



hoosier lottery™

**The State Lottery Commission of Indiana
1302 North Meridian Street
Indianapolis, IN 46202**

INVITATION TO BID

FOR

ITVM Maintenance

Bid 3045

January 25, 2012

BID DUE DATE – Wednesday, February 22, 2012– 4:00 p.m. Eastern

BIDS MUST BE SUBMITTED BY DATE AND TIME SHOWN ABOVE

TABLE OF CONTENTS

SECTION I.	General Conditions and Procedures
1.1	Purpose
1.2	Definitions
1.3	Point of Contact
1.4	Non-Collusion
1.5	Bid Due Date
1.6	Bid Requirements
1.7	Modifications or Withdrawal of Bids
1.8	Bid Clarifications
1.9	Non-Material and Material Deviations
1.10	Acceptance/Rejection of Bids
1.11	Review of Bids
1.12	Evaluation Committee and Award
1.13	Evaluation Criteria
1.14	Appeals
1.15	Contract Negotiations
1.16	News Releases
1.17	Disclosure and Confidentiality
1.18	Liability of Lottery
1.19	Tax Exempt Status
1.20	Non-exclusive Right
1.21	General Timeline
SECTION II.	Specific Requirements
2.1	General Information and Vendor Certification
2.2	Specific Requirements
2.3	Pricing
SECTION III.	General Requirements
3.1	Minority- and Women-Owned Business Participation
3.2	Secretary of State Approval
3.3	Tax Clearance
3.4	Lottery Act Requirements
3.5	Contract Terms
APPENDIX A.	Contract Terms

**SECTION I
GENERAL CONDITIONS AND PROCEDURES**

1.1 Purpose. The purpose of this Invitation To Bid (ITB) is to solicit Bids from qualified Vendors to provide maintenance and technical support for instant ticket vending machines for The State Lottery Commission of Indiana. The details of the services required are more fully set out in Section II, Specific Requirements.

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

BID All materials submitted by a Vendor 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 that may be 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, *et seq.*, as supplemented by 65 IAC 1-1-1 *et seq.*

VENDOR Any entity or organization that may respond to this Invitation to Bid.

SUCCESSFUL VENDOR The vendor selected as a result of the procurement process to deliver the products or services requested.

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:

Jayne Stone
Procurement Manager
(317) 264-4813 Office
(317) 264-4607 Fax
jstone@hoosierlottery.com
Hoosier Lottery
1302 North Meridian Street
Indianapolis, IN 46202

No contact will be allowed regarding this ITB between a Vendor 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 Vendor being disqualified from further consideration. Should you desire additional information to assist in the bid process, please send communication to the contact person at the address above. Please be as detailed as possible regarding the information requested.

1.4 Non-Collusion. Vendors 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 Vendor's Bid.

1.5 Bid Due Date. All Bids must be received by the Lottery no later than 4:00 p.m. Eastern, Wednesday February 22, 2012, however, there will be no formal Bid opening at this time. Bids received after the deadline will not be considered for evaluation.

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 Vendor 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. Vendor must supply all information requested in a clear and concise manner.
- d. Only one (1) Bid may be submitted by each Vendor.
- e. Bids must remain valid for a period of one hundred twenty (120) days from the date of Bid opening.
- f. Bids shall be submitted in portable document format (PDF) and delivered on a CD-R placed inside a sealed container that is clearly marked with the words "Bid for ITB 3045". If the Vendor 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, Vendor is deemed to accept the terms and conditions set forth herein.

1.7 Modifications or Withdrawal of Bids. Vendor 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.

1.8 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 Vendor and accepted by the Lottery shall become a part of Vendor's Bid. The Lottery has no duty to ask a Vendor for clarification of its Bid, even if the Vendor's response to this ITB is incomplete.

1.9 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.

1.10 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 or all Bids or portions of Bids received in conjunction with this ITB or to cancel this ITB.

In the event that all Vendors 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.

1.11 Review of the Bids. Review of submitted bids will commence on or about Thursday, February 23, 2012 at Hoosier Lottery headquarters. However, information regarding vendors and bid contents will not be made public until a completed contract is executed by the successful Vendor and the Lottery.

1.12 Evaluation Committee and Award. All Bids received from Vendors will be reviewed and evaluated by a committee of Lottery personnel and/or consultants 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 report and determine whether to seek clarification, request additional information, or proceed with an award of the Contract.

