

# General Terms and Conditions for Goods Contracts - Effective 1/1/11

## A. DEFINITIONS AND GENERAL INFORMATION

The following words shall be defined as set forth below:

1. **“Bid Proposal”** means the Contractor’s bid or proposal submitted in response to the Competitive Bidding Document.
2. **“Contract”** means the collective documentation memorializing the terms of the agreement between the Lottery and the Contractor identified in the Contract and includes the signed Contract, the Special Terms, these General Terms for Goods Contracts, any Special Contract Attachments, any signed certifications, and all other attachments to the Contract.
3. **“Purchase Instrument”** means the documentation issued by the Lottery to the Contractor for a purchase of goods and/or services in accordance with the terms and conditions of the Contract. It may include an identification of the items to be purchased, the delivery date and location, the address where the Contractor should submit the invoices, and any other requirements deemed necessary by the Lottery. Any pre-printed contract terms and conditions included on Contractor’s forms or invoices shall be null and void.
4. **“Competitive Bidding Document”** means the Request for Proposals, Request for Bids, or Request for Quotation (and any addenda thereto) identified in the Contract that was issued to solicit the goods and services.
5. **“Special Contract Attachments”** means any attachment to this Contract.
6. **“Special Terms”** means the Contract attachment entitled “Special Terms” that contains terms specific to this Contract, including but not limited to any amendments to these General Terms and Conditions for Services Contracts. If there is a conflict between the General Terms and Conditions for Goods Contracts and the Special Terms, the Special Terms shall prevail.
7. **“State”** means the State of Iowa, the Lottery, and all state agencies, boards, and commissions, and any political subdivisions making purchases off of this Contract as permitted by the Competitive Bidding Document.
8. **“Contractor”** means the provider of the goods and services under the Contract.

## B. DURATION OF CONTRACT

The term of the Contract shall begin and end on the dates specified on the Contract, unless extended or terminated earlier in accordance with the applicable terms and conditions. The Lottery may exercise any applicable extension by giving the Contractor written notice of the extension decision at least thirty (30) days prior to the expiration of the initial term or renewal term.

## C. DESCRIPTION OF GOODS AND/OR SERVICES

1. **Specifications in Competitive Bidding Documents.** The Contractor shall provide goods and/or services that comply with the specifications contained in the Competitive Bidding Document identified by bid number in the Contract.
2. **Product Shipment and Delivery.** All products shall be shipped F.O.B. Destination. Destination shall be the location(s) specified in the Purchase Instrument. All items shall be at the Contractor’s risk until they have been delivered and accepted by the receiving entity. All items shall be subject to inspection on delivery. Hidden damage will remain the responsibility of the Contractor to remedy without cost to the Lottery, regardless of the when the hidden damage is discovered.
3. **Non-Exclusive Rights.** The Contract is not exclusive. The Lottery reserves the right to select other contractors to provide goods and services similar or identical to goods and services described in the Contract during the term of the Contract.
4. **No Minimums Guaranteed.** The Contract does not guarantee any minimum level of purchases.

## D. COMPENSATION

1. **Pricing.** The Contractor will be compensated in accordance with the payment terms outlined in the Contract Payment Terms and Scope of Work described in the Special Terms. The Contractor shall submit, on the frequency established in the Contract an invoice for Deliverables rendered in accordance with this Contract. The invoice shall comply with all applicable rules concerning payment of such claims. The Lottery shall verify the Contractor’s performance of the Deliverables outlined in the invoice before making payment. The Lottery shall pay all approved invoices in arrears and in conformance with [Iowa Code 8A.514](#) and [II IAC §41.1\(2\)](#). The Lottery may pay in less than

sixty (60) days, but an election to pay in less than sixty (60) days shall not act as an implied waiver of Iowa Code § 8A.514. Unless otherwise agreed in writing by the parties, the Contractor shall not be entitled to receive any other payment or compensation from the State for any Deliverables provided by or on behalf of the Contractor under this Contract. The Contractor shall be solely responsible for paying all costs, expenses and charges it incurs in connection with its performance under this Contract.

**2. Billings.** The Contractor shall submit, on a regular basis an invoice for goods and services supplied to the Lottery under the Contract at the billing address specified in the Purchase Instrument. The invoice shall comply with all applicable rules concerning payment of such claims. The Lottery shall verify the Contractor's performance of the services outlined in the invoice before making payment. The Lottery shall pay all approved invoices in arrears and in accordance with applicable provisions of Iowa law. Unless otherwise agreed in writing by the parties, the Contractor shall not be entitled to receive any other payment or compensation from the Lottery for any goods or services provided by or on behalf of the Contractor under the Contract. The Contractor shall be solely responsible for paying all costs, expenses and charges it incurs in connection with its performance under the Contract.

