

MISSISSIPPI LOTTERY CORPORATION

REQUEST FOR PROPOSALS NO. 4

REQUEST FOR PROPOSALS FOR INSTANT TICKET LOTTERY GAME SERVICES

PROPOSAL SUBMISSION DEADLINE: AUGUST 2, 2019 (2:00 P.M. CST)

**PROPOSAL DUE TO: MISSISSIPPI LOTTERY CORPORATION
INSTANT TICKET BID
DR. MICHAEL J. MCGREVEY, CHAIRMAN
C/O REBECCA SANFORD
BALCH & BINGHAM LLP
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JUNE 27, 2019

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MISSISSIPPI LOTTERY CORPORATION

REQUEST FOR PROPOSALS FOR INSTANT TICKET LOTTERY GAME SERVICES

RFP NO. 4

PART I - GENERAL INFORMATION

1.1 INTRODUCTION

The Alyce G. Clarke Mississippi Lottery Law, Senate Bill 2001 (First Extraordinary Session 2018) (the “**Act**”), formed the Mississippi Lottery Corporation (the “**Corporation**”) to administer the State of Mississippi’s first lottery (the “**Mississippi Lottery**”). The Corporation’s Board of Directors (the “**Board**”) governs the Corporation. The Board is comprised of five (5) members appointed by the Governor, with the advice and consent of the Senate, in addition to the Commissioner of the Department of Revenue and the State Treasurer as ex officio members. Composing the current Board are Dr. Michael J. McGrevey, Dr. Cass Pennington, Kimberly LaRosa, Gerard Gibert, Philip Chamblee, Commissioner Herb Frierson, and Treasurer Lynn Fitch. The Act mandates that the Board appoint a President of the Corporation, subject to the approval of the Governor. The Board appointed Thomas N. Shaheen as President of the Corporation (the “**President**”), who was subsequently approved by Governor Phil Bryant.

In accordance with the Act, the Corporation must act for the benefit of the people of Mississippi through the operation of a lottery and strive to maximize lottery revenues to the State of Mississippi.

The purpose of this procurement (the “**Procurement**”) and Request for Proposal (“**RFP**”) is to invite responsible proposals (“**Proposals**”) from qualified and reputable vendors in the lottery industry (“**Vendors**”) for the provision, implementation and operation of instant ticket lottery game services and systems and certain marketing services and other purposes described herein (collectively, the “**System**”). It is the Corporation’s desire to select a single Vendor that is able to provide a comprehensive System and solution to its instant ticket operations, to include the manufacture of instant tickets, warehousing and distribution and marketing support services covered by this RFP.

The Corporation currently intends to execute a contract (the “**Contract**”) as a result of this Procurement of the System, if any Contract is executed at all, encompassing all of the products and services contemplated in this RFP and Procurement; provided, however, nothing herein obligates the Corporation to sign any Contract, or only one Contract, and the Corporation reserves the right to sign one or more Contracts, or no Contracts, as it determines in its sole discretion to be in the best interests of the Corporation and the State of Mississippi. Notwithstanding any provision of this RFP to the contrary, the Corporation may in its sole discretion favor multiple Proposals and accordingly select multiple “**Successful Vendors**” (as defined in this Section 1.1) and execute multiple Contracts.

This RFP is being used by the Corporation to take maximum advantage of the design capabilities, implementation knowledge and operational knowledge of the marketplace for the design, implementation and operation of the Corporation's statewide instant ticket sales and related activities. All Vendors must fully acquaint themselves with the Corporation's needs and requirements and obtain all necessary information and understandings to be able to develop an appropriate solution and to submit responsive and effective Proposals. Vendors are encouraged to be creative in their Proposals and provide best in class and creative solutions so that the Corporation can maximize the revenues it raises as responsibly as possible.

The Corporation is an independent, self-supporting and revenue-raising corporation of the State of Mississippi, created by the Act. It plans to employ approximately eighty (80) people statewide and have approximately three (3) regional claim center offices (the "**Claim Center Offices**") in addition to the Corporation's headquarters to be located in Hinds, Rankin or Madison Counties, Mississippi (the "**Greater Jackson Metropolitan Area**") by the start-up of instant ticket sales on or before December 1, 2019. The exact numbers of employees, retailers selling the Corporation products and Claim Center Offices is subject to change in the discretion of the Corporation. The Corporation is committed to maximizing revenues to the State of Mississippi by providing entertaining lottery products and quality customer service to retailers and players, while maintaining its integrity and the integrity of its games.

The Corporation requires that instant ticket sales begin on or before December 1, 2019 (the "**Startup Deadline**"); thus, all components of the System and instant ticket operation must be in place, fully operational and tested prior to that Startup Deadline. The Corporation also requires that online ticket sales begin on or before February 10, 2020 (the "**Online Deadline**"); thus, all of the online lottery game products, services and systems must be in place, fully operational and tested prior to that Online Deadline. The Corporation currently expects to begin with instant ticket price points at \$1, \$2, \$3, \$5 and \$10 and may offer higher instant ticket denominations within the Contract term. The Corporation plans for the Vendor that is selected to provide the System, goods and services contemplated by this RFP (the "**Successful Vendor**") to develop and implement software and systems and do all things necessary to enable the Corporation to achieve all of its objectives as set forth in this RFP.

The Corporation's retailer base ("**Retailers**") as of the Startup Deadline is currently expected to be approximately fifteen hundred (1,500) to seventeen hundred (1700) (subject to change in the discretion of the Corporation). Thereafter, based on subsequent developments and sales and the recommendation of the President to the Board, the Retailer base may be expanded to three thousand (3,000) or more during the term of the Contract. Additionally, the Corporation currently plans to staff and operate three (3) Claim Center Offices throughout the State of Mississippi in addition to its headquarters to be located in the Greater Jackson Metropolitan Area. Accordingly, the System proposed by the Vendors must be sufficiently scalable and fully functional to properly handle the growing needs of the Corporation as they evolve from time to time in the discretion of the Corporation.

1.2 CORPORATION OBJECTIVES

All Proposals in response to this RFP shall reflect at least the following overall goals and objectives of the Corporation:

- To acquire a System and instant ticket operation that will suit the requirements of the Corporation now and into the future;
- To make prize payouts of a least fifty percent (50%) of the total annual gross revenues accruing from the sale of lottery tickets;
- To annually increase revenue to the Lottery Proceeds Fund in the Mississippi State Treasury (the “**Lottery Proceeds Fund**”), and meet the Act’s requirement to transfer the net proceeds of total annual gross revenues accruing from the sale of lottery tickets (after payment of prizes to the holders of winning lottery tickets and payment of costs incurred in the operation and administration of the lottery) to the Lottery Proceeds Fund;
- To market high quality products that provide entertainment and customer satisfaction;
- To ensure that the lottery receives services from Vendors who are financially sound and experienced and who maintain favorable reputations within the lottery industry for proper ethics and contract performance;
- To ensure that the Successful Vendor is capable of providing the Systems and services called for in this RFP, and that the Successful Vendor will be capable of continuing to provide the System and those services during the term of the Contract;
- To ensure that the System is fully operational and installed and all instant ticket products are in retail locations and available for sale to the public in all Retailer locations approved by the Corporation at least two weeks prior to the December 1, 2019 Startup Deadline;
- To ensure that the Successful Vendor is capable of full compliance with “**Applicable Laws**” (as defined in Section 3.13) in the operations proposed to be conducted under any Contract awarded as a result of this Procurement;
- To provide for innovation and the ability to respond to changes in the industry and the demands of the marketplace;
- To obtain the highest quality goods and services at competitive prices; and
- To start up and operate the Mississippi Lottery as an extremely successful lottery, while maintaining its efficiency, security and integrity.

1.3 SUCCESSFUL VENDOR/CORPORATION RELATIONSHIP

The nature of this RFP and the Contract that will result from this Procurement will result in a relationship between the Successful Vendor and the Corporation, which relationship must be founded on mutual trust and respect. The Successful Vendor must adopt the same attitudes, concerns and commitment towards the Corporation’s games, financial performance, legal compliance, integrity and security as are held by the Corporation.

1.4 GOVERNING LAW

All Proposals and the Contract are automatically subject to the requirements of, and must comply with, the Act and the regulations, policies and procedures of the Corporation as they may be adopted or amended from time to time (collectively, the “**Regulations, Policies and Procedures**”), regardless of whether or not specifically addressed in either this RFP or the Proposal. All potential Vendors must read and be familiar with the Act and the Regulations, Policies and Procedures of the Corporation, a copy of which may be obtained either from the Corporation or through a link on the Corporation’s official web site, www.mslotteryhome.com (the “**Website**”). The Regulations, Policies and Procedures are subject to change from time to time in the sole discretion of the Corporation and no advance written notice of any such changes must be provided to any Vendor or other individual or entity. Unless otherwise indicated therein, any changes in the Regulations, Policies and Procedures adopted by the Corporation become effective thirty (30) days after their being published and posted on the Website. A Vendor may obtain the latest Regulations, Policies and Procedures at any time upon a written request to the Corporation. Thus, all Vendors are required to continually monitor and pay close attention to the Regulations, Policies and Procedures and all changes thereto. All Vendors shall automatically be deemed to be on notice of, and subject to, the latest Regulations, Policies and Procedures of the Corporation. All Vendors are precluded from alleging that any particular Regulations, Policies and Procedures are not applicable to them because of their lack of knowledge of their existence or modification.

1.5 PROPOSAL SUBJECT TO PUBLIC RECORDS ACT AND OPEN MEETINGS ACT

All Proposal data, materials and documentation originated, prepared and submitted to the Corporation pursuant to this RFP shall belong exclusively to the Corporation. Unless required by Applicable Laws, the Corporation will not release any Proposal data, materials and documentation originated, prepared and submitted to the Corporation pursuant to this RFP during the evaluation process or prior to an award of a Contract. After all Vendors have been notified of the award of a Contract, Vendors’ Proposals will be available for public review, subject to the limitations of the Mississippi Public Records Act of 1983, *Miss. Code Ann.* §§ 25-61-1 *et seq.*, as amended, and the Corporation’s Public Records Request Policy (the “**Open Records Laws**”).

Vendors should properly and conspicuously identify any trade secrets or confidential commercial or financial information which are confidential information in accordance with the Open Record Laws (collectively, “**Confidential Information**”) and in writing by page, paragraph and sentence prior to or upon submission to the Corporation of Confidential Information to be protected. It is the responsibility of the Vendors to identify all Confidential Information. All markings of identification must be conspicuous; use color, bold, underlining or some other method in order to conspicuously mark and distinguish the Confidential Information from the other text. If a portion of a Proposal is improperly marked as Confidential Information or similar designation, the Corporation may, in its sole discretion, determine it non-responsive. Do not mark the entire page if only portions of a page are protected. Vendors should also state the reasons such confidentiality is necessary. However, under no circumstance will the Corporation be liable to any Vendor or to any other person or entity for any disclosure of any such

Confidential Information, including any trade secrets contained therein. The Corporation will not consider any Proposal which is declared, or a substantial portion of which is declared, by the Vendor submitting such Proposal to constitute Confidential Information.

Vendors are hereby notified that all meetings of the Board are subject to and shall be conducted pursuant to the Mississippi Open Meetings Act, *Miss. Code Ann.* §§ 25-41-1 *et seq.*, as amended.

1.6 MISUNDERSTANDING OR LACK OF INFORMATION

By submitting a Proposal, Vendors covenant and agree that they fully understand and will abide by the terms and conditions of this RFP and all Regulations, Policies and Procedures and they will not make any claims for, nor have any rights to, cancellation, remedy or relief because of any misunderstanding or lack of information.

1.7 REJECTION OF PROPOSALS AND CANCELLATION OF RFP; REISSUE OF RFP

Issuance of this RFP does not constitute a commitment on the part of the Corporation to award or execute a Contract. The Corporation retains the right, in its sole discretion, at any time to reject any or all Proposals, in whole or in part, and to cancel or cancel and reissue this RFP, before or after receipt and opening of Proposals in response thereto, or take any other actions, if it considers it to be in the best interests of the Corporation. Any Proposal that does not meet the requirements or specifications of this RFP may be considered to be non-responsive to this RFP and the Proposal may be rejected by the Corporation in its sole discretion. Any Proposal that restricts the rights of the Corporation or otherwise qualifies the Proposal may be considered to be non-responsive to this RFP and may be rejected in the sole discretion of the Corporation. The Corporation shall have the right, in its sole discretion, to reissue or not reissue an RFP and to negotiate a Contract or not negotiate a Contract, all without any liability to any Vendor. Vendors submit proposals at their own risk and with no expectation that a Contract will be awarded to them or at all.

1.8 INCURRED EXPENSES

The Corporation shall not, under any circumstance, be liable or responsible for any costs, expenses, reimbursements or fees incurred by a Vendor (or any other individual or entity) in preparing and submitting a Proposal or in performing any other action in connection with this Procurement, including, without limitation, any site visits, System demonstrations, negotiations, questions and answers, procurements or other activities of any kind or nature.

1.9 PROPOSAL VALIDITY

All Proposals shall remain valid for one hundred and eighty (180) calendar days (the “**Proposal Offer Period**”) from 2:00 p.m. Central Standard Time (“**CST**”) August 2, 2019 (the “**Proposal Deadline**”) and as provided in *Attachment A* to this RFP. A Proposal constitutes an offer by the Vendor to contract with the Corporation in accordance with the terms of the Proposal and this RFP, which offer is irrevocable for the duration of the Proposal Offer Period and may not be withdrawn or amended during the Proposal Offer Period without the written consent of the Corporation.

By submitting a Proposal, a Vendor certifies that it is not currently debarred from submitting proposals for contracts issued by any political subdivision or agency of the State of Mississippi or federal government, and that it is not an agent of a person or entity that is currently debarred from submitting proposals for contracts issued by any political subdivision or agency of the State of Mississippi or federal government.

1.10 RIGHT TO USE INFORMATION IN THE PROPOSAL

Upon submission, all materials submitted to the Corporation by Vendors shall become the property of the Corporation and may be used as the Corporation deems appropriate.

PART II - PROPOSAL PROCESS

Vendors are advised that all contents of this RFP, any amendments thereto, any “**Answers**” (defined in Section 2.4) prepared and published in accordance with this RFP by the Corporation to “**Questions**” (defined in Section 2.4) regarding this RFP and Procurement, the Successful Vendor’s Proposal and the Contract, will constitute the substantive terms and conditions, among others, of the relationship, if any occurs, between a Successful Vendor and the Corporation, all as further described herein.

2.1 CONTACT PERSON

The sole point of contact (the “**Contact Person**”) for inquiries and additional information concerning this RFP and Procurement will be Rebecca Sanford, who can be reached as follows:

Email: rsanford@balch.com

IF DELIVERED SOLELY BY US POSTAL SERVICE

Mississippi Lottery Corporation Instant Ticket Bid
Dr. Michael J. McGrevey, Chairman
c/o Rebecca Sanford
Balch & Bingham LLP
P.O. Box 22587
Jackson, MS 39225

IF DELIVERED BY ANY OTHER MEANS (INCLUDING HAND DELIVERY)

Mississippi Lottery Corporation Instant Ticket Bid
Dr. Michael J. McGrevey, Chairman
c/o Rebecca Sanford
Balch & Bingham LLP
188 E. Capitol Street, Suite 1400
Jackson, MS 39201

2.2 PROHIBITION AGAINST UNAUTHORIZED CONTACTS

The Corporation is committed to a competitive procurement process that maintains the highest level of integrity, ethics and professionalism. Therefore, except as expressly contemplated in

this RFP, or in connection with normal business activities not associated with this Procurement, no direct or indirect contact or other solicitation initiated by Vendors, or any employees or representatives of Vendors, including but not limited to their attorneys, representatives or others promoting their position, will be allowed with the President, any Board member (a “**Director**”), any member of an evaluation committee created by the Board for this Procurement (the “**Evaluation Committee**”) or any public official, or with any Corporation officer, employee, consultant or adviser, individually or otherwise, from and after the release of this RFP until the Corporation selects a Successful Vendor (the “**Quiet Period**”). During the Quiet Period, all contact and other solicitations made by a Vendor submitting a Proposal, or any person or entity employed by or on behalf of such a Vendor shall be directed towards the Contact Person identified in Section 2.1 of this RFP or otherwise as directed by the Corporation as part of the RFP, Procurement and evaluation processes (e.g., in connection with official site visits of a Vendor, or in response to the Evaluation Committee’s requests for information, or as a result of a required interaction with an Evaluation Committee member in the exercise of such member’s job). Any violation of this prohibition may result in the immediate disqualification of a Vendor and possible censure or other consequences in the sole discretion of the Corporation. Any attempt to intimidate or influence any Corporation employees, officers, consultants, advisors, Directors, the President or members of the Evaluation Committee with respect to this Procurement, whether such attempt is oral or written, formal or informal, successful or unsuccessful is strictly prohibited, will not be tolerated and will result in immediate, and possibly permanent, disqualification in the sole discretion of the Corporation. The Corporation takes its ethics, integrity and professionalism responsibilities extremely seriously and admonishes all Vendors to do the same or risk serious consequences!

2.3 HIRING OF CORPORATION PERSONNEL

Vendors are expressly prohibited from officially or unofficially hiring, making any employment offer or proposing any similar representation, consulting or business arrangement whatsoever with any Corporation employee, officer or Director, whether directly or through an entity owned thereby, for compensation of any kind, from the time this RFP is issued until the earlier of either: (i) one (1) year after the execution of any Contract; or (ii) the rejection of all Proposals received by the Corporation.

Notwithstanding anything in this Section 2.3 to the contrary, Vendors are hereby notified that the Corporation’s Conflict of Interest/Ethics Policy prohibits (i) former Corporation employees, officers or Directors representing any Successful Vendor before the Corporation, and (ii) former Corporation officers and Directors, whether directly or through an entity owned thereby, soliciting or accepting employment or entering into a contact for compensation of any kind with a Successful Vendor, each for a period of one (1) year after such person ceases to be a Corporation employee, officer or Director, as the case may be.

