

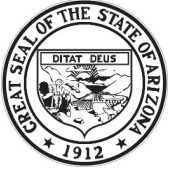
Request for Proposal
Solicitation No. **BPM0002678**
Description:
Advertising & Marketing – Arizona Lottery

Arizona Department of
Administration
State Procurement Office
100 N 15th Ave., Suite 402
Phoenix, AZ 85007

Part 2: Scope, Pricing and Terms and Conditions

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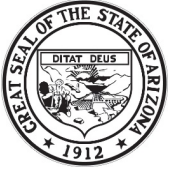
SECTION 2-A: Scope of Work

1.0 Introduction

- 1.1 The mission of the Arizona Lottery is to support Arizona programs for the public benefit by maximizing net revenue in a responsible manner.
- 1.2 The Arizona Lottery (hereinafter referred to as “Lottery”) is seeking the services of a qualified firm (hereinafter referred to as “Contractor”) to perform all functions (“Marketing Services”) normally required of a full-service marketing agency necessary for the development, preparation, and placement of marketing in various media throughout the state of Arizona as the Lottery shall direct or deem necessary.
- 1.3 Powerball and Mega Millions product development is managed by the Multi-State Lottery Association and the Mega Millions Consortium respectively. Media and creative development is managed at a local level in compliance with brand standards set by both groups.
- 1.4 Additional background of the Lottery is identified in Exhibit A – Gaming Data.

2.0 Transition Periods

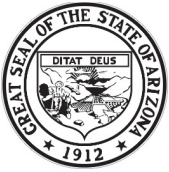
- 2.1 Incoming Transition
 - 2.1.1 The Lottery’s present advertising contract ends May 15, 2021. The Lottery does not intend for the incumbent Contractor to provide services under the current agreement beyond May 15, 2021, but unforeseen circumstances may require the Lottery to use the State’s marketing contracts for some period of time after May 15, 2021.
 - 2.1.2 The Contractor will be expected to meet with key Lottery staff within fifteen (15) days of the award. The Contractor will actively participate in marketing status meetings cooperatively working with multiple vendors and be prepared to receive historical data working files.
 - 2.1.3 The key personnel of the Contractor will actively engage in development and planning to assure that Lottery initiatives and revenue-generating campaigns will continue to be seamlessly executed as of the termination date of the present advertising contract.
 - 2.1.4 If more than one contract is awarded, Contractor(s) are expected to work in concert and cooperatively as a team to accomplish the Lottery’s mission and objectives.
 - 2.1.5 Upon award of the Contract, Account Services Staff assigned to the Lottery account will be required to spend a day in the field with Lottery Territory Managers. The purpose of these visits is for Account Services Staff to listen to retailer comments, learn from lottery field personnel, review POS materials, and stay intimately familiar with the environment in which POS and signage are presented and intended to be effective.
- 2.2 Outgoing Transition



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- 2.2.1 If the Lottery anticipates a continued need for the Contract services specified herein after Contract term expiration and a Contract is awarded to a new contractor, there shall be a transition of service period.
- 2.2.2 During this period, the existing Contractor shall work closely with a new contractor's personnel and/or staff to ensure a smooth and complete transfer of duties and responsibilities.
- 2.2.3 Commencing at least six (6) months prior to Contract term expiration and continuing through the Contract expiration date, Contractor shall provide the State with transition assistance. In addition, Contractor shall provide, upon the State's request, transition assistance for up to six (6) months following the date of termination.
- 2.2.4 All transition activities will be coordinated by the Lottery's authorized representative. The Contractor shall work in concert and cooperatively as a team to ensure a smooth transition while accomplishing the Lottery's mission and objectives. The Contractor will actively participate in marketing status meetings cooperatively working with multiple vendors.
- 2.2.5 A transition plan as approved by the Lottery will be developed in conjunction with the Contractor to assist the new contractor and/or staff to implement the transfer of duties. The transition plan may include, but is not limited to the following:
 - 2.2.5.1 The Contractor shall prepare at no cost, in a format that is acceptable to the Lottery, all data for transfer to a new contractor. All historical data shall be available for transfer no later than two (2) months prior to the termination of the Contract.
 - 2.2.5.1.1 Historical data shall include, but not be limited to, final files, creative files, working files, radio spots, video footage, planning documents, and executed contracts.
 - 2.2.5.2 Contractor will transition all dedicated equipment, furniture and fixtures produced specifically for the Lottery at the end of the Contract. Contractor will agree to leave said equipment certified for maintenance by the Contractor prior to transfer.
- 2.2.6 Transition assistance services may be required after the expiration of the Contract. Transition assistance services shall be billed on a time and materials basis. The Contractor shall not be separately reimbursed for any transition services within the term of the Contract.
- 2.2.7 The State shall have the option to assume contracts for any services provided by third parties to the Contractor and used by the Contractor to provide services to the State, and the contracts between the Contractor and any third parties or subcontractors shall be written so that they are assumable by the State or a new contractor assuming responsibility for any Marketing Services, at the sole option of the State or that new contractor.
- 2.2.8 If the Contractor has incorporated the State's network into a Contractor proprietary network, the Contractor will provide up to two (2) years continued network services at the then current contract rates for such service. This will permit the State to establish a replacement capability in an orderly manner.

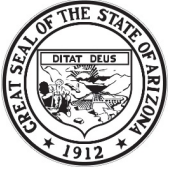


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3.0 General Requirements

- 3.1 Contractor shall have the capability and requisite experience and expertise to perform Marketing Services for the Lottery in accordance with the provisions and requirements set forth herein for the duration of the Contract. The requirements listed herein are intended to clarify the types of services to be provided, but do not constitute a complete listing.
- 3.2 Marketing Services shall generally include, but are not limited to:
 - 3.2.1 Effective and integrated annual and quarterly strategic planning, guidance, design, development, and execution of general market, multi-cultural, public relations, interactive, media, retailer merchandising, and promotional advertising, including assistance in development of a yearly integrated marketing plan, as outlined further herein (“Marketing Plan”);
 - 3.2.2 Branding, creative conception, development, production, planning, buying, circulating, and placing of approved broadcast, print, digital, social, and out-of-home advertising in support of the Marketing Plan;
 - 3.2.3 Implementation of emerging technologies and services as approved by the Lottery;
 - 3.2.4 Provision of staff and resources to assist with retailer, promotional, community outreach, and other special events;
 - 3.2.5 Provision of relevant research, analysis, advice, recommendations, and support for all Lottery marketing initiatives;
 - 3.2.6 Provision of pre-activity evaluation of all proposed advertising initiatives, and post-activity evaluation of the performance of such initiatives;
 - 3.2.7 Establishment and execution of an annual advertising budget (the “Budget”) as outlined in section 4 of the Scope of Work, being accountable for budgetary control and sharing responsibility for cost savings; and
 - 3.2.8 The Contractor may be required to perform additional related functions for the Lottery over the term of the Contract at the Lottery’s request.
- 3.3 The Contractor shall maintain an office in the Phoenix metropolitan area so that all account, media, public relations, interactive, social media and creative staff is available to the Lottery on an ongoing basis.
- 3.4 Contractor shall not resell any media purchased under this Contract, including non-account specific added value resulting from Lottery media investments.
- 3.5 Contractor will be required to work the Lottery Customer Service Desk and receive training on Sales.
 - 3.5.1 Contractor may be required to promote the sale of games from the Lottery ticket van at remote events.
- 3.6 The Contractor must provide Marketing Services in a business-like manner, consistent with the Lottery’s daily needs, and in conformance with the highest possible industry and quality standards.
- 3.7 The Contractor shall provide all services in a manner consistent with the North American Association of State and Provincial Lotteries (“NASPL”) Advertising Guidelines, as approved March 19, 1999, or as amended by any successor guidelines adopted by NASPL. The guidelines can be located at https://www.naspl.org/img/standards/Responsible_Gambling_Verification_FINAL.pdf.
- 3.8 Contractor is required to keep up-to-date on industry standards and activity. Participation in training and trade shows is expected to maintain a current knowledge base.
- 3.9 The Contractor shall deliver all final files, including but not limited to, creative files, working files, radio spots, video footage, planning documents and executed contracts in a format acceptable to the Lottery on an annual basis.



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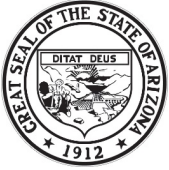
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4.0 Budget Development Services

- 4.1 The maximum level of anticipated annual spending for marketing (“Yearly Allotment”) will be determined by the Arizona State Legislature and the Lottery, based on projections developed by the Lottery. Each Yearly Allotment may be reduced by a reserve held for internal Special Projects, including the Lottery Sales Department budget, leaving the remainder as the amount of funds available to the Contractor to provide Marketing Services (“Contractor Allotment”).
- 4.2 Prior to each State Fiscal Year, the Lottery will provide the Contractor with the Yearly Allotment for Marketing Services and will require the Contractor to develop a cost-efficient Budget for Marketing Services that is responsive to the Lottery’s sales and net revenue goals and marketing needs and does not exceed the Yearly Allotment. Each yearly Budget or adjustments thereto, proposed by the Contractor shall be subject to the modification of, and final approval by the Lottery, exercising its sole discretion.
 - 4.2.1 The available pass through budget for media will be determined annually. This can be adjusted as additional funds become available.
- 4.3 Development of an annual Budget must include, at a minimum, the creation of a project budget, hour’s utilization, procurement, and tracking reports or other reports as requested.
 - 4.3.1 Contractor shall be expected to: (a) recommend and document ways to generate cost savings and improve efficiencies; (b) develop value-added opportunities; and (c) maximize advertising impact and exposure of budgeted initiatives.
 - 4.3.2 The Contractor shall provide regular Budget updates as required by the Lottery.

5.0 Strategic Services/Plans

- 5.1 The Contractor shall work with the Lottery to develop an annual integrated Marketing Plan four months prior to the start of each new fiscal year with the final plan delivered two months prior to the start of each new fiscal year. The final Marketing Plan must be approved by the Lottery, and must:
 - 5.1.1 Incorporate the sales, net revenue, net transfers, and marketing initiatives selected by the Lottery;
 - 5.1.2 Include a detailed outline of all integrated campaigns or plans during each State Fiscal Year;
 - 5.1.3 Provide budget estimates of proposed spending related to each initiative, including costs for recommended media and creative production;
 - 5.1.4 Be reviewed by Contractor and the Lottery at least once per quarter and revised as required by changes in initiatives, strategies, budget, and market conditions, or as directed by the Lottery; and
 - 5.1.5 Be based on credible research developed under section 10, Research Services, herein.
- 5.2 The Contractor shall work with the Lottery to develop short and long-term strategic plans, as defined herein or as reasonably requested by the Lottery, which must be integrated into the Marketing Plan. These plans will consist of:
 - 5.2.1 An over-arching integrated marketing plan detailing brand, campaign, promotional, give backs and special offer advertising by quarter for the entire fiscal year. The plan must also include the following and be delivered complete at least two months prior to the start of each new fiscal year:
 - 5.2.1.1 A research plan.
 - 5.2.1.2 A public relations plan for communications, including, but not limited to:
 - 5.2.1.2.1 Press Releases;



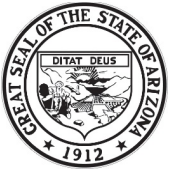
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- 5.2.1.2.2 Statewide winner awareness plan;
- 5.2.1.2.3 A Corporate, community or public service outreach plan, outlining distribution/placement of materials;
- 5.2.1.2.4 A trade outreach plan, outlining collateral creation and development, including press kits, releases, brochures, flyers, and broadcast segment outlines; and
- 5.2.1.2.5 A Speakers Bureau plan including planned blog posts and public appearances of Lottery Executive Team members.
- 5.2.1.3 A paid media plan per individual initiative. Each media plan must include:
 - 5.2.1.3.1 Allocation of dollars by media and designated market area (“DMA”) with detailed rationale;
 - 5.2.1.3.2 Gross rating point (“GRP”) objectives with reach/frequency and efficiency analysis;
 - 5.2.1.3.3 Detailed media flowchart that specifies mediums, market tiers, GRP levels, number of spots, estimated impressions, and costs for each campaign;
 - 5.2.1.3.4 Annual assessment of overall media mix by season as determined by ROI calculations; and
 - 5.2.1.3.5 Periodic media audit conducted by a third party to gather directional information to best optimize annual spending at the request of the Lottery.
- 5.2.1.4 An interactive media plan, which may include sub-plans for individual initiatives and which shall include a mixture of paid advertising, social and search engine optimization.
- 5.2.1.5 Social media marketing plan, which may include, but is not limited to, Facebook, Twitter, and Instagram.
- 5.3 Strategic plans should be based on the State Fiscal Year (FY) (July 1 – June 30). All plans must support strategic direction, set forth specific objectives, outline measurable results, and include detailed rationale, timelines, budgets, in-depth analysis, and recommendations.