**3. Delay of Payment Due to Contractor's Failure.** If the Lottery determines that the Contractor has failed to perform or deliver any service or product as required by the Contract, the Contractor shall not be entitled to any compensation under the Contracts until such service or product is performed or delivered. In this event, the Lottery may withhold that portion of the Contractor's compensation which represents payment for services or products that were not performed or delivered.

**4. Setoff Against Sums Owed by the Contractor.** In the event that the Contractor owes the State of Iowa any sum under the terms of the Contract, pursuant to any judgment, or pursuant to any law, the State may set off the sum owed to the State against any sum owed by the State to the Contractor in the State's sole discretion, unless otherwise required by law. The Contractor agrees that this provision constitutes proper and timely notice under the law of setoff.

## **E. TERMINATION**

**1. Immediate Termination by the Lottery.** The Lottery may terminate this Contract for any of the following reasons effective immediately without advance notice:

**1.1** In the event the Contractor is required to be certified or licensed as a condition precedent to providing goods and services, the revocation or loss of such license or certification will result in immediate termination of the Contract effective as of the date on which the license or certification is no longer in effect;

**1.2** The Lottery determines that the actions, or failure to act, of the Contractor, its agents, employees or subcontractors have caused, or reasonably could cause, a person's life, health or safety to be jeopardized;

**1.3** The Contractor fails to comply with confidentiality laws or provisions;

**1.4** The Contractor furnished any statement, representation or certification in connection with the Contract or the bidding process which is materially false, deceptive, incorrect or incomplete.

**2. Termination for Cause.** The occurrence of any one or more of the following events shall constitute cause for the Lottery to declare the Contractor in default of its obligations under its Contract.

**2.1** The Contractor fails to deliver or has delivered nonconforming goods or services or fails to perform, to the Lottery's satisfaction, any material requirement of its Contract or is in violation of a material provision of the Contract, including, but without limitation, the express warranties made by the Contractor;

**2.2** The Lottery determines that satisfactory performance of its Contract is substantially endangered or that a default is likely to occur;

**2.3** The Contractor fails to make substantial and timely progress toward performance of the Base and/or Subsequent Contracts;

**2.4** The Contractor becomes subject to any bankruptcy or insolvency proceeding under federal or state law to the extent allowed by applicable federal or state law including bankruptcy laws; the Contractor terminates or suspends its business; or the Lottery reasonably believes that the Contractor has become insolvent or unable to pay its obligations as they accrue consistent with applicable federal or state law;

**2.5** The Contractor has failed to comply with applicable federal, state and local laws, rules, ordinances, regulations and orders when performing within the scope of the Contract;

**2.6** The Contractor has engaged in conduct that has or may expose the Lottery or the State to liability, as determined in the Lottery's sole discretion; or

**2.7** The Contractor has infringed any patent, trademark, copyright, trade dress or any other intellectual property rights of the Lottery, the State, or a third party.

**3. Notice of Default.** If there is a default event caused by the Contractor, the Lottery shall provide written notice to the Contractor requesting that the breach or noncompliance be remedied within the period of time specified in the Lottery's written notice to the Contractor. If the breach or noncompliance is not remedied by the date of the written notice, the Lottery may:

**3.1** Immediately terminate its Contract without additional written notice; and/or,

**3.2** Procure substitute goods or services from another source and charge the difference between the current contract and the substitute contract to the defaulting Contractor; and/or,

**3.3** Enforce the terms and conditions of the Contract and seek any legal or equitable remedies.

**4. Termination Upon Notice.** Following 30 days' written notice, the Lottery may terminate its Contract in whole or in part without the payment of any penalty or incurring any further obligation to the Contractor. Following termination upon notice, the Contractor shall be entitled to compensation, upon submission of invoices and proper proof of claim, for goods and services provided under the Contract to the Lottery up to and including the date of termination.