2.4 INQUIRIES

All inquiries or concerns regarding this RFP must be submitted in the form of questions or requests for clarification (collectively, the “**Questions**”). Such Questions must be in writing and received by the Contact Person identified in Section 2.1 of this RFP on or before 2:00 p.m. CST on July 8, 2019 (the “**Question Deadline**”). Waiting until the submission of a Proposal or after

the Question Deadline to raise any Questions may result in rejection of a Vendor's Proposal without recourse. The Corporation will not accept, review or respond to any Questions received improperly or after the Question Deadline. The Corporation is under no obligation to respond to any Questions submitted; however, responses to Questions properly received prior to the Question Deadline to which the Corporation chooses to respond (the "Answers") will be posted on the Website on or before 5:00 p.m. CST on July 16, 2019 (the "Answer Deadline").

2.5 PROPOSAL SUBMISSION

Proposals must be received by the Contact Person identified above in Section 2.1 of this RFP no later than the Proposal Deadline of 2:00 p.m. CST on August 2, 2019 in sealed containers marked "Proposal Package." No extensions or exceptions will be made. A Vendor will submit a signed original and seven (7) reproduced complete copies of its Proposal. The original Proposal must be signed in blue or black ink by the Vendor's authorized agent. All copies of the cost/price portion of the Proposal required by Part VI must be submitted in sealed and labeled envelopes separate from the information required by all other parties of this RFP. The container shall also be clearly labeled with the name of the Vendor and the RFP to which the Proposal relates, and directed to the attention of the Contact Person. Proposals shall be mailed or hand-delivered to the Contact Person as stipulated in Section 2.1. No Proposals delivered by email or facsimile will be accepted. Proposals which fail to comply with the provisions of this RFP may, in the sole discretion of the Corporation, not be considered. Late Proposals will not be accepted, and shall be rejected and returned to the Vendor unopened. The Corporation reserves the right to refuse to accept any late Proposal even if the delay is occasioned by inclement weather or other events of force majeure, and thus Vendors should plan accordingly.

2.6 PROPOSAL FORMAT

Each Vendor shall take steps to completely and totally familiarize itself with the requirements of this RFP and Procurement. Vendors must prepare and submit Proposals following the format of this RFP. Vendors must provide responses for all numbered items in Parts IV, V and VI which request or call for a response or information, and responses and signatures are required for any Attachments referenced within, or attached to, this RFP that are due with the Proposal.

A Proposal shall be prepared simply and economically to provide a straightforward and concise but complete delineation of the capabilities of a Vendor to satisfy the requirements set forth in this RFP, in accordance with the format prescribed in this RFP. Proposals that do not comply with this format may, in the sole discretion of the Corporation, be considered non-responsive and be rejected and not considered. Proposals shall be complete and must convey all of the information requested by the Corporation. The words "shall," "must," "will" and words of similar import denote material and essential requirements of this RFP. Failure to comply with any material and essential requirement may result in a rejection of a Proposal in the sole discretion of the Corporation.

2.7 MULTIPLE VENDORS AND JOINT PROPOSALS

If the response submitted is a joint Proposal that includes multiple Vendors, it must define completely the roles, responsibilities, duties and obligations that each entity that is a part of a

joint venture, strategic partnership or prime contractor team proposes to undertake, as well as the proposed responsibilities of each subcontractor of each entity. The Proposal must be signed by an authorized officer or agent of each entity. Also, the Proposal must designate a single authorized official from one of the entities to serve as the sole contact between the Corporation and the joint venture, strategic partnership or prime contractor team. Any Contract resulting from a joint Proposal must be signed by an authorized officer or agent of each entity. Any entity which is part of a joint venture, strategic partnership or prime contractor team included in the submission of a joint Proposal will be jointly and severally liable during the term of the Contract.

The Successful Vendor that submits a Proposal whereby any subcontractor will provide some portion of the specifications of this RFP shall retain ultimate responsibility for all design, implementation, operation, performance, maintenance and services provided by any subcontractor, and any claims or liabilities arising from or related to the subcontractor's performance. Furthermore, each subcontractor of a Successful Vendor must comply with all of the requirements contained in this RFP. A Vendor that submits a Proposal whereby any subcontractor will provide some portion of the specifications of this RFP must also provide the information described in Part IV – "Required Information" for each such subcontractor.

2.8 CHANGES, MODIFICATIONS AND CANCELLATION

The Corporation reserves the right, in its sole discretion, at any time prior to the Proposal Deadline of 2:00 p.m. CST on August 2, 2019, to make changes to this RFP by issuance of written addendum(s) or amendment(s) or to cancel all or part of this RFP and Procurement. Any addendum(s), amendment(s) or cancellation(s) will be posted on the Website.

2.9 MODIFICATION OR WITHDRAWAL OF PROPOSAL

A submitted Proposal may be modified or withdrawn by written notice received by the Contact Person identified in Section 2.1 of this RFP at any time *prior* to the Proposal Deadline. After the Proposal Deadline, no Proposal may be modified or withdrawn.

A Vendor is under a continuing obligation to notify the Corporation following the submission of a Proposal of any changes to the Proposal information, data or facts submitted in response to Part IV, Part V and Part VI and the Attachments to this RFP which could reasonably be expected to affect the Corporation's consideration of the Proposal. The Corporation reserves the right to request additional information or clarification on the contents of a Proposal in its sole discretion. However, unless requested by the Corporation, no Vendor is authorized or permitted to submit any additional information or further clarifications after the Proposal Deadline.

2.10 ADDITIONAL INFORMATION

The Corporation reserves the right, and a Vendor by submitting a Proposal grants to the Corporation the right, to obtain any information the Corporation desires from any lawful source regarding the Vendor, its officers, directors, employees, owners, team members, partners, joint venturers and/or subcontractors, and its or their past business history, practices, contracts, abilities, performance, reputation or track record. All such information may be taken into consideration in evaluating the Proposals and no Vendor may complain or object to the obtaining or consideration of any such information. If a Vendor is concerned about any such negative

publicly available information being considered by Corporation, it may provide any factual and lawful explanation of such information along with its Proposal. Failure to provide such explanations with its Proposal, which the Corporation can consider or not consider in its sole discretion, estops a Vendor from complaining about the consideration of any such information obtained by the Corporation.

2.11 PROPOSAL EVALUATION

2.11.1 INTRODUCTION

The deadlines stated in this RFP are critical. Time is of the essence. It is not the intent of the Corporation to disqualify any Proposal based on minor technicalities. However, the Corporation reserves the right to determine if a particular deficiency or inadequacy is significant enough to disqualify the Proposal and Vendor. It is the intent of the evaluation procedure established by the Corporation to determine whether each Proposal meets the needs of the Corporation, as outlined in this RFP, and then to determine which Proposal best suits those needs. A variety of factors shall be considered by the Corporation in determining the Successful Vendor it believes provides the best overall solution at a fair and reasonable price and consistent with the goals and objectives of the Corporation. No one factor can or will be so paramount that the most favorable bidder in that category automatically is the Successful Vendor. While price and total cost are both important factors, as is a price/value analysis, the total System solution and maximizing net revenues for the Lottery Proceeds Fund in the most professional and responsible manner with integrity is most critical. Thus, while Vendors are strongly encouraged to offer the lowest price and total cost and highest value possible, the Vendor offering the lowest price and total cost may not be selected as the Successful Vendor.

2.11.2 EVALUATION COMMITTEE

The Corporation will conduct a fair, comprehensive and impartial evaluation of all Proposals deemed responsive and received in accordance with this RFP and Procurement using an Evaluation Committee selected by the Board. Legal counsel and consultants may provide such assistance to the Corporation and the Evaluation Committee as is deemed necessary or helpful. Any attempt to intimidate or influence the Evaluation Committee (or their advisors) will be met with the most severe remedies and will include disqualification, in the sole discretion of the Corporation. Any contacts by Vendors with Evaluation Committee members must be professional, ethical and limited to the specific business purpose for which such contact was initiated by the Evaluation Committee member.

2.11.3 EVALUATION PROCEDURE

The Evaluation Committee will review all responsive Proposals timely and properly submitted in accordance with this RFP. The Evaluation Committee may, in its sole discretion, request clarifications or answers to any questions it may have of a Vendor as a result of any information or representations contained in its Proposal or otherwise identified, and may ask a Vendor to address technical questions or seek additional

information regarding any Proposal before completing the initial evaluation. The Evaluation Committee may conduct site visits and/or require Vendors to make oral presentations to it as part of its evaluation process. Requests for clarification from Vendors, and any information received in response thereto, will be in, and will become part of, the evaluation record and the Contract if that Vendor is selected as the Successful Vendor. The Corporation may designate the Successful Vendor as a Vendor who submits a responsive Proposal as a result of this RFP and, in the opinion of the Corporation, in its sole discretion (all of the following being collectively defined as the “**Optimal Selection Objectives**”):

- (1) is the responsible lottery Vendor who submits the best proposal that maximizes the benefits to the State of Mississippi;
- (2) is able, and is otherwise qualified in all material respects, to perform fully the Contract requirements without delay;
- (3) has the integrity, professionalism, reliability and System to assure good faith and complete performance of the Contract;
- (4) successfully passes, to the satisfaction of the Corporation, the background, business practices, ethical, reputation, criminal record, civil litigation, competence, integrity and regulatory compliance checks and investigations conducted by the Evaluation Committee, the Board, the President or as required by the Act or other Applicable Laws;
- (5) whose Proposal as determined by the Corporation, in its sole discretion:
 - (a) conforms in all material respects to this RFP, the Procurement, the Act and other Applicable Laws;
 - (b) represents the best value to the Corporation; and
 - (c) offers what the Corporation in its sole discretion believes can provide:
 - (i) the greatest long-term benefit to the Lottery Proceeds Fund and the State of Mississippi;
 - (ii) the greatest integrity for the Corporation; and
 - (iii) the preferred System, services and products for the Corporation and public taking into consideration the evaluation factors as deemed appropriate by the Evaluation Committee and the Corporation.

When the evaluation is completed, the Evaluation Committee will prepare a written recommendation to the President, who may meet with the Evaluation Committee to ask questions regarding the recommendation or require further work in connection therewith.

The President may approve, disapprove, amend, modify, accept or reject the terms of the recommendation by the Evaluation Committee or require further work to be done. The President shall then ultimately submit his final written recommendation to the Board for the Board's consideration. The Board may approve, disapprove, amend, modify, accept or reject the terms of the recommendation by the President or require further work to be done. Additionally, before the Contract may be awarded to and signed by a Vendor, the President must obtain the Board's approval of such Contract award.

The Corporation shall promptly notify the Successful Vendor in writing of the Contract award and the Successful Vendor must commence work immediately following notification of the award, regardless of whether or not a Contract has been signed.

2.11.4 EVALUATION CATEGORIES

In evaluating the Proposals, the Evaluation Committee will be guided by various factors pertinent to the System and services sought as detailed in this RFP, and such factors shall include, but not necessarily be limited to, the following factors, which are not necessarily listed in the order of importance.

- Experience, including lottery start-up experience;
- Integrity;
- Background;
- Financial viability and ability to perform the Contract as required and proposed;
- Marketing plan;
- Operations plan, including printing, warehousing, distribution, ticket inventory control and management;
- Security plan and security track record;
- Proposed technical solution; and
- Cost/price and value to the Corporation.

This RFP is intended to foster creative approaches to the implementation of the Mississippi Lottery in all respects. The RFP process will afford a Vendor the latitude to propose its best possible solution for the Corporation and will offer the Corporation a wide range of alternatives and allow it to consider all possible alternatives in determining the best solution for implementing the Mississippi Lottery.

The Corporation shall select a Vendor that it believes can best satisfy and achieve the Optimal Selection Objectives outlined in Section 2.11.3. Notwithstanding anything herein to the contrary, the Successful Vendor must, in the opinion of the Corporation, also successfully pass, to the satisfaction of the Corporation, the background, business

practices, ethical, reputation, criminal record, civil litigation, competence, integrity, and regulatory compliance checks and investigations conducted by the Evaluation Committee, the Board, the President or as required by the Act or other Applicable Laws.

2.12 DISPUTE PROCEDURE

All claims and disputes, including but not limited to protests related to this RFP, the Procurement and the award of the Contract to the Successful Vendor shall be handled solely and exclusively under and in accordance with Section 17 of the Act and the Corporation’s Dispute Resolution Procedures (the “**Dispute Procedures**”), as adopted and/or amended from time to time by the Corporation in accordance with the authority granted to it in the Act. The Dispute Procedures are automatically considered to be a part of the Regulations, Policies and Procedures of the Corporation. All Vendors should read and be familiar with the Dispute Procedures which are available through a link on the Website. The Dispute Procedures include provisions governing the deadline for the filing of a Dispute Resolution Request. Any Vendor that submits a Proposal hereby expressly acknowledges and agrees that: (a) the Dispute Procedures represent the exclusive procedure and the exclusive forum for binding resolution of all claims, disputes, complaints and Dispute Resolution Requests of any kind relating in any way to any RFP, Procurement, Contract, bid, offer, quote, proposal or agreement entered into by the Corporation; (b) it is estopped from objecting to any court, agency or other entity as to the Dispute Procedures being such sole and exclusive forum for binding resolution; and (c) it agrees to be completely, solely and irrevocably bound by such Dispute Procedures. In addition, each Vendor submitting a Proposal irrevocably waives any claim they might have had to protest or object to this RFP or its contents.

2.13 SUMMARY OF KEY DATES

The Corporation reserves the right to change any dates and schedule contained in this RFP, including those shown below. If changes are made, the changes will be communicated in accordance with Section 2.8.

| | |
|-----------------------|---|
| June 27, 2019 | RFP Issuance Date |
| July 8, 2019 | Intent To Bid Letter due to Corporation by 2:00 p.m. CST |
| July 8, 2019 | Questions Deadline 2:00 p.m. CST |
| July 16, 2019 | Answers to Written Questions Posted on Website by 5:00 p.m. CST |
| August 2, 2019 | Deadline for Submission of Proposals 2:00 p.m. CST |

IF DELIVERED SOLELY BY US POSTAL SERVICE

Mississippi Lottery Corporation Instant Ticket Bid
Dr. Michael J. McGrevey, Chairman
c/o Rebecca Sanford
Balch & Bingham LLP
P.O. Box 22587
Jackson, MS 39225

IF DELIVERED BY ANY OTHER MEANS (INCLUDING HAND DELIVERY)

Mississippi Lottery Corporation Instant Ticket Bid
Dr. Michael J. McGrevey, Chairman
c/o Rebecca Sanford
Balch & Bingham LLP
188 E. Capitol Street, Suite 1400
Jackson, MS 39201

- | | |
|------------------------|---|
| August 2, 2019 | Commence Evaluation of Proposals |
| August 16, 2019 | Proposals Evaluated and Oral Presentations Held (if Requested by Corporation) |
| August 23, 2019 | Target Date for Corporation Decision of Successful Vendor |
| August 30, 2019 | Target Date for Contract Execution with Successful Vendor |

2.14 INTENT TO BID LETTER

All Vendors interested in submitting a Proposal are requested to deliver to the Contact Person an Intent To Bid Letter by the Questions Deadline of 2:00 p.m. CST on July 8, 2019 stating their intent to provide a Proposal in accordance with this RFP. Vendors not submitting an Intent To Bid Letter may still submit a Proposal in accordance with this RFP.

2.15 PROPOSAL CONSTITUTES OFFER

By submitting a Proposal, a Vendor agrees to be governed by the terms and conditions set forth in this RFP, and any amendments thereto, and further agrees that the Contract will incorporate the terms and conditions of this RFP and any amendments hereto and the Questions and Answers, the Vendor’s Proposal and any terms and conditions subsequently negotiated with such Vendor. A Vendor submitting a Proposal must complete and submit, as part of its Proposal, the Vendor Certification Form included as *Attachment A*, and made a part hereof. All Proposals shall remain valid for one hundred and eighty (180) calendar days from the Proposal Deadline (the “**Proposal Offer Period**”). A Proposal constitutes an offer by the Vendor to contract with the Corporation in accordance with the terms of the Proposal, which offer is irrevocable for the duration of the Proposal Offer Period, and may not be withdrawn or amended during the Proposal Offer Period without the written consent of the Corporation.

2.16 NEGOTIATION AND EXECUTION OF CONTRACT

A Successful Vendor under this RFP shall negotiate and execute a Contract containing such terms and conditions as shall be satisfactory to, and required by, the Corporation in the sole discretion of the Corporation and its legal counsel. Initially, the Corporation may, in its sole discretion, negotiate only with the Vendor whose Proposal is the highest rated Proposal (the “**Apparent Successful Bidder**”), or it may, in its sole discretion, negotiate with several Vendors simultaneously or in seriatim. The occurrence of negotiations with any Vendor(s) conveys no right or status on such Vendor(s). In the event that negotiations with the Apparent Successful Bidder fail to result in a Contract, or if for any other reason a Contract with the Apparent Successful Bidder is not executed within fifteen (15) days of the Corporation’s selection of a Successful Vendor, the Corporation is not obligated to negotiate a Contract with the Apparent Successful Bidder and it may instead conduct negotiations with other Vendors until a Contract is successfully executed. By submitting a Proposal, each Vendor acknowledges and agrees that the Corporation may negotiate with one or more Vendors, under such circumstances, at such times and in such a manner as it determines to be in the best interests of the Corporation, and no Vendor may object to the fact that the Corporation has not negotiated with it but may have negotiated with one or more other Vendors.

PART III - CONTRACTUAL TERMS AND CONDITIONS

3.1 GOVERNING LAW

The procurement process, the award procedure, and any Contract resulting from this RFP shall be governed by and construed in accordance with the laws of the State of Mississippi, including the Act. Any and all claims or disputes arising under or in connection with this RFP or the Contract shall be exclusively governed by the Dispute Procedures, as they may be adopted or amended from time to time by the Corporation.

3.2 CONTRACT ELEMENTS

The Contract will follow the general format specified by the Corporation in this RFP. The terms of this RFP, as may be amended by the Corporation from time to time, and the Proposal of the Successful Vendor will be incorporated into and form a part of the Contract, as will the Questions and Answers. In the event of any conflict or contradiction between or among these documents, the documents shall control in the following order of precedence: the Contract, this RFP and any amendments thereto as well as Answers to the Questions, Proposal of the Successful Vendor, all of which must comply with the Act.

