

**NEBRASKA LOTTERY  
DIGITAL DRAW SYSTEM 2019**

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## **REQUEST FOR PROPOSAL NEBRASKA LOTTERY**

### **Digital Draw System 2019**

The Nebraska Lottery is seeking a qualified, responsible Bidder to provide a digital draw system for use in various lottery game drawings (DDS). The DDS shall mean any/all hardware, software and supplies necessary to operate and maintain a DDS that generates random numbers in compliance with various game matrices.

The successful Bidder will be expected to enter into a written agreement with the Nebraska Lottery within 60 days of selection.

Proposals shall consist of two (2) Submittals, which shall be provided in two separate, sealed envelopes: the Technical Submittal and the Cost Submittal. Bidders' Proposals will be received until May 13, 2019, 3:00 p.m. Central Time. Sealed bids are to be submitted to:

Nebraska Lottery  
Attn: Shawn Fotinos  
137 NW 17<sup>th</sup>  
Lincoln NE 68528

## **SECTION I GENERAL INFORMATION**

### **1.1 PURPOSE**

The overriding goal of this RFP is to obtain an Automated Draw System/Random Number Generator for the Nebraska Lottery. The purpose of this Request for Proposal (RFP) is to allow the Nebraska Lottery to choose a Bidder to supply a Digital Draw System (DDS) and related services, including updates and maintenance services.

It is anticipated that obligations under this contract will commence in May, 2019, and continue through June, 2023. Nebraska Lottery can, at its sole option, extend the contract.

### **1.2 CONTENT OF THE REQUEST FOR PROPOSAL (RFP) AND PROPOSALS**

This RFP is designed to provide bidders with the information necessary for the preparation of competitive Proposals. The RFP is not intended to be comprehensive, and each bidder is responsible for addressing all issues relevant to the RFP.

Nebraska Lottery reserves the right to modify the RFP at any time. Any modification of the RFP will be clearly marked as a modification and provided to each bidder who received an original copy of the RFP.

A Proposal is defined as: the Technical Submittal, and the Cost Submittal. Each shall be in a separate, sealed envelope, and together constitute the Proposal.

Proposals shall be based solely on the material contained in the RFP or in subsequent modifications to the RFP. Bidders are to disregard any draft material they may have received, any newspaper articles they may have read, and any other oral or written representations from any source.

In submitting a proposal, the bidder agrees that it will not bring any claim or have any cause of action against the Nebraska Lottery based on any misunderstanding concerning the information provided or the Nebraska Lottery, negligent or otherwise, to provide the bidder with pertinent information as intended under the terms of the RFP.

Bidders are encouraged to provide the Nebraska Lottery with information, evidence and demonstrations (if any) that will make possible an award that best serves the stated interests of the Nebraska Lottery. Bidders are provided wide latitude in the degree of detail they offer or the extent to which they reveal plans, processes, and procedures. Bidders should prepare their Proposals simply and economically, providing a straightforward and concise description of their capabilities to satisfy the requirements of this RFP. Proposals that are excessive in length, or that contain a significant amount of boilerplate or advertising text or redundancies are discouraged.

### **1.3 BIDDER QUESTIONS**

A bidding conference will not be held. Bidders may submit written questions concerning this RFP by the date identified below in Section 1.7. All bidders who received copies of the RFP will receive copies of the written questions received and the written answers provided by the Nebraska Lottery. The questions and answers will not modify the RFP, unless the Nebraska Lottery specifically states that a modification is being made.

All written questions regarding this RFP shall be directed to:

Mr. Shawn Fotinos  
[shawn.fotinos@nebraska.gov](mailto:shawn.fotinos@nebraska.gov)  
Nebraska Lottery  
137 NW 17th  
Lincoln, NE 68528  
(402) 471-6115  
Fax (402) 471-6108

A Bidder may be disqualified for attempts to contact any Nebraska Lottery staff member to request additional information about this RFP. The Nebraska Lottery will disqualify a Bidder for intentionally causing a material violation or circumvention of the requirements of this Section.

### **1.4 SUBMISSION OF PROPOSALS**

Only one Proposal will be accepted from each Bidder.

**Bidders must identify and address each requirement in this RFP by section number and in order.**

Bidders must submit their Proposal as the two Submittals defined above. The Submittals shall be labeled appropriately. The original of each Submittal must be provided, in addition to three (3) copies.

Each Proposal must also be accompanied by a signed Bidder's certification included with the RFP (Appendix A).

## **1.5 TRANSMITTAL LETTER**

A transmittal letter must be submitted as the first page of the Proposal. The transmittal letter must clearly indicate that it is the transmittal letter, identify the Bidder submitting the proposal, and indicate the name, title, address, and telephone number of the person in the Bidder's organization to be contacted concerning the proposal. The transmittal letter must also contain any requests for treatment of information submitted by the Bidder as confidential information as required by this RFP.

By signing and submitting the transmittal letter the Bidder is agreeing to the following:

1. The Bidder will provide the goods and services requested in this RFP in accordance with this RFP and the Bidder's proposal;
2. The Bidder is warranting that it has not made any material misrepresentation or omission in connection with its Proposal;
3. The Bidder has not acted with other Bidders to restrict competition for this solicitation;
4. The Bidder has not agreed to pay any person or entity (other than a bona fide employee of the Bidder) a fee or commission conditioned on the award of this contract; and,
5. The person signing the transmittal letter has the power to make the above representations, and bind the Bidder to the terms of the Bidder's Proposal.
6. The Bidder's Scope of Ownership as identified in Section 1.19 below.

**THE TRANSMITTAL LETTER SHALL SPECIFICALLY RECITE THAT THE BIDDER HAS READ THIS PROVISION AND AGREES TO EACH OF THESE REQUIREMENTS.**

## **1.6 SUBMISSION OF DISCLOSURE DOCUMENTS**

The "Initial Bidder Disclosure" (Appendix B) must also be included with the proposal.

## **1.7 DATES RELEVANT TO THIS RFP**

April 17, 2019	RFP released
April 24, 2019	Bidders' questions are due by 3:00 p.m. CT in accordance with Section 1.3 above
April 29, 2019	Nebraska Lottery responses to Bidders' questions emailed to all bidders
May 13, 2019	Proposals due by 3:00 p.m. CT.
May 27, 2019	Contract begins no later than July 29, 2019 DDS delivered, with certification

All dates are subject to change by the Nebraska Lottery.

**Proposals and disclosure documents must be received** by the Nebraska Lottery, 137 NW 17<sup>th</sup>, Lincoln NE 68528, **by no later than 3:00 p.m. Central Time on May 13, 2019.**

## **1.8 COST ACCEPTED BY BIDDERS**

The Nebraska Lottery is not responsible for any costs incurred by a Bidder that are related to the preparation or delivery of the proposal, any on-site inspection or off-site presentation which may be required, or any other activities related to this RFP.

## **1.9 CLARIFICATIONS TO PROPOSALS**

Clarifications from Bidders may be requested by the Nebraska Lottery for the purpose of resolving ambiguities or questions about the information presented in the proposals. Clarification responses shall be in writing and shall address only the information requested. Clarifications of proposals will be issued by the Nebraska Lottery designated contact (see

above). Responses to clarifications shall be submitted within a reasonable time as specified by the Nebraska Lottery.

#### **1.10 ALL PROPOSALS AND PRICING VALID FOR 180 DAYS**

All proposals submitted shall remain valid for 180 calendar days following the date on which the proposals are opened. A Bidder's submission of a proposal shall constitute the Bidder's express agreement to this time limit. The pricing from the selected Bidder shall remain valid through successful contract negotiations.

#### **1.11 SOURCES OF INFORMATION USED BY THE NEBRASKA LOTTERY IN ADDITION TO THE PROPOSALS**

The Nebraska Lottery reserves the right to contact individual bidders after the submission of bidder proposals for the purpose of clarifying a proposal to ensure mutual understanding. Bidders will not be permitted to modify or amend their proposals if contacted by the Nebraska Lottery for this reason.

Information obtained from or through the disclosure documents may be used in evaluating the proposals.