**5. Termination Due to Lack of Funds or Change in Law.** Notwithstanding anything in this Contract to the contrary, and subject to the limitations set forth below, the Lottery shall have the right to terminate this Contract without penalty and without any advance notice as a result of any of the following:

- o If the Lottery's authorization to conduct its business or engage in activities or operations related to the subject matter of this Contract is withdrawn or materially altered or modified; or
- o If the Lottery's duties, programs or responsibilities are modified or materially altered. The Lottery shall provide Contractor with written notice of termination pursuant to this section.

**6. Remedies of the Contractor in Event of Termination by the Lottery.** In the event of termination of the Contract for any reason by the Lottery, the Lottery shall pay only those amounts, if any, due and owing to the Contractor for goods and services actually rendered up to and including the date of termination of the Contract and for which the Lottery is obligated to pay pursuant to its Contract or Purchase Instrument. Payment will be made only upon submission of invoices and proper proof of the Contractor's claim. This provision in no way limits the remedies available to the Lottery under the Contract in the event of termination. The Lottery shall not be liable for any of the following costs:

**6.1** The payment of unemployment compensation to the Contractor's employees;

**6.2** The payment of workers' compensation claims, which occur during the Contract or extend beyond the date on which the Contract terminates;

**6.3** Any costs incurred by the Contractor in its performance of the Contract, including, but not limited to, startup costs, overhead or other costs associated with the performance of the Contract;

**6.4** Any taxes that may be owed by the Contractor in connection with the performance of the Contract, including, but not limited to, sales taxes, excise taxes, use taxes, income taxes or property taxes.

**7. The Contractor's Termination Duties.** Upon receipt of notice of termination or upon request of the Lottery, the Contractor shall:

**7.1** Cease work under the Contract and take all necessary or appropriate steps to limit disbursements and minimize costs, and furnish a report within thirty (30) days of the date of notice of termination, describing the status of all work under the Contract, including, without limitation, results accomplished, conclusions resulting therefrom, and any other matters the Lottery may require.

**7.2** Immediately cease using and return to the Lottery, any personal property or materials, whether tangible or intangible, provided by the Lottery to the Contractor.

**7.3** Comply with the Lottery's instructions for the timely transfer of any active files and work product produced by the Contractor under the Contract.

**7.4** Cooperate in good faith with the Lottery, its employees, agents and contractors during the transition period between the notification of termination and the substitution of any replacement Contractor.

**7.5** Immediately return to the Lottery any payments made by the Lottery for goods and services that were not delivered or rendered by the Contractor.

## **F. CONFIDENTIAL INFORMATION**

**1. Access to Confidential Data.** The Contractor's employees, agents and subcontractors may have access to confidential data maintained by the Lottery to the extent necessary to carry out its responsibilities under the Contract. The Contractor shall presume that all information received pursuant to the Contract is confidential unless otherwise designated by the Lottery. If it is reasonably likely the Contractor will have access to the Lottery's confidential information:

**1.1** The Contractor shall provide to the Lottery a written description of its policies and procedures to safeguard confidential information;

**1.2** Policies of confidentiality shall address, as appropriate, information conveyed in verbal, written, and electronic formats;

**1.3** The Contractor must designate one individual who shall remain the responsible authority in charge of all data collected, used, or disseminated by the Contractor in connection with the performance of the Contract; and;

**1.4** The Contractor shall provide adequate supervision and training to its agents, employees and subcontractors to ensure compliance with the terms of the Contract.

The private or confidential data shall remain the property of the Lottery at all times.

**2. No Dissemination of Confidential Data.** No confidential data collected, maintained, or used in the course of performance of the Contract shall be disseminated except as authorized by law and with the written consent of the Lottery, either during the period of the Contract or thereafter. Any data supplied to or created by the Contractor shall be considered the property of the Lottery. The Contractor must return any and all data collected, maintained, created or used in the course of the performance of the Contract, in whatever form it is maintained, promptly at the request of the Lottery.

**3.Subpoena.** In the event that a subpoena or other legal process is served upon the Contractor for records containing confidential information, the Contractor shall promptly notify the Lottery and cooperate with the Lottery or the State in any lawful effort to protect the confidential information.

**4. Reporting of Unauthorized Disclosure.** The Contractor shall immediately report to the Lottery any unauthorized disclosure of confidential information.

**5. Survives Termination.** The Contractor's confidentiality obligation under the Contract shall survive termination of the Contracts.