6.0 Account Services

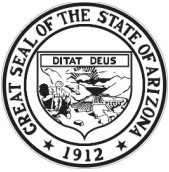
- 6.1 Account Services Staff. All Contractor staff assigned to Lottery’s account shall be approved by the Lottery. The Contractor shall provide an outline (organization chart) of staff assigned to the Lottery indicated by area of specialization, including delineation of duties and percentage of time allocated to the Lottery account per Contractor account representative (“Account Services Staff”). The outline shall be updated upon a change in Contractor’s personnel and/or upon the Lottery’s request, within two (2) business days of the change or request.
- 6.2 New Account Services Staff must attain the same level of familiarization within the first two (2) weeks of any new Account Services Staff changes or hires.
- 6.3 The term “Account Services Staff” includes “Account Management Staff,” as defined below.
- 6.4 It is highly preferred that the Contractor have in-house personnel to perform required Marketing Services, and it is expected that a full complement of Account Services Staff, as defined below, will require a minimum of twenty (20) full-time employees of which a minimum of ten (10) employees will be dedicated to the Lottery account.
- 6.5 Contractor shall have an in-house Media Buyer.
- 6.6 Account Services Staff (in conjunction with key Lottery personnel) shall develop and maintain a Graphic Standards manual. All Account Services Staff working on the Lottery account shall be



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- required to thoroughly familiarize themselves with the key brand logos, marks, elements, taglines, legal language, boilerplates, and other key brand items.
- 6.7 Account Services Staff assigned to the Lottery account will be required to spend a day in the field with Lottery Territory Managers on a twice annual basis. The purpose of these visits is for Account Services Staff to listen to retailer comments, learn from Lottery field staff, review POS materials, and stay intimately familiar with the environment in which POS and signage are presented and intended to be effective.
- 6.8 Designated Account Services Staff shall meet regularly (not less than quarterly) with Lottery management executives to evaluate, develop, and discuss ongoing and future programs, plans, and strategies.
- 6.9 Account Services Staff must have strong abilities in the areas of:
- 6.9.1 Resource management expertise, as well as the ability to ensure the highest quality work from third party vendors;
 - 6.9.2 Ability to control costs and achieve cost savings while ensuring the highest standards and quality possible, consistent with budget constraints;
 - 6.9.3 Ability to deal effectively and responsibly with Lottery marketing staff, present ideas clearly, and listen and be responsive to communications from the Lottery; and
 - 6.9.4 Expertise in providing all Marketing Services.
- 6.10 A senior representative from the Account Services Staff or other senior level designee approved by the Lottery will be required to provide reports and presentations to the Lottery Commission and attend Commission meetings.
- 6.10.1 Additional members of Account Services Staff may also be required to attend monthly commission meetings and be prepared to answer questions as they arise.
- 6.11 Sales Recruiter. Contractor shall provide a dedicated Sales Recruiter **that has the expertise and services necessary to expand the Lottery's retailer network.**
- 6.12 Account Planner. The Contractor shall provide a dedicated Account Planner who is responsible for organizing and leading quarterly and annual strategic planning activities. The Account Planner will communicate planning activity regularly with the Lottery Marketing Manager and the Deputy Director of Marketing and Products.
- 6.13 A minimum of one (1) full-time staff member assigned to the Lottery Contract shall work from the Phoenix Lottery office two (2) days a week (unless alternative work arrangements, such as telework, are approved by the Lottery). Staff assignment shall be approved by the Lottery.
- 6.14 Account Management Services. The Contractor shall provide sufficient and solely dedicated project managers ("Account Management Staff") to supervise the work of the Account Services Staff to ensure that requirements of the Scope of Work and that the Lottery's daily needs are met.
- 6.14.1 Account Management Staff must have strong project management skills for all Marketing Services initiatives, ensuring that all deadlines and deliverables are met.
 - 6.14.2 Account Management Staff must have the ability to handle the volume of accounting and business functions associated with annual multi-million dollar account billings with accurate record keeping and communication.
- 6.15 Relevant Account Management or Account Services Staff shall conduct weekly staff meetings and shall hold regularly scheduled creative meetings (with the Contractor's creative team present when necessary) with the Lottery. During these meetings, there will be discussions regarding scheduling and planning, concept approvals, pre-production of advertisements, Point of Sale (POS)



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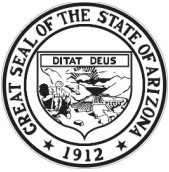
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or other Contractor-produced materials. Additional meetings shall be held with Lottery personnel as required by the Lottery.

- 6.16 Contractor shall at minimum assign one (1) full-time PR Account Executive, one (1) Account Director and one (1) Senior Account Executive or staff at an equivalent level or higher. All assignments shall be approved by the Lottery.

7.0 Business Account Services

- 7.1 The Contractor shall be required to enter into subcontracts with third parties to provide sponsorships, promotions, or special event opportunities or services under this Scope of Work, or to provide other materials and services to the Lottery that are related to Marketing Services under the Contract ("Service Agreements").
- 7.2 No Service Agreement will be entered by the Contractor until the Contractor has satisfied all terms in the Contract or stipulations of the Lottery that require that the Contractor demonstrate to the Lottery's satisfaction the value of the opportunity, materials or services subject to the Service Agreement. The terms of Service Agreements are subject to prior approval by the Lottery, and shall include a term that the Lottery is not a party to the Service Agreement, but is a third-party beneficiary of the Service Agreement. As a party, the Contractor will be primarily responsible for payment of fees and costs under such Service Agreements, and shall bill the Lottery for those fees and costs, which may include reimbursement for any taxes paid by Contractor on the goods or services (exclusive of income taxation of Contractor), but may not include any mark-up or late fees. The Lottery shall not be responsible for payment of additional fees, losses, costs or expenses that may result from the Contractor's agreement in a Service Agreement to indemnify the other party, to pay for late fees, or to provide insurance certificates to the other party.
- 7.3 Contractor shall negotiate on behalf of the Lottery to secure the lowest available rate that will best achieve Lottery objectives. The Contractor shall obtain competitive bids and prepare cost estimates for all marketing and related production products, services and supplies from third-party vendors as it relates to this Contract. The Contractor must obtain for the Lottery's approval at least three (3) competitive bids for all purchases, including aggregate purchases from the same vendor, which would amount to ten thousand dollars (\$10,000) or more in one State Fiscal Year. In case of emergency, time constraints, a sole source provider, or when competition is impracticable, a letter explaining the details and the attempt to provide the most competition that was practicable must be submitted to the Lottery. The Lottery shall determine, in its sole discretion, whether the competitive bid requirement can be waived prior to Contractor entering into a Service Agreement.
- 7.3.1 The Contractor shall publish the request for proposal on the Contractor's website all purchases including aggregate purchases from the same vendor that would amount to \$10,000 or more in a year. The posting of the request for proposal shall be available on the Contractors website for a period not less than ten (10) business days and the deadline for submission shall not be shorter than ten (10) business days from the date of the first posting. The Contractor shall determine other rules regarding submission and consideration of all bids received, but shall be guided by the principle that the process should provide the best competition practicable for the Lottery. Such rules, deadlines, and other criteria shall also be posted on the Contractor's website contemporaneously with the posting of the request for proposal.



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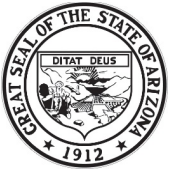
- 7.4 The Contractor shall ensure that total invoices from third-party vendors for services and products do not exceed approved estimates. Payment for any costs or charges that exceed approved estimates shall be the sole responsibility of the Contractor and shall not be paid by the Lottery.
- 7.5 The Contractor shall ensure that any marketing product or service that is paid for by the Lottery is received from a vendor in a timely manner and in compliance with any agreements with the vendor. Documentation of timely performance of vendors, such as affidavits or tear sheets, will be required, as directed by the Lottery.
- 7.6 The Contractor must notify the Lottery before approving any replacement for marketing that did not run as scheduled. All such documentation shall be maintained by the Contractor and shall be available for inspection by the Lottery or authorized Lottery representatives within twenty-four (24) hours of a request for the materials.
- 7.7 The Contractor shall not, either verbally or in writing, commit the Lottery to any purchase without the Lottery's written pre-approval. In negotiating purchases, the Contractor shall make the Lottery aware of any cost savings that might be achieved through long-term commitments or other special programs and any savings shall be passed on to the Lottery.
- 7.8 The Lottery may at any time cancel, at no cost, any purchase previously authorized when the vendor will accept such cancellation without financial penalty. The Lottery may, in its sole discretion, also cancel any purchase previously authorized for which there is a cancellation penalty, but such penalty shall be paid by the Lottery.

8.0 Multi-Cultural Services

- 8.1 The Lottery has a diverse customer and retailer base and seeks to reach those audiences in meaningful ways. The Contractor must include Spanish-speaking and multi-cultural staff to assist with all multi-cultural outreach efforts and projects. Translation services may include translation in multiple languages, terminology creation and management, editing, proofreading, studio linguistic advising and post-processing, and cultural review. These services must be available on request.

9.0 Reporting Services

- 9.1 Account services staff shall provide reports as required by the Lottery, which include, but are not limited to, the following:
 - 9.1.1 Weekly status reports to provide accurate, detailed information on all projects in process, including individual project and initiative timelines;
 - 9.1.2 Detailed notes and action items (recap reports) shall be provided after all Lottery meetings with the Contractor;
 - 9.1.3 On a quarterly basis, a written overview of current industry trends and marketing campaigns shall be prepared and presented, along with samples of interesting, applicable work and best practices from other lotteries (the entire Account Services Staff will be required to attend these presentations); and
 - 9.1.4 Other reports as required by the Lottery, for example, budget reports as outlined in section 4, Budget, year-end summaries of spending by game category by media, quarterly evaluation of the value of bonus spots achieved through negotiations, special reports on specific markets or programs, reports on the acceptance and usage of public service announcements by the media, pre-initiative analysis, post-initiative analysis, or point-of-view white papers.