The Nebraska Lottery reserves the right to make on-site inspection of the Bidders' facilities that the Nebraska Lottery deems pertinent and necessary to evaluate the Bidders' proposals. The Nebraska Lottery may consider information obtained during the inspection for purposes of evaluating the proposals.

The Nebraska Lottery reserves the right to obtain information, from any and all sources concerning a Bidder or a Bidder's product which the Nebraska Lottery deems pertinent to this RFP and to consider such information in evaluating the bidder's proposal.

#### **1.12 STANDARDS APPLICABLE TO THE AWARD**

The Nebraska Lottery shall award the contract to the responsible bidder submitting the best proposal. The Nebraska Lottery shall consider and evaluate each bid based on these factors: security, warranty and service, end-user experience and references, overall design, and costs.



All bids received from Bidders will be reviewed and evaluated by an Evaluation Committee, comprised of Nebraska Lottery personnel as appointed by the Nebraska Lottery Director or designee. The Evaluation Committee will evaluate each Bid and determine which Bid best addresses the applicable provisions of the RFP, offers the best overall range of benefits and is considered most advantageous to the Nebraska Lottery. The Evaluation Committee will report its recommendation to the Director, who will review the Evaluation Committees' report and determine whether to seek clarification, request additional information, or proceed with an award of the Contract.

### **1.13 WAIVER OF INFORMALITIES AND REJECTION FOR NONCOMPLIANCE**

The Nebraska Lottery reserves the right to waive minor deficiencies in a proposal. The decision as to whether a deficiency will be waived or will require the rejection of a proposal will be solely within the discretion of the Evaluation Committee. **Bidders are advised that the failure to comply with or respond to any part of this RFP that requires a response may result in rejection of their proposal.** The Nebraska Lottery reserves the right to reject any and all proposals in response to this RFP at any time during the solicitation process for any reason. The Nebraska Lottery reserves the right to refuse to meet with any or all Bidders responding to this RFP during the RFP process, which concludes when a contract for the work has been signed by both parties.

### **1.14 PROPOSAL REJECTION**

The Nebraska Lottery reserves the right to reject any and all proposals in response to this RFP. Bidders whose proposals are not selected for further negotiations or contract award will be notified in writing at the address given in the proposal.

### **1.15 REQUESTS FOR CONFIDENTIALITY**

Proposals will not be opened publicly so that the Nebraska Lottery may evaluate requests for confidentiality. Proposals will be shown only to the Nebraska Lottery and persons authorized by the Nebraska Lottery.

Any request for confidential treatment of information must be included in the transmittal letter described in this RFP. The request must also include the name, address, and telephone number of the person authorized by the Bidder to respond to any inquiries by the Nebraska Lottery concerning the confidential status of the materials. The Bidder must also state in the transmittal letter the reasons such confidentiality is necessary.

Any documents submitted which contain confidential information must be marked on the outside as containing confidential information, and each page upon which confidential information appears must be marked as containing confidential information. The confidential information must be clearly identifiable to the reader wherever it appears. All copies of the proposal submitted, as well as the original proposal, must be marked in this manner.

In addition to marking the material as confidential material where it appears, the Bidder must submit one copy of the relevant pages of the proposal from which the confidential information has been excised. The confidential material must be excised in such a way as to allow the public to determine the general nature of the material removed and to retain as much of the document as possible. These pages must be submitted with the transmittal letter.

The Bidder's failure to request confidential treatment of material pursuant to this section will be deemed by the Nebraska Lottery as a waiver of any right to confidentiality which the Bidder may have had. Under no circumstance will the Nebraska Lottery be liable to any Bidder or to any person or entity for any disclosure of any materials not claimed as confidential by the Bidder or for materials the Nebraska Lottery reasonably believes should not be considered trade secret or confidential information.

Identification of the entire Proposal as confidential may be deemed non-responsive and disqualify the Bidder.

## **1.16 COPYRIGHTS**

By submitting a proposal, the Bidder agrees that the Nebraska Lottery may copy the proposal for purposes of facilitating the evaluation or to respond to requests for public records. By submitting a response to the RFP, the Bidder represents that such copying will not violate any copyrights in the materials submitted.

## **1.17 PROPOSALS PROPERTY OF THE NEBRASKA LOTTERY**

All proposals will become the property of the Nebraska Lottery and will not be returned to the bidders.

The Nebraska Lottery reserves the right to use any and all information contained in a proposal to the extent permitted by law. Due to the creative nature of the lottery industry, many marketing ideas have been presented, designed, and developed by lottery personnel or

associated outside related agencies unknown to Bidders. The Nebraska Lottery will have the right to use ideas or adaptations of ideas that are presented in the proposals if deemed “nonoriginal” or “previously submitted”.

### **1.18 CONTRACT PROVISIONS**

The contract that the Nebraska Lottery expects to award as a result of this RFP will be based upon the proposal submitted by the successful Bidder(s) and all requirements as presented in this RFP. The Nebraska Lottery reserves the right to either award a contract without further negotiation with the successful Bidder, or to negotiate terms with the selected Bidder if the best interests of the Nebraska Lottery would be served by so doing.

The selected Bidder may be required to reduce the price quoted if the Nebraska Lottery reduces the requirements placed upon the Bidder, or if the Nebraska Lottery assumes some of the requirements contained in the RFP, and/or assumes some of the Bidder’s responsibilities.

The contract terms included in Appendix D are not intended to be a complete listing of all contract terms, but are provided to enable the Bidder to better evaluate the Bidder’s costs associated with the provision of services to the Nebraska Lottery.

Exhibit A (Scope of Work and Implementation Schedule) to the contractual terms and conditions will be provided after selection of the successful Bidder.

Exhibit A to the contractual terms and conditions in Appendix D shall include a detailed Implementation Schedule, with a delivery date of no later than July 15, 2019 for the DDS.

When submitting proposals, Bidders should expect to enter into a contract with the terms and conditions indicated in Appendix D.

### **1.19 SCOPE OF OWNERSHIP**

The Nebraska Lottery shall have ownership of the equipment, goods, hardware, software (unless a license is required, and set out as a cost), and other products and services to be delivered by the Bidder under the agreement. Such services shall include, but not be limited to, any unfinished products (no matter at what stage of completion) that are the result of the Bidder’s partial or complete performance under the agreement.

If the Bidder requires any part of its software or hardware to remain proprietary or licensed by the Bidder to the Nebraska Lottery, the Bidder must clearly state such claim in the Transmittal Letter and at places where the items are mentioned in the proposal. Additionally, any licensing fees associated with the software used in products produced in response to this RFP shall be included as a separate item in the Cost proposal.

The Bidder agrees that no ideas or materials shall be used by the Bidder, or its subcontractors, at any time, during or after the term of the agreement, to advertise any competitive product of the Nebraska Lottery.

If the agreement is terminated for any reason, the Bidder shall agree to deliver to the Nebraska Lottery any and all products, materials or other items specified herein which the Nebraska Lottery might request, within thirty (30) days of request.

The Nebraska Lottery retains the right to inspect any phase of services to be provided either on a continuing or a spot-check basis.

The Bidder shall assure that details of the Nebraska Lottery marketing programs, advertising and/or game design are not disclosed to persons or organizations other than the personnel and/or subcontractors of the Bidder whose assistance in production of the DDS is necessary. Upon award of a contract resulting from this RFP, the successful Bidder shall be required to complete a Non-Disclosure Agreement (and return the signed Agreement) prior to commencement of services.

## **1.20 CONTRACTOR WARRANTIES**

Warranties expressed in the Agreement will be intended to modify the warranties implied by law only to the extent that they expand the warranties applicable to the goods and services provided by the successful Bidder.

The successful Bidder will represent and warrant that in the performance of the Contract, its work product and the information, data, designs, processes, inventions, techniques, devices and other such intellectual property furnished, used, or relied upon by the Bidder will not infringe on any copyright, patent, trademark, trade dress or other intellectual property rights held by a third-party.

