

**State Lottery Commission of Indiana
1302 N. Meridian Street, Suite 100
Indianapolis, IN 46202**

INVITATION TO BID

FOR

RANDOM NUMBER GENERATOR SOFTWARE TESTING AND CERTIFICATION

NOVEMBER 17, 2016

BID DUE DATE – December 16, 2016 – 3:00 p.m. Eastern

BIDS MUST BE SUBMITTED BY DATE AND TIME SHOWN ABOVE

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SECTION I
GENERAL CONDITIONS AND PROCEDURES

- 1.1 Purpose.** The purpose of this Invitation to Bid (ITB) is to solicit Bids from qualified Respondents to provide Testing and Certification for Random Number Generator (RNG) Software currently used by the State Lottery Commission of Indiana (Hoosier Lottery or Lottery) to select winning numbers for draw games. The details of the services required are more fully set out in Section II. Nothing in this ITB is to be construed as a legal offer. The Lottery requests that all Respondents examine the specific requirements contained in this ITB and prepare their responses pursuant to the terms of this ITB.

The Hoosier Lottery currently conducts RNG software-based drawings for three (3) of its regularly scheduled draw games: Hoosier Lotto with +PLUS, Cash 5, and Quick Draw. Cash 5 is drawn once every day in the evening. Quick Draw is drawn twice daily, once at midday and once in the evening. Hoosier Lotto with +PLUS is drawn twice weekly on Wednesday and Saturday evenings. Raffle-style drawings are conducted at various times throughout the year. Two of the Lottery's draw games (Daily 3 and Daily 4) are drawn using traditional ball drop machines. However, these games have been coded on the RNG system as a backup drawing method. Some of the online games contain add-on features, some such initiatives in the works for future release include a "Bullseye" add-on to the Quick Draw game and a "Superball" add-on feature to the Daily 3 and Daily 4 games.

Respondents must be capable of certifying the software for any changes or additions to the existing draw games. Randomness certification, when requested, will consist of data collection of test results and application of various mathematical tests to ensure an appropriate level of randomness. Source code review, when requested, will consist of reviewing software source code to ensure that no malicious code exists that could compromise or pre-determine drawing results.

- 1.2 Definitions.** The following are definitions of terms that will be used throughout this Invitation To Bid:

BID	All materials submitted by a Respondent in response to this ITB, including but not limited to questions submitted by all Vendors and answers provided by the Lottery.
CONTRACT	Agreement entered into by and between the Lottery and the Successful Vendor for the services described in this ITB, which shall include the terms of this ITB and any other terms mutually agreed upon by the parties.
CONTRACTOR	The Vendor whose bid is selected and who executes a Contract with the Lottery to deliver the goods and services.
EXECUTIVE DIRECTOR	The Executive Director of the Lottery.
ITB	Invitation to Bid. Refers to this document and any written amendments or modifications hereto.
LOTTERY	The State Lottery Commission of Indiana, d/b/a The Hoosier Lottery.
LOTTERY ACT	IC 4-30-1-1, <i>et seq.</i> , as supplemented by 65 IAC 1-1-1 <i>et seq.</i>

RESPONDENT

An offeror that is one entity or individual who will ultimately be responsible for the performance of the contract.

SUCCESSFUL VENDOR

The Vendor selected by the Executive Director to provide the goods and services and with whom Contract negotiations are initiated.

- 1.3 Point of Contact.** The Lottery is the sole point of contact with regard to this procurement and all contractual matters related to the services being solicited. All communications concerning this ITB, including submission of the Bid, must be addressed in writing to the contact person identified in Section 1.5.

No contact will be allowed regarding this ITB between a Respondent and any member of the Lottery Commission or Lottery staff after issuance of this ITB with the exception of the Lottery contact person. Any such unauthorized contact may result in that Respondent being disqualified from further consideration. Should you desire additional information to assist in the bid process, please send communication to the contact person identified in Section 1.5. Please be as detailed as possible regarding the information requested. Please note that the Lottery's recent Annual Reports are located on the website: hoosierlottery.com.

- 1.4 Non-Collusion.** Respondents shall not offer any incentive to, or otherwise attempt to influence any employee of the Lottery or member of the Lottery Commission regarding this ITB. Any approaches to persons other than the contact person may, at the discretion of the Executive Director, result in the rejection of the Respondent's Bid.