1.13 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 Vendor 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 Vendor's demonstrated past experience and performance in providing ITVM Maintenance and technical support.
- 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 its plan for providing ITVM maintenance and technical support services to the lottery requested in this ITB.
- e. **Financial Stability.** Vendor 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.

1.14 Appeals. The procurement of goods or services by contract is exempt from the Administrative Orders and Procedures Act (see IC 4-21.5-2-5(11)). Vendors possess no administrative right to appeal the Lottery's contract award decisions. However, the Lottery appreciates feedback and unsuccessful Vendors are welcome to raise concerns regarding the procurement process in writing to the Executive Director.

1.15 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 the procurement of 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 Vendor 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.

- 1.16 News Releases.** Vendor, 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.
- 1.17 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. 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 will 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.
- 1.18 Liability of Lottery.** The Lottery is not, and shall not be, liable for any costs incurred by Vendors 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.
- 1.19 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.
- 1.20 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.
- 1.21 General Timeline.** The following dates are established for informational and planning purposes. The Lottery reserves the right to change any of the dates.

EVENT	DATE
Invitation to Bid issued	Wednesday, January 25, 2012 1:00 pm Eastern
Questions from Vendors due	Wednesday, February 1, 2012 1:00 pm Eastern
Responses to Questions due	Wednesday, February 8, 2012 4:00 pm Eastern
Bids due to Lottery	Wednesday, February 22, 2012 4:00 pm Eastern
Bid Opening	Thursday, February 23, 2012 4:30 pm Eastern
Notice of Award	Friday, March 16, 2012 1:00 pm Eastern

SECTION II SPECIFIC REQUIREMENTS

2.1 General Information and Vendor Certification. When providing the following information and disclosures, Vendor shall respond with as much detail as would be helpful to the Lottery in determining Vendor's ability to provide the necessary goods or services. Bids must be organized to correspond to and specifically reference, by number and letter, the subsections of Section II and III of this ITB. Failure to follow this format or respond completely may result in rejection of the Bid.

Corresponding with and specifically referencing this subsection, the Vendor 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, Vendor 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 each stockholder in the corporation, except that in the case of owners of equity securities of a publicly traded corporation only the names and addresses of those known to the corporation to own beneficially at least five percent (5%) in equity securities need be disclosed.
 2. If an 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 names of the owner.
 5. If the vendor is a trust, the trustees and all persons entitled to receive income or benefits from the trust.
- b. Provide an organizational chart highlighting the names and positions of those key individuals who will perform work in relation to this ITB.
- c. If subcontractors are to be used, disclose the same information required of the Vendor herein regarding the subcontractors.
- d. Disclose, to the best of Vendor's knowledge and belief, any Lottery employee or Commissioner or their respective family members who hold any interest, financial or otherwise, in Vendor, or if such a person is an officer or director of Vendor.

2.1.2 Experience. Provide a description of past and present experience, including, but not limited to:

- a. 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;
- b. A description of any unique qualities that will enhance the services to be supplied pursuant to this ITB.
- c. A description of the experience of personnel relevant to Vendor's Bid. (List names, titles, qualifications and certifications)

2.1.3 Past Contract Issues or Litigation

- a. Provide a description of any contracts which Vendor was awarded but was unable to honor.
- b. Provide a description of any pending and/or threatened litigation involving Vendor.
- c. List any existing contracts, agreements or past 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 Vendor.
- c. Provide either:
 - 1. Vendor'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 Vendor's income statement and balance sheets are not independently audited, the Vendor's income statement and balance sheet for each of the two (2) most recently completed fiscal years and copies of the Vendor's income tax returns for those same years.

2.1.5 References.

- a. List all lotteries to which it has provided services and the nature of those services.
- b. Provide three (3) business references that are currently using services similar to those being proposed in this ITB, include 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 Vendor.

2.2 Specific Requirements. Vendors must certify in their bids that the specifications listed below are met, and they must further describe how they meet the listed specifications. If Vendors cannot meet specifications, then they must specifically describe how they fail to meet them and describe alternatives, if any, it proposes to make. Vendors must address each subsection listed below in the same order as it appears.