In the event that a third party asserts that the Nebraska Lottery use of the product(s) is in violation of such party's rights, the successful Bidder shall indemnify and hold harmless the Nebraska Lottery.

The successful Bidder must warrant that the products and services provided to the Nebraska Lottery will be suitable for the particular purpose of use in performing lottery drawings and are merchantable. The Bidder also acknowledges that the Nebraska Lottery is relying on the successful Bidder's skill and judgment to provide products and services that are fit, in all aspects for the purposes of use by the Nebraska Lottery for a complete and reliable DDS.

The successful Bidder must represent and warrant that all services provided shall be performed in a prompt, competent and workmanlike manner by properly trained individuals in accordance with the highest standards in the Bidder's profession, and that all goods and services will be free and clear of any lien or claim by any part at the time of delivery, and that no misrepresentations have been made including material omissions.

## **1.21 LIQUIDATED DAMAGES**

The Nebraska Lottery and the Bidders agree that it would be extremely impractical and difficult to determine actual damages that the Nebraska Lottery will sustain in the event of a breach by the successful Bidder. Additionally, the Nebraska Lottery and the Bidders further agree that the goods and services to be provided under this RFP and resulting Agreement are not readily available on the open market and any breach by the successful Bidder will delay and disrupt the Nebraska Lottery operations, and will result in damages. The Nebraska Lottery and the Bidders agree that the assessment of liquidated damages is reasonable, and are not to be construed as a penalty.

In no case shall liquidated damages be measured in terms of potential lost revenue or potential lost net profit to the Nebraska Lottery, unless and to the extent that a court of competent jurisdiction should determine that a liquidated damages provision is unenforceable as a matter of law.

Assessment of liquidated damages shall be in addition to, and not in lieu of, such other remedies as may be available to the Nebraska Lottery. Except and to the extent expressly provided herein, the Nebraska Lottery shall be entitled to recover liquidated damages under each and every section applicable to any given breach, occurrence or incident. Liquidated damages may include, but not be limited to reputational damages and other losses that the Nebraska Lottery may incur due to a breach by the successful bidder.

Upon determination that liquidated damages are to be or may be assessed, the Nebraska Lottery shall notify the successful Bidder of the assessment in writing. The availability of any period of cure will depend on the situation and will be in the sole discretion of the Nebraska Lottery.

## **SECTION II**

### **DISCLOSURE REQUIREMENTS**

#### **2.1 NOTICE OF DISCLOSURE REQUIREMENTS**

All bidders submitting a proposal must provide a completed response to the "Initial Bidder Disclosure" document (Appendix B). This document must be included with the bidder's proposal.

The Bidder must provide complete background information, upon notification of contract award, on all control persons of the Bidder and any person(s) involved in this project deemed pertinent by the Nebraska Lottery. Bidder must pass background checks prior to contract signing.

A "Control Person" means any person who owns five percent or more of the Bidder, a parent company, a subsidiary company, and all officers and directors of the Bidder, parent or subsidiary company of the Bidder, or any other business entity directly associated with the Bidder.

All parties contracting with the Nebraska Lottery must pass security background checks performed by lottery security officials or law enforcement officials.

The Nebraska Lottery will not award a contract to a Bidder if a Control Person of the Bidder, or a person assigned by the Bidder to perform services for the Nebraska Lottery, has been convicted of a felony or any gambling related offense.

#### **2.2 USE OF INFORMATION**

Any information provided to the Nebraska Lottery in the disclosure form or obtained by the Nebraska Lottery through the use of these documents may be used by the Nebraska Lottery to determine the successful bidder or to disqualify a bidder. Law enforcement or Lottery security officials may confer with bidders.

## **SECTION III MANDATORY REQUIREMENTS**

### **3.1 GENERAL REQUIREMENTS**

In providing the following information and disclosures, Bidder shall respond with as much detail as would be helpful to the Nebraska Lottery in determining Bidder's ability to provide the necessary goods and services.

Bidder must specifically address each requirement below, and reference the requirement with each response.

#### **A. ORGANIZATION**

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

## **B. EXPERIENCE**

1. Bidder Qualifications
  - a. Provide resumes for all persons to be assigned to this project. State the experience which the bidder, the bidder's key personnel, and the personnel which will be assigned to the Nebraska Lottery contract have had in providing services similar to those described in this RFP.
2. In-house Facilities
  - a. Describe the in-house facilities, resources, manpower, and equipment which will be made available to the Nebraska Lottery to perform the work described below.

## **C. FINANCIAL STABILITY**

List all bankruptcy, reorganization, insolvency or default on any bond or loan obligation experienced by Bidder in the past 10 years.

## **D. REFERENCES**

Provide five (5) business references that are currently using goods and services similar to those being proposed in this RFP, and include: the contact name; email address; telephone number; and, address.

## **E. TITLE TO, USE OF, AND COMPENSATION FOR INTELLECTUAL PROPERTY**

To the extent a successful Bidder uses or relies upon third-party intellectual property rights in fulfilling its obligations under the Agreement, the successful Bidder represents and warrants that it has the valid right to use such intellectual property right. In the event of failure to perform, or breach of the Agreement, the successful Bidder must ensure continued right of use of licensed intellectual property by the Nebraska Lottery.

## **F. INABILITY TO PLAY LOTTERY**

Restrictions apply to the purchase of tickets and payment of prizes regarding individuals related to successful Bidder's and its subcontractors. No ticket or share issued by a lottery shall be purchased by and no prize shall be paid to any officer, employee, agent, or subcontractor of any vendor or to any spouse, child, brother, sister, or parent residing as a member of the same household in the principal place of residence of any such person if such officer, employee, agent, or subcontractor has access to confidential information which may compromise the integrity of the Nebraska Lottery.



### 3.2 TECHNICAL REQUIREMENTS

The DDS solution must be compliant with requirements of the Americans with Disabilities Act.

Additionally, the DDS game output capabilities:

- a. Must be displayed to the operator.
- b. Must be generated only when one person from each of two sets of persons are present at the machine. This should be enforced using two-factor authentication. Persons must not share credentials.
- c. Must print results onto material which can be archived for at least thirty (30) years.
- d. Must include a method to verify the validity of the game output, including current hardware/software/configuration of the machine, non-repeating draw sequence number per game and total per machine, persons present for the draw, game results, and any other important information determined by the Bidder.
- e. Provide hardware such that the time will be accurate without manual updating or maintenance for the life of the DDS, if time and date are included.
- f. Must assure that the integrity of game output not be influenced by outside environmental effects, including temperature, humidity, electrical, magnetic, or radio frequency interference, and must detect when outside parameters are outside tolerances and alert operators. Alternatively, bidder shall provide guidance to what the operating parameters are and mechanisms to ensure they are met.
- g. Must operate on standard North American electrical power, commonly referred to as 110V or 120V 60Hz, and must be able to be plugged in to a NEMA 5-15 receptacle, and must be able to run on "modified sine wave" electrical output from an uninterruptable power supply, unless manufacturer specifically prohibits this type of power and provides a mechanism to detect and inform the operator that the power being delivered is not acceptable.
- h. Must provide that all components used to ensure operation and integrity of game operation and output must be physically secured from everyone except service personnel. All physical access to these components, even by service personnel, must be evident to the end user/operator in a way that cannot be bypassed or hidden.

- i. Must allow that any machine hardware, software, configuration files, and any other part of the machine, and the game configuration cannot not be changeable by anyone except service personnel. Any changes must result in notification or evidence to the end user/operator in a way that cannot be bypassed or hidden.
- j. Must not allow for general purpose interface to be accessible (no USB/video/serial/etc. cables coming out of secured box, No access to external USB ports, etc.)
- k. Must have a clearly visible, unique external identifier that is not removable or changeable without leaving evidence of tampering. This identifier shall include at minimum Manufacturer Name, Model Name or Number (if applicable), and a unique serial number. The identifier should consist only of printable ASCII characters, including space.
- l. Hardware, software, configuration files, and any other part of the machine must include full documentation. In particular, any software or hardware used in the machine, and any of the same used outside the machine (e.g. for validation), must include full documentation describing its operation, including algorithms, source code, physical design, etc., and this documentation must be able to be verified to match the actual configuration of the machine.