1.5 Timeline.

- A. Questions from Respondents are due to the Lottery, in writing, no later than **November 30, 2016**.
- B. Responses to all questions received shall be made available to all potential Respondents no later than **December 6, 2016**.
- C. All Bid materials must be received by the Lottery no later than 3:00 pm Eastern, **December 16, 2016**, however there will be no formal Bid opening at this time. Bids received after the deadline will not be considered for evaluation. The Lottery will not accept faxed bids. Bids must be submitted in a sealed container addressed to:

Carrie Stroud, Chief of Staff
Hoosier Lottery
1302 N. Meridian St.
Indianapolis, IN 46202
e-mail: cstroud@hoosierlottery.in.gov

- D. Selection of Successful Bidder will be determined by **December 30, 2016**.

- 1.6 Bid Requirements.** In order to facilitate the timely evaluation of Bids, a standard format for Bids has been developed. Bids shall be submitted in accordance with the following requirements:
- A. Bids must include a transmittal letter, supported by appropriate documentation, which is signed by a representative of the Respondent authorized to commit the organization's resources.
 - B. Bids must be organized to correspond to and specifically reference by number and letter the subsections in Section II and Section III of this ITB.
 - C. Respondent must supply all information requested in a clear and concise manner.
 - D. Only one (1) Bid may be submitted by each Respondent.

- E. Bids must remain valid for a period of one hundred twenty (120) days from the date of Bid opening.
- F. Bids shall include one (1) printed original document and one (1) electronic copy (provided in portable document format (PDF.)) The electronic copy may either be transmitted electronically to the Lottery's point of contact or delivered with the hard copies on a CD-R or flash drive. If the Respondent has supplied information in its proposal that it deems to be confidential, as defined in section 1.18, then the bidder should include a redacted copy of the Bid in electronic format (PDF), which may be publicly disclosed.

Failure to follow the prescribed format or respond completely may result in rejection of the Bid. By submitting a Bid in response to this ITB, Respondent is deemed to accept the terms and conditions set forth herein.

- 1.7 **Sealed Bids.** A Bid must be submitted in a sealed container that is clearly marked with the words "**For Random Number Generator Software Testing and Certification.**" Bid must be signed by a representative authorized to commit the organization's resources. The bid must include Respondent's name, address and phone number.
 - 1.8 **Modifications or Withdrawal of Bids.** Respondent may amend, modify or otherwise change its Bid provided such is done in writing and submitted to the Lottery contact person prior to the deadline for Bid submission. No modifications or withdrawals of Bids shall be allowed after the deadline set for receipt of the Bids.
 - 1.9 **Bid Clarifications.** At its discretion, the Lottery may seek or accept clarification of a Bid after the deadline for Bid submission. Any written clarification submitted by a Respondent and accepted by the Lottery shall become a part of Respondent's Bid. The Lottery has no duty to ask a Respondent for clarification of its Bid if its response to this ITB is incomplete.
 - 1.10 **Non-Material and Material Deviations.** The Lottery may reject all or part of any Bid if it is conditional, incomplete or not in compliance with the requirements and specifications contained in this ITB. At its discretion, the Lottery may consider Bids with non-material deviations from the requirements of this ITB.
 - 1.11 **Acceptance/Rejection of Bids.** The issuance of this ITB in no way constitutes a commitment by the Lottery to award a contract. The Lottery reserves the right to reject any and all Bids or portions of Bids received in conjunction with this ITB or to cancel this ITB.
- In the event that all Respondents fail to meet one (1) or more of the requirements of this ITB, the Lottery reserves the right to continue the evaluation of the Bids and to select the Bid which most closely meets the specifications of this ITB and the needs of the Lottery.
- 1.12 **Property of the Lottery.** All materials submitted as a part of the Bid become the property of the Lottery. Regardless of acceptance or rejection of a Bid, the Lottery has the right to use any and all ideas contained in the Bid.
 - 1.13 **Evaluation Committee and Award.** All Bids received from Respondents will be reviewed and evaluated by a committee of Lottery personnel appointed by the Executive Director or the Executive Director's designee. The Evaluation Committee will evaluate each Bid and determine the Bid that best addresses the applicable provisions of the ITB, offers the best overall range of benefits and is considered most advantageous to the Lottery. The Evaluation Committee will report its recommendation to the Executive Director. The Executive Director will review the Committee's recommendation and

determine whether to seek clarification, request additional information, or proceed with an award of the Contract.