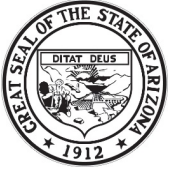
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- 9.1.5 For every proposed initiative, the Contractor must provide a written pre-initiative analysis to evaluate the basis of the recommendation, and to weigh the strategic benefits against the costs and risks of the initiative.
- 9.1.6 Within thirty (30) days of the completion of an initiative, the Contractor must provide a written post-initiative Return-on-Investment (ROI) value analysis focusing on the effectiveness of the initiative in terms of sales levels, cost, reach, continuity, and overall message effectiveness. Such analysis must include a recommendation based on cost versus actual value in context with future Lottery objectives and strategies.
- 9.1.7 Within sixty (60) days before the end of each State Fiscal Year and on December 1 of each State Fiscal Year, the Contractor shall supply a list of current Subcontractors, with itemization of the activities performed by those Subcontractors, which shall be updated within ten (10) days of any change.
- 9.1.8 Within ten (10) days after the close of every month, the Contractor shall supply an earned media value (PR value); social media engagement numbers; email, push notification or text open rates (if applicable); and website performance numbers.
- 9.1.9 On a monthly basis, a written overview of all hours associated with each job/project for that month shall be submitted to the Lottery within five (5) days of the close of that month.
- 9.1.10 On a quarterly basis, the Contractor shall provide the Lottery with an organizational chart for all assigned staff. This chart shall include, at minimum:
 - 9.1.10.1 Name
 - 9.1.10.2 Title
 - 9.1.10.3 Percentage of Time Assigned to the Contract

10.0 Research Services

- 10.1 The Contractor shall provide Research Services, in order to improve marketing and product development or explore emerging product opportunities. Research Services are defined as:
 - 10.1.1 Utilizing current relevant primary and secondary research to develop strategies for marketing Lottery products; and
 - 10.1.2 Recommending, designing, implementing, managing, and analyzing research projects and results, which will determine program effectiveness and gauge changes in target audience attitudes and perceptions.
- 10.2 Research Services shall include, but are not limited to: quarterly or bi-annual tracking studies, focus group research, consumer segmentation studies, media research, advertisement concept testing, product research studies and quantitative player studies.
- 10.3 The Contractor may use a Subcontractor to provide approved Research Services, but the Contractor shall retain responsibility for managing subcontracted research projects on behalf of the Lottery. Contractor may be required to work with Lottery-designated subcontractors to continue research in progress at initiation of Contract.

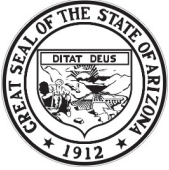


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11.0 Creative Development and Production Services

- 11.1 Under the direction of the Lottery, the Contractor shall be responsible for the creation and production of effective advertising materials and services (“Creative Services”), including, but not limited to:
- 11.1.1 Television, radio, interactive/web, out-of-home, print materials;
 - 11.1.2 Point of Sale materials, including posters, wobblers, banners, brochures, game flyers, clings, toppers, pole signs, etc.;
 - 11.1.3 Images, videos and commercials for use on the Lottery or partner website and social media (Facebook, Twitter, YouTube, Instagram, Twitch, etc.);
 - 11.1.4 Promotional and sponsorship materials, including posters, flyers, clings, banners, digital elements, and promotional gifts;
 - 11.1.5 As requested, game name creation, ticket design, trademark design and clearance;
 - 11.1.6 Research, clearance and procurement of the rights to use intellectual property (“IP”), whether that IP belongs to the Lottery (i.e., Contractor must obtain a reputable legal opinion that all trademark designs created by Contractor for the Lottery are researched and cleared for legal use by the Lottery) or to third-parties (i.e., Contractor must negotiate for and obtain the right to use all third-party licensed properties); and
 - 11.1.7 Materials and services in support of multimedia campaigns or other initiatives and promotions identified in the Marketing Plan.
- 11.2 The Contractor shall be responsible for offering at least three (3) alternative campaign concepts rather than only one creative solution to a particular game, promotion or initiative. Each concept shall reflect a distinctly different tone, approach, and style.
- 11.3 The Lottery will adopt detailed production schedules for developing, presenting, and refining Creative Services. Such production schedules will outline the milestones and deadlines for Creative Services, such as presentation, obtaining final approval, editing and revising a selected option, and producing and distributing the finished product. Creative services must comply with Lottery specifications and production schedules.
- 11.4 The Contractor must obtain written approval from the Lottery prior to producing any Creative Services products or materials. When producing any creative work, the Contractor shall not vary from approved scripts, storyboards, or print layouts without Lottery approval. Failure to adhere to approved scripts, storyboards, or layouts may void the Lottery’s approval of the estimate for the project. The Contractor shall be liable for all costs if Creative Services products or materials are executed in a manner not consistent with the Lottery’s approval. The Lottery will not be responsible for payment of overtime on any project that has not been pre-approved by the Lottery.
- 11.5 All casting and talent selection shall be pre-approved by the Lottery, exercising its sole discretion. If actors or other talent are needed for an advertising project, the Contractor shall:
- 11.5.1 obtain the most cost-effective talent in compliance with Screen Actors Guild (SAG) or American Federation of Radio and Television Artists (AFTRA) requirements;
 - 11.5.2 recommend extended talent cycles and buyouts in cases when additional uses of advertisements and their components are anticipated and approved in advance by the Lottery;
 - 11.5.3 utilize talent who are not covered by collective bargaining agreements whenever possible;



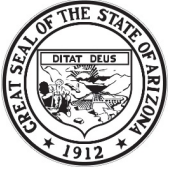
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- 11.5.4 negotiate the best possible rate for talent and provide written justification as to why the negotiated compensation package is reasonable;
- 11.5.5 ensure that selection of talent will be reflective of the population of Arizona as a whole; and
- 11.5.6 Select Arizona-based talent whenever possible.
- 11.6 The Contractor must oversee and supervise all aspects of the broadcast production process by third party production services.

12.0 Public Relations/Corporate Communication Services

- 12.1 The Contractor shall be responsible for providing consultation, drafting services, and public appearance services to the Lottery with regard to public relations and corporate communications and will assist in the development of short- and long-term strategic communications plans (“PR Services”).
- 12.2 PR Services shall include planning, development, training, implementation, or support of various communications efforts, including communications with news media. Such planning, development, training, implementation, or support may include, but is not limited to, the following areas of need:
 - 12.2.1 Public relations management, communications and presentations, including publicity gained through promotional initiatives and optimization of opportunity-based promotional efforts (“Earned Media”);
 - 12.2.2 Crisis communications;
 - 12.2.3 Winner awareness programs and communications;
 - 12.2.4 Responsible gaming/problem gaming education and awareness communications and programs as directed by the Lottery;
 - 12.2.5 Corporate, community or public service outreach programs, including distribution/placement of materials;
 - 12.2.5.1 With regard to public service announcements, the Contractor shall be required to develop low-cost informational materials that will be acceptable to all types of media outlets (television, radio, outdoor, digital, print media, etc.) to run at no charge to the Lottery.
 - 12.2.6 Trade outreach programs, including collateral creation and development including press kits, releases, brochures, flyers, and broadcast segment outlines;
 - 12.2.7 Promotional programs in support of events, product launches, and product awareness;
 - 12.2.8 Interactive and social media programs;
 - 12.2.9 Strategic initiatives;
 - 12.2.10 Public appearances, press conferences and press releases, including those occasioned by a high volume of traffic, jackpot rollover, or jackpot winners;
 - 12.2.10.1 A draft of a press release shall be provided to the Lottery within no more than two (2) hours from notification from the Lottery to the Contractor of the need for the press release. In addition, once the draft is approved by the Lottery and returned to the Contractor, it must be released to the media within one (1) hour, unless otherwise directed by the Lottery.
 - 12.2.11 Talking points and media training for Lottery staff;
 - 12.2.12 Beneficiary communications proposals;
 - 12.2.13 Internal and external memoranda or publications regarding Lottery initiatives and business developments; and



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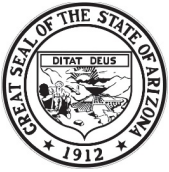
- 12.2.14 Public Service Awareness outreach plan and distribution/placement of materials.
- 12.2.15 Core Initiative Sponsorship planning and execution as directed by the Lottery Public Information Officer (PIO).

13.0 Media Strategy and Planning Services

- 13.1 The Contractor shall be responsible for providing consultation, drafting services, and public appearance services to the Lottery with regard to media advertising and will assist in the development of short- and long-term media advertising plans (“Media Services”). The planning, development, training, implementation, or support of various media advertising efforts, include, but are not limited to, the following areas of need:
 - 13.1.1 Communication with media advertising partners, and evaluation of sponsorship opportunities available to the Lottery via media outlets, sports organizations/arenas, special events, concert venues, etc.;
 - 13.1.2 Negotiation, purchase, instruction, and delivery of materials for placement of media time and space;
 - 13.1.3 Utilization of bonus spots, and/or added value promotions from all radio and TV stations based on estimated spending over each Contract quarter;
 - 13.1.4 On-going real time sales analysis and adjustment to media plan according to such analysis; and
 - 13.1.5 Electronic signage and other outdoor media contracts (upon Lottery approval, execution and management of outdoor strategies and contracts).
- 13.2 The Contractor shall document the process of selecting media outlets to the Lottery.
 - 13.2.1 The Lottery will have the sole discretion to approve the selection of media outlets. The Contractor shall provide documentation of the process for selecting interactive media outlets to the Lottery prior to the approval and selection by the Lottery of such outlets.
- 13.3 The Contractor shall establish a goal for the number of bonus spots or other value-added promotions. Any such bonus spots or value-added promotions provided by participating stations must be identified in the post-initiative ROI analysis of the media buy, and the value must be calculated as a savings to the Lottery.
- 13.4 The Contractor will work with a third party and the Lottery to conduct a media buying audit to determine areas where media planning and implementation may be improved. This audit is up to the discretion of the Lottery and may be conducted on an annual basis.

14.0 Digital Services

- 14.1 The Contractor shall be responsible for Web-based Interactive Services as directed by the Lottery, defined as activities related to the internet that may include, but are not limited to:
 - 14.1.1 Creative development, modification, and maintenance of the responsive Lottery website (potentially including microsites or apps);
 - 14.1.2 Creative development for the Lottery loyalty website and app;
 - 14.1.3 Development of player retention and new player acquisition strategies and plans;
 - 14.1.4 Management of email marketing program with a third-party vendor to include strategy, creative development, database acquisition, and post-activity analysis;



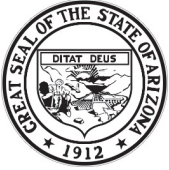
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- 14.1.5 Social Media strategy, planning, production and management of daily social media activity;
- 14.1.6 Conducting research and surveys to gain knowledge regarding user behavior, and to provide recommendations regarding strategy shifts; and
- 14.1.7 Discovery or creation of co-promotional opportunities with retailers, beneficiaries, and sponsor-affiliated websites.
- 14.2 The Contractor must be able to provide Digital Services that are compatible with current Lottery digital platforms and operating systems; or, at its expense, must obtain training specific to the Lottery digital platforms. For example, the Lottery's current website utilizes the Umbraco platform. The design of the Marketing Plan must include strategies for site analytic functions that utilize the Lottery's current digital platform to optimize the website user's experience.
- 14.3 The Contractor may be responsible for communicating with vendors on behalf of the Lottery and evaluate all potential Digital Services opportunities. If the Lottery is contacted by a company offering Digital Services opportunities, the Lottery may direct the inquiring party to the Contractor.
- 14.4 The Contractor shall be responsible for the negotiation, purchase, instruction, and delivery of materials for the placement of digital media time and space.
- 14.5 The Lottery will have the sole discretion to approve the selection of media outlets. The Contractor shall provide documentation of the process for selecting interactive media outlets to the Lottery prior to the approval and selection by the Lottery of such outlets.