## **G. INDEMNIFICATION**

1. The Contractor agrees to indemnify and hold harmless the State of Iowa, the Lottery, its officers, employees, volunteers and agents (collectively the indemnified parties) from any and all costs, expenses, losses, claims, damages, liabilities, settlements and judgments, including reasonable value of the time spent by the Attorney General's Office, and the costs and expenses and reasonable attorneys' fees of other counsel required to defend the indemnified parties, related to or arising from:

- Any breach of the Contract;
- Any negligent, intentional or wrongful act or omission of the Contractor or any employee, agent or subcontractor utilized or employed by the Contractor;
- Any failure of goods to comply with applicable specifications, warranties, and certifications under the Contract;
- The negligence or fault of the contractor in design, testing, development, manufacture, or otherwise with respect to the goods or any parts thereof provided under the Contract;
- Claims, demands, or lawsuits that, with respect to the goods or any parts thereof, allege product liability, strict product liability, or any variation thereof;
- The Contractor's performance or attempted performance of the Contract, including any employee, agent or subcontractor utilized or employed by the Contractor;
- Any failure by the Contractor to comply with the Compliance with the Law provision of the Contract;
- Any failure by the Contractor to make all reports, payments and withholdings required by federal and state law with respect to social security, employee income and other taxes, fees or costs required by the Contractor to conduct business in the State of Iowa or United States;
- Any infringement of any copyright, trademark, patent, trade dress, or other intellectual property right;
- or
- Any failure by the Contractor to adhere to the confidentiality provisions of the Contract.

2. Survives Termination. The indemnification obligation of the Contractor shall survive termination of the Contract.

## **H. INSURANCE**

**1. Insurance Requirements.** The Contractor, and any subcontractor, shall maintain in full force and effect, with insurance companies licensed by the State of Iowa, at the Contractor's expense, insurance covering its work during the entire term of this Contract and any extensions or renewals. The Contractor's insurance shall, among other things, be occurrence based and shall insure against any loss or damage resulting from or related to the Contractor's performance of this Contract regardless of the date the claim is filed or expiration of the policy. The State of Iowa and the Iowa Lottery shall be named as additional insureds or loss payees, or the Contractor shall obtain an endorsement to the same effect, as applicable.

**2. Types and Amounts of Insurance Required.** Unless otherwise requested by the Lottery in writing, the Contractor shall cause to be issued insurance coverages insuring the Contractor and/or subcontractors against all general liabilities, product liability, personal injury, property damage, and (where applicable) professional liability in the amount specified on the Contract Declarations and Execution page for each occurrence. In addition, the Contractor shall ensure it has any necessary workers' compensation and employer liability insurance as required by Iowa law.

**3. Certificates of Coverage.** All insurance policies required by this Contract shall remain in full force and effect during the entire term of this Contract and any extensions or renewals thereof and shall not be canceled or amended except with the advance written approval of the Lottery. The Contractor shall submit certificates of the insurance, which indicate coverage and notice provisions as required by this Contract, to the Lottery upon execution of this Contract. The certificates shall be subject to approval by the Lottery. The insurer shall state in the certificate that no cancellation

of the insurance will be made without at least thirty (30) days' prior written notice to the Lottery. Approval of the insurance certificates by the Lottery shall not relieve the Contractor of any obligation under this Contract.

**4. Waiver of Subrogation Rights.** The Contractor shall obtain a waiver of any subrogation rights that any of its insurance carriers might have against the Lottery. The waiver of subrogation rights shall be indicated on the certificates of insurance coverage supplied to the Lottery.

## **I. PERFORMANCE BOND.**

When applicable, the Contractor shall post a performance bond in an amount equal to the amount indicated in the Contract and provide a copy of the bond to the Lottery within (10) days of execution of this Contract. The Contractor shall pay the cost of the bond. In the event that the Contractor or any subcontractor or any officer, director, employee or agent of the Contractor or any subcontractor or any parent or subsidiary corporation of the Contractor or any subcontractor fails to fully and faithfully perform any material requirement of this Contract, including without limitation the Contractor's obligation to indemnify the Lottery and pay damages to the Lottery, the performance bond shall be forfeited to the Lottery. The bond shall be in a form customarily used in the Contractor's industry and shall be written by a surety authorized to do business in Iowa and that is acceptable to the Lottery. The bond shall be in effect at all times during the term of this Contract and any extensions or renewals thereof and for one (1) year following the conclusion of the Contract. The Contractor warrants that it will maintain the required performance bond coverage as described herein without any lapse in coverage. A lapse of the bond will be a material breach of the Contract and shall be considered cause for the State to declare the Contractor in default under this Contract.