Vendors must provide a proposal that demonstrates how they would provide technical support, warehouse, maintain, and repair the ITVM's, specifically:

2.2.1 Staffing: Vendor must provide a staffing proposal for the services to be provided, including:

- a. A listing of all identified staff that will work on the project;
- b. Their individual qualifications in relation to servicing and maintaining instant ticket vending machines, and
- c. Describe any ongoing Vendor staff training program during the term of the prospective contract.

2.2.2 Facilities: Vendor must identify existing or proposed facilities within Indiana for warehousing and repairing of ITVMs. Vendor must provide who would have access to the warehouse, as well as a monthly count of how many ITVM's are being housed in the warehouse.

2.2.3 Preventative Maintenance: Vendor must provide a detailed preventative maintenance program for nine hundred and ten (910) Lottery ITVMs, serviced at least once every ninety (90) days. See Appendix B for complete specifications of ITVMs.

- a. Vendor must provide a sample copy of a preventative maintenance service log providing the information for the preventative maintenance completed. The log must be provided to the Lottery the first of every month. Preventative maintenance log must be maintained separate from customer service log.
- b. Vendor must provide an overview of what will be completed during a preventative maintenance visit.
- c. Vendor must provide a monthly schedule of planned preventative maintenance for the coming month.

- d. Vendor must provide list of all completed preventative maintenance based off of master list of ITVMs.

2.2.4 US Currency Update: Vendor must define process and proposed timeline for ensuring that all ITVMs are updated to accept new or modified U.S. currency.

2.2.5 Customer Service Calls: Vendor must demonstrate its capability for providing customer service twenty-four (24) hours a day, seven (7) days a week.

- a. Vendor must provide its process, and approximate turnaround time, in receiving customer service inquiries from time of initial contact to the issue resolution.
- b. Vendor's proposal must provide process for repair or replacement of a machine within forty-eight (48) hours from time of service call.
- c. Vendor must provide the Lottery with a sample copy of a detailed weekly service report including, at a minimum: ITVM serial number, retailer number, retailer name, description of issue, time and date of initial contact, dispatch, and issue resolution, and the tech providing the service.
- d. Vendor must provide a sample copy of a weekly customer service log. Customer service log must be maintained separate of preventative maintenance log. The log must be provided to the Lottery the first of every month.

2.2.6 Revenue Loss: Vendor will be liable in the event of a malfunction of a machine which causes loss to a retailer.

- a. Vendor must define the process of troubleshooting, analyzing and addressing revenue loss by a retailer when malfunctions occur with an ITVM.

2.2.7 Staff Training: Vendor must specify a training plan for Lottery associates minimally once a year at each of the three (3) regional Lottery offices.

- a. Training plan must include, but is not limited to, technology updates, troubleshooting, operations, cleaning, and ticket installation.

2.2.8 Transportation/Relocations: Vendor must provide relocation process of ITVM machines. As used herein, "relocation" is defined as moving an ITVM from one (1) retailer location or a warehouse and installing it in another location designated by the Lottery.

- a. Vendor shall be liable for, and report to the Lottery, any damage to an ITVM during all relocations. Vendor must describe reporting process for any damages to ITVMs that are damaged during transport or installation.

2.3 Pricing.

2.3.1 Pricing Option 1 (Per item pricing). Vendor must provide per item pricing for each of the following items:

- a. *Preventative Maintenance.* Provide a flat fee price per machine serviced per quarter.
- b. *Transportation/Relocations.* Provide a flat fee price per machine per relocation, as the term relocation has been defined in Section 2.2.8.
- c. *Customer Service Calls.* Flat fee for each occasion in which a field service representative is dispatched to a retailer.

Above pricing should be inclusive of all costs, including parts and supplies, associated with providing the services herein.

- 2.3.2 Pricing Option 2 (bundled pricing).** As an alternative to and exclusive of the pricing of 2.3.1, Vendor must provide pricing based on a bundled monthly fee per ITVM to include all costs associated with providing the services herein.
- 2.3.3 Pricing Option 3.** Vendor may choose to provide a third alternative pricing methodology to best address the specifications required herein and designed to provide significant savings to the Lottery. Pricing included in Option 3 should be inclusive of all costs associated with providing the services herein.