15.0 Special Event Services

- 15.1 The Contractor shall be responsible for providing assistance in designing, developing, and implementing sponsorships, promotions, and special events ("Special Event Services"). Special Event Services include, but are not limited to:
 - 15.1.1 Identifying opportunities, planning, development, and executing tasks necessary to develop retailer and consumer sponsorships, promotions, and special events, including but not limited to pricing, staffing, collateral development and production, working in tandem with third-party vendors; and
 - 15.1.2 Reviewing, evaluating, and providing recommendations regarding Special Event opportunities.
- 15.2 The Contractor must provide a promotions team (the "Street Team"), staffed by the Contractor or a third-party provider. Staffing of the Street Team by a third-party provider requires approval of the expenditure by the Lottery. The Street Team will be responsible for the coordination, production, activation, and staffing of functions at retailers, community and special events, sponsorships, and other promotions.
 - 15.2.1 The Street Team may be required to transport and deliver promotional Materials and equipment to promotional sites. Such duties include, but are not limited to: transportation of staff; transportation of promotional equipment and prizes; and installing and tear down of promotional Materials. The Street Team will be responsible for maintaining the condition of Lottery property in good repair.
 - 15.2.2 The Contractor must provide a vehicle, which: (a) owned, operated, and maintained by the Contractor, (b) is capable of transporting staff and promotional Materials to promotional sites; and (c) will be stored at the Contractor's location. The vehicle must be wrapped with Lottery-branded Materials, as approved by the Lottery.



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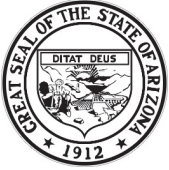
- 15.2.3 The Contractor must solicit and develop joint promotional and cross-promotional opportunities leveraging existing networks, relationships, and sponsorships. Contractor will be expected to negotiate and oversee the number of corporate cross-promotional programs set by the Lottery each year.
- 15.2.4 The Contractor may, in the sole discretion of the Lottery, be reimbursed for actual unexpected expenses that are not included in the approved quoted price and that are incurred as a result of the Contractor's performance of Special Event Services when itemized invoices are submitted according to billing and procurement requirements.

16.0 Retailer Strategy Services

- 16.1 In providing Retailer Strategy Services, the Contractor will be expected to obtain and maintain thorough familiarity with the Lottery's current position within the retailer industry. Retailer Strategy includes, but is not limited to:
 - 16.1.1 Development of a strong retailer optimization strategy and associated tactics to ensure Lottery is maximizing exposure and merchandizing potential with retailers;
 - 16.1.2 Design and production of integrated POS materials for Lottery games and promotions;
 - 16.1.3 Development and maintenance of a POS retailer calendar and library to ensure all available tools are being utilized;
 - 16.1.4 Mastery of retail/POS trends and best practices from other state lotteries (the Contractor shall be required to present new ideas and opportunities to the Lottery on a quarterly basis, as required by Section 9.1.3);
 - 16.1.5 Development of retailer communication pieces including, but not limited to: newsletters, brochures, new player folders, check presentation folders, premium items, sales kits, how to play guides, new product info/sell-in sheets, interactive tutorials, etc.;
 - 16.1.6 Upon request by the Lottery, subcontracting with a third party to provide retailer relationship strategic guidance, along with specialized corporate account development and support; and
 - 16.1.7 Design of electronic sales and promotional messaging for retailer terminals, working in conjunction with Lottery contractor(s) who provide retailer terminals.

17.0 Other Design, Production, or Marketing Services

- 17.1 Other Design, Production or Marketing Services will include, but may not be limited to:
 - 17.1.1 Designing, delivering, and placing promotional items required and approved by the Lottery (examples of promotional items that may be required by the Lottery are Lottery-branded t-shirts, key chains, hats, etc., that can be used as retailer or consumer promotional prizes);
 - 17.1.2 Provision of all materials or services needed for Special Events, such as equipment, materials, signage, and services (an example of such materials is a banner; and examples of such services are transportation, storage, assembly and disassembly of Special Event materials);



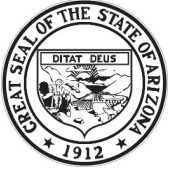
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- 17.1.3 Development of cooperative advertising programs or promotions with corporate or retailer partners, together with related services and materials;
- 17.1.4 Procurement of items or services not specifically identified in, but related or similar to those identified requirements stated in the Scope of Work (including, but are not limited to: consultative services for public affairs, crisis management, and production assistance), which must be pre-approved by the Lottery. Costs for these additional services will be billed directly to the Lottery without markup.

The following Exhibit applies to the Scope of Work:
SECTION 2-A_EXHIBIT A – Gaming Data

End of Section 2-A



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SECTION 2-B: Pricing Document

1.0 Compensation

1.1 COMPENSATION METHOD

Contractor will be compensated for satisfactorily carrying out its obligations under the Contract.

Payment obligations to the Contractor(s) will commence on May 16, 2021.

2.0 Pricing

2.1 The Contractor Fee will be \$2.1 Million annually and shall be billed to Lottery on a monthly basis with a not-to-exceed monthly retainer of \$175,000.00.

2.1.1 In the event that this Contract is awarded to more than one Offeror, the Contractor Fee will be calculated on the portion of the Contractor Allotment awarded to each Offeror.

2.2 Additional pricing shall be as referenced in Attachment 4- Pricing.

2.3 CONTRACTOR'S BEST PRICING. Supplier warrants that, for the term of the Contract, the prices and discounts set out in Contract, including any subsequent agreed amendment to it (the "Contract Pricing"), will be equal to or better than the lowest prices and largest discounts, both separately and in combination, at which Contractor sells equivalent services, items of equipment and materials.

2.3.1 That price-plus-discount equivalence ("Contractor's Best Pricing") is intended to be irrespective of whether or not those other sales have special purchase terms, conditions, rebates or allowances.

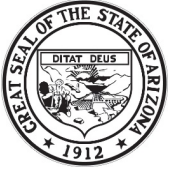
2.3.2 If Contractor's Best Pricing for equivalent services, items of equipment and materials is better than the Contract Pricing, then Contractor agrees to adjust the Contract Pricing to match the Contractor's Best Pricing for all sales related to the Contractor made after the date when the Contractor's Best Pricing was first better than the Contract Pricing.

2.3.3 For clarification of intent, that date is intended to be the date when the difference first occurred, which might have been before the difference was first identified. If it was before, then Supplier agrees to charge at less than the Contract Pricing until the extended difference that would have been realized (i.e., if the Contractor's Best Pricing had been applied when it should have been) has been settled.

2.4 PRICING-ALL-INCLUSIVE:

2.4.1 Pricing is all-inclusive, including any ancillary fees and costs required to accomplish the Scope of Work and all aspects of Contractor's offer as accepted by State. Details of service not explicitly stated in the Scope of Work or in Contractor's Offer, but necessarily a part of, are deemed to be understood by Contractor and included herein. All administrative, reporting, or other requirements, all overhead costs and profit and any other costs toward the accomplishment of the requirements in the Contract are included in the pricing provided.

2.4.2 Unless otherwise indicated herein, the Contractor will be responsible for the costs of all labor and services, including but not limited to: costs and materials for media buying, publication; shipping within Arizona; postage; overnight deliveries; travel within Arizona; attendance and registration fees for industry conferences and educational seminars; overhead; insurance, bonds or letters of credit; profits; permits and licenses; phone; voice messaging; internet service, including duplication, distribution, uploading and other related costs to traffic production assets across media buys; photography and prints; artwork; production cost overruns; advertising copy; electronic storage media; digital media



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production (e.g. banners ads, rotators, etc.); any other expenses not pre-approved by the Lottery; and similar costs of doing business.

2.5 PRICE INCREASES:

2.5.1 The State may review a fully documented request for a price increase. The requested increase shall be in writing and be based upon a cost increase to the contractor that was clearly unpredictable at the time of the offer and is directly correlated to the price of the product concerned. Contractor must provide conclusive evidence of a need for any price increases such as being substantiated by the Producer Price Index, Consumer Price Index, or similar pricing guide.

- (a) Initial Contract prices will be honored for one year after award of Contract.
- (b) All written requests for price adjustments made by the contractor shall be initiated thirty (30) days in advance of any desired price increase to allow State sufficient time to make a fair and equitable determination to any such requests. This may be waived upon proper documentation demonstrating the urgency of the request.
- (c) All price adjustments will be implemented by a formal contract amendment. State shall determine whether the requested price increase or an alternate option is in the best interest of State.

2.6 PRICE REDUCTIONS:

2.6.1 Price reductions shall be immediately passed along to State and may be submitted in writing to State for consideration at any time during the Contract period. The contractor shall offer State a price reduction on the Contract product(s) concurrent with a published price reduction made to other customers. State at its own discretion may accept a price reduction. The price reduction request shall be in writing and include documentation showing the actual reduction of cost. Sales promotions requests shall include difference in pricing, begin, and end date of promotion along with the products covered.

2.7 ADDITIONAL CHARGES:

2.7.1 Any charges or fees not delineated in the Contract may not be added, billed, or invoiced under the Contract.

2.8 TRAVEL.

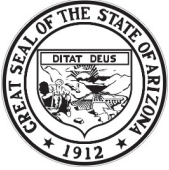
2.8.1 Any travel or per diem by the Contractor to carry out its obligations under the Contract shall be at the Contractor's expense.

3.0 Funding

No particular funding considerations apart from paragraph 4.4 [*Availability of Funds for the Next State fiscal year*] and 4.5 [*Availability of Funds for the current State fiscal year*] of the Uniform Terms and Conditions have been identified as of the Solicitation date.

4.0 Invoicing

- 4.1 **INVOICE FREQUENCY.** Contractor shall submit invoices monthly for the previous month's services and expenses.
- 4.2 **INVOICES GO TO BUYING ENTITY.** Contractor shall submit all billing notices or invoices to the ordering Eligible Entity/Customer (e.g. Eligible Agency or Co-Op Buyer) at the address indicated on the applicable Order document or by utilizing the Buying Entity's purchasing tool/process.
- 4.3 **MINIMUM INVOICE REQUIREMENTS.** Every invoice must include the following information:



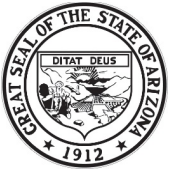
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| Item | Required |
|--|----------------|
| Bill-to name and address | ● |
| Contractor name and contact information | ● |
| Remit-to address | ● |
| State contract number | ● |
| Order number (typically the The State's e-Procurement System PO #) | ● |
| Invoice number and date | ● |
| Date the items shipped or services performed | ● |
| Applicable payment terms | ● |
| Contract line item number | ● |
| Contract line item description | ● |
| Quantity delivered or performed | ● |
| Line item unit of measure | ● |
| Item price | ● |
| Extended pricing | ● |
| Discount off list or catalog | ● |
| Taxes (<i>as a separate invoice line item</i>) | ● |
| Upcharge shipping/freight, etc. (<i>as a separate invoice line item</i>) | Materials only |
| Total invoice amount due | ● |
| | |

4.3.1 The monthly invoice should itemize all costs and fees for Marketing Services, including all expenses required to be prepaid by the Contractor and pass-through costs. In the case of pass-through costs, the Contractor shall pay for all such goods and services purchased for the Lottery and shall submit invoices to the Lottery for reimbursement, itemizing such expenditures without mark-up of any kind. Pass-through costs include, but are not limited to:

- (a) Special project costs;
- (b) Service Agreement or Subcontractor fees, including Street Team fees and expenses;
- (c) Sponsorship fees; and
- (d) Public relations distribution and media monitoring fees;
- (e) Third-party research fees;
- (f) Actual costs for third-party production and media fees (media buying services and airtime placement costs).
 - i. Third-party production and media fees incurred in the delivery of services during the term of this Contract will be itemized separately from the monthly fee and will be paid without mark-up, if pre-approved by the Lottery. Actual vendor invoices must be attached to the monthly billing.