## **J. WARRANTIES**

### **1. Construction of Warranties Expressed in the Contract with Warranties Implied by Law.**

All warranties made by the Contractor and/or subcontractors in all provisions of the Contract and the Contractor's Bid Proposal, whether or not the Contract specifically denominates the Contractor's and/or subcontractors' promise as a warranty or whether the warranty is created only by the Contractor's affirmation or promise, or is created by a description of the materials, goods and services to be provided, or by provision of samples to the Lottery shall not be construed as limiting or negating any warranty provided by law, including without limitation, warranties which arise through course of dealing or usage of trade, the warranty of merchantability, and the warranty of fitness for a particular purpose. The warranties expressed in the Contract are intended to modify the warranties implied by law only to the extent that they expand the warranties applicable to the goods and services provided by the Contractor. The provisions of this Section apply during the term of the Contract and any extensions or renewals thereof.

**2. Warranty – Nonconforming Goods.** All goods delivered by Contractor to the Lottery shall be free from any defects in design, material, or workmanship. If any goods offered by the Contractor are found to be defective in material or workmanship, or do not conform to Contractor's warranty, the Lottery shall have the option of returning, repairing, or replacing the defective goods at Contractor's expense. Payment for goods shall not constitute acceptance.

Acceptance by the Lottery shall not relieve the Contractor of its warranty or any other obligation under the Contract.

**3. Compliance with Federal Safety Acts.** Contractor warrants and guarantees to the Lottery, that the goods provided under the Contract are in compliance with Sections 5 and 12 of the Federal Trade Commission Act; the Fair Packaging and Labeling Act; the Federal Food, Drug, and Cosmetic Act; the Consumer Product Safety Act; the Federal Environmental Pesticide Control Act; the Federal Hazardous Substances Act; the Fair Labor Standards Act; the Wool Products Labeling Act; the Flammable Fabrics Act; the Occupational Safety and Health Act; the Office of Management and Budget A-110 Appendix A and the Anti-Kickback Act of 1986.

Concepts, Materials, and Goods Produced. Contractor represents and warrants that all the concepts, materials, goods and services produced, or provided to the Lottery pursuant to the terms of the Contract shall be wholly original with the Contractor or that the Contractor has secured all applicable interests, rights, licenses, permits or other intellectual property rights in such concepts, materials, goods and services. The Contractor represents and warrants that the concepts, materials, goods and services and the Lottery's use of same and the exercise by the Lottery of the rights granted by the Contract shall not infringe upon any other work, other than material provided by the Contract to the Contractor to be used as a basis for such materials, or violate the rights of publicity or privacy of, or constitute a libel or slander against, any person, firm or corporation and that the concepts, materials and works will not infringe upon the copyright, trademark, trade name, trade dress patent, literary, dramatic, statutory, common law or any other rights of any person, firm or corporation or other entity. The Contractor represents and warrants that it is the owner of or otherwise has the right to use and distribute the goods and services contemplated by the Contract.

**4. Conformity with Contractual Requirements.** The Contractor represents and warrants that the goods and services provided in accordance with the Contract will appear and operate in conformance with the terms and conditions of the Contract.

**5. Authority to Enter into Contract.** The Contractor represents and warrants that it has full authority to enter into the Contract and that it has not granted and will not grant any right or interest to any person or entity that might derogate, encumber or interfere with the rights granted to the Lottery.

**6. Obligations Owed to Third Parties.** The Contractor represents and warrants that all obligations owed to third parties with respect to the activities contemplated to be undertaken by the Contractor pursuant to the Contract are or will be fully satisfied by the Contractor so that the Lottery will not have any obligations with respect thereto.

**7. Title to Property.** The Contractor represents and warrants that title to any property assigned, conveyed or licensed to the Lottery is good and that transfer of title or license to the Lottery is rightful and that all property shall be delivered free of any security interest or other lien or encumbrance.

**8. Industry Standards.** The Contractor represents and expressly warrants that all aspects of the goods and services provided or used by it shall at a minimum conform to the standards in the Contractor's industry. This requirement shall be in addition to any express warranties, representations, and specifications included in the Contract, which shall take precedence.

**9. Data Processing Warranty.** Contractor warrants that each item of hardware, software, firmware, or a custom designed and developed software program or a system which is developed or delivered under, or used by Contractor in connection with its performance of, this Contract, shall accurately process data, including, but not limited to, calculating, comparing and sequencing, from, into, between and among the nineteenth, twentieth and twenty-first centuries, including leap year calculations, when used in accordance with the item's documentation provided by Contractor.