- 1.14 Evaluation Criteria.** The criteria used to evaluate Bids shall be both objective and subjective. Any Contract award pursuant to this ITB shall be to the Respondent whose Bid best addresses the applicable provisions of the ITB, offers the best overall range of benefits and is considered most advantageous to the Lottery. The following criteria are deemed to be relatively important in the evaluation process but none of the criteria shall provide the sole basis for any Contract award:
- A. Pricing.** Bids will be evaluated on the total cost to the Lottery.
 - B. Experience and Performance.** Bids will be evaluated on Respondent's demonstrated past experience and performance in providing services similar to the requirements of this ITB.
 - C. Compliance with the ITB.** Bid must be responsive and accurate with respect to all written specifications and requirements contained in the ITB. Bids that are deemed to be conditional, incomplete or otherwise do not conform to the requirements and specifications may be considered non-responsive and rejected by the Lottery.
 - D. Thoroughness of Bid.** Bids must be thorough in describing the plan for providing the services to the Lottery as requested in this ITB.
 - E. Financial Stability.** Respondent must have sufficient resources, personnel and financial stability to provide the services required in this ITB.
 - F. Other Factors.** Bids will be evaluated on any other factors that the Lottery, in its discretion, determines to be relevant to this evaluation, including factors that may benefit the Lottery.
- 1.15 Appeals.** All appeals arising out of this ITB are subject to the regulations promulgated by the Lottery, specifically, 65 IAC 2-5-1 *et seq.* Appeals must be submitted in writing and received by the Lottery contact person within seventy-two (72) hours of the determination or public announcement of the determination.
- 1.16 Contract Negotiations.** Upon announcement of an award, the successful Vendor and Lottery will enter into negotiations which may, at the discretion of the Lottery, include executing a Contract for services. If, at any time during Contract negotiations the Lottery determines that negotiations are ineffective and further efforts would be futile, it may cease all activities with the successful Vendor and initiate Contract negotiations with the Respondent offering the next best Bid. This process may continue until either a completed Contract is executed or the Lottery determines that no acceptable alternate Bid exists.
- 1.17 News Releases.** Respondent, its agents or employees, shall not issue news releases of any kind, in writing or orally, pertaining to this ITB until after the execution of a Contract with the Lottery. Any such release prior to the award of a contract under this ITB may result in disqualification.
- 1.18 Disclosure and Confidentiality.** All Contracts, Bids and other documentation arising out of this ITB are public records, subject to disclosure pursuant to the Indiana Access to Public Records Act, I.C. 5-14-3-1, *et seq.* and Lottery Rules, 65 IAC 1-2-1, *et seq.* Any confidential information that may be exempt from public disclosure under IC 5-14-3-4 must be identified as such by plainly marking the same "Confidential Information." Only the confidential portion(s) should be so identified and marked. An entire page or paragraph in which such information appears should not be marked confidential unless the entire page or paragraph consists of such confidential information. The Lottery shall not disclose confidential information to third parties to the extent allowed under the Indiana Access to Public Records Act and other applicable law. Pricing may not be designated as confidential.

- 1.19 Liability of Lottery.** The Lottery is not, and shall not be, liable for any costs incurred by Respondents as a result of responding to this ITB. The total liability of the Lottery is limited to the terms and conditions of the ITB and any Contract that may result from said ITB.
- 1.20 Tax Exempt Status.** The Lottery is exempt from federal, state and local taxes. The Lottery is not, and shall not be, responsible for taxes levied on or due from the successful Vendor or any other person.
- 1.21 Non-Exclusive Right.** Nothing in this ITB or the resulting Contract shall preclude the Lottery from purchasing goods or services similar to those described herein from other sources.

SECTION II SPECIFIC REQUIREMENTS

- 2.1 General Information and Respondent Certification.** When providing the following information and disclosures, Respondent shall respond with as much detail as would be helpful to the Lottery in determining Respondent's ability to provide the necessary services.

Corresponding with and specifically referencing this subsection, the Respondent must certify in its Bid that it is able to meet all of the specifications in Section II and Section III. If it cannot meet any specification, Respondent must specifically describe how it fails to meet the specification and describe any alternatives to the specifications that cannot be met.

2.1.1 General Information

- a. Provide the name and the address of its principal place of business.
- b. Provide the name of owners and officers as follows:
 1. If a corporation, the names of all corporate officers, directors, and stockholders having five percent (5%) or more in equity or securities of the corporation.
 2. If a company or other association, the names of all the members, officers, and directors.
 3. If a partnership or joint venture, the names of all of the general partners, limited partners, or joint venturers.
 4. If a sole proprietorship, the name of the owner.
- c. Provide an organizational chart highlighting the names and positions of those key individuals who will perform work in relation to this ITB.
- d. If subcontractors are to be used, disclose the same information required of the Respondent herein regarding the subcontractors.
- e. Disclose, to the best of Respondent's knowledge and belief, any Lottery employee or Commissioner or their respective family members who hold any interest, financial or otherwise, in Respondent, or if such a person is an officer or director of Respondent.