The currently proposed draft Contract is attached to this RFP as *Exhibit A* (the “**Proposed Contract**”). This Proposed Contract shall be the Contract executed by the Successful Vendor, subject only to: (a) any changes thereto made by the Corporation (which if made prior to the Proposal Deadline will be noticed in accordance with Section 2.8, and which in any event shall automatically become incorporated as a part of the Proposed Contract); and (b) any other changes proposed by the Successful Vendor and agreed to by the Corporation, in the Corporation’s sole discretion. If a Vendor has any changes it desires to make to the Proposed Contract, it must provide the exact wording of such changes and a redlined revised version of the

Proposed Contract for the Corporation's consideration as a part of the Vendor's Proposal. Failure to provide any such suggested specific changes and redlined revised Proposed Contract along with its Proposal shall estop the Vendor from further negotiating the Contract if it is selected as the Successful Vendor, and in such case the Proposed Contract as prepared by the Corporation shall be the Contract that the Successful Vendor is required to execute. Merely because a Vendor has offered suggested changes to the Proposed Contract along with its Proposal does not bind the Corporation nor does it require the Corporation to accept any such suggestions or changes in whole or in part. The Corporation reserves the right to insist that all or any portion of the Proposed Contract be executed as presented by the Corporation.

3.3 AMENDMENTS

The Contract may be amended only by the signed written agreement of each party thereto.

3.4 SUCCESSORS AND ASSIGNS

Subject to the limitations on assignment contained herein, the Contract shall be binding on and inure to the benefit of the Successful Vendor, its subcontractors, successors and permitted assigns.

3.5 SUBCONTRACTING; ASSIGNMENT

The Successful Vendor is prohibited from subletting, conveying, assigning or otherwise disposing of the Contract, its rights, duties, obligations, title, or interest therein, or its power to execute the Contract to any person or entity without the prior written approval of the Corporation in its sole discretion. If any portion of the Contract is to be subcontracted to a third party, the Corporation must approve same in advance and in writing and such third party must comply with the requirements of the Act, the Corporation, the Contract, this RFP and any amendments thereto and any other Applicable Law.

3.6 BACKGROUND INVESTIGATIONS

The Corporation shall conduct background and other investigations, as required by the Act and Applicable Law, as it deems appropriate and as may be outlined in Section 4.5 of this RFP, of the Successful Vendor and its officers, directors, principals, shareholders, investors, owners, subcontractors, employees or other associates, parent companies, subsidiaries and affiliates.

3.7 COMPLIANCE

The Successful Vendor shall comply with all applicable rules, procedures and regulations as adopted and/or amended from time to time by the Corporation under the Act, including but not limited to the Regulations, Policies and Procedures, and all other applicable federal, state and local laws, rules and regulations.

3.8 TERM OF CONTRACT

The Contract shall commence as of its effective date and shall continue, unless sooner terminated, for a term of seven (7) years from the Startup Deadline of December 1, 2019 or such

earlier start date as proposed by the Successful Vendor and agreed by the Corporation in the Contract, subject to the Corporation's sole option to exercise three (3) one (1) year extensions of the term of the Contract, which exercise by the Corporation may occur annually, in multiples of two (2) or three (3) years, or not at all.

3.9 OWNERSHIP OF MATERIALS AND RIGHTS OF USE

Neither the Successful Vendor nor any of its approved subcontractors or joint venturers shall have any proprietary rights or interests in the software, hardware, patents, copyrights, equipment, firmware, mask works, trademarks (and the goodwill associated therewith) and service marks (and the goodwill associated therewith), products, materials, intellectual properties developed, data, documentation, approaches, systems, programs, methodologies, or concepts developed, produced or provided in connection with the services provided exclusively for the Corporation under the Contract (collectively, the "**Corporation Intellectual Properties**"). All such Corporation Intellectual Properties, including all intellectual property rights therein, shall belong exclusively to the Corporation, and shall, to the greatest extent possible be deemed to be "works made for hire" for the Corporation.

The Corporation grants to the Successful Vendor during the period from the effective date of the Contract until the Contract expires or is otherwise terminated a non-exclusive license to use, sublicense, modify and create derivative works of the Corporation Intellectual Properties which are owned by the Corporation and created solely by the Successful Vendor, or its approved subcontractors or joint venturers, provided such use by the Vendor is only for the benefit of the Corporation and solely for the purpose of performing the Contract.

The Successful Vendor grants to the Corporation a perpetual, royalty free license to use, sublicense the use of, modify and create derivative works of any and all proprietary materials owned by it including, but not limited to, software, hardware, patents, copyrights, equipment, firmware, mask works, trademarks (and the goodwill associated therewith) and service marks (and the goodwill associated therewith) and used in connection with the System or performance of the Contract (collectively, the "**Vendor Licensed Intellectual Properties**"), and the Successful Vendor irrevocably grants to the Corporation necessary rights and authority to modify such Vendor Licensed Intellectual Properties and to create derivative works in any manner the Corporation deems necessary. It is the intent of the Corporation that it has control over all such Vendor Licensed Intellectual Properties in a manner consistent with ownership thereof. The intent of the Corporation is that the Corporation is able to continue to use any or all of the Vendor Licensed Intellectual Properties that it chooses in the conduct of its the lottery games and other activities, if in the discretion of the Corporation it is in the best interests of the lottery and the Corporation to do so, after the expiration or termination of the Contract. A necessary component of such operations is for the Corporation to have access to the source code, operational diagrams and other proprietary materials so that the Corporation, or contractors engaged by Corporation, if the Successful Vendor is unable or unwilling to supply upgrades, modifications or other necessary support, can perform such functions so as not to jeopardize the operation of the Lottery. The Successful Vendor shall deposit the source code to all software in the Corporation Intellectual Properties, Vendor Licensed Intellectual Properties and other proprietary materials with an independent third party, acceptable to the Corporation and under

terms acceptable to Corporation, to be accessed by the Corporation in the event of breach, expiration or termination of the Contract.

3.10 PATENTS, COPYRIGHTS, TRADEMARKS, TRADE SECRETS AND OTHER INTELLECTUAL PROPERTY

The Successful Vendor represents and warrants that its performance under the Contract, its System and its Vendor Licensed Intellectual Properties does not and will not infringe any patent, copyright, trademark, service mark or other intellectual property rights of any other person or entity, and that it and they will not constitute the unauthorized use or disclosure of any trade secret of any other person or entity.

3.11 TRADEMARK AND SERVICE MARK SEARCH AND REGISTRATION

The Successful Vendor, at its sole expense, will conduct trademark and service mark searches for all game names used during the term of the Contract. Copies of all such search reports will be delivered to the Corporation and its legal counsel. New trademarks and service marks developed for the Corporation will be registered by legal counsel chosen by the Corporation solely in the name of the Corporation for its sole use.

3.12 INTELLECTUAL PROPERTY INDEMNIFICATION

The Successful Vendor shall indemnify and hold harmless the Corporation, its officers, Directors, agents, Retailers and employees and the State of Mississippi from and against any and all suits, damages, expenses, losses, liabilities, claims of any kind, costs or expenses of any nature or kind, including, without limitation, court costs, attorneys' fees and other damages, arising out of, in connection with or resulting from the development, possession, license, modification, disclosure or use of any Vendor Licensed Intellectual Properties, copyrighted or non-copyrighted materials, trademark, service mark, patent, trade secret, confidential information, secure process, invention, process or idea (whether patented or not), article or appliance furnished or used in the performance of the Contract.

3.13 WARRANTIES

The Successful Vendor warrants that it currently is, and will at all times during the term of the Contract remain, lawfully organized and constituted under all federal, state and local laws, ordinances and other authorities of its domicile and that it currently is, and will at all times remain in full compliance with all legal requirements, laws, statutes, rules, regulations and orders of any court, agency or entity that has jurisdiction over it, including, without limitation, the Act and all applicable laws of its domicile, the State of Mississippi and the United States of America (all of the foregoing being collectively defined as, the "**Applicable Laws**").

The Successful Vendor warrants that (i) it has never been found guilty of a felony related to the security or integrity of the lottery in this or any other jurisdiction and has never been found to be in possession of any illegal lottery device; (ii) it has obtained a signed tax clearance from the Mississippi Commissioner of Revenue indicating that it is current in filing all applicable tax returns and in payment of all taxes, interest and penalties owed to the State of Mississippi, excluding items under formal appeal pursuant to applicable statutes; (iii) it currently is, and shall

at all times during the term of the Contract remain, qualified to do business in the State of Mississippi; and (iv) at all times during the term of the Contract, it shall file appropriate tax returns as provided by the laws of the State of Mississippi.

The Successful Vendor represents, warrants and agrees that all Systems, analyses, items designed and other items procured pursuant to this RFP, its Proposal and the Contract have been and shall be prepared or done in a workman-like manner consistent with the highest standards of the industry in which the services are normally performed. The Successful Vendor further represents and warrants that all computer programs implemented for performance under the Contract, if any, shall meet the performance standards required thereunder and shall correctly and accurately perform their intended functions on the equipment supplied by the Corporation or the Successful Vendor.

The Successful Vendor represents, warrants and agrees that it will keep all equipment provided to the Corporation, or used by it for the benefit of the Corporation, in good condition and repair, and it shall make all reasonable efforts to prevent anything that may materially impair the operations thereof. The Successful Vendor shall not permit any such equipment to be used in violation of any provision of the Contract, this RFP or any Applicable Laws, and shall not encumber such equipment or otherwise dedicate the use of such equipment in such a way as to compromise the ability of the Successful Vendor to perform the services provided in the Contract.

The Successful Vendor must warrant that the actual prize pool for each game will be within the limits set out in the “**Working Papers**” mutually agreed upon by the Successful Vendor and the Corporation as further described herein. The Successful Vendor must warrant that all tickets will have a unique validation number within each game.

3.14 TERMINATION FOR BREACH

The Corporation may terminate the Contract: (a) if certain material breaches are not cured within seventy-two (72) hours; and (b) if any other breaches are not cured within thirty (30) days of notice (all as more particularly described in the draft Contract attached hereto as *Exhibit A*).

3.15 BOOKS AND RECORDS

The Successful Vendor shall maintain its books, records and other evidence pertaining to the Contract in accordance with the Act, good business practices, United States generally accepted accounting principles (or other applicable accounting principles or policies) and Applicable Laws records retention requirements.

3.16 AUDIT REQUIREMENTS

The Successful Vendor shall maintain all documentation and records as required by the Act and other applicable Mississippi laws. The books, documents, papers, accounting records and other evidence pertaining to System, products and/or services to be provided or performed or money received under the Contract shall be maintained in accordance with all requirements of the Act and all other Applicable Laws and for a period of not less than five (5) full years from the date of the final payment and shall be subject to audit or inspection at any reasonable time and upon

reasonable notice by the Corporation, or its duly appointed representatives, including, without limitation, the Corporation's auditors, the Office of the Mississippi State Treasurer, the Mississippi State Auditor or any other appropriate representative of Mississippi state government. The Successful Vendor shall make such materials available at its offices, and copies thereof shall be furnished to the Corporation or its duly appointed representative by the Successful Vendor, at no cost to the Corporation or its duly appointed representative, if requested by the Corporation or its duly appointed representative. Such records shall be maintained in accordance with the Act and any applicable provisions of United States generally accepted accounting principles (or other applicable accounting principles or policies) and any other applicable procedures established by the Corporation from time to time. A copy of the annual financial statements of the Successful Vendor, with an independent audit opinion expressed without reservation or qualification, shall be provided to the Corporation within six (6) months of the fiscal year end. The Corporation and its auditor, the Mississippi State Auditor, the Office of the Mississippi State Treasurer and any other appropriate representative of the State of Mississippi shall have the right to audit the records and operations of the Successful Vendor as relates to the Corporation and the System.

3.17 INDEMNIFICATION

The Successful Vendor shall indemnify and hold harmless the Corporation, its officers, Directors, agents, employees and Retailers, and the State of Mississippi from and against any and all suits, damages, expenses, losses, liabilities, claims of any kind, costs or expenses, including court costs and attorney's fees, which may be incurred, suffered, or required, in whole or in part, by an actual or alleged act or omission of the Successful Vendor, or a subcontractor or joint venturer of the Successful Vendor, or any person directly or indirectly employed by the Successful Vendor or a subcontractor of the Successful Vendor whether the claim, liability, loss, damage, cost or expense is based on negligence, strict liability or any other action or omission.

3.18 BONDS AND INSURANCE

All required bonds and insurance as provided under the Act or other Applicable Laws must be issued by companies or financial institutions which are financially rated "A" or better (or equivalent ratings) by a nationally recognized rating agency and are duly licensed, admitted and authorized to transact business in the State of Mississippi.

3.19 PERFORMANCE BOND

Contemporaneously with the delivery of a Proposal, the Vendor must post a bond or letter of credit from a bank or credit provider acceptable to the Corporation in the amount of Five Hundred Thousand Dollars (\$500,000.00) to secure, in part, the Vendor's obligation to pay the cost of the Corporation's investigation of the Vendor under Section 35 of the Act and criminal record check of the Vendor conducted under Section 36 of the Act. In addition, contemporaneously with the execution of the Contract, the Successful Vendor shall provide a performance bond, letter of credit from a bank, or deposit securities, pursuant to Section 35 of the Act and acceptable to the Corporation, in the amount of not less than Ten Million Dollars (\$10,000,000.00). The amount of the above-noted performance bond, letter of credit or

securities may be reduced after the third year of the Contract term, in the sole discretion of the Corporation.

3.20 INSURANCE

The Successful Vendor shall be required to maintain at least the following types and amounts of insurance during the term of the Contract from reputable and solvent carriers reasonably acceptable to the Corporation, and designating the Corporation as an additional insured on each policy:

- General liability insurance in the amount of at least \$5,000,000.00;
- Property insurance in the amount of replacement cost;
- Errors and omissions insurance in the amount of at least \$5,000,000.00;
- Automobile liability insurance in the amount of at least \$5,000,000.00;
- Crime insurance in the amount of at least \$5,000,000.00;
- Cyber and Privacy insurance in the amount of at least \$5,000,000.00;
- Social Engineering Fraud insurance in the amount of at least \$5,000,000.00;
- Workman's Compensation Insurance at or above the levels required by the State of Mississippi;
- Self-insurance with respect to equipment associated with this Proposal; and
- Such other types and amounts of insurance as the Corporation shall from time to time reasonably require.

The Successful Vendor shall provide the Corporation with certificates of insurance within ten (10) days after the Contract date and evidence of any renewed bonds or insurance policies within five (5) days prior to the expiration of then existing bonds or insurance policies during the term of the Contract.

3.21 LIQUIDATED DAMAGES

A Vendor must complete and submit as part of its Proposal, and the Contract will contain provisions and maximum amounts for each of the following types of liquidated damages :

- Delay in the start of the lottery;
- Delay in the start of a new game;
- Shortage of tickets;
- Failure to distribute tickets within two (2) business days of ordering;
- Security violations;
- Untimely reports;

- Untimely Working Papers;
- Unauthorized modifications to Working Papers;
- Claimed prize tickets not approved by the Corporation;
- Defective or nonconforming tickets; and
- Incomplete or incorrect game validation files.

The Successful Vendor will remit damages directly to the Corporation, or at the option of the Corporation, the Corporation may withhold amounts otherwise due to the Successful Vendor.

3.22 FORCE MAJEURE/DELAY OF PERFORMANCE

In the event that either party to the Contract is unable to perform any of its obligations under the Contract, or to enjoy any of its benefits because of natural disaster, actions or decrees of governmental bodies, or other events of force majeure not the fault of the affected party, the affected party shall immediately give notice to the other party and shall use its best efforts to resume performance. Upon receipt of such notice, each party's obligations under the Contract shall be immediately suspended. Any such causes of delay or failure shall, in the exercise of reasonable diligence, extend the period of performance, for a reasonable period, until after such causes of delay or failure have been removed. However, if delays resulting from any foregoing causes extends for more than thirty (30) days and the parties have not agreed upon a revised basis for continuing the work at the end of the delay, including adjustment for price, then either party, upon written notice may terminate the Contract and in due course collect monies properly due up to and including the date of such termination.

3.23 TAXES, FEES AND ASSESSMENTS

The Corporation shall have no responsibility whatsoever for the payment of any federal, state or local taxes which become payable by the Successful Vendor or its subcontractors, joint venturers, agents, officers or employees. The Successful Vendor shall pay and discharge all such taxes when due.

3.24 NEWS RELEASE

The Successful Vendor shall not issue any news releases or participate in any media interview pertaining to this RFP, Procurement or the Contract without the express prior written consent of the Corporation in each instance, and then only in cooperation with the Corporation.

3.25 ADVERTISING

The Successful Vendor agrees not to use the Corporation's names, trademarks, service marks, logos, images, or any data arising or resulting from this RFP or the Contract as a part of any commercial advertising or proposal without the express prior written consent of the Corporation in each instance.

3.26 CODE OF CONDUCT FOR SUCCESSFUL VENDOR

The Corporation is an extremely sensitive enterprise because of the nature of the lottery industry and its status as a corporation of the State of Mississippi, created by the Act. Therefore, it is

essential that its operation, and the operation of other enterprises which would be linked to it in the public mind, avoid not only actual impropriety but also the appearance of impropriety. Accordingly, the Successful Vendor is expected to establish and enforce a code of conduct for all employees, independent vendors and subcontractors that will help achieve these objectives as well as follow the rules and procedures established, and from time to time amended, by the Corporation.

3.27 CONSULTANTS AND LOBBYISTS

The Successful Vendor and its approved subcontractors shall disclose all written and oral agreements with all lobbyists and consultants doing work on its behalf in the State of Mississippi and before the federal government. The Successful Vendor and its approved subcontractors shall also comply with all state and federal lobbying Applicable Laws.

Any Contract with the Successful Vendor who has not complied with these disclosure requirements is voidable at the sole option and discretion of the Corporation. Failure to provide the Corporation with timely disclosure updates during the term of the Contract may result in the termination of the Contract by the Corporation.

3.28 CONTRACT CONVERSION

It is contemplated that the Corporation, prior to the expiration of the term of the Contract resulting from this RFP, will award a new contract for replacement of the instant lottery games and the System. The parties understand and agree that the Corporation may utilize the last specified number of days of the Contract term, as agreed upon by the parties to the Contract, for conversion or transfer of equipment, supplies, materials, ticket inventory and functions. The Successful Vendor will cooperate fully with this process.