SECTION III GENERAL REQUIREMENTS

- 3.1 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 Vendor must submit with its Bid a brief description of how its bid will help the Lottery meet its commitment. If the Vendor is a MBE or WBE, the Vendor shall include reasonable evidence of its MBE/WBE certification. If subcontractors are anticipated, Vendor 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.
- 3.2 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 Vendor is not so approved, Vendor 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 Vendor's certificate of existence or advise the Lottery of the status of Vendor's request for said certificate.
- 3.3 Tax Clearance.** Provide the Lottery with a tax clearance statement from the Indiana Department of Revenue certifying that the Vendor is not on the most recent tax warrant list.
- 3.4 Lottery Act Requirements.** Vendor must warrant to the Lottery in its proposal that the vendor 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.
- 3.5 Contract Terms.** The Lottery's contract terms are attached as Appendix A and will provide the base terms for any negotiations upon an award to a successful Vendor. Vendor must identify any terms or conditions that it proposes to modify and include any terms and conditions it seeks to have added. The Lottery is not obligated to accept any of the proposed modifications or additions.

APPENDIX A

**AGREEMENT BETWEEN
THE STATE LOTTERY COMMISSION OF INDIANA
AND _____**

**FOR
MAINTENANCE OF INSTANT TICKET VENDING MACHINES**

RECITALS

WHEREAS, the State Lottery Commission of Indiana (Hoosier Lottery) issued an Invitation to Bid (ITB) for Maintenance of Instant Ticket Vending Machines on Wednesday, January 25, 2012; and

WHEREAS, _____ responded to said ITB by a Bid dated _____; and

WHEREAS, the Hoosier Lottery selected the Bid as the Bid which best addresses the applicable provisions of the ITB, offers the best overall range of benefits and is considered most advantageous to the Lottery;

NOW THEREFORE, this Contract (“this Contract”), entered into by the State Lottery Commission of Indiana doing business as the Hoosier Lottery (herein referred to as the “Lottery”) and _____ (herein referred to as the “Contractor”), is executed pursuant to the terms and conditions set forth herein. In consideration of those mutual undertakings and covenants, the parties agree as follows:

**PART I
CONTACTOR DUTIES, RELATIONSHIP, AND PERFORMANCE**

1.1 Duties of the Contractor. The Contractor shall provide the following services relative to this Contract:

[AFTER ANNOUNCEMENT OF THE SUCCESSFUL VENDOR,
LOTTERY WILL COMPLETE THIS SECTION.]

The Contractor shall execute its responsibilities by following and applying at all times the highest professional and technical guidelines and standards.

1.2 Independent Contractor. In the performance of this Contract, both parties shall act in an individual capacity and not as agents, employees, partners, joint ventures or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purposes whatsoever. Neither party will make commitments on behalf of the other without prior written approval of the other party.

1.3 Assignment; Successors. Contractor may not sell, assign, subcontract or pledge its rights and obligations under this Contract or take any other action which may tend to encumber the direct contractual relationship between the Lottery and the Contractor without express prior written consent of the Lottery, which shall not be unreasonably withheld. Notwithstanding any such assignment or subcontract, the Contractor shall remain obligated to the Lottery for performance of the obligations of the Contractor under this Contract.

PART II
CONSIDERATION, EXPENSES, AND TERMS OF PAYMENT

2.1 Consideration.

[PRICING ON ACTUAL CONTRACT TO BE DETERMINED BASED ON SUCCESSFUL BID]

2.2 Taxes. The Lottery is exempt from state, federal, and local taxes. The Lottery will not be responsible for any taxes levied on the Contractor or any other person or entity as a result of this Contract.

2.3 Penalties/Interest/Attorney's Fees. The Lottery will in good faith perform its required obligations hereunder and does not agree to pay any penalties, interest, or attorney's fees, except as permitted by Indiana law.

2.4 Payment Terms. Contractor 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.

2.5 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.

PART III
CONTRACT TERM AND RENEWAL

3.1 Term. This Contract shall be effective for a period of two (2) years. It shall commence on _____ and shall conclude on _____.

3.2 Renewal Option. The Lottery may, at its sole discretion, renew this Contract for four (4) additional period(s) of one (1) year(s) on the same terms and conditions as provided herein by giving written notice to the Contractor on or before the end of the then current term or renewal.

PART IV
DISPUTES, TERMINATION, DEFAULT, AND REMEDIES

4.1 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.