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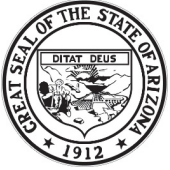
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- (g) Any other reasonable costs that are not clearly defined herein and are mutually agreed upon by the Offeror(s) and the Lottery, such as presentation items, industry award submissions, and vendor proofs.

- 4.4 NO INVOICE WITHOUT AUTHORIZATION. Contractor shall not seek payment for any:
1. Materials or Services that have not been authorized on an acknowledged Order;
 2. Expediting, overtime, premiums, or upcharges absent State's express prior approval; or
 3. Materials or Services that are the subject of a Contract Amendment that has not been fully signed.
- 4.5 PRE-INVOICE REVIEW. Shortly before Contractor is scheduled to submit each invoice, the parties' representatives shall meet informally to review any issues relevant to that upcoming invoice so that the formal invoice process is thereby facilitated and made more efficient.
- 4.6 SUBMITTING INVOICES. Contractor shall submit an invoice to the ordering Eligible Agency or Co-Op Buyer using the form and/or process provided or required by the ordering Eligible Entity/Customer (Eligible Agency or Co-Op Buyer). Every invoice must be signed by Contractor's authorized representative and accompanied by all supporting information and documentation required by the Contract and applicable laws.
- 4.7 DEFECTIVE INVOICES. Without prejudice to its other rights under the Contract or further obligation to Contractor, the ordering Eligible Entity/Customer (Eligible Agency or Co-Op Buyer) may, at its discretion, reject any materially defective invoice.
- 4.7.1 The ordering Authorize Entity/Customer (Eligible Agency or Co-Op Buyer) shall notify Contractor within 5 (five) business days after receipt if it determines an invoice to be materially defective.
- 4.7.2 Invoices will be deemed automatically rejected upon delivery if they:
- (a) are sent to an incorrect address;
 - (b) do not reference the correct State contract number; or
 - (c) are payable to any Person other than the Contractor.
- 4.7.3 The ordering Eligible Entity/Customer (Eligible Agency or Co-Op Buyer) will have no obligation to pay against a defective invoice unless and until Contractor has re-submitted it free of defects.

5.0 Payments

- 5.1 PAYMENT. The applicable Eligible Agency or Co-Op Buyer shall pay undisputed amounts due to Contractor within the time period specified in Section 4.0 Costs and Payments of the Uniform Terms and Conditions
- 5.2 JOINT CHECKS OR DIRECT PAY. Applicable Eligible Agency or Co-Op Buyer may, but is under no obligation to, pay by joint check or to pay directly to any Subcontractor or other creditor to whom any portion of Contractor's requested payment is owed.
- 5.3 RECOVERY OF OVER-PAYMENT. If applicable Eligible Agency or Co-Op Buyer determines that an over-payment has been made to Contractor on any prior invoice, it shall inform Contractor of the amount and date of the over-payment and may deduct the over-paid amount from amounts then or thereafter due to Contractor.
- 5.4 PAYMENTS TO SUBCONTRACTORS. Contractor shall make payment of all undisputed amounts due to Subcontractors within thirty (30) days of receipt of funds from applicable Eligible Agency or Co-Op Buyer applicable to their services.
- 5.5 PURCHASING CARD. Applicable Eligible Agency or Co-Op Buyer may pay invoices for some or all Orders using a purchasing card. Any and all fees related to payment using a Purchasing Card are the responsibility of Contractor. Unless otherwise stated in the Contract there will be no additional fees or increase in prices associated with this method of payment.

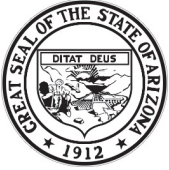


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- 5.6 AUTOMATED CLEARING HOUSE. Applicable Eligible Agency or Co-Op Buyer may pay invoices for some or all Orders through an Automated Clearing House (ACH). In order to receive payments in this manner from Eligible Agencies, Contractor must complete an ACH Vendor Authorization Form (form GAO-618) within 30 (thirty) days after the effective date of the Contract. The form is available online at:
<https://gao.az.gov/afis/vendor-information>

End of Section 2-B



Request for Proposal
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Description:
Advertising & Marketing – Arizona Lottery

Arizona Department of
Administration
State Procurement Office
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Phoenix, AZ 85007

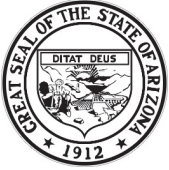
SECTION 2-C: Special Terms and Conditions

The Special Terms and Conditions modify the Uniform Terms and Conditions and its Appendices. It can modify them by replacing, deleting, appending to, or revising the text of an existing provision or by inserting a new paragraph into an existing article. No other document modifies or adds to the Uniform Terms and Conditions, except as may subsequently be otherwise and expressly agreed and incorporated by Contract Amendment.

1.0 Definition of Terms

As used in the Contract, the terms listed below are defined as follows:

- | | |
|---|---|
| 1.1 Acceptance | "Acceptance" means the document headed "Offer and Acceptance Form" bearing the State contract number once Procurement Officer has signed it to signify (1) State's formal acceptance of the Accepted Offer and (2) the formation of the Contract. For clarity of intent, the foregoing is not to be confused with the term "acceptance" used throughout the Contract in the context of delivery, inspection, etc., with respect to Materials or Services. |
| 1.2 Accepted Offer | If State did not request a Revised Offer, then "Accepted Offer" means the Initial Offer. If State did request a Revised Offer but not a Best and Final Offer, then "Accepted Offer" means the latest Revised Offer. If State requested a Best and Final Offer, then "Accepted Offer" means the Best and Final Offer. |
| 1.3 Arizona Procurement Code; A.R.S.; A.A.C. | "Arizona Procurement Code, "A.R.S.," and "A.A.C." are each defined in the <u>Instructions to Offerors</u> . |
| 1.4 Arizona TPT | "Arizona TPT" means Arizona Transaction Privilege Tax. For information, refer to the Arizona Department of Revenue (DOR) website at: https://www.azdor.gov/business/transactionprivilegetax.aspx . |
| 1.5 Attachment | "Attachment" means any item that: <ol style="list-style-type: none">1. the Solicitation required Offeror to submit as part of the relevant Offer (e.g., Initial Offer, Revised Offer, or BAFO);2. was attached to an Offer when submitted; and3. was included in the Accepted Offer. |
| 1.6 Pricing Document | "Pricing Document" means <u>Section 2-B of Part 2 of the Solicitation Documents</u> , provided that, if there is no such Section in the Contract, then "Pricing Document" is to be construed as referring to whatever item in the Contract contains the contracted pricing and payment provisions. |
| 1.7 Contract Amendment | "Contract Amendment" means a document signed by Procurement Officer that has been issued for the purpose of making changes to the Contract after execution. |
| 1.8 Contract Terms and Conditions | "Contract Terms and Conditions" means the <u>Special Terms and Conditions</u> and these Uniform Terms and Conditions taken collectively. |
| 1.9 Contractor | "Contractor" means the Person identified on the Accepted Offer who has entered into the Contract with State. |
| 1.10 Contractor Indemnitor | "Contractor Indemnitor" means Contractor or any of its owners, officers, directors, agents, employees, or Subcontractors. |
| 1.11 Co-Op Buyer | "Co-Op Buyer" means a member of the State Purchasing Cooperative that has entered into a "Cooperative Purchasing Agreement" with the Arizona Department of Administration State Procurement Office under A.R.S. § 41-2632. Unless there is an applicable Cooperative |



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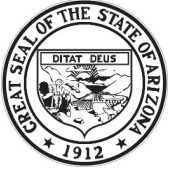
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Purchasing Agreement in effect at the time, a State Purchasing Cooperative member cannot be a Co-Op Buyer. For reference, “Co-Op Buyer” is to be construed as encompassing “eligible procurement unit” under A.A.C. R2-7-101(23).

NOTE: Membership in the State Purchasing Cooperative is open to all Arizona political subdivisions, including cities, counties, school districts, and special districts. Membership is also available to non-profit organizations, other state governments, the federal government and tribal nations. For reference, “non-profit organizations” are defined in A.R.S. § 41-2631(4) as any nonprofit corporation as designated by the IRS under section 501(c)(3) through 501(c)(6) of the tax code.

- 1.12 Draw Game** A draw game is an Arizona Lottery game where tickets are purchased through a network of computer terminals located at retail locations. The terminals are connected to a central computer that controls and records all game functions.
- 1.13 Drawing** A drawing is the formal process of selecting winning numbers which determine the number of winners for each prize level of a draw game.
- 1.14 Eligible Agency** This Contract is for the exclusive use of the Arizona Lottery.
- 1.15 Indemnified Basic Claims** “Indemnified Basic Claims” means any and all claims, actions, liabilities, damages, losses, or expenses, including court costs, attorneys’ fees, and costs of claim processing, investigation and litigation, for bodily injury or personal injury, including death, or loss or damage to any real or tangible or intangible personal property, collectively. See paragraph 6.3.
- 1.16 Instructions to Offerors** “Instructions to Offerors” is Section 3-a of Part 3 of the Solicitation Documents.
- 1.17 MUSL** MUSL is the Multi-State Lottery Association, a government-benefit association wholly owned and operated by party lotteries.
- 1.18 NASPL** NASPL is the North American Association of States and Provincial Lotteries.
- 1.19 Order** “Order” means the instrument by which State authorizes Contractor to perform some or all of the Work. Whether the Contract will have one Order or many Orders depends the scope of the Contract and how State will use it. The Special Terms and Conditions provide that information. Any of the following is to be construed as being an “Order”:
1. “Release” or “Release Purchase Order” in The State’s e-Procurement System;
 2. “task order”, “service order,” or “job order” when a Release Purchase Order for Services has already been committed in The State’s e-Procurement System; or
 3. “purchase order” for buying by Co-Op Buyers, if co-op buying applies.
- 1.20 The State’s e-Procurement System** “The State’s e-Procurement System” means State’s official electronic procurement system, established pursuant to A.A.C. R2-7-201 as set forth in the Arizona Department of Administration State Procurement Office policy document *Technical Bulletin No. 020, The State’s e-Procurement System – The Official State eProcurement System*.
- NOTE (1): Technical Bulletin No. 020 is available online at:
<https://spo.az.gov/administration-policy/state-procurement-resource/procurement-regulations>
- 1.21 State** With respect to the Contract generally, “State” means the State of Arizona and its department, agency, university, commission, or board that has executed the Contract. With respect to administration or rights, remedies, obligations and duties under the Contract for a given Order, “State” means each of Eligible Agency or Co-Op Buyer who has issued the Order.
- 1.22 State Indemnitees** “State Indemnitees” means, collectively, the State of Arizona, its departments, agencies, universities, commissions, and boards and, and their respective officers, agents, and employees.
- 1.23 Subcontractor** “Subcontractor” has the meaning given in A.R.S. § 41-2503(38), which, for convenience of reference only, is “... a person who contracts to perform work or render service to ... [C]ontractor or to another [S]ubcontractor as a part of a contract with a state governmental unit” The Contract is to be construed as “a contract with a state governmental unit” for purposes



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1.24 Terminal

of the definition. For clarity of intent, a Person carrying out any element of the Work is a Subcontractor from the moment they first carry out that element of the Work regardless of whether or not a Subcontract exists then or subsequently.