The continuation of games without any service interruption is of the highest priority to the Corporation. Accordingly, the Successful Vendor agrees to cooperate with any subsequent new Vendor to ensure the continuation, or the seamless transition, of the instant games and System, without any service interruption.

3.29 USUFRUCT

If, for any reason other than breach of Contract by the Corporation, the Successful Vendor should become unable to service the Contract resulting from this RFP, the Corporation shall acquire a usufruct (or the equivalent thereof) in all contractual items owned or licensed by the Successful Vendor in conjunction with the Contract which are necessary to provide such services.

PART IV - REQUIRED INFORMATION

4.1 MANDATORY COMPONENTS

The integrity of the Mississippi Lottery is essential. The Corporation must maintain control over all functions and be assured that they are performed to provide the greatest long-term benefit to

the State of Mississippi, the greatest integrity for the Corporation and the best service and products for the public, all in a manner consistent with the dignity of the State of Mississippi. This RFP sets forth the minimum requirements, specifications, functions, marketing services and equipment that the Corporation believes must be provided by a Vendor that is committed to the implementation of such a program.

4.2 STATEMENT OF UNDERSTANDING

Any deviation from any requirement set forth in this RFP may affect the evaluation of a Proposal and may cause its rejection as non-responsive to this RFP.

4.3 VENDOR COMMITMENT

A Vendor must sign and submit the Proposal Signature and Certification Form included as *Attachment B* and made a part hereof. The form must be signed by a person duly authorized to legally bind such Vendor.

4.4 VENDOR CONTACT PERSON

A Vendor shall provide the name, address, telephone number, e-mail address and facsimile number of the person to provide notification or contact concerning questions regarding its Proposal.

Until the Corporation is notified otherwise by the Successful Vendor, this contact person shall serve as such to all joint ventures, strategic partners and prime contractor team members throughout the term of the Contract, if awarded and executed.

4.5 BACKGROUND INFORMATION

The Corporation will investigate, at a minimum, the financial responsibility, security and integrity of any Vendor that submits a Proposal.

A Vendor must complete and submit as part of its Proposal the Contract compliance and Financial Disclosure Form, included as *Attachment C* and made a part hereof. Vendors must also fully comply and cooperate with all investigations conducted under Sections 35 and 36 and other applicable Sections of the Act or Applicable Laws.

A Vendor must complete and submit, as part of its Proposal, for itself and all of the individuals listed in this paragraph, the Authorization for Investigation and Release Form, included as *Attachment D* and made a part hereof, and Consent Form, included as *Attachment E* and made a part hereof, in both cases to allow the Corporation access to the criminal history of the Vendor and its employees assigned to this project. Such Authorization for Investigation Form and Consent Form shall authorize access to the criminal history and backgrounds of the following persons, as well as the Vendor, as applicable: (i) if the Vendor is a corporation, the officers, directors and each stockholder known to the corporation to own beneficially five percent (5%) or more of such corporation's securities, as well as the same information for every business entity that is a direct or indirect five percent (5%) or greater shareholder of such Vendor corporation; (ii) if the Vendor is a limited liability company, the equivalent disclosure of that required for

corporations; (iii) if the Vendor is a trust, the trustee and all persons entitled to receive income or benefits from the trust; (iv) if the Vendor is an association, the members, officers and directors; and (v) if the Vendor is a partnership or joint venture, all of the general partners, limited partners or joint ventures.

A Contract resulting from this RFP shall not be entered into with any Vendor who has not complied with the disclosure requirements of this RFP, the Act and Applicable Laws. Any Contract with a Successful Vendor who has supplied false disclosure information is voidable at the option of the Corporation. A Contract with the Successful Vendor who does not comply with the requirements for periodically updating such disclosures as specified by the Contract during the term or the Contract may be terminated by the Corporation.

4.6 DISCLOSURE OF LITIGATION AND LEGAL MATTERS

A Vendor must include in its Proposal a complete disclosure of any civil or criminal litigation or indictment involving such Vendor. A Vendor must also disclose any civil or criminal litigation or indictment involving any of its joint venturers, strategic partners, prime contractor team members and subcontractors. Specifically, the Vendor must disclose, on behalf of itself, its joint venturers, strategic partners, prime contractor team members and subcontractors, and each of the persons or entities described in Section 4.5, all of the items and information requested in Questions 10-12 of *Attachment C*. Failure to comply with these minimum required disclosures can result in the Vendor's Proposal being deemed to be non-conforming and the Vendor being disqualified. This disclosure requirement is a continuing obligation, and any civil or criminal litigation or indictment commenced after a Vendor has submitted a Proposal under this RFP must be disclosed to the Corporation in writing within five (5) days after it is filed.

4.7 SUBCONTRACTORS

For any subcontractor, such Vendor shall disclose all of the information required by Sections 4.5 and 4.6 for such subcontractor as if the subcontractor itself was the Vendor.

4.8 FINANCIAL SOUNDNESS

A Vendor must provide adequate information to permit an evaluation of its capabilities to undertake and complete satisfactorily any Contract awarded and executed pursuant to this RFP. A Vendor must provide evidence of financial responsibility and stability for performance of a Contract of this magnitude. A Vendor must demonstrate the ability to finance the project described by the Vendor's submission and must also disclose any outside financial resources that will be utilized.

In addition, a Vendor must submit a copy of its last three (3) years financial statements that have been audited by an independent public accounting firm. A Vendor's failure to submit the requested financial statements will result in a disqualification of its Proposal.

4.9 IMPLEMENTATION PLAN SUMMARY

A Vendor must provide a summary overview and an implementation plan for the entire project being proposed. The intent of this requirement is to provide the Corporation with a concise but

functional summary (the “**Executive Summary**”) discussion of each phase of the Vendor’s plan in the order of progression. While the Corporation expects a Vendor to provide full details in each of the Sections in other areas of the RFP relating to its plan, the Executive Summary will provide a “map” for the Corporation to use while reviewing the Proposal.

Each area summarized must be listed in chronological order, beginning with the date of Contract execution, to provide a clear indication of the flow and duration of the project. A Vendor may use graphics, charts, pre-printed marketing pieces or other enhancements as a part of this Section to support the chronology or add to the presentation. Any such materials must be included in the original and each copy of the Proposal.

4.10 EXPERIENCE

A Vendor, and its joint venturers, strategic partners and prime contractor team members must outline their experience in the marketing, creative design, computer programming for ticket generation, imaging, ticket production, distribution, warehousing and inventory control and security of instant lottery games, including instant ticket game start-up experience, as well as that of their subcontractors. A Vendor and its subcontractors must demonstrate overall experience in the functions described in this RFP. In addition, the joint venturers, strategic partners, prime contractor team members and subcontractors proposed to perform specific tasks, duties or functions must clearly document that they possess the qualifications and experience necessary to fulfill the relevant requirements of this RFP.

The Corporation reserves the right to verify all information provided via direct contact with a Vendor’s and its joint venturers’, strategic partners’, prime contractor team members’ and subcontractors’ prior project or client personnel, and a Vendor and its joint venturers, strategic partners, prime contractor team members and subcontractors agree to provide any release necessary for the Corporation to check on any previous projects. Misstatements of experience, scope of prior projects or results thereof may result in the disqualification of the Proposal.

4.11 PROJECT STAFF

A Vendor’s Proposal shall include an organization diagram and a staffing plan. Key staff must be identified, the nature and scope of each person’s responsibilities and duties must be outlined and detailed resumes must be provided. In addition to all other persons needed by the Successful Vendor to perform all services required under this Procurement, a Vendor must provide and identify three (3) additional experienced start-up professionals who will be made available to the Corporation for on-site general start-up assistance as determined by the Corporation from the date of Contract Award though the first two (2) months after start-up.

4.12 COMPUTATION OF LIQUIDATED DAMAGES

A Vendor must propose a program of liquidated damages to cover the damages listed in Section 3.21 and provide the rationale and the computation formula used to determine the level of damage penalties that are included in this response. All proposed liquidated damages amounts shall be subject to the satisfaction of the Corporation.

PART V - INSTANT TICKET LOTTERY GAME SERVICES

5.1 TECHNICAL SPECIFICATIONS

The objective of this RFP is to encourage Vendors to provide a solution for the challenges facing the Corporation associated with the start-up of instant ticket sales and operation of the Mississippi Lottery. Vendors should be innovative in developing their Proposals. However, the Corporation also believes that Vendors should be provided with guidelines as to the functionality desired by the Corporation. For this reason, the Corporation has provided the specifications, requirements and functional features in this Part V of the RFP. The portions of Proposals that address the functional requirements of the RFP will provide the Corporation with the information necessary to conduct a fair evaluation of the proposed technical solutions from all Vendors.

Any items that are not specifically mentioned in this RFP but which are integral to the smooth efficient operation of the proposed services should be included in a Vendor's Proposal and pricing. Those items not specifically requested under this RFP shall be identified in the appropriate Sections of the Proposal. All required supplies and materials necessary for the success of the overall operation of the Mississippi Lottery are to be included in the base Proposal price, even though those items may not be specifically requested under this RFP.

5.1.1 GAME SPECIFICATIONS

It is the Corporation's intent to receive Proposals for the printing of instant game tickets using "state of the art" production techniques, including the services necessary to design and produce secure, high quality instant tickets. A Vendor's Proposal should include recommended specifications as to the following:

- "Working Paper" structure;
- Ticket stock construction and durability;
- Ticket size and orientation;
- Perforations;
- Industry tolerances;
- Display/graphics printing;
- Overprint design and rub-off cover;
- Printing design security;
- Barcode technology;
- Benday patterns;
- Prize fund management;
- Retailer validation codes;
- Colors, ink and coating characteristics;
- Game data fonts and sizes;
- Design and reconstruction of barcode validation number;
- Shelf life;
- Ticket, game and package numbering;
- Ticket packaging;

- Universal product codes and/or any other bar codes currently utilized by lotteries on instant game tickets;
- Security certifications; and
- Any other pertinent ticket specifications.

5.1.2 LIMITATIONS AND EXCEPTIONS

If a Vendor has any limitations in regard to the capability of printing a variety of words, letters, number, characters, or unique symbols in various combinations of colors, these must be fully and clearly specified in the Proposal.

5.1.3 UV COATING

All tickets printed by the Successful Vendor pursuant to the Contract must contain full UV coating or similar technique or substance over the entire front surface of the ticket to provide a glossy finish.

5.1.4 COMPULSIVE OR PROBLEM GAMBLING LANGUAGE

The Act mandates, and the Corporation shall require as part of any contract for the production or printing of lottery tickets, that all tickets printed by the Successful Vendor pursuant to the Contract contain the toll-free telephone number of any state or national organization that provides information and referral services regarding compulsive or problem gambling, as approved by the Corporation.

5.2 QUALITY SPECIFICATIONS

Vendor's Proposal must address quality specifications in order for the Corporation to ensure the acquisition of instant game products that are marketable and of high quality and durability. Vendors will be required to produce tickets of varying sizes. The ticket dimensions shall not vary by more than two percent (2%) of the size established in the Working Papers for each instant game. Regardless of the type of ticket design or designs proposed, the final product must be tamper-proof by any practical means. Quality limitations and/or deviations that adversely affect the security of the tickets are unacceptable.

5.3 GAME PLANNING PROCESS

The instant ticket planning process will play a vital role in the success of the Corporation's instant ticket sales. Recognizing the aggressive game launch schedule, the Corporation will work with the Successful Vendor on a continual basis to quickly monitor the relative success of each game. Games that appear to indicate they will have a longer than average sales life will be quickly reordered and reprinted. Quick turnarounds and flexibility in print schedules are imperative in the planning and production processes to ensure that ticket inventory remains available for ordering, with no lapses in sales for any game.

A Vendor's Proposal must include a complete description and timeline of the instant ticket planning process for a game, from the development stage to the "available in the warehouse for distribution" stage. This should be provided for a new game launch, as well as a reorder.

Describe the team that will be available to the Corporation for such processes, as well as the percentage of time expected to be dedicated to Corporation. The Corporation's requirement to reorder successful games, as necessary, should be taken into account.

5.4 OVERALL SECURITY SPECIFICATIONS

A Vendor shall provide an overall security plan by which it intends to produce the recommended instant game tickets including:

- Plant security;
- Game ticket construction security;
- Anti-counterfeiting and validation security;
- Redemption security; and
- Game design security.

A Vendor must fully describe methods to be employed in the construction of tickets to avoid security problems. These methods include protective measures against unauthorized invasion utilizing all types of known techniques. Also to be included is a description of measures that have been taken to minimize and detect ticket alteration and counterfeiting attempts. A Vendor shall identify potential security problems in the type of tickets proposed and specify its method for handling these problems.

An understanding of the overriding importance of security in all phases of design, materials procurement, production, transportation, storage, distribution, validation and disposition of game tickets is to be made manifest in the procedures, methods, controls and accounting systems of the security plan. It is intended that all Sections and paragraphs of this RFP have implied the essential need for security, though such may not be explicitly stated. A Vendor's Proposal must make clear and specify the precautions, safeguards, inspections, reporting and other measures that will relate to the entire program and its parts.

The Successful Vendor will have the capability and integrity required to maintain constant vigilance against any breach of security. Failure to meet or to maintain the Corporation approved security standards will be grounds for exclusion from further consideration, or if a Contract has been awarded, will be grounds for immediate cancellation of the Contract.

5.4.1 TICKET SECURITY REQUIREMENTS

Neither winning tickets nor non-winning tickets shall be recognizable by the human eye from any characteristics of the tickets other than by the play symbols concealed by the rub-off material. In particular, and without limitation, the following must be true:

- (a) *Physical Features.* The odds of winning any prize of any level on a given ticket must not vary from the approved prize structure by virtue of any characteristics of the tickets, including, but not limited to, any variation or irregularity in the front or back display printing, stock, perforations, cuts, exposed pack number, exposed ticket numbers, bar code, staples, folds, packaging, color or thickness or texture of rub-off material, overprints,

protective coating, and printing registration or misregistration. If the game is produced in more than one production batch, winners shall be recreated for each such batch and shall not bear any identifying characteristics. Describe the control of “odds” at all levels and overall, when tickets are printed in more than one production batch for a game.

- (b) *Invasive Techniques.* It shall not be possible to ascertain whether a ticket is a winning or non-winning ticket, using a practical or economical technique, unless the application of the technique renders the ticket not saleable to the public or easily recognizable as having been tampered with. In particular, it shall not be possible to “see-through” the rub-off spots, or the back of paper card stock tickets, with any practically available device or technique, including, without limitation, high-intensity light, infrared light, ultraviolet light, x-rays, photography, microscopes, optical fibers, heat, freezing, mechanical means, cutting or peeling, electrostatics, chemical means, electrical means, coping machine intrusion techniques, or microsurgery.

5.4.2 SECURITY CERTIFICATION

A Vendor shall submit with its Proposal copies of the most recent and applicable laboratory test reports and other certifications assuring the security of said instant lottery tickets against practical compromise by reasonably comprehensive technical effort. The Corporation reserves the right to cancel the Contract at any time if the Successful Vendor’s or the Corporation’s tests show any representative sample of production tickets to be practically compromisable. Tickets shall not bear any works, symbols, or numbers that in any way would permit a person to determine the location of a winning ticket.

5.4.3 PLANT SECURITY

The plant(s) and warehouse(s) in which the lottery tickets are to be produced and stored must be equipped with a complete plant security system that is acceptable to the Corporation. The plant(s) and warehouse(s) may be inspected for security prior to or after Proposal opening if the Corporation deems such an inspection is necessary.

A Vendor shall describe how it will protect the Corporation from financial loss in the event of a disaster at the warehouse that destroys the inventory of tickets.

5.4.4 EMPLOYEE SECURITY

The Successful Vendor must establish a program to ensure that all those involved in the design, production, distribution or sale of the instant lottery tickets are precluded from ascertaining or being knowledgeable of the location of winning tickets. The Proposal should outline the procedures that will be implemented to address this requirement.

5.4.5 TICKET TESTING

The Corporation may arrange for quality, security, and bar code testing of tickets by an independent laboratory selected by the Corporation as deemed necessary. The Successful Vendor shall be responsible for all costs for up to three (3) such tests per year. Testing in excess of once per game shall be the responsibility of the Corporation unless it is necessitated by a failure on the first test. The purpose of the testing will be to determine if the ticket meets the following three (3) primary, minimum quality and security criteria:

- (a) *Marketability.* Is construction of the ticket secure enough for the ticket to endure reasonable environmental rigors and still be readily marketable?
- (b) *Compromisability.* Is construction of the ticket secure enough for the ticket to withstand attempts to determine if the ticket is a winning or a non-winning ticket without removing a readily noticeable amount of the coatings on the play area of the ticket within a reasonable time frame, by methods and materials available to the Retailers?
- (c) *Alterability.* Is construction of the ticket secure enough for the ticket to withstand attempts to alter the play data, prize amounts, or bar code and produce a redeemable winning ticket from a non-winning ticket, and/or increase the prize amount on the ticket by methods and materials available to the public?

Failure of any ticket to pass any of the tests will be cause for additional testing. The objective of the additional testing will be to:

- (a) Determine the repeatability and practicality of the method; and
- (b) Determine the range of ticket production pools in which the problem is repeated.

If ten percent (10%) or more of the pools within a game are rejected, then the Corporation shall be entitled, at its sole option, to reject the whole game.

5.4.6 GAME PRODUCTION AND PRIZE GUARANTEES

A Vendor's Proposal shall describe the methods and procedures by which it guarantees:

That each game is printed in conformity with all game specifications included in the Working Papers;

That each game is printed in conformity with the prize structure included in the Working Papers so that prizes will constitute no more than the percentage of revenue stated, and larger prizes are all present in delivered tickets within stated tolerances; and

That winning tickets are distributed with no discernible pattern throughout the entire population of a game.

The Successful Vendor will be required to submit, at no additional cost to the Corporation, a report by a certified public accounting firm relating to agree-upon procedures for each game's production related to the above.

5.4.7 SECOND CHANCE LOYALTY PROGRAM

The Successful Vendor will provide a second chance drawing loyalty program for instant, and possibly online games, as well as other promotions (the "**Loyalty Program**").