The DDS must produce output for these games:

Nebraska Pick 5, matrix 1 – 38, No repeating numbers

Nebraska Pick 3, matrix 3 sets of 10 numbers (0 – 9), numbers can repeat

Nebraska MyDaY, matrix 1 – 36,525 translated into a mm/dd/yy format, only use date combinations that are valid based on the standard twelve-month calendar. Invalid months and days that will be rejected include: 02/30, 02/31, 04/31, 06/31, 09/31 and 11/31. February 29 will only be allowed for years that are divisible by 4, including 00.

### **3.3 END-USER REQUIREMENTS**

#### **A. General Description**

1. Describe the physical enclosure of the DDS and the mitigating processes to prevent single person entry.
2. Describe how the system will prevent unauthorized changes in development, test, implementation, and use of the product. Bidders should describe any and all methods for preventing and for detecting and reporting unauthorized access or modifications to the system.

3. Describe a detailed description of the methods that prevent the prediction of the selected values before the selection event.
4. Describe the proposed method that will be used to initiate the draw.
5. Describe how the system will seed the random numbers.
6. Describe how the algorithm will be managed, controlled and verified to ensure that no change has occurred since the last draw.
7. Describe the timeframe anticipated for draws from start to finish.
8. Describe the reports able to be generated by the proposed DDS.
9. Describe all information that will be found on a draw printout. This should include, but not be limited to, draw date, draw time, game name, game matrix, winning numbers generated, officials performing draw.
10. Describe the audit program or capability incumbent in the DDS, including the archival and recall features for drawings logs
11. Describe how the proposed DDS will support, at a minimum, user administration, password resets, user account disablement, and account creation.
12. Describe the authentication capabilities and how each system access will be limited to authorized users.
13. Describe the capability for expansion and modification of the proposed DDS, by users, to add new games, modify current games, including, but not limited to, the maximum set of numbers and tiers that the proposed DDS can process at one time.
14. Describe the system's ability to maintain an audit trail to permit the reconstruction of the processing associated with all games and all draws since inception.

## **B. Performance Requirements**

1. DDS must be able to display winning numbers in order drawn and additionally in ascending order, if appropriate for the game being drawn, and otherwise as defined by the user.
2. The system must support "test drawings". Describe how each system audit log captures this data and differentiates these from official draws.
3. System must require at least two (2) independent individuals to be present with unique access devices (such as locks/keys or biometric identifiers) in or to gain physical access to the machines.
4. System should have a logging function that captures all activity on the system thereby allowing for a review of the activity.
5. System must produce exportable log files.
6. The system must not allow a "screen saver" or "power save" mode.
7. The system must not allow a drawing to be performed using only one set of credentials.
8. Each system must have a direct method of saving data to a USB flash drive more than once, if needed.

9. System must provide or support the ability to print winning numbers, logs, and other reports including reports that are designed to prevent nefarious activities.
10. Drawings can only occur at or around their scheduled draw dates and times.
11. Winning numbers should auto-print, with retrieval and reprinting capabilities.
12. The DDS system configuration must be standalone (air gap).
13. Audit log entries must include a digital timestamp.
14. Winning numbers must be generated correctly based on the values defined for each draw game, including draw dates and times. Describe this process.
15. The proposed system should allow for recording by the Nebraska Lottery's security monitoring system.

### **C. Training Requirements**

1. Bidders must propose an on-site system-training program, which ensures, at a minimum, lottery personnel and its auditors are fully qualified to operate the system correctly and efficiently. Describe proposed training program.
2. Operations training must include, at a minimum, complete and comprehensive tutorial instruction at all the system interface screens.
3. Bidders must describe recommended training for future games/enhancements.

### **D. Support, Service and Maintenance Requirements**

1. Must provide 24/7/365 customer service support; Bidders must describe their customer support team.
2. Provide detail and annual pricing regarding warranty and ongoing service and maintenance plan, including, but not limited to: hotline troubleshooting; evaluation; game matrix and feature addition / change / modification; and RNG system support for the initial term and each contract renewal period.

## **3.4 USER ACCEPTANCE TESTING**

Once the selected bidder has completed the design and development of the DDS in accordance with the specifications and the Statement of Work (SOW), and prior to the actual use of the DDS, selected bidder shall deliver the DDS to the Nebraska Lottery for User Acceptance Testing.

The User Acceptance Testing shall be defined and managed by the Nebraska Lottery in accordance with current or anticipated draw practices.

The selected Bidder will be required to coordinate testing through a third-party testing firm as identified by the Nebraska Lottery.

Acceptance of the DDS shall occur when the DDS has passed the User Acceptance Testing process by the Nebraska Lottery. The Nebraska Lottery shall formally accept the site with notification to selected bidder as soon as reasonably practicable after Acceptance by the Nebraska Lottery.

In the event that any Acceptance Tests are not passed, the defects that cause(d) the relevant failures (Defects) shall be documented by the Nebraska Lottery and the selected bidder for discussion on how selected bidder shall address and rectify such Defects and for additional testing as needed. The costs of addressing and rectifying such Defects, and for the additional testing shall be borne by the successful Bidder.

If any failure to pass the Acceptance Tests results from a Defect which is caused by the Nebraska Lottery, or by one of the Nebraska Lottery's agents for whom the selected bidder has no responsibility (Non-bidder Defect):

- a. the DDS shall be deemed to have passed the Acceptance Tests;
- b. the selected bidder shall provide all assistance reasonably requested by the Nebraska Lottery in remedying any non-bidder Defect by supplying additional services or products;
- c. if such assistance in (b) above is requested, the Nebraska Lottery shall pay the selected bidder in full for all such additional services and products at the selected bidder's then current fees and prices, as mutually agreed upon prior to provision of any additional services by selected bidder to the Nebraska Lottery.

The selected bidder shall remedy any Defects promptly in order to ensure that the DDS passes the Acceptance Testing on a retest. If such a retest demonstrates that the DDS is still not in accordance with the DDS Technical and End-user specifications, the Nebraska Lottery may, by written notice to the selected bidder choose to fix a new date for further tests on the DDS on the same terms and conditions as the retest at the selected bidder's cost.

If the DDS fails the retest in this clause, the Nebraska Lottery may, at its sole discretion:

- d. choose to accept the DDS subject to a reduction of the charges set out in Paragraph 5 of this section, such reduction to be an amount that is reasonable, taking into account the circumstances; or
- e. reject the DDS as not being in conformity with this Agreement, in which event this agreement shall automatically terminate and the Selected bidder shall refund to the Nebraska Lottery all sums already paid to the selected bidder under this Agreement.

## **SECTION IV INSURANCE REQUIREMENTS**

The successful Bidder, within 15 days following notification of their selection, shall provide the Nebraska Lottery with evidence of insurance as defined in Appendix D.

The successful Bidder must maintain in effect insurance policies in full force and effect from the execution of the Agreement and must continue in full force and effect throughout the term of the Agreement. The Nebraska Lottery must receive thirty (30) days advance written notice of cancellation, termination, or failure to renew any policy.

Professional Liability and Errors and Omissions insurance must indemnify the Nebraska Lottery, its directors, officers and employees, for direct or indirect loss due to any error or omission caused by the successful Bidder and coverage must continue until one (1) year past the term of the Agreement.

## **SECTION V**

### **FINANCIAL INFORMATION**

The Nebraska Lottery may request audited financial statements and/or financial records during the evaluation of submitted proposals.

## **SECTION VI COST PROPOSAL**

The Bidder must provide a single, firm, fixed cost to the Nebraska Lottery for the providing of all services relating to the production of a DDS and all other described elements of this RFP.

The cost proposal should include the following components, identified separately:

- a. Digital Draw System (including maintenance and support for the Initial Term of two years). Pricing must include a cost per unit, including support and maintenance for hardware, software, training, etc., and include any discounts for purchasing multiple units.

Currently, the Nebraska Lottery anticipates it will need three (3) identical independent systems including support and maintenance for hardware, software, training, etc.