- 2.1.2 Experience. Provide a description of past and present experience, including, but not limited to: A brief history of the business, including the number of years it has been in business, major clients, organizational structure, trade affiliations and any parent/subsidiary affiliation with other entities. A description of any unique qualities it has which will enhance the services that will be supplied pursuant to this ITB. A description of the experience of personnel relevant to Respondent's Bid will also be provided. (List names, titles, qualification and certifications).

2.1.3 Past Contract Issues or Litigation

- a. Provide a description of any contracts which Respondent was awarded but was unable to honor.
- b. Provide a description of any pending and/or threatened litigation involving Respondent.
- c. List any existing contracts or agreements, or any past contracts or agreements with the Hoosier Lottery.

2.1.4 Financial Stability

- a. Provide a description of all bankruptcy, reorganization, insolvency or default on bond or loan obligations within the last ten (10) years.
- b. Provide a description of any pending or anticipated sale, merger or purchase of the Respondent.
- c. Provide either:
 1. Respondent's complete financial statements (income statement, balance sheet, and statement of cash flows) for each of the two (2) most recently completed fiscal years audited by a certified public accountant verifying that the audit was conducted; or
 2. In the event that the Respondent's income statement and balance sheets are not independently audited, the Respondent's income statement and balance sheet for each of the two (2) most recently completed fiscal years and copies of the Respondent's income tax returns for those same years.

2.1.5 References. List all lotteries to which it has provided services and the nature of those services. Provide three (3) business references that are currently using services similar to those being proposed in this ITB, including a contact name, phone number, and address. A detailed description of the type of goods or services provided to those clients should be included. The Lottery may contact any of the references listed and inquire about the quality of the services supplied by the Respondent.

2.1.6 Lottery Act. The respondent will represent and warrant to the Lottery in its proposal that the Respondent:

- a. Has read and is familiar with the Lottery Act.
- b. Complies specifically with the provisions of Indiana Code 4-30-3-19.
- c. Understands that the Lottery will request a security check be completed for all selected respondents conducting audit work.

2.2 Requirements.

The Lottery utilizes the Origin™ Digital Drawing System manufactured by Smartplay International of Edgewater Park, NJ. All engagements involve working directly with Smartplay to coordinate hand-off of the software from Smartplay to the Respondent. A supervised build should occur during the hand-off in which the two parties witness the compilation of the software and confirm that the executable code being analyzed was in fact derived from the source code submitted.

The current games offered by the Lottery that have been programmed and reside on the Smartplay Origin™ system are shown below.

Game	Matrix
Hoosier Lotto	6 of 46 without replacement
Quick Draw	20 of 80 without replacement
Daily 3	3 of 10 with replacement
Daily 4	4 of 10 with replacement
Cash 5	5 of 41 without replacement
2 nd Chance / Raffle	Variable

Note that Daily 3 and Daily 4 are drawn using traditional ball-drop machines. However, these games exist on the Smartplay Origin™ Digital Drawing System as a backup method.

All engagements will require a written report as a deliverable. Engagements may involve certifying changes to the existing set of games or possibly certifying entirely new games. Proposals may include one or more sample reports (redacted if necessary), which is considered desirable by the Lottery.

There are two main components of the Origin™ system – the Random Number Server (RNS) and the User Interface (UI). Certain software signatures are derived when the program executables are created, including SHA-1 and MD5 signatures. The written certification report for any engagement must include these signatures values for both components. The Lottery confirms these signatures prior to all drawings.

- a. Respondents' proposals must describe its organization's ability to perform data collection for gaming applications such as lottery games similar to those listed above. Proposals should identify the number of test runs that would be deemed appropriate for each of the games listed above.
- b. Respondents' proposals must describe its organization's ability to perform randomness certification for gaming applications such as lottery games similar to those listed above.
- c. Respondents' proposals should identify and describe the types of mathematical tests that would be utilized to test for randomness using the games supplied above as an indication of the types of games offered by the Lottery.
- d. Respondents' proposals must describe its organization's ability to perform source code review of gaming applications such as lottery games similar to those listed above. The purpose of the source code review is to confirm that there is no extraneous malicious code that would compromise the drawing outcomes or allow the outcomes to be manipulated or predicted.
- e. Respondents must provide an organizational chart outlining the roles and descriptions of staff who would be assigned to the Lottery's account.