A Vendor should describe in detail the manner in which the Loyalty Program is structured. The cost of the Loyalty Program must be included in the single cost quotation provided by a Vendor pursuant to Section 6.2.

5.4.8 WINNER'S FILE

The Successful Vendor will submit a computer file containing all prizes for the game, including grand prize entry tickets and annuity type prizes, if any. Low tier prizes will be separate from mid and high tier prizes or as specified in the Working Papers. The information will include only validation number, play spots and prize code (prize amount) for the tickets actually produced and delivered.

A Vendor should describe all possible secure methods for transmitting the file to the Corporation or an online systems Vendor, as may be required.

5.5 WAREHOUSING OF NEW TICKETS

The Successful Vendor will be responsible for the storage of new tickets from the time they are printed until they are distributed to Retailers or the Corporation's offices. Facilities, organization and procedures must be designed to ensure the security and integrity of the games.

Submit a warehouse-staffing plan, including the resume of the perspective warehouse manager.

Procedures and controls must be in place to ensure the confidentiality and integrity of game information. In particular, printing systems and data must not be accessible to those involved in the warehousing activities and vice versa. A Vendor shall specify the methods and carriers by which packaged tickets are to be transported from the Vendor's plant to the warehouse.

The warehouse must contain a minimum of 7,000 square feet of secured space for use by the Corporation (for point-of-sale or other materials).

The warehouse must include dedicated, secure office space for at least two (2) Corporation representatives. This space will be used by management, auditors, security personnel and others as necessary to coordinate and monitor warehousing activities.

The Proposal must address the requirements set out above and must include:

- A description of the security controls, including the access control system(s) and procedures;
- Security equipment and procedures;
- Intrusion detection and monitoring equipment and procedures; and
- Fire prevention and detection, and flood detection.

All procedures and controls must be approved by the Corporation. The proposed location of the warehouse must be in the Greater Jackson Metropolitan Area, and it must be approved by the Corporation.

5.6 TICKET INVENTORY CONTROL AND MANAGEMENT

The Proposal must provide a plan to ensure that an adequate supply of tickets is always available for distribution. Status reports must be routinely given to the Corporation.

5.7 DISTRIBUTION OF TICKETS FROM OTHER VENDORS

The Successful Vendor may be required to warehouse and distribute up to eight (8) instant ticket games purchased by the Corporation from other Vendors. These tickets will be distributed along with the Successful Vendor's tickets, and the Successful Vendor will not be reimbursed for warehousing and distributing these tickets, nor will they be paid a percentage of sales, when the tickets are sold.

5.8 TICKET ORDER PACKAGING

The Successful Vendor will be responsible for the filling and packing of ticket orders. The procedures to be used must focus on the need for security, integrity, efficiency and accuracy.

The Successful Vendor may be required to include additional materials, at no additional cost to the Corporation, in packages containing tickets to be delivered to Retailers.

The Proposal must contain a detailed plan for the packaging of tickets for delivery to Retailers. It should address all aspects of the operation including:

- Staffing and organization;
- Physical layout of packing area;
- The amount of training that would be provided to staff;
- Hours of operation during the week, on weekends and during holiday periods;
- Picking and packing procedures and controls; and
- Packing materials.

5.9 INSTANT TICKET DISTRIBUTION

The Successful Vendor will be responsible for delivering instant tickets to Retailers and the Corporation's offices. Deliveries must be made as soon as possible, but no later than two (2) business days after the order is placed. Proof of delivery must be obtained. The Successful Vendor must ensure that the distribution is secure, effective, and efficient and presents a positive image of the Corporation to Retailers and others. The Proposal should include a complete description of the distribution plan, including staffing training, and procedures. The Successful Vendor shall assume full financial responsibility for picking up any tickets printed by the Successful Vendor that must be picked up as a result of exigent circumstances.

In addition to tickets, the Successful Vendor may, in special instances, be required to deliver other Corporation materials (such as point of sale material, online game supplies, Retailer manuals and newsletters) at no additional charge to the Corporation.

5.10 RETURNED TICKETS

The Successful Vendor will be responsible for the return of undeliverable and unaccepted tickets. In addition, the Successful Vendor will also be responsible for processing the return of all unsold partial and full packs of tickets. The response must include a description of the procedures that will be used to return, document, and store full and partial packs (including damaged tickets) returned from Retailers. Undamaged full packs of returned tickets from active games should be reissued.

5.11 INSTANT TICKET DESTRUCTION

The Successful Vendor must provide for the secure disposal of unsold, damaged and/or returned tickets in an environmentally responsible manner. The Corporation may also require for secure disposal of other similar materials, such as tickets returned for second chance drawings. This response must include a plan for ticket destruction and a description of all ticket destruction procedures.

5.12 MARKETING SERVICES

The Corporation expects the Successful Vendor to play a significant role in the Corporation's marketing program. The Successful Vendor will work closely with the Corporation as decisions are being made regarding games and implementation schedules.

The marketing support services associated with the design and implementation of an instant lottery game are to include, but not be limited to, the following items:

- Creative design of instant lottery games;
- Development of each instant game in detail, with accepted game design, prize structure and proposed "HOW TO PLAY" rules; draft proposed regulations for the purpose of defining the rules of the game for defining what constitutes a winning ticket in the game, for defining the security tests that claimed tickets must satisfy in order to be validated as a winner, for defining conditions which will invalidate a ticket;

- Mechanical art work and color separations for each game and specifications of the game ticket layout consistent with security requirements and methods; and
- All support personnel required by the Corporation for management consultation relating to the items above as needed before and during game design, the cost of which must be included in the specified price, since no additional charge will be allowed.

The Proposal should include a marketing plan for the first eighteen (18) months of the Contract. The plan should address the overall strategy for marketing instant games in Mississippi including:

- Vendor staffing;
- Focus group testing;
- Prize structures/payouts;
- Incentives and promotions; and
- Sales data and trend analyses, etc.

The Corporation will require a minimum of one (1) full-time, on-site staff person, in addition to warehouse staffings, residing in the Greater Jackson Metropolitan Area assigned to service this account. This staff individual must be identified in the Proposal and a complete resume of such individual must be submitted. The Successful Vendor may be required to rent office space at the Corporation's headquarters for this individual at the Successful Vendor's cost. Consideration will be given during the evaluation process to Vendors providing highly qualified personnel and services that add to the value of their Proposal.

The Corporation is interested in knowing what service(s) or product(s) Vendors shall offer, over and above those, which are specifically required in this RFP. A Vendor should explain why such service(s) or product(s) would benefit the Corporation.

Services described in this Section 5.12 should be included in the proposed ticket price.

5.13 START-UP PLAN

The Successful Vendor will have the responsibility for developing and implementing a plan to start-up instant ticket sales, and set up related facilities, arrange for necessary services and obtain the necessary inventory. As part of the Proposal, a Vendor shall include a start-up plan and timeline for the first twelve (12) months following the execution of the Contract. Each Vendor should include recommendations for the number of games and quantity of tickets for each game for this time period.

5.14 INSTANT TICKET DISPENSERS

A Vendor's Proposal must include a plan to provide sufficient and appropriate dispensers that securely store, display and dispense the required number of full packs of instant tickets using the

best marketing and sales approaches. At least thirty thousand (30,000) stackable single unit instant ticket dispensers or their equivalents must be provided each year during the Contract term. A Vendor's Proposal must include a separate price for instant ticket dispensers required by the Corporation above thirty thousand (30,000) per annum.

5.15 RETAILER AND EMPLOYEE TRAINING

The Proposal should include Retailer and Corporation employee training on the various aspects of handling the instant game process, as appropriate. Training may be provided in conjunction with an online gaming system Vendor.

5.16 ADDITIONAL REQUIRED OPERATIONAL ITEMS

A Vendor must list in this Section other significant services, procedures, materials, supplies, programs, policies, equipment, facilities, etc., necessary for the successful daily operational aspects of the proposed products and services, even though there are no specific requirements for those items listed in this RFP. The Successful Vendor is not released from the responsibility of providing all needed items to make the proposed products and services successful.

5.17 MATERIAL, SUPPLIES AND EQUIPMENT

All material, supplies and equipment offered and furnished must be new except as otherwise specified herein.

PART VI - COST

6.1 INTRODUCTION

The Corporation will offer a compensation package that is based on a percentage of "Net Sales" (as defined in Section 6.3). A Proposal must meet both the immediate and long-term needs of the Corporation. Therefore, the objective of this RFP is to develop a program of compensation that rewards the Successful Vendor for excellent performance while ensuring that the Corporation will achieve its desired goals regarding start-up of the lottery and instant ticket operations, including the maximization of net proceeds of total annual gross revenues accruing from the sale of lottery tickets (after payment of prizes to the holders of winning lottery tickets and payment of costs incurred in the operation and administration of the lottery) to the Lottery Proceeds Fund.

6.2 PRICING FORMULA

The method of compensation that will be utilized is a percentage of total Net Sales achieved by the Corporation during the term of the Contract. A Vendor must state the percentage of total sales required for compensation to accomplish the tasks specified in the Proposal. The single cost quotation should be presented on a separate, signed page and be expressed as a numeric percentage of Net Sales carried to no more than four (4) decimal places. For example, 1.0000%.

Vendors are reminded that the cost quotation should cover the entire System, and all of the products and services covered by this RFP and Procurement, to be provided by the Successful

Vendor during the full term of the Contract, as may be extended pursuant to Section 3.8, including:

- Marketing support services;
- Instant ticket printing;
- Distribution and warehousing;
- A minimum of thirty thousand (30,000) single unit instant ticket dispensers annually;
- Distribution, along with other instant ticket products, of a maximum of eight (8) games per year purchased by the Corporation from other Vendors; and
- All other services deemed necessary by the Vendor.

ALL PRICES QUOTED ARE APPLICABLE FOR TEN (10) YEARS FROM THE STARTUP DEADLINE OF DECEMBER 1, 2019 OR SUCH EARLIER START-UP DATE AS MAY BE AGREED-UPON BY THE CORPORATION.

6.3 DETERMINATION OF NET SALES

At the end of each full week of sales after start-up, Net Sales will be calculated to determine the amount subject to compensation. "Net Sales" shall equal:

- The total face value of the Vendor's tickets activated for sale during the week (exclusive of any activations from instant tickets purchased by the Corporation from other Vendors);
- LESS the sum of the total face value of: (i) activated tickets returned by Retailers during the given week; and (ii) defective tickets based on numbers reported to the Corporation during the given week; and
- LESS the total face value of promotional tickets issued by the Corporation during the given week.

Adjustments for active field inventory will be made at the Contract conclusion.

6.4 PAYMENT

Upon determination of the amount due to the Successful Vendor for any week, payment (less applicable damages and penalties which may be deducted) will be processed in an expedited manner. Vendors may propose any alternative methods or schedules of payments, which will be considered during Contract negotiations with the Apparent Successful Vendor.

6.5 PROGRAM ENHANCEMENTS

The Successful Vendor may be requested by the Corporation to perform tasks, provide equipment or otherwise perform in a manner that was not originally contemplated in the

Contract. By mutual agreement, those functions may be performed for a specific fee to be mutually agreed upon. This procedure is not intended to avoid a competitive solicitation for goods and services that might appropriately be provided by other potential suppliers. However, the Corporation may decide to separately procure any option not covered in the Successful Vendor's Proposal.

As part of the basic compensation that has been proposed by the Successful Vendor, all items represented in the Proposal must be provided for unless specifically identified as options. If programs, equipment or services represented in the Proposal are not clearly indicated as options, the Corporation will rightfully assume that the cost is included in the percentage of Net Sales quotation in the Proposal.

6.6 PRICING ASSUMPTIONS

The following assumptions and estimates should be factored into the calculation of the percentage of Net Sales compensation formula:

- At start-up of instant ticket sales, the Corporation plans to have approximately four (4) games for sale simultaneously, and an additional four (4) games within two (2) weeks of start-up;
- The Corporation anticipates that it will introduce forty-five (45) to sixty (60) new games each year and that successful games will be reordered/reprinted during the year;
- At start-up of instant ticket sales, the Corporation plans to have approximately fifteen hundred (1,500) to seventeen hundred (1,700) Retailers selling instant tickets; and
- The Corporation will pay the Successful Vendors the same percentage of Net Sales for instant tickets, regardless of font, price point, ticket size, or shape.

6.7 SUBMIT COST PORTION OF PROPOSAL SEPARATELY

All copies of the cost portion of a Proposal required under this Part VI must be submitted in sealed and labeled envelopes separate from the information required by Parts IV and V of this RFP. Any Proposal which fails to adequately separate the cost portion of the Proposal from the other information required by this RFP may be considered non-responsive and rejected by the Corporation.

ATTACHMENT A

VENDOR CERTIFICATION

INSTANT TICKET LOTTERY GAME SERVICES

I hereby do certify as follows:

1. the initial prices and other terms and provisions included in the Proposal submitted by _____ (the “**Proposing Vendor**”) are accurate and binding for 180 days from the Proposal due date (the “**Proposal Offer Period**”);
2. all charges are, to the best of my knowledge, accurate and complete;
3. the Proposing Vendor acknowledges and agrees that this Proposal will be considered valid and irrevocable for the Proposal Offer Period and, if an award is not made within the Proposal Offer Period or if a Contract with the Successful Vendor is for any reason not executed within the Proposal Offer Period, it shall be incumbent upon the Proposing Vendor to notify the designated contact person identified in Section 2.1 of the RFP in writing if it does not want its Proposal to be further considered beyond the Proposal Offer Period (i.e., in the event of a breach or termination, the Corporation may decide to return to the remaining Vendors’ Proposals). Failure on the part of the Proposing Vendor to notify the designated contact person identified in Section 2.1 of this RFP will mean that its Proposal remains valid even after the Proposal Offer Period;
4. the cost and other terms and provisions contained in the Proposal accurately reflect the Proposing Vendor’s total proposed cost, including any applicable discounts, and the Proposing Vendor would deliver the services and related items for that amount and according to those terms and provisions if the Corporation wanted to accept the prices and other terms and provisions described in its Proposal without negotiation;
5. all inquiries to the Corporation and other pre-Proposal review and evaluation efforts have been completed and that no extra costs or payments to any entity, including this Proposing Vendor, will be allowed for any miscalculation, deficiency, oversight and failure to make suggestions regarding possible additional needs for desired features, or any other difference in cost if later discovered;
6. by submission of this Proposal, the Proposing Vendor agrees to fully comply with all requirements of the RFP, and its separate parts, and any deviation noted in the Proposing Vendor’s submission may be the basis for rejection of its Proposal by the Corporation without recourse;
7. the Proposing Vendor has read and understands the Act and all of the requirements contained in the RFP and any amendments thereto, the responses to written questions submitted by Vendors and its Proposal, and agrees to be bound by all the terms and conditions contained in each of these documents, without exception;

8. the Proposing Vendor has taken appropriate steps to completely and fully familiarize itself with the requirements of the RFP in order to render full performance under any resulting relationship between the Corporation and Proposing Vendor; and
9. the Proposing Vendor had the opportunity to submit written questions regarding the RFP and thereby address any concerns related to the RFP, and therefore, the Proposing Vendor has availed itself of every opportunity to understand its obligations contained in the RFP and any amendments thereto, the response to written questions and the Proposal.

(Signature of Authorized Representative)

(Print Name)

(Title)

(Date)

ATTACHMENT B

PROPOSAL SIGNATURE AND CERTIFICATION

I certify that this Proposal is made without prior understanding, agreement, or connection with any corporation, firm or person submitting a Proposal for the same materials, supplies, equipment or services and is in all respects fair and without collusion or fraud. I understand collusive bidding is a violation of State and federal law and can result in fines, prison sentences and civil damage awards. I understand and agree to abide by all conditions of the RFP and this Proposal and certify that I am authorized to sign this Proposal for _____ (name of company submitting Proposal).

Date: _____

Authorized Signature: _____

Print Name: _____

Title: _____

Company Name: _____

ATTACHMENT C

CONTRACT COMPLIANCE AND FINANCIAL DISCLOSURE FORM

Note: For any subcontractor that will provide some portion of the specifications of this RFP (a “**Subcontractor**”), disclose all the same information for each Subcontractor as if each Subcontractor were itself the Vendor. In addition, disclose all of the same information for each member of a joint venture, a strategic partnership or a prime contractor team as if each such joint venturer, strategic partner or member of a prime contractor team were itself the Vendor. (Vendor and all members of a joint venture, a strategic partnership or a prime contractor team are sometimes herein referred to as “**Vendor Team**”).

[These pages may be copied and used as needed]

PLEASE PROVIDE THE FOLLOWING INFORMATION:

1. Name of Business:
2. Type of legal entity and the state under whose laws the business entity is organized:
3. Address:
 - a. All prior addresses for the prior ten (10) years:
4. Telephone Number, including area code:
5.
 - a. List any trade names or assumed names used:
 - b. List all states where each name is or has been used:
 - c. Attach verification of authorization to conduct business in the State of Mississippi.