“System” means hardware (computer, printer and UPS), software, supplies, and related services necessary to implement, operate and maintain a state-of-the-art turnkey DDS solution.

- b. Modifications or enhancements for new games requested or functional/product changes.
- c. License Fees (if applicable).
- d. Maintenance and support fees for period(s) beyond the Initial Term.
- e. Length of initial warranty, and costs of extended warranty. It is expected that the initial warranty will be free of charge.



**APPENDIX A**

**BIDDER CERTIFICATION**

I certify that I have the authority to bind the bidder indicated below to the specific terms and conditions imposed in the RFP, and that by my signature on this document, the bidder specifically agrees to all of the waivers, restrictions, and requirements of the RFP as conditions precedent to submitting this proposal.

I further state that in making this proposal the indicated bidder has not consulted with others for the purpose of restricting competition and that the bidder has not made any knowingly false statements in its proposal or background statement.

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Name

---

Title

---

Entity submitting proposal

---

Date

## **APPENDIX B**

### **INITIAL BIDDER DISCLOSURE**

The bidder shall provide the following information on a separate sheet entitled “Bidder Disclosure”:

1. Name, website address, mailing address and physical address of company (or other business entity) submitting the proposal.
2. Type of business entity (e.g., corporation, partnership).
3. Place of incorporation, if applicable.
4. Name and location(s) of major offices and other facilities that relate to the bidder's performance under the terms of this RFP.
5. Name(s), address(es), and function(s) of any and all subcontractors, associated companies, or consultants to be involved in any phase of this project.
6. Name, address, voice telephone number, email address, and fax number of bidder's representative to contact regarding all contractual matters concerning this proposal.
7. Name, address, voice telephone number, email address, and fax number of bidder's representative to contact regarding all technical matters concerning this proposal.
8. Name, address, voice telephone number, email address, and fax number of bidder's representative to contact regarding scheduling and other arrangements, if necessary.
9. Names of all attorneys and law firms representing the bidder.
10. The name, address and telephone number of all persons, consultants, sales agents, or other entities involved in aiding the bidder's efforts to obtain this contract or otherwise assisting the bidder.
11. The bidder must state whether or not, for each controlling person of the bidder or employee assigned to do the work, during the last five (5) years, any of the following events occurred:

- a. A petition under the Bankruptcy Act or any state insolvency law was filed by or against, or a receiver, fiscal agent or similar officer appointed by a court for the business or property of such person, or any partnership in which such person was a general partner at or within two (2) years before the time of such filing, or any corporation or business association of which he was an executive officer at or within two (2) years before the time of such filing.
  - b. Such person was indicted, accused or convicted of a crime or was a subject of a grand jury or criminal investigation (excluding traffic violations and other minor offenses).
  - c. Such person was the subject of any order, judgment or decree of any court of competent jurisdiction permanently or temporarily enjoining him from, or otherwise limiting his participating in any type of professional or business practice or activity (i.e., licenses, suspension and/or revocation of same).
  - d. Such person was the subject of any order, judgment or decree of any federal or state authority barring, suspending or otherwise limiting the right of such person to engage in any professional or business practice or activity.
- 12.** A bidder must provide the name, home address, cell phone number, and current duties and responsibilities of all individuals who will be assigned to work on any contract awarded pursuant to this RFP. This requirement is met if the information requested here is included in the resumes provided with the bid.
- 13.** If any part of the bidder's work on any contract awarded pursuant to this RFP is to be performed by subcontractors, partners, or consultants, the bidder must identify such parties and describe their functions, as well as the contractual agreements with said parties. The bidder should also include resumes of the officers and key employees of such parties.
- 14.** Bidders who employ or have on their governing boards as of the date of their proposals, employees or former employees of the Nebraska Lottery shall identify each such person and their position and responsibilities within the bidder's organization. If, following a review of this information, the Nebraska Lottery determines that a conflict of interest may exist, the bidder may be disqualified from further consideration for the award of a contract.
- 15.** If any control person of the bidder, or subcontractor of the bidder, or any employee of either assigned to this project, is a member of the immediate family of any employee of the Nebraska Lottery or its members or has a close personal relationship to any employee of the Nebraska Lottery or its members, indicate each person and employee.

- 16.** The bidder must state whether any of the following has occurred:
- a. During the last five (5) years, the bidder has had a contract terminated for any reason.
  - b. During the last two (2) years, the bidder has been assessed penalties under any of its existing or past contracts. If so, indicate the public jurisdiction, the reason for the penalty, and the penalty amount of each incident.
  - c. During the last two (2) years, the bidder, a subsidiary of intermediary company, parent company or holding company was the subject of any order, judgment or decree of any federal or state authority barring, suspending or otherwise limiting the right of the bidder to engage in any business, practice or activity.

## APPENDIX C NON-DISCLOSURE AGREEMENT

This Non-Disclosure Agreement (the "**Agreement**"), effective as of \_\_\_\_\_ (the "**Effective Date**"), is entered into by and between \_\_\_\_\_ ("\_\_\_\_\_"), a \_\_\_\_\_ having its principal place of business at \_\_\_\_\_ and the Nebraska Lottery, having its principal place of business at 137 NW 17th, Lincoln Ne 68528 (together, the "**Parties**", and each, a "**Party**").

WHEREAS, in connection with the DDS project ("Purpose"), the Nebraska Lottery desires to share certain information that is non-public, confidential or proprietary in nature.

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions set forth herein, the Parties agree as follows:

Confidential Information. Except as set forth in Section 2 below, "**Confidential Information**" means all non-public, confidential or proprietary information disclosed before, on or after the Effective Date, by the Nebraska Lottery (the "**Disclosing Party**") to the other Party (the "**Recipient**") or discovered by the Recipient, or its affiliates, or disclosed to or discovered by any of such Recipient's or its affiliates' employees, officers, directors, partners, shareholders, agents, attorneys, accountants or advisors (collectively, "**Representatives**"), whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential," including, without limitation:

all information concerning the Disclosing Party's, their affiliates', and their customers', suppliers' and other third parties' past, present and future business affairs including, without limitation, finances, customer information, supplier information, products, services, organizational structure and internal practices, forecasts, sales and other financial results, records and budgets, and business, marketing, development, sales and other commercial strategies;

the Disclosing Party's unpatented inventions, ideas, methods and discoveries, trade secrets, know-how, unpublished patent applications and other confidential intellectual property; all designs, specifications, documentation, components, source code, object code, images, icons, audio-visual components and objects, schematics, drawings, protocols, processes, and other visual depictions, in whole or in part, of any of the foregoing;

any third-party confidential information included with, or incorporated in, any information provided by the Disclosing Party to the Recipient or its Representatives; and

all notes, analyses, compilations, reports, forecasts, studies, samples, data, statistics, summaries, interpretations and other materials (the "**Notes**") prepared by or for the Recipient or its Representatives that contain, are based on, or otherwise reflect or are derived from, in whole or in part, any of the foregoing or otherwise are created as result of the Purpose.

Exclusions from Confidential Information. Except as required by applicable federal, state or local law or regulation, the term "Confidential Information" as used in this Agreement shall not include information that:

at the time of disclosure is, or thereafter becomes, generally available to and known by the public other than as a result of, directly or indirectly, any violation of this Agreement by the Recipient or any of its Representatives;

at the time of disclosure is, or thereafter becomes, available to the Recipient on a non-confidential basis from a third-party source, provided that such third party is not and was not prohibited from disclosing such Confidential Information to the Recipient by a legal, fiduciary or contractual obligation to the Disclosing Party;

was known by or in the possession of the Recipient or its Representatives, as established by documentary evidence, prior to being disclosed by or on behalf of the Disclosing Party pursuant to this Agreement; or

was or is independently developed by the Recipient, as established by documentary evidence, without reference to or use of, in whole or in part, any of the Disclosing Party's Confidential Information.