A terminal is a device authorized by the Arizona Lottery to function in an online, interactive mode with the AZ Lottery's computer system for the purpose of issuing AZ Lottery tickets and entering, receiving, and processing Lottery transactions, including purchases, validating tickets, and transmitting reports.

1.25 Validation

Validation is the confirmation of whether a ticket is a winner or not.

1.26 Work

"Work" means the totality of the Materials and the Services and all the acts of administration, creation, production, and performance necessary to fulfill and incidental to fulfilling all of Contractor's obligations and duties under the Contract in conformance with the Contract and applicable laws.

2.0 Contract Interpretation

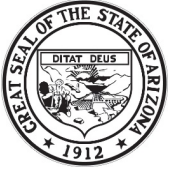
2.1 Usage

Where the Contract:

1. assigns obligations to Contractor, any reference to "Contractor" is to be construed to be a reference to "Contractor and all Subcontractors, whether they are first-tier subcontractors, sub-subcontractors, suppliers, sub-suppliers, consultants, or sub-consultants, as well as all of Contractor's and the Subcontractors' respective agents, representatives, and employees" in every instance unless the context plainly requires that it is be a reference only to Contractor as apart from Subcontractors;
2. uses the permissive "may" with respect to a party's actions, determinations, etc., the term is to be interpreted as in A.A.C. R2-7-101(31) [Definitions]. For clarity of intent, any right given to State using "State may" or a like construction denotes discretion and freedom to act so far as any regulatory or operative constraints permit in the relevant circumstances, provided that: (a) where written "may, at its discretion," the discretion extends to whatever is most advantageous to State; and (b) where written only as "may," the discretion is constrained by what is fair, reasonable, and as accommodating of the respective best interests of both parties as practicable under the circumstances;
3. uses the imperative "shall" with respect to a party's actions, duties, etc., the term is to be interpreted as in A.A.C. R2-7-101(43) [Definitions]. Conversely, the phrase "shall not" is to be interpreted as an imperative prohibition.
4. uses the term "must" with respect to a requirement, criterion, etc., the term is to be interpreted as conveying compulsion or strict necessity, and is to be read as though written "*must, if [the subject] is to be entitled to have [the object] considered or credited as being compliant with, conforming to, or satisfying [the requirement, criterion, constraint, etc.], otherwise, [the object] will be considered or debited as being non-compliant, non-conforming, or unsatisfactory for its Contract-related purposes*" in every instance;
5. uses the term "might" with respect to an event, outcome, action, etc., the term is to be interpreted as conveying contingency or non-discretionary conditionality; and
6. uses the term "will" or the phrases "is to be" or "are to be" with respect to an event, outcome, action, etc., the term or phrase is to be interpreted as conveying such certainty or imperativeness that "shall" is either unnecessary or irrelevant in that instance.

2.2 Contract Order of Precedence

COMPLEMENTARY DOCUMENTS. All of the documents forming the Contract are complementary. If certain work, requirements, obligations, or duties are set out only in one but not in another, Contractor shall carry out the Work as though the relevant work, requirements, obligations, or duties had been fully described in all, consistent with the other documents forming the Contract and as is reasonably inferable from them as being necessary to produce complete results.



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CONFLICTS. In case of any inconsistency, conflict, or ambiguity among the documents forming the Contract and their provisions, they are to prevail in the following order, descending from most dominate to most subordinate, provided that, among categories of documents or provisions having the same rank, the document or provision with the latest date prevails. Information being identified in one document but not in another is not to be considered a conflict or inconsistency.

- (a) Contract Amendments;
- (b) the final Solicitation Documents, in the order:
 - (1) Special Terms and Conditions;
 - (2) Exhibits to the Special Terms and Conditions;
 - (3) Uniform Terms and Conditions;
 - (4) Scope of Work;
 - (5) Exhibits to the Scope of Work;
 - (6) Pricing Document;
 - (7) Exhibits to the Pricing Document;
 - (8) Specifications; and
 - (9) any other documents referenced or included in the Solicitation;
- (c) Orders, in reverse chronological order; and
- (d) Accepted Offer.

ATTACHMENTS AND EXHIBITS. For clarity of intent, if an item was an Attachment in the Solicitation Documents or an Offer (either Initial, Revised, Best and Final, or Accepted) and was subsequently made into an Exhibit, or its content was incorporated into one of the other Contract documents, then that Attachment no longer exists contractually as an "Attachment" since it has at that point been made into some other Contract document. In every other case, an Attachment and the Offeror data therein remain part of the Accepted Offer for purposes of precedence and contractual effect.

2.3 Independent Contractor

Contractor is an independent contractor and shall act in an independent capacity in performance under the Contract. Neither party is or is to be construed as being to be the employee or agent of the other party, and no action, inaction, event, or circumstance will be grounds for deeming it to be so.

2.4 Complete Integration

The Contract, including any documents incorporated into the Contract by reference, is intended by the parties as a final and complete expression of their agreement. There are no prior, contemporaneous, or additional agreements, either oral or in writing, pertaining to the Contract.

3.0 Contract Administration and Operation

3.1 Term of Contract

The term of the Contract will commence on the date indicated on the Acceptance and continue for **twelve (12) months unless cancelled, terminated, or permissibly extended.**

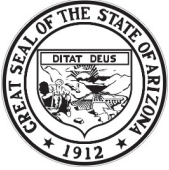
3.2 Contract Extensions

State may at its discretion extend the initial Contract term in increments of one or more months and do so one or more times, provided that, the maximum aggregate term of the Contract including extensions cannot exceed the maximum aggregate term of five (5) years.

3.3 Notices and Correspondence

3.3.1 TO CONTRACTOR. State shall:

- (a) address all Contract correspondence other than formal notices to the email address indicated as "Default for Type" for "General Mailing Address" in Contractor's corresponding The State's e-Procurement System Vendor Profile; and
- (b) address any required notices to Contractor to the "Contact Name and Title" at the "Mailing Address" indicated on the Accepted Offer, as that address might have been amended during the term of the Contract.

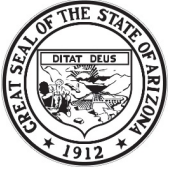


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- 3.3.2 TO STATE. Contractor shall :
- (a) address all Contract correspondence other than format notices to the email address indicated in "Contact Instructions" in the The State's e-Procurement System Summary for State; and
 - (b) address any required notices to State to Procurement Officer identified as "Purchaser" in the State's e-Procurement System Summary at the following mailing address:

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Phoenix, AZ 85007
- 3.3.3 CHANGES. State may change the designated Procurement Officer, update contact information, or change the applicable mailing address by Contract Amendment.
- 3.4 Signing of Contract Amendments**
- Contractor's counter-signature – or "approval" in The State's e-Procurement System, in the case of an amendment – is not required to give effect if the Contract Amendment only covers either:
- 1. extension of the term of the Contract within the maximum aggregate term;
 - 2. revision to Procurement Officer appointment or contact information; or
 - 3. modifications of a clerical nature that have no effect on terms, conditions, price, scope, or other material aspect of the Contract.
- In every case other than those listed in (1), (2), and (3) above, both parties' signature – or "approval" in The State's e-Procurement System, in the case of an Amendment – are required to give it effect.
- 3.5 Click-Through Terms and Conditions**
- If either party uses a web based ordering system, an electronic purchase order system, an electronic order acknowledgement, a form of an electronic acceptance, or any software based ordering system with respect to the Contract (each an "Electronic Ordering System"), the parties acknowledge and agree that an Electronic Ordering System is for ease of administration only, and Contractor is hereby given notice that the persons using Electronic Ordering Systems on behalf of State do not have any actual or apparent authority to create legally binding obligations that vary from the terms and conditions of the Contract. Accordingly, where an authorized State user is required to "click through" or otherwise accept or be made subject to any terms and conditions in using an Electronic Ordering Systems, any such terms and conditions are deemed void upon presentation. Additionally, where an authorized State user is required to accept or be made subject to any terms and conditions in accessing or employing any Materials or Services, those terms and conditions will also be void.
- 3.6 Books and Records**
- 3.6.1 RETAIN RECORDS. By A.R.S. § 41-2548(B), Contractor shall retain and shall contractually require each Subcontractor to retain books and records relating for any cost and pricing data submitted in satisfaction of § 41-2543 for the period specified in the statute.
- 3.6.2 RIGHT TO AUDIT. The retained books and records are subject to audit by State during that period. By A.R.S. § 41-2548(B), Contractor shall retain and shall contractually require each Subcontractor to retain books and records relating to performance under the Contract for the period specified in the statute and those retained books and records are subject to audit by State during that period.
- 3.6.3 AUDITING. Contractor or Subcontractor shall either make all such books and records under subparagraphs 3.6.1 and 3.6.2 available to State at all reasonable times or produce the records at a designated State office on State's demand, the choice of which being at State's discretion. For the purpose of this paragraph, "reasonable times" are during normal business hours and in such a manner so as to not unreasonably interfere with normal business activities.



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- 3.6.4 Public Information and Marketing Records. "Public Information and Marketing Records," including social media communications, shall be retained by the Contractor during and after the term of the Contract according to the Arizona State Library, Archives and Public Records Schedule Number GS 1003, "General Records Retention Schedule Issued to All Public Bodies – Public Information and Marketing." After termination of the Contract, such materials may be archived with the Arizona State Library, Archives and Public Records, or returned to the Lottery's safekeeping, as directed by the Lottery
- 3.6.4 ANNUAL AUDIT. Arizona Revised Statute, Title V, requires an annual audit of the Lottery fund. An independent verification and review of the existence and reliability of the Contractor's policies, procedures, and controls may be included in this annual audit. The scope of the Lottery's financial audit and the Contractor's portion, if any, shall be determined annually. The cost of the Contractor's portion of the audit shall be the responsibility of the Contractor. In the event the independent third party makes recommendations for change and the Lottery concurs, the Contractor shall be required to comply with the recommendations. All costs for implementing such recommendations shall be the responsibility of the Contractor.
- 3.6.5 If the Contractor is a publically traded company, the Contractor shall provide the Lottery with Securities and Exchange Commission ("SEC") 10-K reports (or the appropriate non-U.S. equivalent) as they are issued, together with any reports required pursuant to Section 13 of the Securities and Exchange Act of 1934, as amended.

3.7 Contractor Licenses

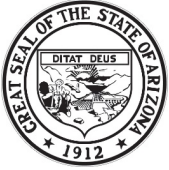
Contractor shall maintain current all federal, state and local licenses and permits required for the operation of its business in general, for its operations under the Contract, and for the Work itself.