List the name, address, area code and telephone number, and social security number of the Vendor’s officers, directors and each stockholder if the Vendor is a corporation (in the case of a publicly-traded corporation, only those stockholders known to the corporation to own beneficially five percent (5%) or more of such corporation’s securities), as well as the same information for every business entity that is a direct or indirect five percent (5%) or greater shareholder of such Vendor corporation; if the Vendor is a limited liability company, the equivalent disclosure of that required for corporations; if the Vendor is a trust, the trustee and all persons entitled to receive income or benefits from the trust; if the Vendor is an association, the members, officers and directors; if the Vendor is a partnership or joint venture, all general partners, limited partners or joint venturers:

- a. Name:

Relationship to Vendor:

Address:

Telephone number, including area code:

Social Security number:

b. Name:

Relationship to Vendor:

Address:

Telephone number, including area code:

Social Security number:

c. Name:

Relationship to Vendor:

Address:

Telephone number, including area code:

Social Security number:

7. Disclose all the states and jurisdictions (domestic and foreign) in which any member of the Vendor Team does business and the nature of the business for each such state or jurisdiction:

8. Disclose all the states and jurisdictions (domestic and foreign) in which any member of the Vendor Team has contracts to supply gaming goods or services, including, but not limited to, lottery goods and services, and the nature of the good or services involved for each such state or jurisdiction:

9. List all states and jurisdictions (domestic and foreign) in which any member of the Vendor Team has applied for, sought renewal of, has received, has been denied, has pending, or has had revoked a lottery or gaming license or lottery contract of any kind, or has had fines or penalties assessed to his or its license, contract or operation and the disposition of such in each such state or jurisdiction. Include all facts or circumstances underlying the revocation or non-renewal of any lottery or gaming license or contract or any lottery or gaming license or application that has been either denied or is pending and has remained pending for more than six (6) months:

a. State:

Type of license:

Status of license:

Fines or penalties:

Circumstances:

b. State:

Type of license:

Status of license:

Fines or penalties:

Circumstances:

c. State:

Type of license:

Status of license:

Fines or penalties:

Circumstances:

10. For each member of the Vendor Team, if applicable, list the details of any finding or pleas, conviction or adjudication of guilt in a state or federal court, or in another jurisdiction, for any felony or any other criminal offense other than a traffic violation, including, but not limited to, felonies related to the security or integrity of a lottery:

Charge:

Date of proceeding:

Custodian of records concerning this proceeding:

Outcome of proceeding:

Charge:

Date of proceeding:

Custodian of records concerning this proceeding:

Outcome of proceeding:

11. For each member of the Vendor Team, if applicable, list the details of any finding or plea, conviction or adjudication of guilt in a state or federal court, or in another jurisdiction, of any charge or offense involving gambling, prostitution, theft, computer

offenses, forgery, perjury, dishonesty or for unlawfully selling or providing a product or substance to a minor:

Charge:

Date of proceeding:

Custodian or records concerning this proceeding:

Outcome of proceeding:

Charge:

Date of proceeding:

Custodian or records concerning this proceeding:

Outcome of proceeding:

12. For each member of the Vendor Team, if applicable, list the details of any bankruptcy, insolvency, reorganization, corporate or individual purchase or takeover of another business, including bonded indebtedness, or any pending litigation:

a. Filing or action:

Date of filing or action:

Court of filing or action:

Date of discharge if bankruptcy:

Pending litigation:

b. Filing or action:

Date of filing or action:

Court of filing or action:

Date of discharge if bankruptcy:

Pending litigation:

13. List the business entities that are a part of the Vendor Team, and list the Fiscal Years for each team member. Complete an Authorization for Investigation and Release for each (see *Attachment D*).

14. List all the individuals constituting the Vendor Team who will work on the Contract. Complete a Consent Form for each (see *Attachment E*).

15. Does the Vendor Team or any individual member thereof have an ownership interest in any entity that has supplied consultation services under contract to the Corporation regarding this RFP? If yes, please provide details.
16. Does any “public officer” or employee of such public officer have an ownership interest of five percent (5%) or more in any member of the Vendor Team? If yes, please provide details.
17. List any conflict of interest with the products, promotions and goals contemplated by the Corporation that could result from other projects in which the Vendor Team or any of the staff members designated to work on the project are involved. Failure to disclose any such conflict may be cause for Contract termination or disqualification of the Proposal.
18. List all lobbyists and consultants working on behalf of the Vendor Team in connection with this Proposal or any subsequent Contract.

Certification

I, _____, hereby certify that I am duly authorized to act on behalf of the Vendor and Vendor Team. In that capacity, I hereby certify that the Vendor and all members of the Vendor Team have filed appropriate tax returns as provided by the laws of the State of Mississippi. I further warrant that the information contained in this Contract Compliance and Financial Disclosure Form is true and complete, and acknowledge that a finding that it is not true or complete may result in a cancellation of the Contract.

I further certify that the Vendor and each member of the Vendor Team recognizes and acknowledges that there are certain limitations on their activities, now and in the future, including, but not limited to, limitation on certain political contributions, limitation of the ability to submit proposals, in response to subsequent request for proposals issued by the Corporation, limitation on the ability to purchase lottery tickets. The restrictions on the ability to purchase lottery tickets and entering into contracts or other arrangements apply to the employees of the Vendor and the members of the Vendor Team as well as the members of all such employees' households, and the Vendor and each member of the Vendor Team will enforce such restrictions upon its employees and subcontractors.

| | | |
|-------|---------------|-------|
| Date: | Printed Name: | _____ |
| | Signature: | _____ |
| | Title: | _____ |

ATTACHMENT D

AUTHORIZATION FOR INVESTIGATION AND RELEASE

_____, hereby authorize the Mississippi Lottery Corporation or its designee to conduct a Vendor background investigation pursuant to Sections 35 and 26 of The Alyce G. Clarke Mississippi Lottery Law, including but not limited to the criminal and financial credit history of _____, and hereby release the Mississippi Lottery Corporation, its officers, Board of Directors, agents and employees and the State of Mississippi from any liability arising out of, in connection with or resulting therefrom. Further, I hereby release all organizations, individuals, agencies, and other employees and agents from any liability that may result from their furnishing such information and authorize all organizations, individuals, agencies and their employees and agents contacted by the Mississippi Lottery Corporation or its designee to provide such information. A photocopy of this release will be valid as an original thereof, even though said photocopy does not contain an original writing of my signature.

Business Address: _____

City/State/Zip Code: _____

Printed Name: _____

Signature: _____

Title: _____

Date: _____

ATTACHMENT E

CONSENT FORM

I hereby authorize the Mississippi Lottery Corporation or its designee to request and receive any criminal history record information pertaining to me that may be in the files of any criminal justice agency.

Full Name Printed
(First, Middle, Last – *no initials*)

Street Address

City State Zip

Sex

Race

____/____/____
Date of Birth

SSN

Signature

Notary

Date: _____

INSTANT TICKET LOTTERY GAMES SERVICES AGREEMENT

THIS INSTANT TICKET LOTTERY GAMES SERVICES AGREEMENT (the "**Agreement**") is made and entered into this ____ day of _____, 2019 (the "**Effective Date**"), by and between MISSISSIPPI LOTTERY CORPORATION ("**MLC**"), a corporation of the State of Mississippi, created pursuant to the Alyce G. Clarke Mississippi Lottery Law (*Miss. Code Ann. §§ 27-115-1 et seq.*) (as may be amended from time to time, the "**Act**"), and _____, a corporation organized under the laws of the State of _____ (the "**VENDOR**").

W I T N E S S E T H:

WHEREAS, MLC was created to organize and operate a state lottery in the State of Mississippi (the "**Lottery**");

WHEREAS, VENDOR, on behalf of itself and certain of its "**Subcontractors**" (as defined in Section 3(a) hereof) with which it will enter into contracts, submitted the proposal dated _____, 2019, attached hereto as Exhibit A and incorporated herein by reference (the "**Proposal**"), to MLC in response to MLC's Request For Proposals for Instant Ticket Lottery Games Services dated June 27, 2019, attached hereto as Exhibit B and incorporated herein by reference (the "**RFP**"), as interpreted by MLC's Answers to Questions concerning the RFP, which were published by MLC on _____, 2019, attached hereto as Exhibit C and incorporated herein by reference (the "**Answers**"); and

WHEREAS, subject to the terms and conditions hereinafter set forth, MLC desires to retain VENDOR to provide instant ticket lottery games systems, products, equipment and services to MLC, and VENDOR desires to provide such systems and perform such services for MLC.

NOW, THEREFORE, for and in consideration of the premises, the mutual promises, covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby expressly acknowledged, the parties hereto hereby agree as follows:

1. SERVICES

Subject to the terms and conditions set forth in this Agreement, MLC retains VENDOR to provide instant ticket lottery games systems, products, equipment and services to MLC as contemplated by the RFP, the Answers and the Proposal, and VENDOR agrees to provide such systems and render such services to MLC.

2. DUTIES AND RESPONSIBILITIES OF VENDOR AND SUBCONTRACTORS

(a) VENDOR and its Subcontractors will work in conjunction with the President of MLC (the "**President**"), MLC staff, MLC Board of Directors (the "**Board**") and the other vendors, subcontractors, employees, agents, retailers and consultants of MLC. VENDOR and its Subcontractors will provide instant ticket lottery games systems, products, equipment and services to MLC as detailed in the RFP, the Answers and the Proposal and

will perform such specific services and provide such deliverables as requested, from time to time, orally or in writing, by the President, his designee(s) or the Board, provided such services and deliverables are within the scope set forth in any of this Agreement, the RFP, the Answers or the Proposal. Except as otherwise set forth herein, VENDOR agrees that all systems, deliverables, equipment and services to be provided to MLC under this Agreement shall be capable of the full level of capacity and capability required by the RFP and the Answers.

(b) VENDOR, and its Subcontractors as requested from time to time, shall meet regularly with the President or his designee(s) and shall establish work plans, implementation schedules and timetables for completion as and when required by the President or his designee(s).

(c) VENDOR hereby agrees to use its best efforts to make available to MLC such of its employees and its Subcontractors as may be necessary or appropriate for the timely performance of VENDOR's obligations pursuant to this Agreement. No employee or agent of VENDOR or any of its Subcontractors shall undertake or participate in, during the term of this Agreement, any other engagement which will interfere with the completion of the work contemplated by this Agreement. VENDOR will provide to MLC, as requested from time to time, written reports of the names and work schedules of VENDOR's and the Subcontractors' employees who will be performing services pursuant to this Agreement.

3. **SUBCONTRACTORS**

(a) None of VENDOR or any Subcontractors will subcontract or otherwise assign any or all of its duties or obligations under this Agreement to any individual or entity without the prior written consent of MLC in each instance, which consent may be withheld in MLC's sole discretion. VENDOR will provide MLC with the name, qualifications, experience and expected duties of each proposed subcontractor under this Agreement each time it desires to retain a subcontractor. All subcontractors which are approved by MLC for work pursuant hereto will be defined collectively as the "**Subcontractors**" and individually as a "**Subcontractor**" and will become a subcontractor for purposes hereof and must execute such agreements or other documentation as may be necessary pursuant to the Act or as MLC may require. VENDOR agrees that it will obtain the prior consent of the President or his designee(s) prior to having any Subcontractor perform any activities for MLC under this Agreement.

(b) Upon the request of MLC, VENDOR will promptly provide MLC with copies of all subcontracts and other agreements entered into by VENDOR with respect to its obligations under this Agreement. No such subcontract or other agreement may contain any terms or conditions inconsistent or in conflict with the terms and conditions contained in this Agreement. In the event of any such inconsistent or conflicting provisions, such inconsistencies or conflicts will be resolved in favor of this Agreement.

(c) MLC shall have the right, at any time and from time to time, to instruct VENDOR not to use the services of any Subcontractor, individual or employee in connection with the

work to be performed for MLC under this Agreement, and VENDOR agrees to comply with all such instructions.

(d) Notwithstanding anything herein to the contrary, VENDOR will remain fully liable and responsible for all work to be performed under this Agreement, whether or not subcontracted to or performed by a Subcontractor or any other person or entity retained by VENDOR or under VENDOR's control, and VENDOR will ensure the compliance of its employees, and will exercise its best efforts to ensure the compliance of, and in any event be responsible for, Subcontractors and their employees with the terms of this Agreement, the Act and all other applicable laws which govern the performance of services pursuant to this Agreement and such other standards or policies as MLC may establish from time to time.

4. INDEPENDENT CONTRACTOR.

(a) Both MLC and VENDOR, in the performance of this Agreement, will be acting in their own separate capacities and not as agents, employees, partners, joint venturers or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees, agents or partners of the other party for any purposes whatsoever. Neither party will assume any liability for any injury (including death) to any persons, or any damage to any property or other claim arising out of the acts or omissions of the other party or any of its agents, employees or subcontractors. It is expressly understood and agreed that VENDOR is an independent contractor of MLC in all manners and respects and that neither party to this Agreement is authorized to bind the other party to any liability or obligation or to represent that it has any such authority, and no Subcontractor is authorized to bind MLC to any liability or obligation or to represent that it has any such authority.

(b) VENDOR shall be solely responsible for all payments to Subcontractors and all compensation, withholding taxes and benefits for its employees and for providing all necessary unemployment and workmen's compensation insurance for its employees.

5. COMPENSATION

(a) As full and complete compensation for all goods and services provided by VENDOR pursuant to this Agreement, MLC will pay VENDOR, and VENDOR will accept, an amount equal to _____ percent (____%) of "Net Sales" which shall be defined as:

- (i) the total face value of VENDOR's tickets activated for sale during the week (exclusive of any activations from instant tickets purchased by MLC from other Vendors; minus
- (ii) the sum of the total face value of: (A) activated tickets returned by retailers during the given week; and (B) activated defective tickets, based on numbers reported to MLC during the given week; minus

- (iii) the total face value of activated promotional tickets issued by MLC during the given week.

Adjustments for active field inventory will be made at the conclusion of the term of the Agreement.

For purposes of this Section 5, a "week" shall mean the period beginning 12:01 a.m. Tuesday and ending at midnight Monday.

(b) Subject to the availability of funds and any other restrictions imposed by the Act, the "**Governing Laws and Regulations**" (as defined in Section 14) or this Agreement, MLC will pay to VENDOR all uncontested amounts due under this Agreement on a weekly basis, unless the parties otherwise agree upon a less frequent payment schedule, in accordance with the policies and procedures established by MLC from time to time and subject to setoff or offset for all sums owed by VENDOR or its Subcontractors.

(c) Within thirty (30) days after the expiration of the term of this Agreement, the parties shall in good faith mutually agree upon the reimbursement amount due MLC with respect to instant tickets activated during the term of this Agreement and: (i) returned; (ii) given as "free ticket" prizes; (iii) returned as defective; (iv) reported stolen by a retailer; or (v) issued by MLC as a promotion after the term of this Agreement. The parties hereby agree that the historical percentages based on the ten (10) week period immediately prior to the termination of this Agreement for each of the categories set forth in the subparagraphs of this Section 5(c) shall be used as the guidelines for such negotiations. VENDOR shall pay such reimbursable amount to MLC within fifteen (15) days after the conclusion of such negotiations.

6. **TERM**

(a) Unless sooner terminated in accordance with the provisions of Section 18 or other provisions of this Agreement, the RFP or the Answers, and subject to the provisions of Section 25 hereof, the term of this Agreement shall commence as of the Effective Date and shall continue for a period of seven (7) years after December 1, 2019, the date on which MLC expects to commence instant ticket sales (the "**Instant Ticket Start-Up Date**"), subject to three (3) one (1) year extensions of the term of this Agreement as set forth below.

(b) At the sole option of MLC, MLC may exercise up to three (3) one (1) year extensions of the term of this Agreement, which exercise may occur annually, in multiples of two (2) or three (3) years, or not at all. MLC shall exercise any extension and notify VENDOR of same no later than one hundred eighty (180) days prior to the expiration of the term of this Agreement, as extended (if applicable).

(c) VENDOR acknowledges and agrees that, prior to the expiration of the term of this Agreement, MLC will award a new contract for replacement of the instant ticket lottery games systems, products, equipment and services provided by VENDOR under this Agreement and that VENDOR has no right or expectation in or to any such new contract. VENDOR further agrees that MLC may use the final one hundred eighty (180) days of the

term of this Agreement to convert to the use of such replacement instant ticket lottery games systems, products, equipment and services; provided that VENDOR shall continue to be compensated in accordance with Section 5 hereof during such one hundred eighty (180) day period. VENDOR shall cooperate fully and in good faith and shall assist MLC and the new contractor, to the extent reasonable and practical, to accomplish such conversion in a timely and efficient manner, at no additional cost to MLC or such new contractor.

7. WORK STANDARD

(a) VENDOR hereby agrees that it and its Subcontractors shall at all times comply with and abide by all terms and conditions set forth in this Agreement, and all requirements of the Act and Governing Laws and Regulations. VENDOR further agrees that it and its Subcontractors shall perform their respective duties and responsibilities as set forth in this Agreement by following and applying the highest professional and technical guidelines and standards.

(b) VENDOR hereby agrees that it and its Subcontractors will perform their respective duties and responsibilities as set forth in this Agreement with integrity and dignity and free from political influence, collusion and fraud. VENDOR further agrees that none of it, its Subcontractors, nor any of their respective employees or agents will solicit or accept, or attempt to solicit or accept, any kickbacks or other inducements from any offeror, supplier, manufacturer or subcontractor in connection with the performance of its obligations under this Agreement.

(c) If MLC becomes dissatisfied with the work product of or the working relationship with any of the individuals assigned to perform services under this Agreement by VENDOR or any Subcontractors, MLC may require the prompt replacement of any or all of such individuals. Personnel identified in the Proposal as performing services under this Agreement will continue to perform such services in their designated capacities until such services are completed unless they cease to be employed by VENDOR or a Subcontractor or unless MLC requests their removal, in which case a person or persons of suitable competency and acceptable to MLC, in its discretion, will be substituted forthwith.

(d) Nothing in this Section 7 shall be construed to prevent VENDOR from using the services of others to perform tasks ancillary to those tasks which directly require the expertise of such key personnel, including secretarial, clerical and common labor duties. VENDOR shall at all times remain responsible for the performance of all necessary tasks under the scope of this Agreement, whether performed by key personnel or other workers.

(e) Nothing in this Agreement shall prohibit MLC from retaining the services of any individual or entity to perform any services on its behalf, whether or not such or similar services were initially contemplated to be performed by VENDOR or a Subcontractor. MLC is not prohibited by this Agreement from retaining the services of any individual or entity to perform any services it requires, and it is under no obligation to exclusively use the services of VENDOR or any Subcontractors. If MLC desires to add an item provided

by an entity other than VENDOR or a Subcontractor to VENDOR's instant ticket lottery games systems, products, equipment or services provided pursuant hereto, then VENDOR and MLC agree to negotiate in good faith an amendment to this Agreement (if necessary) or a separate agreement which contains all of the mutually agreed-upon terms and conditions, including, without limitation, any price, liquidated damages and other terms. To the extent VENDOR is capable of providing any such comparable item, MLC will consider any offer tendered by VENDOR with respect thereto.

(f) VENDOR hereby designates _____, or such other person or persons as it may from time to time notify MLC, as its primary contact with MLC for purposes of this Agreement.