Recipient Obligations. The Recipient shall:

protect and safeguard the confidentiality of all such Confidential Information with at least the same degree of care as the Recipient would protect its own Confidential Information, but in no event with less than a commercially reasonable degree of care;

not use the Disclosing Party's Confidential Information, or permit it to be accessed or used, for any purpose other than the Purpose or any related transactions between the Parties, or otherwise in any manner to the Disclosing Party's detriment, including without limitation, to reverse engineer, disassemble, decompile or design around the Disclosing Party's proprietary services, products and/or confidential intellectual property;

not disclose any such Confidential Information to any person or entity, except to the Recipient's Representatives who:

need to know the Confidential Information to assist the Recipient, or act on its behalf, in relation to the Purpose or to exercise its rights under the Agreement;

are informed by the Recipient of the confidential nature of the Confidential Information; and

are subject to confidentiality duties or obligations to the Recipient that are no less restrictive than the terms and conditions of this Agreement; and be responsible for any breach of this Agreement caused by any of its Representatives.

Additional Confidentiality Obligations. Except as required by applicable federal, state or local law or regulation, or otherwise as mutually agreed to in writing by the Parties, the Recipient shall not, nor permit any of its Representatives to, disclose to any person:

that the Confidential Information has been made available to it or its Representatives, or that it has inspected any portion of the Confidential Information;

that discussions or negotiations may be, or are, underway between the Parties regarding the Confidential Information or the Purpose, including the status thereof; or

any terms, conditions or other arrangements that are being discussed or negotiated in relation to the Confidential Information or the Purpose.

Required Disclosure. Any Disclosure by the Recipient or its Representatives of any of the Disclosing Party's Confidential Information pursuant to applicable federal, state or local law, regulation or a valid order issued by a court or governmental agency of competent jurisdiction (a "**Legal Order**") shall be subject to the terms of this Section. Prior to making any such disclosure, the Recipient shall provide the Disclosing Party with:

prompt written notice of such requirement so that the Disclosing Party may seek, at its sole cost and expense, a protective order or other remedy; and

reasonable assistance, at the Disclosing Party's sole cost and expense, in opposing such disclosure or seeking a protective order or other limitations on disclosure.

If, after providing such notice and assistance as required herein, the Recipient remains subject to a Legal Order to disclose any Confidential Information, the Recipient (or its Representatives or other persons to whom such Legal Order is directed) shall disclose no more than that portion of the

Confidential Information which, on the advice of the Recipient's legal counsel, such Legal Order specifically requires the Recipient to disclose and, upon the Disclosing Party's request, shall use commercially reasonable efforts to obtain assurances from the applicable court or agency that such Confidential Information will be afforded confidential treatment.

Return or Destruction of Confidential Information. At any time during or after the term of this Agreement, at the Disclosing Party's written request, the Recipient and its Representatives shall promptly return to the Disclosing Party all copies, whether in written, electronic or other form or media, of the Disclosing Party's Confidential Information, or destroy all such copies and certify in writing to the Disclosing Party that such Confidential Information has been destroyed. In addition, the Recipient shall also destroy all copies of any Notes created by the Recipient or its Representatives and certify in writing to the Disclosing Party that such copies have been destroyed.

Term and Termination. The term of this Agreement shall commence on the Effective Date and shall not expire even past the completion of any underlying agreement's objectives, and such duties not to disclose shall continue even after the return or destruction of Confidential Information by the Recipient.

No Representations or Warranties. Neither the Disclosing Party nor any of its Representatives make any representation or warranty, expressed or implied, as to the accuracy or completeness of the Confidential Information disclosed to the Recipient hereunder. Neither the Disclosing Party nor any of its Representatives shall be liable to the Recipient or any of its Representatives relating to or resulting from the Recipient's use of any of the Confidential Information or any errors therein or omissions therefrom.

No Transfer of Rights, Title or Interest. The Nebraska Lottery retains its entire right, title and interest, including all intellectual property rights, in and to all of its Confidential Information. Any disclosure of such Confidential Information hereunder shall not be construed as an assignment, grant, option, license or other transfer of any such right, title or interest whatsoever to the Recipient or any of its Representatives.

No Other Obligation. The Parties agree that neither Party shall be under any legal obligation of any kind whatsoever, or otherwise be obligated to enter into any business or contractual relationship, investment, or transaction, by virtue of this Agreement, except for the matters specifically agreed to herein. Either Party may at any time, at its sole discretion with or without cause, terminate discussions and negotiations with the other Party, in connection with the Purpose or otherwise.

Remedies. Each Party acknowledges and agrees that money damages might not be a sufficient remedy for any breach or threatened breach of this Agreement by the Recipient. Therefore, in



addition to all other remedies available at law (which neither Party waives by the exercise of any rights hereunder), the Nebraska Lottery shall be entitled to seek specific performance and injunctive and other equitable relief as a remedy for any such breach or threatened breach, and the Parties hereby waive any requirement for the securing or posting of any bond or the showing of actual monetary damages in connection with such claim.

Governing Law, Jurisdiction and Venue. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Nebraska without giving effect to any choice or conflict of law provision or rule (whether of the State of Nebraska or any other jurisdiction) that would cause the application of Laws of any jurisdiction other than those of the State of Nebraska. Any legal suit, action or proceeding arising out of or related to this Agreement or the matters contemplated hereunder shall be instituted exclusively in the courts of the State of Nebraska in each case located in County of Lancaster, and each Party irrevocably submits to the jurisdiction of such courts in any such suit, action or proceeding and waives any objection based on improper venue or *forum non conveniens*. Service of process, summons, notice or other document by mail to such Party's address set forth herein shall be effective service of process for any suit, action or other proceeding brought in any such court.

Notices. All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given: (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by facsimile or e-mail of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient; or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the addresses set forth on the first page of this Agreement (or to such other address that may be designated by a Party from time to time in accordance with this Section).

Entire Agreement. This Agreement constitutes the sole and entire agreement of the Parties with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to such subject matter. This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each Party hereto.

Severability. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

Assignment. Neither Party may assign any of its rights or delegate any of its obligations hereunder without the prior written consent of the other Party. Any purported assignment or delegation in violation of this Section shall be null and void. No assignment or delegation shall relieve the assigning or delegating Party of any of its obligations hereunder. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

Waivers. No waiver by any Party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the Party so waiving. No waiver by any Party shall operate or be construed as a waiver in respect of any failure, breach or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the Effective Date.

**NEBRASKA LOTTERY**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Date

**CONTRACTOR**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Date

## APPENDIX D

### AGREEMENT FOR THE PRODUCTION OF DIGITAL DRAW SYSTEM

This agreement is made by and between the Nebraska Lottery, and CONTRACTOR (Contractor), located at ADDRESS.

1. **Incorporation of Documents.** The Nebraska Lottery Request for Proposal (RFP) for the Digital Draw System (DDS) number and the Contractor's response to the Request for Proposal (Contractor's Proposal) are incorporated by reference into this agreement as though fully set forth.

In the event of a conflict in language between the RFP, RFP amendments, and the proposal, the provisions set forth in the RFP and its amendments shall govern. In the event that an issue is addressed in the proposal that is not addressed in the RFP or its amendments, no conflict in language shall be deemed to occur.

In the event of a conflict in language between any of the above-mentioned documents and the contract, the provisions set forth in the contract shall govern. In the event that an issue is not addressed in the contract, no conflict in language shall be deemed to occur.

Any alterations, variations, changes, modifications or waivers of or to provisions of the contract shall only be valid when they have been reduced to writing and duly executed and approved by each of the parties.

2. **Term.** The initial contract term will be for four (4) calendar years from May 2019. The Nebraska Lottery will have the sole right to extend the contract up to six (6) additional year option periods for a total contract period not to exceed ten (10) years.
3. **Contractor's Duties.** The Contractor shall perform as set forth in this agreement, the Contractor's Proposal, and as required by the RFP. In the event that any of the employees specified in the Contractor's Proposal become unavailable to the Contractor, the Contractor shall replace them with employees with comparable expertise.

The purpose of this agreement is to provide the Nebraska Lottery with a digital draw system (DDS) with associated hardware, software, and services, as more fully set forth in Exhibit A to this Agreement. Contractor and the Nebraska Lottery agree that the following terms and conditions shall govern the provision of these services.

