be deemed to have been duly delivered or given at the time of mailing by certified mail, postage prepaid, in a United States Post Office addressed to the parties at the addresses given in blocks 1.2 and 1.4, herein.

18. AMENDMENT. This Agreement may be amended, waived or discharged only by an instrument in writing signed by the parties hereto and only after approval of such amendment, waiver or discharge by the Governor and Executive Council of the State of New Hampshire.

19. CONSTRUCTION OF AGREEMENT AND TERMS. This Agreement shall be construed in accordance with the laws of the State of New Hampshire, and is binding upon and inures to the benefit of the parties and their respective successors and assigns. The wording used in this Agreement is the wording chosen by the parties to express their mutual

intent, and no rule of construction shall be applied against or in favor of any party.

20. THIRD PARTIES. The parties hereto do not intend to benefit any third parties and this Agreement shall not be construed to confer any such benefit.

21. HEADINGS. The headings throughout the Agreement are for reference purposes only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

22. SPECIAL PROVISIONS. Additional provisions set forth in the attached EXHIBIT C are incorporated herein by reference.

23. SEVERABILITY. In the event any of the provisions of this Agreement are held by a court of competent jurisdiction to be contrary to any state or federal law, the remaining provisions of this Agreement will remain in full force and effect.

24. ENTIRE AGREEMENT. This Agreement, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire Agreement and understanding between the parties, and supersedes all prior Agreements and understandings relating hereto.

EXHIBIT A

SCOPE OF SERVICES

- I. The scope of services is set forth in the following documents, which are hereby incorporated by reference into this Agreement:
 - A. The "Request for Proposal for Legal Consulting Services" (hereinafter "RFP") (Attachment 1 hereto) issued by the New Hampshire Lottery Commission (hereinafter referred to as "NHLC") on March 12, 2012.
 - B. The Proposal, dated April 17, 2012, submitted by McLane, Graf, Raulerson & Middleton (hereinafter "Contractor") in response to the RFP. A copy of the Proposal is on file with the Commission.
- II. Contractor agrees to perform the following services for the Commission:
 - A. Perform an annual trademark watch service for federally registered service marks owned now or in the future by the Commission. The Contract shall review all watch notices, provide the Commission with an analysis of any potential infringement and provide recommendations on proceeding.
 - B. Prepare and file any Powers of Attorney as needed to continue use and renewal of filings for service mark registrations.
 - C. To the extent the contract permits, provide assistance, counseling and litigation support pertaining to other intellectual property law related issues and matters including, but not limited to pending or threatened litigation, web site domain issues, and patent registration and infringement matters.

EXHIBIT B

PAYMENT SCHEDULE

- I. The maximum amount of the two year contract is \$15,000.
- II. All invoices are to be sent to the New Hampshire Lottery Commission, 14 Integra Drive, Concord, New Hampshire, 03301.

EXHIBIT C

SPECIAL PROVISIONS

- I. The Commission has the sole option to renew this contract for up to one period of two years with the written consent of both parties and at the current fee structure, subject to approved funding. The Commission shall notify the Contractor no later than February 28, 2014 whether or not the Commission intends to exercise the one two year option.

- II. Both parties agree that the "Contractor" shall, at its sole expense, obtain and maintain in force, and shall require any subcontractor or assignee to obtain and maintain in force, the following insurance: Comprehensive general liability insurance against all claims of bodily injury, death or property damage, in amounts of not less than One Hundred Fifty Thousand Dollars (\$150,000.00) per claim and \$2,000,000 per occurrence is adequate for the purposes of this contract.