2.3 Pricing.

Each Respondent must submit pricing the services as specified in the ITB. Any costs not specifically identified in the Bid by name and amount will not be honored in any subsequent Contract. Respondent agrees that it will be solely and wholly responsible for any costs that may arise in the performance of the services delineated herein and that are not specifically identified in the Bid. Accordingly, Respondent will hold the Lottery harmless for any additional costs the Respondent fails to anticipate. The cost proposal should include the following components, identified separately:

Single-Game Fixed Cost for RNG Analysis - Pricing on a per-game basis for the collection of data and review for randomness of the results of the application.

Single-Game Fixed Cost for Software Source Code Review – Pricing on a per-game basis for the review of source code in order to confirm that no malicious code exists that could compromise or pre-determine the results of any drawings.

Additional Costs and Hourly Rate - Pricing at an hourly rate for any work beyond the normal scope of testing for an engagement, if needed.

It is anticipated that most engagements would require both RNG Analysis and a Software Source Code Review. An exception to this might involve a game change requiring cosmetic changes to the display or reporting that does not involve a change to the game matrix. In such cases, the Lottery may elect to request only a Software Source Code Review.

SECTION III
TERMS AND MISCELLANEOUS CONDITIONS

- 3.1 Contract Terms.** The Lottery's contract terms will provide the base terms for any negotiations upon an award to a Successful Vendor. Respondent must identify any terms or conditions that it proposes to modify and include any terms and conditions it seeks to have added. Excessive requests for modifications and additions may be considered non-responsive and may disqualify Respondent's Bid. The Lottery is not obligated to accept any of the proposed modifications or additions.
- 3.2 Term.** This Contract shall be for an initial term of four (4) years with, at the sole option of the Lottery, four (4) additional one (1) year terms.
- 3.3 Minority- and Women-Owned Business Participation.** The Lottery is committed to ensuring there is equitable participation of minority- and women-owned business enterprises (MBE/WBE) in all phases of Lottery operations. Each Respondent must submit with its Bid a brief description of how its Bid will help the Lottery meet its commitment. If the Respondent is a MBE/ WBE, the Respondent shall include reasonable evidence of its MBE/WBE certification. If subcontractors are anticipated, Respondent must describe whether it will subcontract with certified minority- and women-owned or controlled businesses in the performance of the services hereunder, including the name and location of the subcontractor and evidence of MBE/WBE certification. The successful Vendor agrees to submit a copy of the agreement entered into between the successful Vendor and each certified MBE/WBE subcontractor upon request.
- 3.4 Secretary of State Approval.** Corporations, limited partnerships, limited liability partnerships and limited liability companies doing business with the Lottery must be approved by the Secretary of State to do business in the State of Indiana. If Respondent is not so approved, Respondent should contact:

Secretary of State
Corporation Division, Room E018
Indiana Government Center South
302 West Washington Street
Indianapolis, IN 46204
(317) 232-6531

Attach a copy of Respondent's certificate of existence or advise the Lottery of the status of Respondent's request for said certificate.

- 3.5 Tax Clearance.** Provide the Lottery with a tax clearance statement from the Indiana Department of Revenue certifying that the Respondent is not on the most recent tax warrant list.
- 3.6 Lottery Act Requirements.** Respondent must warrant to the Lottery in its proposal that the Respondent is familiar with the Lottery Act, Indiana Code 4-30 et seq., and it understands that it will be bound by all provisions of the Lottery Act including the provisions prohibiting ticket purchases by officers or employees of Lottery vendors.
- 3.7 Assignment and Subcontracting.** The Successful Vendor binds its successors and assignees to all the terms and conditions of the Contract. The Successful Vendor shall not assign or subcontract the whole or any part of its Contract duties without prior written consent of the Lottery. The Lottery reserves the right to require the Successful Vendor to replace subcontractors found to be

unacceptable. The Successful Vendor is totally responsible for adherence by the subcontractor to all provisions of the Contract including providing proof of insurance and background checks. Any change in subcontractors as part of the Contract shall be approved by the Lottery, in writing, prior to such change.