4. **Payments to Contractor.** The Contractor agrees to submit an invoice to the Nebraska Lottery requesting payment for the services rendered based on the prices set forth in this agreement. This fee shall include all costs incurred by the Contractor in providing services as set forth in this agreement, the RFP, and the Contractor's Proposal. Invoices shall be submitted to the Director of Finance, Nebraska Lottery, 137 NW 17<sup>th</sup>, Lincoln, NE 68528, and undisputed amounts will be paid within 45 days of receipt. A payment structure will likely include a fifty percent (50%) payment upon delivery of the DDS, and the remainder of the payments made upon final testing and acceptance of the DDS by the Nebraska Lottery.
5. **Termination for Cause.** The Nebraska Lottery may terminate this Agreement upon written notice for the breach by the Contractor, if such breach is not cured, provided that a cure is feasible, within the timeframe for cure set forth in the written notice of breach by the Nebraska Lottery. Breach events include, but are not limited to, Contractor's failure to perform as set forth by this Agreement or Contractor's failure to provide equipment, goods, and services that meet the specifications and requirements set forth in this Agreement, without limitation the representations and warranties set forth in this Agreement.

The Contractor may terminate this Agreement upon written notice for the breach by the Nebraska Lottery if such breach is not cured, provided that a cure is feasible, within the timeframe for cure set forth in the written notice of breach by the Contractor. Breach events include the Nebraska Lottery's breach of this Agreement or any related software license contract or the Nebraska Lottery's failure to pay as set forth in this Agreement.

6. **Termination for Convenience.** The Nebraska Lottery may terminate the contract upon issuing a 30day notice, paying compensation only for good and valuable product and services received, as determined by the Nebraska Lottery.

Further, if the contract is terminated, compensation, if any, shall be limited to reasonable expenses for products, materials, supplies, and services rendered, for which Contractor has not yet been compensated. The Nebraska Lottery will make no payments for unfurnished work, work in progress, or raw materials acquired unnecessarily in advance, in excess of the Nebraska Lottery's delivery requirements, or initiated after receipt of notice of termination.

**6.1. Immediate Termination.** The Nebraska Lottery may terminate this Agreement, effective immediately without advance notice, allowance for cure, and without penalty or legal liability to the Nebraska Lottery for any of the following reasons:

- a. if the Contractor furnished any statement, representation, warranty or certification in connection with this Agreement, which is materially false, deceptive, incorrect or incomplete; or
- b. if the Contractor becomes subject to any bankruptcy or insolvency proceeding under federal or state law to the extent allows by applicable state or federal law including bankruptcy laws; or
- c. if the Contractor terminates or suspends its business, or lets its insurance lapse or be cancelled; or
- d. if the Nebraska Lottery reasonably believes that the Contractor has become insolvent or unable to pay or perform its obligations consistent with applicable federal or state law; or
- e. if an officer, director or employee of Contractor in contract with the Nebraska Lottery's account is or has been convicted of a felony, any gambling-related offense whether a misdemeanor or felony, or of any state or federal ongoing criminal conduct or Racketeer Influenced or Corrupt Organization Act (RICO) offenses by a court of competent jurisdictions; or
- f. if a lawsuit is filed against Contractor claiming that the Contractor's processes or materials violate any valid patent, trademark, copyright, intellectual property right or contract, and the Lottery reasonably believes that the lawsuit may impair the Contractor's performance of this Agreement; or,
- g. if during the course of this Agreement the Contractor or any employee, contractor, or agent of Contractor seeks to sell or pass any Lottery ticket, play any lottery game or claim any lottery prize, or
- h. if during the course of this Agreement any action by the Contractor interferes with the Nebraska Lottery's relationship any multi-jurisdictional game it supports.

If cancellation occurs for any of the causes set forth above, the Nebraska Lottery shall have no further obligation to the Contractor other than payment for services rendered and materials provided prior to cancellation. Payment will be made only upon submission of invoices and proper proof of the Contractor's claim. This provision in no way limits the remedies available to the Nebraska Lottery in the event of a termination under this provision.

**7. No Release of Obligation.** The expiration or termination of this Agreement for any cause shall not release Vendor from:

- a. Any obligations and duties remaining under any order accepted by the Contractor prior to such expiration or termination; or
- b. Any liability which at the time of expiration or termination has already accrued to the other party, or, which thereafter may accrue in respect to any event prior to expiration or termination; or
- c. Any liability from any obligation that survives expiration or termination

**8. Non-Exclusive.** The contract will not be exclusive as related to projects for a DDS or similar system are undertaken by the Nebraska Lottery.

**9. Indemnification.**

- a. **General Indemnification.** Contractor shall indemnify, defend and hold harmless the Nebraska Lottery, and their departments, divisions, agencies, sections, commissions, officers, employees and agents from and against all losses, liabilities, penalties, fines, damages and claims (including taxes), and all related costs and expenses (including reasonable attorneys' fees and disbursements and costs of investigation, litigation, settlement, judgments, interest and penalties), arising from or in connection with any of the following:
  - i. Any claim, demand, action, citation or legal proceeding arising out of or resulting from (i) the products provided or (ii) performance of the work, duties, responsibilities, actions or omissions of Contractor or any of its subcontractors under this contract, or (iii) a breach of any representation or warranty made by Contractor in the contract.
  - ii. Any claim, demand, action, citation or legal proceeding arising out of or related to occurrences that Contractor is required to insure against as provided for under the contract.
  - iii. Any claim, demand, action, citation or legal proceeding arising out of or resulting from the death or bodily injury of any person, or the damage, loss or destruction of any real or tangible personal property, in connection with the performance of services

by Contractor, by any of its subcontractors, by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable.

- iv. Any claim, demand, action, citation or legal proceeding resulting from an act or omission of Contractor or any of its subcontractors in its or their capacity as an employer of a person.

These indemnification clauses shall not apply to the extent, if any, that such death, bodily injury, property damage, or other damages are caused by the negligence or reckless or intentional wrongful conduct of the Nebraska Lottery.

**b. Patent / Copyright / Trademark / License Infringement Indemnification**

Contractor shall indemnify, defend and hold harmless the Nebraska Lottery and their departments, divisions, agencies, sections, commissions, officers, employees and agents from and against all losses, liabilities, damages (including taxes), and all related costs and expenses (including reasonable attorneys' fees and disbursements and costs of investigation, litigation, settlement, judgments, interest and penalties) incurred in connection with any action or proceeding threatened or brought to the extent that such action or proceeding is based on a claim that any piece of equipment, software, commodity or service supplied by Contractor or its subcontractors, or the operation of such equipment, software, commodity or service, or the use or reproduction of any documentation provided with such equipment, software, commodity or service infringes any United States or foreign patent, copyright, trademark, license, trade secret or other proprietary right of any person or entity, which right is enforceable under the laws of the United States.

In addition, should the equipment, software, commodity, or service, or the operation thereof, become or in Contractor's opinion be likely to become the subject of a claim of infringement, Contractor shall at Contractor's sole expense (i) procure for the Nebraska Lottery the right to continue using the equipment, software, commodity or service or, if such option is not reasonably available to Contractor, (ii) replace or modify the same with equipment, software, commodity or service of equivalent function and performance so that it becomes non-infringing.

The Nebraska Lottery will not agree to indemnify the Contractor for any reason.