**9.1** If the items to be developed and delivered under this Contract are to perform as a system with other hardware and/or software, then the warranty shall apply to the items developed and delivered as the items process, transfer, sequence data, or otherwise interact with other components or parts of the system. This warranty shall survive the term of this Contract. The remedies available to the Lottery for a breach of warranty includes, but is not limited to, repair or replacement of non-compliant items or systems.

**9.2** Nothing in this warranty shall be construed to limit any rights or remedies of the Lottery under this Contract with respect to defects in the items other than the Data Processing Warranty.

## **K. PRODUCT RECALL**

In the event that any of the goods are found by the Contractor, the Lottery, or any governmental agency or court having jurisdiction to contain a defect, serious quality or performance deficiency, or not to be in compliance with any standard or requirement so as to require or make advisable that such goods be reworked or recalled, the Contractor will promptly communicate all relevant facts to the Lottery and undertake all corrective actions, including those required to meet all obligations imposed by laws, regulations, or orders, and shall file all necessary papers, corrective action programs, and other related documents, provided that nothing contained in this section shall preclude the Lottery from taking such action as may be required of it under any such law or regulation. The Contractor shall perform all necessary repairs or modifications at its sole expense except to any extent that the Contractor and the Lottery shall agree to the performance of such repairs by the Lottery upon mutually acceptable terms.

## **L. CONTRACT ADMINISTRATION**

**1. Incorporation of Documents.** The parties acknowledge that the Contract consists of these contract terms and conditions as well as the Competitive Bidding Document and the Bid Proposal. The Competitive Bidding Document and the Contractor's Bid Proposal are incorporated into the Contract by reference, except that no objection or amendment by a Contractor to the Competitive Bidding Document requirements shall be incorporated by reference into the Contract unless the Contractor has explicitly accepted the Contractor's objection or amendment in writing. If there is a conflict between the Contract, the Competitive Bidding Document and the Bid Proposal, the conflict shall be resolved according to the following priority, ranked in descending order: (1) the Contract; (2) the Competitive Bidding Document; (3) the Bid Proposal.

**2. Intent of References to Competitive Bidding Documents.** The references to the parties' obligations, which are contained in this document, are intended to supplement or clarify the obligations as stated in the Competitive Bidding Document and the Contractor's Bid Proposal. The failure of the parties to make reference to the terms of the Competitive Bidding Document or the Contractor's Bid Proposal in this document shall not be construed as creating a conflict and will not relieve the Contractor of the contractual obligations imposed by the terms of the Competitive Bidding Document and the Contractor's Bid Proposal. The contractual obligations of the Lottery cannot be implied from the Contractor's Bid Proposal.

**3. Compliance with the Law.** The Contractor, its employees, agents, and subcontractors shall comply with all applicable federal, state, and local laws, rules, ordinances, regulations and orders when performing under the Contract, including without limitation, all laws applicable to the prevention of discrimination in employment and the use of targeted small businesses as subcontractors or suppliers. The Contractor, its employees, agents and

subcontractors shall also comply with all federal, state and local laws regarding business permits and licenses that may be required to carry out the work performed under the Contract. The Contractor may be required to submit its affirmative action plan to the Department of Management to comply with the requirements of 541 IAC chapter 4.

**4. Amendments.** The Contract may be amended in writing from time to time by mutual consent of the parties. All amendments to the Contract must be in writing and fully executed by the parties.

**5. Third-Party Beneficiaries.** There are no third-party beneficiaries to the Contract. The Contract is intended only to benefit the Lottery and the Contractor.

**6. Choice of Law and Forum.** The laws of the State of Iowa shall govern and determine all matters arising out of or in connection with this Contract without regard to the choice of law provisions of Iowa law. Any and all litigation commenced in connection with this Contract shall solely be brought in the District Court for the State of Iowa in the county where venue is appropriate. Alternatively, if venue is proper in federal court, suit shall solely be brought in the United States District Court for the Northern or Southern District of Iowa, wherever jurisdiction is appropriate. Nothing contained in this provision shall be construed as waiving any immunity to suit or liability, including without limitation sovereign immunity or Eleventh Amendment immunity, which may be available to the State.

**7. Assignment and Delegation.** The Contract may not be assigned, transferred or conveyed in whole or in part without the prior written consent of the Lottery. For the purpose of construing this clause, a transfer of a controlling interest in the Contractor shall be considered an assignment.