- 3.8 Payment Terms.** Successful Vendor shall submit detailed billing statements to the Lottery and the Lottery shall pay such statements, subject to satisfactory completion of the billed work and resolution of any disputes, within thirty (30) days of its receipt thereof.
- 3.9 Condition of Payment.** All services provided by the Successful Vendor must be performed to the Lottery's reasonable satisfaction, as determined in section 3.8 at the discretion of the Executive Director, and in accordance with all applicable federal, state, local laws, rules, and regulations. The Lottery shall not be required to pay for work found to be unsatisfactory, inconsistent with the terms and conditions of the ITB or Contract, or performed in violation of federal, state, or local statute, rule, or regulation.
- 3.10 Governing Laws.** This Contract shall be construed in accordance with and governed by the laws of the State of Indiana and all claims or suits arising under this Contract shall be brought and maintained in Marion County, Indiana.
- 3.11 Nondiscrimination.** Pursuant to the Indiana Civil Rights Law, specifically including IC 22-9-1- 10, the Successful Vendor covenants that it shall not discriminate against any employee or applicant for employment relating to this ITB or the Contract with respect to the hire, tenure, terms, conditions, or privileges of employment or any matter directly or indirectly related to employment because of the employee or applicant's: race, color, national origin, religion, sex, age, disability, ancestry, status as a veteran, or any other characteristic protected by federal, state, or local law.
- 3.12 Audits.** Contractor acknowledges that it may be required to submit to an audit of funds paid through this Contract. Any such audit shall be conducted in accordance with IC 5-11-1, et. seq. and audit guidelines specified by the Lottery.
- 3.13 Disputes.** The Contractor and the Lottery agree to act immediately to resolve any and all disputes that may arise with respect to this Contract. Time is of the essence in the resolution of disputes. The Contractor and the Lottery agree to abide by all administrative rules governing the Lottery with respect to Vendor Appeals and Claims, including but not limited to 65 IAC 2-5-6 et seq. The Contractor agrees that, the existence of a dispute notwithstanding, it will continue without delay to carry out all its responsibilities under this Contract that are not affected by the dispute. The Lottery may withhold payments on work that is in good faith dispute, pending resolution of the dispute, but shall in no event withhold timely payment of all undisputed work. The nonpayment by the Lottery to the Contractor of one or more disputed work items in accordance with the terms of this Contract shall not be deemed an act of default and will not be cause for Contractor to terminate the Contract.
- 3.14 Termination.** Notwithstanding any other provision of this Contract to the contrary, this Contract may be terminated in whole or in part upon the following conditions:
1. Insolvency. The Lottery may immediately terminate this Contract without liability of the Lottery and without prejudice to any rights and causes of action the Lottery may have against the Contractor, if:
 - a. contractor files a voluntary petition or is the subject of an involuntary petition in bankruptcy or is adjudged bankrupt;
 - b. contractor makes a general assignment for the benefit of creditors; or

- c. a receiver is appointed due to the Contractor's insolvency and the appointment is not dismissed within thirty (30) days.
2. **Default.** When the Lottery determines that the Contractor has failed to perform any provision of this Contract and that the Contractor has failed to cure such failure to perform within thirty (30) days after written notice by the Lottery, the Lottery may immediately terminate this Contract without liability to the Lottery and without prejudice to any right or cause of action the Lottery may have against the Contractor. In addition, if the Lottery terminates this Contract, it may acquire, under the terms and in the manner the Lottery considers appropriate, supplies or services similar to those terminated, and the Contractor will be liable to the Lottery for any excess costs for those supplies or services. The rights and remedies provided herein shall not be exclusive and are in addition to any other available rights and remedies provided at law or in equity or under this Contract.
3. **Convenience.** The Lottery may terminate this Contract, in whole or in part, when it is in the best interest of the Lottery or the State of Indiana as determined by the Lottery. Termination of services shall be effected by delivery to the Contractor of a Termination Notice at least thirty (30) days prior to the termination effective date. If this Contract is so terminated, the Lottery shall be liable only for payment in accordance with the terms of this Contract for services rendered prior to the effective date of termination.
4. **State Action.** The Lottery may immediately terminate this Contract without prejudice to any right or cause of action the Lottery may have against Contractor if the State of Indiana enacts a statute or the Governor of the State of Indiana issues a mandate that removes the authority or ability of the Lottery to continue its operations. In the event of such action, the Lottery shall send written notice of the action to the Contractor. The Lottery shall have no other liability or obligation to Contractor in connection with any termination under this Section, including, but not limited to any obligations for claims of lost profits or other consequential damages.