10. **Compliance with Laws.** Contractor shall comply with all applicable laws and rules when performing. This also requires that the Contractor pay all taxes, fees, and assessments, however designated, levied, or based upon the goods and services supplied by the Contractor.
11. **Insurance.** Contractor shall maintain adequate insurance for the performance of the contract and, by submission of a bid, agrees to indemnify and save harmless and to defend all legal or equitable actions brought against the Nebraska Lottery, and any agency, officer and/or employee or agent of them, for and from all claims of liability which is or may be the result of Contractor's actions during the performance of the contract. The purchase or non-purchase of such insurance or the involvement of Contractor in any legal or equitable defense of any action brought against Contractor based upon work performed pursuant to the contract will not waive any defense which the Nebraska Lottery, and any agency, officer and/or employee or agent might otherwise have against such claims, specifically including the defense of sovereign immunity where applicable, and the Nebraska Lottery, and any agency, officer and/or employee or agent thereof shall not be financially responsible for the consequences of work performed, pursuant to said contract.
- a. **General Liability Insurance** coverage with limits of not less than \$2,000,000 for injury to any one person, \$4,000,000 for any one occurrence of personal injury and \$2,000,000 for any one occurrence of property damage.
- b. **Property Insurance** on all buildings, furniture, fixtures, computer and communications equipment used in fulfilling the requirements of this Agreement. Coverage shall insure personal property including contents, equipment, and mobile items against fire, theft, collision, and flood. The Nebraska Lottery will not be responsible for insuring any equipment or facilities included in or associated with the contract.
- c. **Automotive Liability Insurance** covering drivers and vehicles employed in connection with the operation of the contract with limits of not less than \$1,000,000 for personal injury to each person and \$250,000 for property damage.
- d. **Errors and Omissions Insurance** with limits of not less than \$10,000,000 per claim, to be in force and effect at all times which will indemnify Contractor and the Nebraska Lottery for direct loss which may be incurred due to any error caused by Contractor, its officers, employees, agents, subcontractors or assigns regardless of negligence. The Nebraska Lottery shall be named as an additional insured on this policy.



- e. **Workers' Compensation Insurance** as required by law.
  - f. Errors and Omissions Insurance must continue until one year past the term of the contract. All other insurances covered by this section must be effective when performance commences under the contract and continue through the life of the contract and any authorized extensions.
  - g. Certificates of insurance must be furnished to the Nebraska Lottery on date of contract execution, with the exception of the certificate for Errors and Omissions Insurance, which must be furnished to the Nebraska Lottery prior to installation of the first system.
  - h. The required insurance coverages shall be written for not less than any limits of liability as required by the contract, and shall include contractual liability as applicable to Contractor's obligations under the Indemnification clause of the contract. Self-insurance coverage will not be acceptable.
12. **No Assignment.** Assignment of the contract will not be allowed without the written consent of the Nebraska Lottery.
13. **No News Releases.** Contractor shall not issue any news releases pertaining to this procurement process nor during the performance of the contract without prior written approval by the Nebraska Lottery.
14. **No use of the Nebraska Lottery Intellectual Property.** Contractor agrees not to use the Nebraska Lottery's name, logos, images, nor any data or results arising from this procurement process or contract as a part of any commercial advertising without prior written approval by the Nebraska Lottery.
15. **Sensitive Operation.** The Nebraska Lottery is an extremely sensitive enterprise because of the nature of the business and because it is government operated. Therefore, it is essential that its operation, and the operation of other enterprises that would be linked to it in the public mind, avoid not only impropriety but also the appearance of impropriety. Because of these concerns, Contractor is expected to:
- a. Offer goods and services only of the highest standards.
  - b. Use its best efforts to uphold the integrity of the Nebraska Lottery and prevent the Lottery industry from becoming embroiled in unfavorable publicity.

- c. Make sales presentations in a responsible manner and when it is necessary to point out the superiority of their goods or services over those of their competitors, to do so in such a manner as to avoid unfavorable publicity for the Nebraska Lottery.
  - d. Avoid promotional activities which could be interpreted as improper and produce embarrassment to the Nebraska Lottery.
  - e. Report discovered security problems only to the Nebraska Lottery.
- 16. Approvals Required.** The Nebraska Lottery must approve all employees, subcontractors or agents involved with performance of the contract.
- 17. Notification of Substantial Change Required.** If Contractor experiences a substantial change in financial condition during the term of a contract with the Nebraska Lottery, then the Nebraska Lottery must be notified in writing at the time the change occurs or is identified. A "substantial change" in financial condition is defined as any event that, following generally accepted accounting practices, would require a notation in the audited annual report. Failure to notify the Nebraska Lottery of such a change may result in termination of the contract.
- 18. Accounting Records.** Contractor is required to maintain books, records and all other evidence pertaining to the contract in accordance with generally accepted accounting principles (GAAP) and such other procedures specified by the Nebraska Lottery. These records shall be available to the Nebraska Lottery, and its internal or external auditors (and other designees) at all times during the contract period and any extension thereof, and for three (3) full years from the expiration date and/or final payment on the contract or extension thereof, whichever is later.
- a. The Nebraska Lottery's certified public accounting staff or other designate will be given the right to review the work papers of these audits, if considered necessary by the Nebraska Lottery.
  - b. The Nebraska Lottery and its independent certified public accountants shall be given a copy of all reports including any management letters issued as a result of the specified audits.
  - c. Contractor is required to provide, upon request, copies of filings to the Securities and Exchange Commission.

- d. The Nebraska Lottery reserves the right at any time to audit Contractor's records and operations as they relate to this contract. Such audits may be conducted by the Nebraska Lottery's own auditors or an independent firm specified by the Nebraska Lottery at the expense of Contractor.

- 19. Force Majeure.** A Force Majeure occurrence is an event or effect that cannot be reasonably anticipated or controlled. As herein used, Force Majeure means acts of war; terrorism; action of the elements; governmental interference; rationing; or any other cause which is beyond the control of the party affected and which, by the exercise of reasonable diligence, said party is unable to prevent.

Neither Contractor nor the Nebraska Lottery shall be liable to the other for any delay in or failure of performance under the contract of Contractor due to a Force Majeure occurrence. Any such delay in or failure of performance shall not constitute default or give rise to any liability for damages. The existence of such causes of such delay or failure shall extend the period for performance to such extent as determined by the Nebraska Lottery to be necessary to enable complete performance by Contractor if reasonable diligence is exercised after the cause of delay or failure has been removed.

If Force Majeure conditions shall be expected to continue unabated for an indefinite period and Contractor cannot service the contract, the Nebraska Lottery retains the right to operate the System and/or to terminate the contract so that business continuity can be restored.

- 20. Ownership of Goods Produced.** All components comprising the DDS (all goods produced, videotaped, filed, or recorded material produced under the terms of this agreement) are solely owned by the Nebraska Lottery. The Nebraska Lottery shall have the right to reproduce or use any products derived from the Contractor's work under the contract without payment of any royalties, fees, etc.
- 21. Contractor Not Employee or Agent of the Nebraska Lottery.** The Contractor, its employees, agents or subcontractors performing under this agreement are not employees or agents of the Nebraska Lottery, but is an independent contractor performing pursuant to the terms of this agreement.
- 22. Choice of Forum.** The laws of the State of Nebraska shall govern and determine all matters arising out of or in connection with this agreement. In the event that any proceeding of a quasi-judicial or judicial nature is brought to determine any matter arising out of or in connection with this agreement, such proceeding must be brought in Lancaster County

District Court for the State of Nebraska or in Federal District Court. for the District of Nebraska in Lancaster County, Nebraska.

- 23. Severance.** If any provision of this agreement is held to be invalid or unenforceable, the remainder shall remain valid and enforceable.
- 24. Amendment.** This Contract may be amended by mutual agreement of the parties. Any such amendment must be in writing and signed by an authorized representative of the parties.
- 25. Notices.** All written notices and communications required by this agreement shall be sent in writing and via email to the following addresses:

Nebraska Lottery  
137 NW 17th  
Lincoln, NE 68528  
[shawn.fotinos@nebraska.gov](mailto:shawn.fotinos@nebraska.gov)

- 26. Exhibit.** Exhibit A (Scope of Work and Implementation Schedule) is incorporated by reference to the terms and conditions of this Agreement.

The above Agreement entered into on the below dates:

\_\_\_\_\_  
Nebraska Lottery

\_\_\_\_\_  
Contractor

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

## EXHIBIT A

### SCOPE OF WORK / IMPLEMENTATION SCHEDULE

Task No.	Responsible Party	Task Name	Duration (in days)	Start Date	End Date	Nebraska Lottery Acceptance Date (if applicable)
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