3.8 Inspection and Testing

By A.R.S. § 41-2547, State may at reasonable times inspect the part of Contractor's or Subcontractors' plant or places of business related to performance under the Contract. Accordingly, Contractor agrees to permit (for itself) and ensure (for Subcontractors) access for inspection at any reasonable time to its facilities, processes, and services. State may inspect or test, at its own cost, any finished goods, work-in-progress, components, or unfinished materials that are to be supplied under the Contract or that will be incorporated into something to be supplied under the Contract. If the inspection or testing shows non-conformance or defects, then Contractor will owe State reimbursement or payment of all costs it incurred in carrying out or contracting for the inspection and testing, as well as for any re-inspection or re-testing that might be necessary. Neither inspection of facilities nor testing of goods, work, components, or unfinished materials will of itself constitute acceptance by State of those things.

3.9 Ownership of Intellectual Property

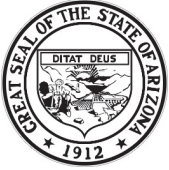
- 3.9.1 RIGHTS IN WORK PRODUCT. All intellectual property originated or prepared by Contractor pursuant to the Contract, including but not limited to, inventions, discoveries, intellectual copyrights, trademarks, trade names, trade secrets, technical communications, records reports, computer programs and other documentation or improvements thereto, are considered the Lottery's property.
- 3.9.2 JOINT DEVELOPMENTS. The parties may each use equally any ideas, concepts, know-how, or techniques developed jointly during the course of the Contract, and may do so at their respective discretion, without obligation of notice or accounting to the other party.
- 3.9.3 PRE-EXISTING MATERIAL. All pre-existing software and other materials developed or otherwise obtained by or for Contractor or its affiliates independently of the Contract or applicable Purchase Orders are not part of the work product to which rights are granted State under subparagraph 3.9.1 above, and will remain the exclusive property of Contractor, provided that:
- (a) any derivative works of such pre-existing material or elements thereof that are created pursuant to the Contract are part of that work product;
 - (b) any elements of derivative work of such pre-existing material that was not created pursuant to the Contract are not part of that work product; and



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- (c) except as expressly stated otherwise, nothing in the Contract is to be construed to interfere or diminish Contractor's or its affiliates' ownership of such pre-existing materials.
- 3.9.4 DEVELOPMENTS OUTSIDE OF CONTRACT. Unless expressly stated otherwise in the Contract does not preclude Contractor from developing competing materials outside the Contract, irrespective of any similarity to materials delivered or to be delivered to State hereunder.
- 3.10 Subcontracts**
- 3.10.1 INITIAL LIST. At the time of Contract execution, Contractor's candidate Subcontractors were identified in Attachment 3-C to the Accepted Offer [*Proposed Subcontractors*]. Agreeing to them being included in the Accepted Offer signified Procurement Officer's advance consent for Contractor to enter into a Subcontract with each candidate, which Contractor shall do as promptly as necessary to ensure its ability to carry out the Work in a timely manner.
- 3.10.2 ADDITIONAL NAMES. Contractor shall not enter into a Subcontract without first obtaining Procurement Officer's written consent with any prospective Subcontractor that (a) was not listed on Attachment 3-C at time of Contract execution or (b) is for any Materials or Services categories other than the ones for which they were previously consented. For either case (a) or (b), Contractor shall submit a written request sufficiently in advance of the need date for those materials or services so that performance under the Contract is not impaired. Procurement Officer may request any additional information he or she determines is necessary to assess the submittal, and may withhold consent pending it.
- 3.10.3 FLOW-DOWN. Contractor shall incorporate the provisions, terms, and conditions of the Contract into every Subcontract by inclusion or by reference, as appropriate. When making any post-execution consent requests, Contractor shall include its warrant that it will do the same for the pending Subcontracts covered by the request. Entering into Subcontracts will not relieve Contractor of any of its obligations or duties under the Contract, including, among other things, the duty to supervise and coordinate the work of Subcontractors. Nothing contained in any Subcontract will create or is to be construed as creating any contractual relationship between State and the Subcontractor.
- 3.11 Offshore Performance of Certain Work Prohibited**
- Contractor shall only perform those portions of the Services that directly serve State or its clients and involve access to secure or sensitive data or personal client data within the defined territories of the United States. Unless specifically stated otherwise in the Scope of Work, this paragraph does not apply to indirect or overhead services, redundant back-up services, or services that are incidental to performance under the Contract. This provision applies to work performed by Subcontractors at all tiers.
- 3.12 Orders**
- 3.12.1 ORDER SUFFICIENCY. The Contract was awarded in accordance with the Arizona Procurement Code; the transactions and procedures required by the code for competitive source selection have been met. An Order issued that cites the correct State contract number will suffice to authorize Contractor to provide the Materials and perform the Services covered by that Order.
- 3.12.2 ORDER TERMS. All Orders are subject to the Contract Terms and Conditions; an Order cannot modify the Contract Terms and Conditions.
- 3.12.3 ORDERS ARE OBLIGATORY. Until the expiration or earlier termination of the Contract, State may issue and Contractor shall accept Orders that make proper reference to the Contract and are permissible hereunder, provided that, Contractor is not obliged to accept any Order that is not consistent with the then-current pricing, lead times, specifications, or payment provisions of the Contract. Contractor shall fulfill and complete any Orders that are begun but not yet completed as of expiration or earlier termination of the Contract unless State instructs otherwise at the time.
- 3.12.4 SPECIAL CASE. In the special case where both the following conditions are true, Procurement Officer's signature on the Acceptance is Contractor's authorization to



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perform and therefore no Order is required: (a) the Contract is identified as being a “single-agency/single-project” contract and (b) the Contract was created in The State’s e-Procurement System as something other than a “Master/ Blanket” type.

- 3.12.5 **NO MINIMUMS OR COMMITMENTS.** (a) Contractor shall not impose any minimum dollar amount, item count, services volume, or services duration on Orders; (b) State makes no commitment of any kind concerning the quantity or monetary value of activity actually initiated or completed during the term of the Contract; (c) Contractor shall only deliver or perform as authorized by Orders; and (d) State is not limited as to the number of Orders it may issue for the Contract. For clarity of intent, the foregoing applies equally whether an Eligible Agency issues the Order or, if applicable, a Co-Op Buyer issues it.
- 3.12.6 **NON-CONTRACTED MATERIALS OR SERVICES.** Any attempt to knowingly represent for sales, marketing, or related purposes that goods or services not specifically awarded are under a State contract is a violation of the Contract and law.

3.13 Multiple-Use Provisions

Eligible Agencies may issue Orders for Services in several forms, all of which become final and effective by a “Release Purchase Order” in The State’s e-Procurement System. Orders issued by Co-Op Buyers will be in whatever form the Co-Op Buyer normally uses. Regardless of origin, Orders must cite the State contract number to be valid. State may, at its discretion in each instance, determine the scope, schedule, and price for each Order in any of the following ways:

1. By choosing some or all of the Materials or Services items covered by the Contract for which a price is established in the Pricing Document, then preparing an Order using those prices (e.g., filling out an order form), and sending it to Contractor.
2. By instructing Contractor to provide a comprehensive proposal of item quantities, combinations, etc., or services hours, personnel, etc., for a defined scope using those established prices as a basis, then validating and negotiating the proposal with Contractor and issuing an Order if and when reaching agreement.
3. As described in (2) above but requesting the proposal from both Contractor and other vendors who are contracted within the applicable scope categories and locations, either sequentially or concurrently, then selecting the proposal or proposals combination that is most advantageous to State.
4. As described in (3) above but introducing ad-hoc commercial competition by making the selection and ordering conditional on obtaining more favorable prices than the contractually-established ones.

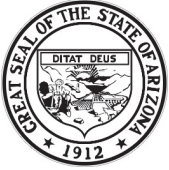
When evaluating the proposals under (3) and (4) above, State may select based on price (for example, a quoted number of hours times the contracted or improved rate plus a fixed amount for incidentals), by experience and qualifications (for example, having an office nearer the required work location), or whatever combination thereof it determines is most appropriate to the work in question.

3.14 Other Contractors

State may undertake with its own forces or award other contracts to the same or other vendors for additional or related work. In such cases, Contractor shall cooperate fully with State’s employees and such other vendors and carefully coordinate, fit, connect, accommodate, adjust, or sequence its work to the related work by others. Where the Contract requires handing-off Contractor’s work to others, Contractor shall cooperate as State instructs regarding the necessary transfer of its work product, services, or records to State or the other vendors. Contractor shall not commit or permit any act that interferes with the State’s or other vendors’ performance of their work, provided that, State shall enforce the foregoing section equitably among all its vendors so as not impose an unreasonable burden on any one of them.

3.15 Work on State Premises

- 3.16.1 **COMPLIANCE WITH RULES.** Contractor is responsible for ensuring that its personnel comply with State’s rules, regulations, policies, documented practices, and documented operating procedures while delivering or installing Materials or performing Services on State’s grounds or in its facilities. For clarity of intent, the foregoing means that if Contractor is required to comply with certain security requirements in order to deliver, install, or perform at that particular location, then it shall do so nonetheless and



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without entitlement to any additional compensation or additional time for performance if those particular requirements are not expressly stated in the Contract. Contractor is reminded that violation of the prohibition under A.R.S. § 13-1502 against possession of weapons on State's property by anyone for whom Contractor is responsible is a material breach of contract and grounds for termination for default.

- 3.16.2 PROTECTION OF GROUNDS AND FACILITIES. Contractor shall deliver or install the Materials and perform the Services without damaging any State grounds or facilities. Contractor shall repair or replace any damage it does cause promptly and at its own expense, subject to whatever instructions and restrictions State needs to make to prevent inconvenience or disruption of operations. If Contractor fails to make the necessary repairs or replacements and do so in a timely manner, State will be entitled to exercise its remedies under paragraph 8.5 [Right of Offset].

3.16 Lottery Participation

Contractor Personnel, including partners, temporary employees, Subcontractors, and consultants involved in the performance of this Contract shall be prohibited from (a) purchasing any Arizona Lottery tickets, including draw games offered by another state lottery which are also offered by the Arizona Lottery (such as Powerball); (b) playing any Arizona Lottery games; and/or (c) entering any Arizona Lottery promotions during the period of this Contract. This prohibition shall include any spouse, child, sibling, or parent residing as a member of the primary household of such Contractor Personnel. No Arizona Lottery prize shall be paid to any of the above persons. The Contractor shall ensure that this requirement is made known to all Contractor Personnel involved in the performance of this Contract.

4.0 Costs and Payments

4.1 Payments

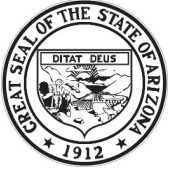
- 4.1.1 PAYMENT DEADLINE. State shall make payments in compliance with Arizona Revised Statutes Titles 35 and 41. Unless and then only to the extent expressly stated otherwise in the Pricing Document, State shall make payment in full for Materials that have been delivered and accepted and Services that have been performed and accepted within the time specified in A.R.S. § 35-342 after both of the following become true: (a) all of the Materials being invoiced have been delivered or installed (as applicable) and accepted and all of the Services being invoiced have been performed and accepted; and (b) Contractor has provided a complete and accurate invoice in the form and manner called for in the Pricing Document, provided that, State will not make or be liable for any payments to Contractor until Contractor has registered properly in The State's e-Procurement System and provided a current IRS Form W-9 to State unless excused by law from providing one.
- 4.1.2 PAYMENTS ONLY TO CONTRACTOR. Unless compelled otherwise by operation of law or order of a court of competent jurisdiction, State will only make payment to Contractor under the federal tax identifier indicated on the Accepted Offer.