3.15 Force Majeure. In the event that either party is unable to perform any of its obligations under this Contract or to enjoy any of its benefits because of natural disaster or decrees of governmental bodies not the fault of the affected party (hereinafter referred to as a "Force Majeure Event"), the party who has been so affected shall immediately give notice to the other party and shall do everything possible to resume performance. Upon receipt of such notice, all obligations under this Contract shall be immediately suspended. If the period of nonperformance exceeds thirty (30) days from the receipt of notice of the Force Majeure Event, the party whose ability to perform has not been so affected may, by giving written notice, terminate this Contract.

3.16 Infringement of Patents, Trademarks, and Copyrights. Contractor warrants that the products and services to be provided by Contractor under the Contract shall not infringe upon any patents, trademarks, or copyrights of any other person. Contractor shall obtain, at its expense, any and all licenses or consents of others required to avoid infringement in connection with its performance under this Contract. Contractor shall defend the Lottery against any claim that services and/or materials supplied hereunder infringe upon any U.S. patent, copyright, or trademark. Contractor shall pay any and all judgments, costs, and expenses of any kind, including without limitation attorney's fees, against or incurred by the Lottery in connection with any such claims.

3.17 Confidentiality of Contractor Information. Contractor acknowledges that the Lottery is subject to the Access to Public Records Act of Indiana such that any writing, paper, report, study, map, photograph, book, card, tape recording, or other material that is created, received, retained, maintained, or filed by or with the Lottery, regardless of form or characteristics, may be considered a public record and any person may have a right to inspect and copy the same. To the extent that the

Contractor discloses to the Lottery certain information that is considered confidential and proprietary under the Access to Public Records Act, including without limitation trade secrets and confidential financial information, Contractor agrees to identify such confidential or proprietary information by plainly marking the same as "Confidential Information." The Lottery agrees to maintain the confidentiality of the Contractor's marked information to the extent allowed under the Indiana Access to Public Records Act and other applicable law.

- 3.18 Confidentiality of Lottery Information.** The Contractor understands and agrees that data, materials, and information disclosed to Contractor by the Lottery may contain confidential and protected information. The Contractor covenants that data, material, and information gathered, based upon, or disclosed to the Contractor for the purpose of this Contract, will not be disclosed to or discussed with third parties without the prior written consent of the Lottery. The data, materials and information subject to this agreement does not include any information which: (i) was known to Contractor notwithstanding disclosure by the Lottery; (ii) is available or becomes generally available to the public other than through a breach of this Agreement by Contractor; (iii) is acquired or received rightfully and without confidential limitation by Contractor from a third party; (iv) is independently developed by Contractor without breach of this Agreement; or (v) is required by applicable law or court order.
- 3.19 Access to Records.** The Contractor and its subcontractors, if any, shall maintain all books, documents, papers, accounting records, and other evidence pertaining to all costs incurred under this Contract. They shall make such materials available at their respective offices at all reasonable times during this Contract term, and for three (3) years from the date of final payment under this Contract, for inspection by the Lottery or its authorized designees. Copies shall be furnished at no cost to the Lottery if requested.
- 3.20 Compliance with Laws.** The Contractor shall comply with all applicable federal, state and local laws, rules, regulations and ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. Contractor agrees to indemnify and hold harmless the Lottery from any loss, damage or liability, resulting from a violation on the part of Contractor of such applicable laws, rules, regulations, ordinances or orders. Contractor acknowledges that the Contractor is specifically subject to Indiana Code §4-30 et seq. and the provisions of Title 65 of the Indiana Administrative Code.
- 3.21 Nondiscrimination.** Pursuant to IC 22-9-1-10, the Contractor and its subcontractors shall not discriminate against any employee or applicant for employment to be employed in the performance of this Contract with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of race, color, religion, sex, disability, national origin, ancestry or any other characteristic protected by law. Breach of this covenant may be regarded as a material breach of this Contract.
- 3.22 Ethical Requirements.** The Contractor and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with the State of Indiana, as set forth in Indiana Code § 4-2-6 et seq., the regulations promulgated there under, and Executive Order 04-08, dated April 27, 2004. If the contractor is not familiar with these ethical requirements, the contractor should refer any questions to the State Ethics Commission, or visit the State Ethics Commission website at <http://www.in.gov/ethics/>. If the Contractor or its agents violate any applicable ethical standards, the Lottery may, in its sole discretion, terminate this Contract immediately upon notice to the contractor. In addition, the Contractor may be subject to penalties under Indiana Code § 4-2-6-12.