4.2 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:

- 4.2.1 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:
- (i) Contractor files a voluntary petition or is the subject of an involuntary petition in bankruptcy or is adjudged bankrupt;
 - (ii) Contractor makes a general assignment for the benefit of creditors; or
 - (iii) A receiver is appointed due to the Contractor's insolvency and the appointment is not dismissed within thirty (30) days.
- 4.2.2 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.
- 4.2.3 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.
- 4.2.4 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.

- 4.2 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.

PART V **INTELLECTUAL PROPERTY, RECORDS, AND CONFIDENTIALITY**

- 5.1 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.

5.2 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.

5.3 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.

5.4 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.

PART VI **COMPLIANCE WITH GOVERNING LAWS**

6.1 Governing Law. 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.

6.2 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 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.

6.3 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.

6.4 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.

6.5 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.

6.6 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.

6.7 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 Vendor 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.

6.8 Contractor Qualified to do Business in Indiana. Contractor warrants that it is qualified to conduct business in Indiana and will maintain good standing with the Indiana Secretary of State.

6.9 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.

PART VII
MISCELLANEOUS TERMS AND CONDITIONS

7.1 Incorporated by Reference. The ITB, the Answers to Vendor'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.

7.2 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.

7.3 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.

7.4 Indemnification. The Contractor agrees to indemnify, defend, and hold harmless the Lottery, its agents, officers, and employees from all claims and suits including court costs, attorney's fees, and other expenses caused by any act or omission of the Contractor and/or its subcontractors, if any, in the performance of this Contract. The Lottery shall not provide such indemnification to the Contractor.

7.5 Insurance. The Contractor shall secure and keep in force during the term of this Contract, the following insurance coverages, covering the Contractor for any and all claims of any nature which may in any manner arise out of or result from this Contract:

1. Commercial general liability, including contractual coverage, and products or completed operations coverage (if applicable), with minimum liability limits of \$500,000 per person and \$1,000,000 per occurrence unless additional coverage is required by the Lottery.
2. Automobile liability with minimum liability limits of \$250,000 per person and \$1,000,000 per occurrence.

The Contractor shall provide proof of such insurance coverage by tendering to the undersigned Lottery representative, a certificate of insurance prior to the commencement of this Contract.

The Contractor's insurance coverage must meet the following additional requirements:

1. The insurer must have a certificate of authority issued by the Indiana Department of Insurance.
2. Any deductible or self-insured retention amount or other similar obligation under the insurance policies shall be the sole obligation of the Contractor.
3. The Lottery will be defended, indemnified, and held harmless to the full extent of any coverage actually secured by the Contractor in excess of the minimum requirements set forth above. The duty to indemnify the Lottery under this contract shall not be limited by the insurance required in this Contract.
4. The insurance required in this Contract, through a policy or endorsement, shall include a provision that the policy and endorsements may not be canceled or modified without thirty (30) days' prior written notice to the undersigned Lottery agency.

Failure to provide insurance as required in this Contract may be deemed a material breach of contract entitling the Lottery to immediately terminate this Contract. The Contractor shall furnish a certificate of insurance and all endorsements to the undersigned Lottery agency prior to the commencement of this Contract.

7.6 Notice to Parties. Whenever any notice, statement or other communication is required under this Contract, it shall be sent to the following addresses, unless otherwise specifically advised:

Notices to the Lottery shall be sent to:

Executive Director
Hoosier Lottery
1302 North Meridian Street
Suite 100
Indianapolis, IN 46202

Notices to the Contractor shall be sent to:

[INSERT CONTRACTOR INFORMATION FOLLOWING BID AWARD]

7.7 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.

7.8 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.

7.9 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.

7.10 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.

Non-Collusion and Acceptance

The undersigned attests, subject to the penalties for perjury, that he/she is the Contractor, or that he/she is the properly authorized representative, agent, member or officer of the Contractor, that he/she has not, nor has any other member, employee, representative, agent or officer of the Contractor, directly or indirectly, to the best of the undersigned's knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he/she has not received or paid, any sum of money or other consideration for the execution of this Contract other than that which appears upon the face of this Contract.

In Witness Whereof, Contractor and the Lottery have, through their duly authorized representatives, entered into this Contract. The parties, having read and understand the foregoing terms of this Contract, do by their respective signatures dated below hereby agree to the terms thereof.

Contractor:

State Lottery Commission of Indiana:

Printed Name: _____

Executive Director

Title: _____

Date: _____

Date: _____