**8. Use of Third Parties.** The Lottery acknowledges that the Contractor may contract with third parties for the performance of any of the Contractor obligations under the Contract. All subcontracts shall be subject to prior approval by the Lottery. The Contractor may enter into these contracts to complete the project provided that the Contractor remains responsible for all goods delivered and services performed under the Contract and for the acts and omissions of all subcontractors, agents, and employees. All restrictions, obligations and responsibilities of the Contractor under the Contract shall also apply to the subcontractors. Any contract with a subcontractor must also preserve the rights of the Lottery. The Lottery shall have the right to request the removal of a subcontractor from the Contract for good cause.

**9. Integration.** The Contract represents the entire Contract between the parties. The parties shall not rely on any representation that may have been made which is not included in the Contract.

**10. Headings or Captions.** The paragraph headings or captions used in the Contract are for identification purposes only and do not limit or construe the contents of the paragraphs.

**11. Not a Joint Venture.** Nothing in the Contract shall be construed as creating or constituting the relationship of a partnership, joint venture, (or other association of any kind or agent and principal relationship) between the parties thereto. Each party shall be deemed to be an independent contractor contracting for goods and services and acting toward the mutual benefits expected to be derived herefrom. No party has the authority to enter into any contract or create an obligation or liability on behalf of, in the name of, or binding upon another party to the Contract.

**12. Joint and Several Liability.** If the Contractor is a joint entity, consisting of more than one individual, partnership, corporation or other business organization, all such entities shall be jointly and severally liable for carrying out the activities and obligations of the Contract, and for any default of activities and obligations.

**13. Supersedes Former Contracts or Agreements.** Unless otherwise specified in the Contract, this Contract supersedes all prior contracts or agreements between the Lottery and the Contractor for the goods and services provided in connection with the Contract.

**14. Waiver.** Except as specifically provided for in a waiver signed by duly authorized representatives of the Lottery and the Contractor, failure by either party at any time to require performance by the other party or to claim a breach of any provision of the Contract shall not be construed as affecting any subsequent right to require performance or to claim a breach.

**15. Notice.** Any and all notices, designations, consents, offers, acceptances or any other communication provided for herein shall be given in writing by a reliable carrier which shall be addressed to the person who signed the Contract on behalf of the party at the address identified in the Contract. Each such notice shall be deemed to have been provided:

15.1 At the time it is actually received; or,

15.2 Within one day in the case of overnight hand delivery, courier or services such as Federal Express with guaranteed next day delivery; or,

15.3 Within five (5) days after it is deposited in the U.S. Mail in the case of registered U.S. Mail.

From time to time, the parties may change the name and address of a party designated to receive notice. Such change of the designated person shall be in writing to the other party and as provided herein.

**16. Cumulative Rights.** The various rights, powers, options, elections and remedies of any party provided in the Contract shall be construed as cumulative and not one of them is exclusive of the others or exclusive of any rights, remedies or priorities allowed either party by law, and shall in no way affect or impair the right of any party to pursue any other equitable or legal remedy to which any party may be entitled as long as any default remains in any way unremedied, unsatisfied or undischarged.

**17. Severability.** If any provision of the Contract is determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect the validity or enforceability of any other part or provision of the

Contract. Further, if any provision of the Contract is determined to be unenforceable by virtue of its scope, but may be made enforceable by a limitation of the provision, the provision shall be deemed to be amended to the minimum extent necessary to render it enforceable under the applicable law.

**18. Time is of the Essence.** Time is of the essence with respect to the performance of the terms of the Contract. Contractor shall ensure that all personnel providing goods and services to the State are responsive to the State's requirements and requests in all respects.

**19. Authorization.** Each party to the Contract represents and warrants to the other parties that:

**19.1** It has the right, power and authority to enter into and perform its obligations under the Contract.

**19.2** It has taken all requisite action (corporate, statutory or otherwise) to approve execution, delivery and performance of the Contract, and the Contract constitutes a legal, valid and binding obligation upon itself in accordance with its terms.

**20. Successors in Interest.** All the terms, provisions, and conditions of the Contract shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns and legal representatives.

**21. Record Retention and Access.** The Contractor shall maintain books, records and documents which sufficiently and properly document and calculate all charges billed to the Lottery throughout the term of the Contract for a period of at least five (5) years following the date of final payment or completion of any required audit, whichever is later.