8. PROGRESS REPORT AND INSTALLATION

(a) To assure MLC that its work under this Agreement is progressing and is being performed in a manner consistent with MLC's policies until the start of lottery instant ticket sales, VENDOR will submit written progress reports to MLC, no less frequently than weekly, covering all work performed by VENDOR and all Subcontractors in form and substance satisfactory to the President.

(b) VENDOR hereby agrees, represents and warrants that all components of the instant ticket lottery games systems, products, equipment and services it is providing pursuant hereto will be fully operational and installed, and all required instant ticket products and equipment shall be installed, and available for sale to the public, in retail locations approved by MLC at least two (2) weeks prior to the Instant Ticket Start-Up Date.

9. CHANGES IN WORK

By written or oral request by the President or his designee(s) to VENDOR, MLC may from time to time make changes in the services, equipment or deliverables to be provided by VENDOR or any Subcontractor, or the place of delivery or performance of such services, equipment or any requested deliverables; provided, however, to the extent any such changes in services, equipment or deliverables are outside the scope of any of this Agreement, the RFP, the Answers or the Proposal, MLC and VENDOR shall in good faith negotiate mutually acceptable terms and compensation. VENDOR and all applicable Subcontractors shall promptly comply with such requests and take all necessary or appropriate actions to effect such change.

10. BOOKS AND RECORDS

VENDOR and each Subcontractor shall provide, as soon as it is available, to MLC on an annual basis a copy of its audited financial statements for such year; provided, however, if a Subcontractor does not obtain audited financial statements, then its financial statements must be certified by its chief financial officer. VENDOR and all Subcontractors shall maintain all books, documents, papers, accounting records and other evidence pertaining to the services to be performed under this Agreement in accordance with the Act, Governing Laws and Regulations, generally accepted accounting principles and any other applicable procedures established by MLC from time to time. VENDOR and all Subcontractors shall make all such materials available at its

offices, at all reasonable times during the term of this Agreement and for five (5) years after the date of final payment under this Agreement, for inspection by MLC, or by any authorized representative of MLC, and copies thereof shall be furnished to MLC by the appropriate entity, at no cost to MLC, if requested by MLC. MLC shall have the right to audit the records and operations of VENDOR and each Subcontractor with respect to the goods to be provided and services to be performed pursuant to this Agreement. VENDOR and Subcontractor shall also comply with all other requirements of the Act and Governing Laws and Regulations.

11. CONFIDENTIALITY; OWNERSHIP OF WORK PRODUCT

(a) For purposes of this Agreement:

- (i) "**Confidential Information**" means any and all items or information of a party which are: (A) marked "Confidential" or some such similar designation; or are (B) valuable, proprietary and confidential information belonging to or pertaining to such party that does not constitute a "**Trade Secret**" (as hereafter defined) and that is not generally known but is generally known only to said party and those of its employees, independent contractors or agents to whom such information must be confided for business purposes, including, without limitation, information regarding said party's customers, suppliers, manufacturers and distributors; and
- (ii) a "**Trade Secret**" means business or technical information, including but not limited to a formula, pattern, program, device, compilation of information, method, technique, or process that: (A) derives independent actual or potential commercial value from not being generally known or readily ascertainable thorough independent development or reverse engineering by persons who can obtain economic value from its disclosure or use; and (B) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

(b) In recognition of the need of VENDOR to protect its legitimate business interests, MLC hereby covenants and agrees that with regard to any: (i) VENDOR Confidential Information, at all times during the term of this Agreement and for a period of three (3) years following the expiration or termination of this Agreement for any reason; and (ii) VENDOR Trade Secrets, at all times such information remains a Trade Secret under applicable law, MLC will regard and treat all such items as strictly confidential and wholly owned by VENDOR and will not, for any reason or in any fashion, either directly or indirectly use, disclose, transfer, assign, disseminate, reproduce, copy, or otherwise communicate any such VENDOR Confidential Information or VENDOR Trade Secrets to any individual or entity for any purpose other than in accordance with this Agreement, pursuant to the instructions from a duly authorized representative of VENDOR or except to the extent necessary to fulfill the purposes of this Agreement or conduct the Mississippi Lottery. MLC shall not be liable, however, to VENDOR or to any other person or entity, if despite MLC's reasonable efforts, VENDOR Confidential Information is disclosed in breach of the foregoing. Notwithstanding anything hereto the contrary, the entirety of

Section 1.5 of the RFP, the Act, the MLC's Public Records Request Policy, the Governing Laws and Regulations, the Mississippi Open Meetings Act (*Miss. Code Ann. §§ 25-41-1 et seq.*, as amended) and the Mississippi Public Records Act of 1983, *Miss. Code Ann. §§ 25-61-1 et seq.*, as amended) (collectively, the "**Superseding Provisions and Statutes**") shall supersede and control any provision of this Agreement, and MLC's confidentiality and nondisclosure obligations and liabilities set forth herein, or in the RFP, Answers or Proposal, shall be subject to, and never be greater than, as set forth in any of the Superseding Provisions and Statutes.

(c) In recognition of the need of MLC to protect its legitimate business interests, VENDOR hereby covenants and agrees that with regard to any: (i) MLC Confidential Information, at all times during the term of this Agreement and for a period of three (3) years following the expiration or termination of this Agreement for any reason; and (ii) MLC Trade Secrets, at all times such information remains a Trade Secret under applicable law, VENDOR and all Subcontractors will regard and treat all such items as strictly confidential and wholly owned by MLC and will not, for any reason or in any fashion, either directly or indirectly use, disclose, transfer, assign, disseminate, reproduce, copy, or otherwise communicate any such MLC Confidential Information or MLC Trade Secrets to any individual or entity for any purpose other than in accordance with this Agreement or pursuant to the instructions from a duly authorized representative of MLC. In addition, to the extent the Act, the Governing Laws and Regulations or any other law imposes any greater restrictions or prohibitions with respect to any MLC Confidential Information, MLC Trade Secrets or other information or property of MLC, VENDOR covenants and agrees that it and all Subcontractors shall comply with such greater restrictions or prohibitions. To ensure the compliance by it and all Subcontractors with the provisions of this Section 11(c), VENDOR shall use its best efforts, including, without limitation, obtaining written confidentiality agreements with all Subcontractors which incorporate requirements no less restrictive than those set forth herein and which contain provisions which permit MLC to independently enforce the requirements set forth in such agreements.

(d) All work product, property, data, documentation or information or materials conceived, discovered, developed or created by VENDOR or any Subcontractor pursuant to this Agreement exclusively and specifically for MLC and solely for MLC's use (collectively, the "**Work Product**") shall be owned exclusively by MLC. Notwithstanding the foregoing, nothing contained herein shall limit or be deemed to limit VENDOR's intellectual property ownership rights in its basic, unmodified proprietary software systems which are generally provided to its customers. To the greatest extent possible, any Work Product shall be deemed to be a "**work made for hire**" (as defined in the Copyright Act, 17 U.S.C.A. § 101 *et seq.*, as amended) and owned exclusively by MLC. VENDOR hereby unconditionally and irrevocably transfers and assigns to MLC, and VENDOR shall cause all Subcontractors and others it retains to irrevocably transfer and assign to MLC, all right, title and interest in or to any Work Product, including, without limitation, all patents, copyrights, Trade Secrets, trademarks, service marks and other intellectual property rights therein. VENDOR agrees to execute and deliver to MLC, and to cause its Subcontractors and others it retains to execute and deliver, any transfers, assignments, documents or other

instruments which MLC may deem necessary or appropriate, from time to time, to vest complete title and ownership of any Work Product, and all associated intellectual property and other rights, exclusively in MLC. During the performance of the services and provisions of the goods specified herein, VENDOR shall be responsible for any loss or damage to any Work Product while in the possession of VENDOR or any Subcontractor, and any loss or damage thereto shall be restored at VENDOR's expense. MLC shall have full, immediate and unrestricted access to all Work Product during the term of this Agreement.

(e) MLC hereby grants to VENDOR a fully paid-up, non-exclusive, perpetual and transferable license to use, sublicense, modify and create derivative works of software, hardware, equipment, firmware and mask works which are owned by MLC and created solely by VENDOR or any Subcontractor, and which constitute Work Product (the "**Created Work Product Items**"). While MLC has the free rights to use, modify and create derivative works of such Created Work Product Items for its own use, it agrees not to license any of the rights licensed to VENDOR to any other entity unless VENDOR: (i) ceases to function as a going concern; (ii) files, or has filed against it, any bankruptcy or insolvency proceeding of any kind; (iii) dissolves, liquidates or otherwise ceases its corporate existence; (iv) makes an assignment for the benefit of its creditors; or (v) VENDOR announces it will cease, or actually ceases, to perform continuing maintenance, support or enhancement services with regard to Created Work Product Items (any of the foregoing events being defined as "**Material Event**"). Upon the occurrence of any Material Event, the license granted by this Section 11(e) to VENDOR with respect to the Created Work Product Items, and any restrictions of MLC's rights with respect to such Created Work Product Items set forth in this Section 11(e) shall immediately terminate and cease, and MLC shall have the right, without limitation, to grant to another entity a license to use, modify and create derivative works of Created Work Product Items for the use or benefit of MLC.

(f) VENDOR hereby grants to MLC a fully paid-up, non-exclusive, perpetual, non-transferable license for MLC to use all software which is provided by VENDOR or Subcontractors for the use by or benefit of MLC pursuant to this Agreement, whether such software is currently set forth in the Proposal or subsequently provided (collectively, the "**VENDOR Software**"). Upon the occurrence of a Material Event, in addition to any rights or licenses which MLC may acquire pursuant to any source code escrow agreement required by Section 3.9 of the RFP or otherwise entered into for the benefit of MLC, MLC's license to the VENDOR Software shall automatically be expanded to include the license and right for MLC, or others on behalf of MLC, to use, modify and create derivative works of the VENDOR Software for MLC's use or benefit.

(g) Notwithstanding the foregoing, the nondisclosure restrictions of Section 11(b) shall not apply to VENDOR information that is: (i) generally known to the public other than due to a disclosure by MLC; (ii) already known to MLC at the time it is disclosed by VENDOR to MLC; (iii) independently developed by MLC; or (iv) received by MLC from a party that MLC believed in good faith had the right to make such disclosure.

(h) Notwithstanding the foregoing, the nondisclosure restrictions of Section 11(c) shall not apply to MLC information that is: (i) generally known to the public other than due to a disclosure by VENDOR or a Subcontractor; (ii) already known to VENDOR at the time it is disclosed by MLC to VENDOR; (iii) independently developed by VENDOR; or (iv) received by VENDOR from a third party that VENDOR believed in good faith had the right to make such disclosure.

12. LIMITATION OF LIABILITY

THE PAYMENT OBLIGATIONS UNDERTAKEN BY MLC UNDER THIS AGREEMENT ARE SUBJECT TO THE AVAILABILITY OF FUNDS TO MLC. THERE SHALL BE NO LIABILITY ON THE PART OF MLC EXCEPT TO THE EXTENT OF AVAILABLE FUNDS PERMITTED TO BE PAID FROM THE PROCEEDS OF LOTTERY OPERATIONS AND OTHER FUNDS AVAILABLE TO MLC. NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, UNDER NO CIRCUMSTANCES WILL THE STATE OF MISSISSIPPI, ITS GENERAL FUND OR ANY OF ITS AGENCIES OR POLITICAL SUBDIVISIONS BE RESPONSIBLE OR LIABLE AS A RESULT OF THIS AGREEMENT OR ANY LIABILITY CREATED HEREBY OR ARISING HEREUNDER.

13. ANTITRUST ACTIONS

VENDOR hereby conveys, sells, assigns and transfers to MLC all of its right, title and interest in and to all causes of action it may now have or hereafter acquire under the antitrust laws of the United States of America and the State of Mississippi relating to any systems, equipment and services acquired by MLC under this Agreement.

14. COMPLIANCE WITH LAWS

VENDOR agrees to comply with all applicable rules, policies, procedures and regulations adopted from time to time by MLC under the Act and all other applicable federal, state and local laws, rules, regulations, ordinances or executive orders, including, without limitation, the Americans with Disabilities Act of 1990 (42 U.S.C. §§ 1201 *et seq.*) and all other labor, employment and anti-discrimination laws, and all provisions required thereby to be included herein, are hereby incorporated by reference (all of the foregoing being sometimes referred to collectively as the "**Governing Laws and Regulations**").

15. REPRESENTATIONS, WARRANTIES AND ADDITIONAL COVENANTS

VENDOR hereby represents, warrants or covenants, as the case may be, to MLC, on its own behalf and with respect to each of its Subcontractors that as of the Effective Date and at all times throughout the term of this Agreement, as follows:

(a) VENDOR has the power and authority to execute and deliver this Agreement and to perform its obligations under this Agreement, and VENDOR has taken all necessary and appropriate action to authorize the execution and delivery of this Agreement and the

performance of its obligations under this Agreement. The execution and delivery of this Agreement and the performance of its obligations under this Agreement are not in contravention of any provisions of law or any material indenture or agreement by which VENDOR is bound and do not require the consent or approval of any governmental body, agency, authority or other person or entity which has not been obtained. This Agreement constitutes the valid and legally binding obligation of VENDOR, enforceable against VENDOR in accordance with its terms.

(b) VENDOR and its Subcontractors have disclosed or will disclose to MLC all matters required to be disclosed under the Governing Laws and Regulations. In addition, VENDOR recognizes and acknowledges that there are certain limitations on its activities, and the activities of its Subcontractors, now and in the future, including, but not limited to, limitations on certain political contributions, limitations on the ability to submit proposals in response to subsequent requests for proposals issued by MLC, limitations on the ability to enter into or perform contracts or other arrangements with certain third parties, and limitations on the ability to purchase lottery tickets, all of which shall be honored. Some of these restrictions also apply to the employees of VENDOR and the members of such employees' households, and VENDOR will enforce such restrictions upon its employees and Subcontractors.

(c) Neither VENDOR, the Subcontractors nor any of its or their respective officers, directors, partners or major shareholders (i) have ever been found guilty of, or plead guilty to, any crime in any way related to the security, integrity or operation of any lottery in any jurisdiction; (ii) currently under indictment for any crime in any way related to the security, integrity or operation of any lottery in any jurisdiction; or (iii) have ever been found to be in possession of any illegal lottery device.

(d) Neither VENDOR, the Subcontractors nor any of its or their respective officers, directors, partners or major shareholders has an ownership interest in any entity that has supplied consultation services under contract to MLC with respect to the RFP.

(e) No "public official" has an ownership interest of five percent (5%) or more in VENDOR or any of the Subcontractors.

(f) VENDOR and all Subcontractors (i) are, and will remain at all times during the term of this Agreement, qualified to do business in the State of Mississippi; (ii) have obtained a signed tax clearance from the Mississippi Commissioner of Revenue indicating that it is current in filing all applicable tax returns and in payment of all taxes, interest and penalties owed to the State of Mississippi, excluding items under formal appeal pursuant to applicable statutes; and (iii) will file Mississippi income tax returns at all times during the term of this Agreement.

(g) Neither VENDOR nor any Subcontractor are currently debarred from contracting with any political subdivision or agency of the State of Mississippi or federal government, and neither VENDOR nor any Subcontractor is an agent of a person or entity that is

currently debarred from contracting with any political subdivision or agency of the State of Mississippi or federal government.

(h) All Work Product: (i) shall be prepared, worked on and completed solely by employees of VENDOR or a Subcontractor in the scope of their employment or by independent contractors of VENDOR or a Subcontractor working under the strict and direct supervision of such employees; (ii) shall be original works of authorship; (iii) shall not infringe, plagiarize, pirate or constitute misappropriations of any copyrights, trademarks, service marks, trade names, patents, Confidential Information, Trade Secrets or other intellectual properties or proprietary rights of any individuals or entities; and (iv) shall not be false, misleading, actionable, defamatory, libelous or constitute an invasion of privacy of any individual or entity.

(i) None of VENDOR or any Subcontractors, nor any of its or their respective employees, officers, directors, partners or major shareholders, shall issue any press release, conduct any press or news conference, participate in any media interview or otherwise make any public statement or announcement on behalf of, with respect to or in connection with this Agreement, MLC or the Lottery without the prior written consent of the President or his designee(s) in each instance.

(j) None of VENDOR or any Subcontractors, nor any of its or their respective employees, officers, directors, partners or major shareholders, shall use MLC's or the Lottery's name, logos, images or any other information or data related to the services to be provided pursuant to this Agreement as a part of or in connection with any commercial advertising without the prior written consent of the President or his designee(s) in each instance.

(k) VENDOR's and all Subcontractors' computer or other systems, and all of its or their respective equipment and components, used in connection with this Agreement shall in all respects meet any requirements, performance standards and specifications of the RFP, the Answers, the Proposal and this Agreement, and shall be suitable and fit for the purposes of instant ticket lottery games systems, products, equipment and services.

(l) All equipment and components provided by VENDOR and all Subcontractors to MLC, other than as permitted by the RFP, shall be new equipment and shall conform to the manufacturer's current official published specifications. Unless MLC is otherwise notified by VENDOR, all such equipment and components not manufactured by VENDOR or a Subcontractor shall carry manufacturer warranties of merchantability and warranties against defects in materials and workmanship. All adjustments, repairs and replacement parts necessary to maintain such equipment and components in good working order shall be promptly provided and performed by VENDOR. Any such equipment or components not meeting the requirements set forth herein shall be replaced by VENDOR as soon as feasible and without cost to MLC.

(m) VENDOR and all Subcontractors shall keep all of their hardware and equipment used in connection with the Lottery in good condition and repair and shall make all

reasonable efforts to prevent anything that may materially impair the operations thereof. Such hardware and equipment shall not be used in violation of this Agreement, the RFP, the Act or any of the Governing Laws and Regulations, and neither VENDOR nor any Subcontractor shall pledge, grant a security interest or lien on, hypothecate or otherwise encumber such hardware or equipment or otherwise dedicate the use of such hardware or equipment in such a way as to compromise the ability of MLC to use same for the proper functioning of the Lottery or the ability of VENDOR or any Subcontractor to perform its or their obligations under this Agreement.