3.23 Drug-Free Workplace Certification. The Contractor hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace. The Contractor will give written notice to the Lottery within ten (10) days after receiving actual notice that the Contractor or an employee of the Contractor in the State of Indiana has been convicted of a criminal drug violation occurring in the Contractor's workplace. The Contractor acknowledges that it may be subject to the provisions of Executive Order 90-5 for the Promotion of a Drug Free Indiana. A determination by the Lottery that the Contractor failed to meet the drug-free workplace requirements constitutes a breach of this contract.

3.24 Licensing Standards. The Contractor and its employees and subcontractors shall comply with all applicable licensing standards, certification standards, accrediting standards and any other laws, rules or regulations governing services to be provided by the Contractor pursuant to this Contract. The Lottery shall not be required to pay the Contractor for any services performed when the Contractor or its employees or subcontractors are not in compliance with such applicable standards, laws, rules or regulations. If licensure, certification or accreditation expires or is revoked, or if disciplinary action is taken against the applicable licensure, certification, or accreditation, the Contractor shall notify Lottery immediately and the Lottery, at its option, may immediately terminate this Contract.

The Contractor warrants that the Contractor and its subcontractors, if any, shall obtain and maintain all required permits, licenses, and approvals, as well as comply with all health, safety, and environmental statutes, rules, or regulations in the performance of work activities for the Lottery. Failure to do so may be deemed a material breach of this Contract and grounds for immediate termination and denial of further work with the Lottery.

3.25 Investigation of Contractor. All persons who will provide direct services to the Lottery under a contract with the Lottery, including key management and those working inside Lottery offices, must submit to local, state, and, at the discretion of the Lottery, national criminal background clearance. The Lottery will undertake a background investigation on behalf of the Contractor and its employees for a fee of twenty-five dollars (\$25.00) per person. The Contractor shall provide any information, fingerprints, or release forms needed by the Lottery's Division of Security to carry out any investigation that may be required under Indiana Code 4-30-6-4. Other background investigations may be performed after a Contract has been executed. The Contractor has a continuing duty to submit release forms and other information for all new employees or employees of subcontractors working on the Contract prior to any new employees being involved in any work related to the contract.

3.26 State Liabilities and Debt Set-off. Contractor shall file appropriate tax returns as provided by Indiana law. Contractor certifies that neither it nor its principal(s) is presently in arrears in payment of its taxes, permit fees or other statutory, regulatory or judicially required payments to the State of Indiana. The Contractor agrees that any payments currently due to the State by it or its principal(s) may be withheld and set off from payments due to the Contractor under this Contract. Any payments that the Lottery may delay, withhold, deny, or apply under this section shall not be subject to penalty or interest.

3.27 Incorporated by Reference. The ITB, the Answers to Respondent's Questions, the Bid, and all Exhibits and Attachments to this Contract, if any, are hereby incorporated by reference into this Contract and any reference to this Contract herein shall be deemed also to refer to such incorporated documents unless otherwise indicated.

3.28 Order of Precedence. Any inconsistency or ambiguity in this Contract shall be resolved by giving precedence in the following order: (1) This Contract, (2) attachments or exhibits to this Contract, (3) the Contractor's Bid, (4) the ITB, and (5) attachments or exhibits to the ITB.

- 3.29 **Non-Exclusive Contract.** The parties acknowledge and agree that this Contract is non-exclusive and that the Lottery is free to contract for goods and services of any type, including those covered by this Contract, with any party at any time.
- 3.30 **Severability.** The invalidity of any section, subsection, clause or provision of this Contract shall not affect the validity of the remaining sections, subsections, clauses or provisions of this Contract.
- 3.31 **Waiver of Rights.** No right conferred on either party under this Contract shall be deemed waived, and no breach of this Contract excused, unless such waiver is in writing and signed by the party claimed to have waived such right.
- 3.32 **Merger & Modification.** This Contract constitutes the entire agreement between the parties. No understandings, agreements, or representations, oral or written, not specified within this Contract will be valid provisions of this Contract. This Contract may not be modified, supplemented, or amended, in any manner, except by written agreement signed by all necessary parties.
- 3.33 **Authority to Bind Contractor.** The signatory for the Contractor represents that he/she has been duly authorized to execute this Contract on behalf of the Contractor and has obtained all necessary or applicable approvals to make this Contract fully binding upon the Contractor when his/her signature is affixed, and certifies that this Contract is not subject to further acceptance by Contractor when accepted by the Lottery.