Records to be maintained include both financial records and service records. The Contractor shall permit the Auditor of the State of Iowa or any authorized representative of the State and where federal funds are involved, the Comptroller General of the United States or any other authorized representative of the United States government, to access and examine, audit, excerpt and transcribe any directly pertinent books, documents, papers, electronic or optically stored and created records or other records of the Contractor relating to orders, invoices or payments or any other documentation or materials pertaining to the Contract, wherever such records may be located. The Contractor shall not impose a charge for audit or examination of the Contractor's books and records. If an audit discloses incorrect billings or improprieties, the State reserves the right to charge the Contractor for the cost of the audit and appropriate reimbursement. Evidence of criminal conduct will be turned over to the proper authorities.

**22. Solicitation.** The Contractor warrants that no person or selling agency (except bona fide employees or selling agents maintained for the purpose of securing business) has been employed or retained to solicit and secure the Contract upon an agreement or understanding for commission, percentage, brokerage or contingency.

**23. Immunity from Liability.** Every person who is a party to the Contract is hereby notified and agrees that the Lottery, and all of its employees, agents, successors, and assigns are immune from liability and suit for or from Contractor's and/or subcontractors' activities involving third parties and arising from the Contract.

**24. Public Records.** The laws of the State of Iowa require procurement records to be made public unless otherwise provided by law.

**25. Clean Air and Water Certification.** Contractor certifies that none of the facilities it uses to produce goods provided under the Contract are on the Environmental Protection Agency (EPA) List of Violating Facilities. Contractor will immediately notify the Lottery of the receipt of any communication indicating that any of Contractor's facilities are under consideration to be listed on the EPA List of Violating Facilities

**26. Debarred, Suspended, and Ineligible Status.** Contractor certifies that the Contractor and/or any of its subcontractors have not been debarred, suspended, or declared ineligible by any agency of the State of Iowa or as defined in the Federal Acquisition Regulation (FAR) 48 C.F.R. Ch.1 Subpart 9.4. Contractor will immediately notify the State if Contractor is debarred by the State or placed on the Consolidated List of Debarred, Suspended, and Ineligible Contractors by a federal entity.

**27. Use of Name or Intellectual Property.** Contractor agrees it will not use the name or any intellectual property, including but not limited to, any Lottery trademarks or logos in any manner, including commercial advertising or as a business reference, without the expressed prior written consent of the Lottery.

**28. Taxes.** The Lottery is exempt from Federal excise taxes, and no payment will be made for any taxes levied on Contractor's employee's wages. The Lottery is exempt from State and local sales and use taxes on the Deliverables.

**29. Certification Regarding Sales and Use Tax.** By executing the Contract the Contractor certifies it is either (a) registered with the Iowa Department of Revenue, collects, and remits Iowa sales and use taxes as required by the Iowa Code chapter 432; or (b) not a "retailer" or a "retailer maintaining a place of business in this state" as those terms are defined in Iowa Code subsections 423.1(42) & (43). The Contractor also acknowledges that the State may declare the Contract void if the above certification is false. The Contractor also understands that fraudulent certification may result in the Lottery or its representative filing for damages for breach of contract.

**30. Contractor Assignments of Rights -Antitrust Claims.** In consideration of the mutual promises contained herein, Contractor, through its duly authorized agent, conveys, sells, assigns, and transfers to the State of Iowa all rights, title, and interest in and to all causes of action it may now or hereafter acquire under the anti-trust laws of the United States and the State of Iowa relating to the subject of the Contract.

**31. Delay or Impossibility of Performance.** Neither party shall be in default under the Contract if performance is delayed or made impossible by an act of God, flood, fire or similar events. In each such case, the delay or impossibility must be beyond the control and without the fault or negligence of the Contractor. If delay results from a

subcontractor's conduct, negligence or failure to perform, the Contractor shall not be excused from compliance with the terms and obligations of the Contract.

**32. Obligations Beyond Contract Term.** The Contract shall remain in full force and effect to the end of the specified term or until terminated or canceled pursuant to the Contract. All obligations of the Contractor incurred or existing under the Contract as of the date of expiration, termination or cancellation will survive the termination, expiration or conclusion of the Contract.

**33. Counterparts.** The parties agree that the Contract has been or may be executed in several counterparts, each of which shall be deemed an original and all such counterparts shall together constitute one and the same instrument.

**34. Further Assurances and Corrective Instruments.** The parties agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for carrying out the expressed intention of the Contract.