(n) VENDOR and all instant ticket printer Subcontractors warrant that: (i) the actual prize pool for each game will be within the limits set out in the Working Papers mutually agreed upon by VENDOR and MLC; and (ii) all tickets will have a unique validation number within each game; and (iii) the ticket dimensions shall not vary by more than two percent (2%) from the size established in the working papers for each instant ticket game; and (iv) regardless of the type of ticket design or designs proposed, the final product must be tamper-proof by any practical means; and (v) each game is printed in conformity with the prize structure included in the Working Papers so that prizes will constitute no more than the percentage of revenue stated, and larger prizes are all present in delivered tickets within stated tolerances; and (vi) winning tickets are distributed with no discernible pattern throughout the entire population of a game; and (vii) all instant ticket games provided by VENDOR pursuant to this Agreement shall in all respects conform to, and function in accordance with, their specifications, designs and Working Papers, as approved by MLC.

(o) All systems analysis, systems design and programming prepared or done by VENDOR or any Subcontractor in connection with this Agreement, the RFP or the Proposal have been and shall be prepared or done in a workmanlike manner consistent with the highest professional and technical guidelines and standards of the industry in which VENDOR is engaged.

(p) All computer programs and equipment implemented by VENDOR or any Subcontractor for performance under this Agreement shall meet their stated performance standards and shall correctly and accurately perform their intended functions in all material respects on all hardware and other equipment supplied by MLC, VENDOR or any Subcontractor.

16. OBLIGATIONS OF VENDOR

(a) VENDOR shall provide to MLC on an annual basis an updated certificate of existence showing that it and each Subcontractor are qualified to transact business in the State of Mississippi.

(b) VENDOR agrees to fully disclose to MLC all matters materially affecting MLC, this Agreement or the performance of this Agreement and all matters reasonably necessary to perform background and security investigations with respect to VENDOR, the Subcontractors, their respective officers, directors, partners, shareholders and employees, and the individuals performing services pursuant to this Agreement or otherwise for the

benefit of MLC or the Lottery. In addition, VENDOR acknowledges that some or all of its employees, officers, directors, partners and shareholders, and its Subcontractors and their respective employees, officers, directors, partners and shareholders, may be required to submit to background and other investigations, and VENDOR shall cause any such individuals or Subcontractors to fully cooperate with any such investigations and to provide all necessary information and authorizations in connection therewith. VENDOR further agrees that it will routinely and continuously update all information disclosed to MLC pursuant to this Agreement or the RFP, including, without limitation, any breaches of all representations, warranties and additional covenants set forth in Section 15 hereof, no less often than every six (6) months; provided, however, VENDOR shall as soon as possible notify MLC upon the occurrence of any event the effect or results of which VENDOR would be required to disclose, or to update a previous disclosure, to MLC under this Agreement or the RFP and which materially affect MLC, VENDOR, the Subcontractors, any of their respective officers, directors, partners, shareholders or employees, this Agreement or the performance of this Agreement. VENDOR further agrees to notify MLC: (i) as soon as possible, but no more than five (5) days after the filing of any criminal proceeding or issuance of any indictment involving VENDOR or any Subcontractor or any officer, director or employee of Vendor or any Subcontractor; and (ii) within thirty (30) days of VENDOR's first learning of any civil or administrative proceeding involving VENDOR or any Subcontractor or any officer, director or employee of Vendor or any Subcontractor; provided, however, if any such proceeding would have a material adverse effect on VENDOR or a Subcontractor or their ability to perform pursuant to this Agreement, then such notice must be delivered to MLC no more than five (5) days after VENDOR learns of such proceeding.

(c) VENDOR must, contemporaneously with the execution of this Agreement, post and maintain at least throughout the term of this Agreement a performance bond (the "**Bond**"), letter of credit from a bank, or deposit securities, pursuant to Section 35 of the Act and acceptable to the MLC in its sole discretion, in an amount equal to Ten Million Dollars (\$10,000,000). The security provided by VENDOR pursuant to this Section 16(c) shall provide funds to MLC in the event MLC suffers any liability, loss, damage or expense as a result of VENDOR's failure to fully and completely perform any or all of the requirements contained in this Agreement, including, without limitation, VENDOR's obligation to pay any liquidated damages due hereunder or to indemnify MLC pursuant hereto. The Bond may be renewable annually, provided that: (i) it provides that, in the event the Bond will not be renewed for an additional year, MLC will be provided written notice thereof at least thirty (30) days prior to the expiration thereof; and (ii) if any such Bond is not renewed for an additional year, VENDOR must obtain a replacement equivalent Bond or letter of credit to be in place so that at no time is VENDOR in violation of its obligation pursuant to this Section 16(c) to maintain a performance bond at least throughout the term of this Agreement.

(d) VENDOR shall maintain the following types and amounts of insurance during the term of this Agreement, designating MLC as an additional insured on each policy:

- (i) General liability insurance in the amount of \$5,000,000.00;

- (ii) Property insurance in the amount of replacement cost;
- (iii) Errors and omissions insurance in the amount of \$5,000,000.00;
- (iv) Automobile liability insurance in the amount of \$5,000,000.00;
- (v) Crime insurance in the amount of \$5,000,000.00;
- (vi) Cyber and Privacy insurance in the amount of \$5,000,000.00;
- (vii) Social Engineering Fraud insurance in the amount of \$5,000,000.00;
- (viii) Workman's Compensation Insurance at or above the levels required by the State of Mississippi;
- (ix) Self-insurance with respect to equipment in the field; and
- (x) Such other types and amounts of insurance as MLC shall from time to time reasonably require.

(e) VENDOR shall provide MLC with certificates of insurance within ten (10) days after the date hereof and evidence of any renewed bonds or insurance policies within five (5) days prior to the expiration of the then existing bonds or insurance policies. All bonds and insurance required of VENDOR by this Agreement must be issued by companies or financial institutions which are financially rated "A" or better (or a comparable rating) by a nationally recognized rating agency and duly licensed, admitted and authorized to transact business in the State of Mississippi.

(f) VENDOR agrees to escrow the source codes to all applicable software and other similar proprietary materials developed or provided by VENDOR or any Subcontractor in connection with its performance under this Agreement, in accordance with a standard Source Code Escrow Agreement in form and substance acceptable to MLC, in its sole discretion. VENDOR hereby grants to MLC a perpetual, non-exclusive, non-transferable, non-sublicensable license to use any and all proprietary materials owned by it and used in connection with its performance under this Agreement. VENDOR hereby further grants to MLC all rights and authority to modify such proprietary materials in any manner MLC deems necessary following the occurrence of a Material Event or in the event they are released from escrow pursuant to any Source Code Escrow Agreement.

(g) VENDOR shall, at its own expense, conduct trademark and service mark searches with respect to the names of all instant ticket games provided by VENDOR for use in connection with the Lottery.

(h) VENDOR and its Subcontractors shall allow any authorized representatives of MLC to inspect, at reasonable times with notice upon arrival, the plants, places of business and job sites of VENDOR or any Subcontractors which are being used in connection with the performance of this Agreement. VENDOR shall not change the location of its

warehousing, printing, systems, offices or service facilities used in connection with this Agreement without the prior written approval of MLC.

(i) VENDOR shall establish and maintain a physical and software security program that is acceptable to MLC and shall adhere to all security requirements established from time to time by MLC.

17. **TAXES**

MLC will not be responsible for any taxes levied on VENDOR or any Subcontractor as a result of the execution, delivery or performance of this Agreement. VENDOR and Subcontractors shall pay and discharge any and all such taxes in a timely manner.

18. **TERMINATION**

(a) Notwithstanding anything herein to the contrary, MLC may cancel and terminate this Agreement: (i) if VENDOR fails to correct or cure any breach of any of Sections 7(b), 15(c), 15(d), 15(e), 15(i), 16(b), 16(h) or 16(i) of this Agreement (collectively, the "**Major Sections**") within seventy-two (72) hours of the earlier of: (A) VENDOR's having knowledge of such breach; or (B) VENDOR's receiving oral or written notice of such breach from MLC; or (ii) if VENDOR fails to correct or cure any breach of any other provisions or Sections of this Agreement, other than Major Sections, after thirty (30) calendar days' prior written notice from MLC.

(b) If MLC, after thirty (30) calendar days' prior written notice from VENDOR, fails to correct or cure any breach of this Agreement, then VENDOR may cancel and terminate this Agreement and in due course collect monies properly due up to and including the date of such termination.

(c) In the event that either party hereto is unable to perform any of its obligations under this Agreement, or to enjoy any of its benefits because of natural disaster, actions or decrees of governmental bodies or communication line failure, or other events of force majeure not the fault of the affected party, the affected party shall immediately give notice to the other party and shall do everything possible to resume performance. Upon receipt of such notice, each party's obligations under this Agreement shall be immediately suspended. If the period of non-performance exceeds thirty (30) days from the receipt of notice of an event described in this Section 18(c), the party whose ability to perform has not been so affected may terminate this Agreement by giving written notice thereof to the other party.

(d) If, for any reason other than a breach of this Agreement by MLC, VENDOR is unable to perform its obligations hereunder, MLC shall acquire a usufruct (or the equivalent thereof) in all property owned by VENDOR or any Subcontractor which is used in conjunction with, and is necessary to, the performance of this Agreement, which usufruct shall exist until the expiration or termination of this Agreement.

(LIQUIDATED DAMAGES PROVISIONS, DESCRIPTIONS AND LEVELS MUST BE NEGOTIATED, REVIEWED AND CONFORMED TO RFP, PROPOSAL AND FINAL AGREED-UPON NEGOTIATED PROVISIONS)

19. LIQUIDATED DAMAGES

(a) If any of the below-described events occurs, MLC shall have the right to assess VENDOR for liquidated damages subject to the maximum liquidated damage amounts set forth below corresponding to each such event:

- (i) Delay in the start of the lottery (\$_____);
- (ii) Delay in the start of a new game (\$_____);
- (iii) Shortage of tickets (\$_____);
- (iv) Failure to distribute tickets within two (2) business days of ordering (\$_____);
- (v) Security violations (\$_____);
- (vi) Untimely vending machine repair (\$_____);
- (vii) Untimely reports (\$_____);
- (viii) Untimely Working Papers (\$_____);
- (ix) Unauthorized modifications to Working Papers (\$_____);
- (x) Claimed prize tickets not approved by MLC (\$_____);
- (xi) Defective or nonconforming tickets (\$_____); and
- (xii) Incomplete or incorrect game validation files (\$_____).

(b) VENDOR and MLC hereby acknowledge and agree that:

- (i) MLC's damages following the occurrence of any event set forth in Section 19(a) hereof are difficult or impossible to accurately estimate or calculate;
- (ii) the liquidated damages amounts set forth in Section 19(a) hereof are reasonable pre-estimates of what MLC's damages would be in the event of the occurrence of any such events and, if assessed, shall be MLC's sole remedy with respect to such events;
- (iii) it is their mutual intention that Section 19(a) hereof provide for liquidated damages to compensate MLC upon the occurrence of such an event, rather

than penalties to deter VENDOR from breaching this Agreement and/or to punish VENDOR upon the occurrence of such an event;

- (iv) to the extent an event occurs for which liquidated damages are assessable under more than one subsection of Section 19(a), MLC shall recover under only such subsection that provides for the highest amount of liquidated damages; and
- (v) MLC shall have the right, in its sole discretion, to waive (in whole or in part) payment by VENDOR of liquidated damages due hereunder. A waiver in any one instance shall be strictly limited to that specific instance and shall not in any way constitute or be construed to be a waiver of the payment of any other liquidated damages that are due or may become due hereunder.

20. **INDEMNIFICATION**

(a) VENDOR agrees to indemnify, defend and hold harmless MLC, the Board, its agents, officers, directors and employees, the State of Mississippi and its agencies and political subdivisions, and their respective agents, officers and employees, against any and all suits, damages, expenses (including, without limitation, court costs, attorneys' fees and other damages), losses, liabilities and claims of any kind, caused by or resulting from any breach of this Agreement or any other act or omission of VENDOR, the Subcontractors, or any of its or their respective agents or employees, whether the same may be the result of negligence, responsibility under strict liability standards, any other substandard conduct or otherwise.

(b) In addition, VENDOR agrees to indemnify, defend and hold harmless MLC, the Board, its agents, officers, directors and employees, the State of Mississippi and its agencies and political subdivisions, and their respective agents, officers and employees, against any and all suits, damages, expenses (including, without limitation, court costs, attorneys' fees and other damages), losses, liabilities and claims of any kind, arising out of, in connection with or resulting from the development, possession, license, modifications or use of any copyrighted or non-copyrighted composition, trademark, service mark, service process, patented invention or item, trade secret, article or appliance furnished to MLC, or used in the performance of this Agreement, by VENDOR or any Subcontractor, excluding claims for personal injury.

21. **CONFLICT RESOLUTION PROCEDURES**

Prior to bringing any judicial enforcement action with respect to any claims or controversies arising in connection with the performance of this Agreement, VENDOR must first pursue and exhaust any and all remedies available to it in accordance with the dispute resolution procedures adopted by MLC, as amended from time to time (collectively, the "**Dispute Resolution Procedures**").

22. **NOTICES**

(a) All notices and statements provided for or required by this Agreement shall be in writing, and shall be delivered personally to the other designated party, or mailed by certified or registered mail, return receipt requested, or delivered by a recognized national overnight courier service, as follows:

If to MLC: Mississippi Lottery Corporation
c/o Balch & Bingham LLP
188 E. Capitol Street, Suite 1400
Jackson, MS 39201
Attn: Thomas N. Shaheen, President

with a copy to: Lucien Smith
Balch & Bingham LLP
188 E. Capitol Street, Suite 1400
Jackson, MS 39201

If to VENDOR: VENDOR

Attn:

with a copy to: _____

Attn:

(b) Either party hereto may change the address and/or person to which notice is to be sent by written notice to the other party in accordance with the provisions of this Section 22.

23. MISCELLANEOUS

(a) This Agreement, together with the Proposals, the Answers and the RFP, contains the entire agreement and understanding concerning the subject matter hereof between the parties hereto. Notwithstanding anything herein to the contrary, in the event of an inconsistency among this Agreement, the Proposal, the Answers and/or the RFP, the terms of this Agreement, as may be amended pursuant hereto, shall control the Answers, the terms of the Answers shall control the RFP, and the terms of the RFP shall control the Proposal. No waiver, termination or discharge of this Agreement, or any of the terms or provisions hereof, shall be binding upon either party hereto unless confirmed in writing. This Agreement may not be modified or amended, except by a writing executed by both parties hereto. No waiver by either party hereto of any term or provision of this Agreement

or of any default hereunder shall affect such party's rights thereafter to enforce such term or provision or to exercise any right or remedy in the event of any other default, whether or not similar.

(b) THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF MISSISSIPPI. ONLY AFTER EXHAUSTION OF ALL REMEDIES AND PROCEDURES IN THE DISPUTE RESOLUTION PROCEDURES OF MLC, IF APPLICABLE LAW PERMITS ANY FURTHER APPEALS, ANY SUCH APPEAL MUST BE BROUGHT SOLELY IN THE CHANCERY COURT OF _____ COUNTY, MISSISSIPPI. VENDOR HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT WHICH IT MAY NOW OR HEREAFTER HAVE TO APPEAL ANY FINAL DECISIONS OF THE BOARD MADE PURSUANT TO THE DISPUTE RESOLUTION PROCEDURES, AND VENDOR IRREVOCABLY WAIVES ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE VENUE OF ANY APPEAL BEING SOLELY IN THE CHANCERY COURT OF _____ COUNTY, MISSISSIPPI.

(c) Neither party hereto shall assign this Agreement, in whole or in part, without the prior written consent of the other party hereto, and any attempted assignment not in accordance herewith shall be null and void and of no force or effect; provided, however, nothing herein shall prevent MLC from freely assigning this Agreement, without requiring VENDOR's prior written consent, to any entity which operates or will operate the Lottery. For purposes of this Section 23(c), any sale or transfer of a controlling equity interest in, or substantially all of the assets of, VENDOR will be deemed an assignment for which MLC's consent is required.

(d) This Agreement shall be binding on VENDOR, and its Subcontractors, successors and permitted assigns.

(e) The headings contained herein are for the convenience of the parties only and shall not be interpreted to limit or affect in any way the meaning of the language contained in this Agreement.

(f) This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute the same Agreement. Any signature page of any such counterpart, or any electronic facsimile thereof, may be attached or appended to any other counterpart to complete a fully executed counterpart of this Agreement, and any telecopy or other facsimile transmission of any signature shall be deemed an original and shall bind such party.

(g) If any provision of this Agreement shall be held void, voidable, invalid or inoperative, no other provision of this Agreement shall be affected as a result thereof, and accordingly, the remaining provisions of this Agreement shall remain in full force and

effect as though such void, voidable, invalid or inoperative provision had not been contained herein.

(h) Upon the request of either party, the other party agrees to take, and VENDOR agrees to cause any Subcontractor to take, any and all actions, including, without limitation, the execution of certificates, documents or instruments, necessary or appropriate to give effect to the terms and conditions set forth in this Agreement.

(i) VENDOR agrees to act in accordance with any policy which shall be adopted by MLC which shall prescribe minimum sales volumes for Lottery retailers.

24. ADDITIONAL SERVICES

In the event MLC desires to retain the services of VENDOR for activities in addition to those contemplated by this Agreement, and VENDOR agrees to perform such services, payment therefor shall not exceed the rates identified in this Agreement unless agreed to in writing by MLC. Any such services, the rates, and the terms of payment shall be approved, in writing, prior to the commencement of any such additional work. In no event shall VENDOR or any Subcontractor be paid for work not authorized, or for work in excess of that authorized, in writing by MLC.

25. APPROVAL OF MLC AND REQUIRED INVESTIGATIONS

MLC and VENDOR hereby agree that this Agreement, and all of the terms and conditions contained herein, is subject to the approval of the Board and the completion of all criminal and other background investigations required by the Act, Governing Laws and Regulations or MLC. This Agreement will not be binding upon MLC until the completion of all such investigations and the Board has expressly approved the awarding of the Agreement to VENDOR and executed this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized representatives to execute this Agreement to be effective as of the Effective Date.

"MLC"

MISSISSIPPI LOTTERY CORPORATION

By: Michael J. McGrevey
Its: Chairman

“VENDOR”

By: _____
Its: _____

Exhibit A
[Proposal]

Exhibit B
[RFP]

Exhibit C
[Questions
and
Answers]