4.2 Applicable Taxes

- 4.2.1 CONTRACTOR TO PAY ALL TAXES. State is subject to Arizona TPT. Therefore, Arizona TPT applies to all sales under the Contract and Arizona TPT is Contractor's responsibility (as seller) to remit. Contractor's failure to collect Arizona TPT or any other applicable sales or use taxes from an Eligible Agency or Co-Op Buyer (as buyer) will not relieve Contractor of any obligation to remit sales or use taxes that are due under the Contract or laws. Unless stated otherwise in the Pricing Document, all prices therein include Arizona TPT as well as every other manner of transaction privilege or sales/use tax that is due to a municipality or another state or its political subdivisions. Contractor shall pay all federal, state, and local taxes applicable to its operations and personnel.
- 4.2.2 TAX INDEMNITY. Contractor shall hold State harmless from any responsibility for taxes or contributions, including any applicable damages and interest, that are due to federal, state, and local authorities with respect to the Work and the Contract, as well as any related costs; the foregoing expressly includes Arizona TPT, unemployment compensation insurance, social security, and workers' compensation insurance.

4.3 Non-Cash Incentives or Rewards

In no event shall the Contractor or Subcontractors accept non-cash incentives or rewards for their own use or on behalf of the Lottery unless directed to do so by the Lottery. If any non-cash



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incentives or rewards are offered for the purchase of goods and services, the Contractor shall attempt to negotiate, as a substitute, a reduction in cost to be passed on to the Lottery. If such reduction of cost cannot be achieved, the Contractor will transfer to the Lottery any discounts or rewards earned in conjunction with such purchases, if approved by the Lottery; or the value of such benefits must be deducted from the Contractor's monthly fee or remitted directly to the Lottery as a cash payment, as follows:

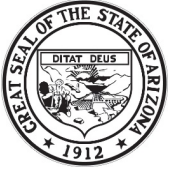
- 4.3.1 Rebates. The Contractor shall return to the Lottery or credit the Lottery's account with any amounts received in rebate from media owners or other third parties resulting from rate reductions, lineage shrinkage, short circulation, non-appearance of advertisement, faulty reproduction, or other similar cause.
- 4.3.2 Media Rebate Exemptions. For all Media Buying, the Contractor shall not accept any commission. Any commissions will be rebated to the Lottery.
- 4.3.3 Discounts. In the event that the Contractor receives cash discounts from media owners for media bills paid on or before the due dates thereof, any such discount shall be passed along to the Lottery.
- 4.3.4 Travel/Merchandise Bonuses. In the event that the Contractor receives travel and/or merchandise offers as an incentive predicated on the expenditures of media dollars in any market on behalf of the Lottery, the Contractor shall disclose such opportunities to the Lottery, and if authorized to expend such media dollars, such travel and/or merchandise shall become the property of the Lottery. Transfer of Travel/Merchandise Bonuses may be accomplished by direct transfer of the offers to the Lottery, or if direct transfer is not possible, by reduction of the Base Contractor Fee or other costs and expenses in an amount equal to the value of the offers.
- 4.3.5 Contractor will be required to disclose to the Lottery all in-kind or financial benefits received by Contractor in transactions with third-party vendors. Such benefits must be disclosed to the Lottery within thirty (30) days from receipt of the benefit or on the next monthly invoice from the Contractor, whichever is sooner.

5.0 Contract Changes

- 5.1 **Contract Amendments** The Contract is issued for State under the authority of Procurement Officer. Only a Contract Amendment can modify the Contract, and then only if it does not change the Contract's general scope. Purported changes to the Contract by a person not expressly authorized by Procurement Officer or made unilaterally by Contractor will be void and without effect; Contractor will not be entitled to any claim made under the Contract based on any such purported changes.
- 5.2 **Assignment and Delegation**
 - 5.2.1 **IN WHOLE**. Contractor shall not assign in whole its rights or delegate in whole its duties under the Contract without Procurement Officer's prior written consent, which consent Procurement Officer may withhold at his or her discretion. If Contractor's proposed assignment or delegation stems from a split, sale, acquisition, or other non-merger change in control, then no such consent will be given in any event without the assignee or delegate giving State satisfactory and equivalent evidence or assurance of its financial soundness, competency, capacity, and qualification to perform as that which Contractor possessed when State first awarded it the Contract.
 - 5.2.2 **IN PART**. Subject to paragraph 3.10 [Subcontracts] with respect to subcontracting, Contractor may assign particular rights or delegate particular duties under the Contract, but shall obtain Procurement Officer's written consent before doing so. Procurement Officer shall not unreasonably withhold consent so long as the proposed assignment or delegation does not attempt to modify the Contract in any way or to alter or impair State's rights or remedies under the Contract or laws.

6.0 Risk and Liability

- 6.1 **Risk of Loss** Contractor shall bear all risk of loss to Materials while in pre-production, production, storage, transit, staging, assembly, installation, testing, and commissioning, if and as those duties are



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within the scope of the Work, until they have been accepted as conforming by State in the particular location and situation specified in the Order, or as specified generally elsewhere in the Contract if the Order does not provide particulars, provided that, risk of loss for nonconforming Materials will remain with Contractor notwithstanding acceptance to the extent the loss stems from the nonconformance.

6.2 Contractor Insurance

Contractor and subcontractors shall procure and maintain, until all of their obligations have been discharged, including any warranty periods under this Contract, insurance against claims for injury to persons or damage to property arising from, or in connection with, the performance of the work hereunder by the Contractor, its agents, representatives, employees or subcontractors

The Insurance Requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The State of Arizona in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that arise out of the performance of the work under this Contract by the Contractor, its agents, representatives, employees or subcontractors, and the Contractor is free to purchase additional insurance.

MINIMUM SCOPE AND LIMITS OF INSURANCE: Contractor shall provide coverage with limits of liability not less than those stated below.

1. Commercial General Liability (CGL) – Occurrence Form

Policy shall include bodily injury, property damage, personal injury and broad form contractual liability coverage

| | |
|---|-------------|
| General Aggregate | \$2,000,000 |
| Products – Completed Operations Aggregate | \$1,000,000 |
| Personal and Advertising Injury | \$1,000,000 |
| Damage to Rented Premises | \$ 50,000 |
| Each Occurrence | \$1,000,000 |

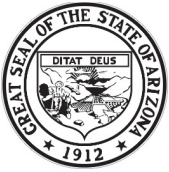
- a. The policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor.
- b. Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

2. Business Automobile Liability

Bodily Injury and Property Damage for any owned, hired, and/or non-owned automobiles used in the performance of this Contract.

| | |
|-----------------------------|-------------|
| Combined Single Limit (CSL) | \$1,000,000 |
|-----------------------------|-------------|

- a. Policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by, or on behalf of, the Contractor involving automobiles owned, hired and/or non-owned by the Contractor.
- b. Policy shall contain a waiver of subrogation endorsement as required by this written agreement in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and



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employees for losses arising from work performed by or on behalf of the Contractor.

3. Worker's Compensation and Employers' Liability

| | |
|----------------------------|-------------|
| Workers' Compensation..... | Statutory |
| Each Accident | \$1,000,000 |
| Disease – Each Employee | \$1,000,000 |
| Disease – Policy Limit | \$1,000,000 |

- a. Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.
- b. This requirement shall not apply to each Contractor or subcontractor that is exempt under A.R.S. § 23-901, and when such Contractor or subcontractor executes the appropriate waiver form (Sole Proprietor or Independent Contractor).

4. Professional Liability (Errors and Omissions Liability)

| | |
|------------------|--------------|
| Each Claim | \$ 2,000,000 |
| Annual Aggregate | \$ 2,000,000 |

- b. In the event that the Professional Liability insurance required by this Contract is written on a claims-made basis, the Contractor warrants that any retroactive date under the Policy shall precede the effective date of this Contract; and, either continuous coverage will be maintained or an extended discovery period will be exercised, for a period of two (2) years beginning at the time work under this Contract is completed.
- c. The policy shall cover professional misconduct or negligent acts for those positions defined in the Scope of Work of this contract.

5. Technology Errors & Omissions (Tech E&O) Insurance

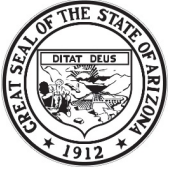
| | |
|------------------|--------------|
| Each Claim | \$ 2,000,000 |
| Annual Aggregate | \$ 2,000,000 |

- a. Such insurance shall cover any, and all errors, omissions, or negligent acts in the delivery of products, services, and/or licensed programs under this contract.
- b. Coverage shall include copyright infringement, infringement of trade dress, domain name, title or slogan.
- c. In the event that the Tech E&O insurance required by this Contract is written on a claims-made basis, Contractor warrants that any retroactive date under the policy shall precede the effective date of this Contract and, either continuous coverage will be maintained or an extended discovery period will be exercised for a period of two (2) years, beginning at the time work under this Contract is completed.

6. Media Liability Coverage

| | |
|------------------|--------------|
| Each Claim | \$ 2,000,000 |
| Annual Aggregate | \$ 2,000,000 |

- d. Such insurance shall cover any and all errors and omissions or negligent acts in the production of content, including but not limited to plagiarism, defamation, libel, slander, false advertising, invasion of privacy, and infringement of copyright, title, slogan, trademark, service mark and trade dress.
- e. In the event that the Media Liability insurance required by this Contract is written on a claims-made basis, Contractor warrants that any retroactive date under the policy shall precede the effective date of this Contract and, either



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continuous coverage will be maintained, or an extended discovery period will be exercised for a period of two (2) years beginning at the time work under this Contract is completed.

ADDITIONAL INSURANCE REQUIREMENTS: The policies shall include, or be endorsed to include, the following provisions:

1. The Contractor's policies, as applicable, shall stipulate that the insurance afforded the Contractor shall be primary and that any insurance carried by the Department, its agents, officials, employees or the State of Arizona shall be excess and not contributory insurance, as provided by A.R.S. § 41-621 (E).
2. Insurance provided by the Contractor shall not limit the Contractor's liability assumed under the indemnification provisions of this Contract.

NOTICE OF CANCELLATION: Applicable to all insurance policies required within the Insurance Requirements of this Contract, Contractor's insurance shall not be permitted to expire, be suspended, be canceled, or be materially changed for any reason without thirty (30) days prior written notice to the State of Arizona. Within two (2) business days of receipt, Contractor must provide notice to the State of Arizona if they receive notice of a policy that has been or will be suspended, canceled, materially changed for any reason, has expired, or will be expiring. Such notice shall be sent directly to the Arizona Lottery and shall be mailed, emailed, or hand delivered to (Arizona Lottery Procurement, 4740 E University Dr., Phoenix, AZ 85034).

ACCEPTABILITY OF INSURERS: Contractor's insurance shall be placed with companies licensed in the State of Arizona or hold approved non-admitted status on the Arizona Department of Insurance List of Qualified Unauthorized Insurers. Insurers shall have an "A.M. Best" rating of not less than A- VII. The State of Arizona in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

VERIFICATION OF COVERAGE: Contractor shall furnish the State of Arizona with certificates of insurance (valid ACORD form or equivalent approved by the State of Arizona) evidencing that Contractor has the insurance as required by this Contract. An authorized representative of the insurer shall sign the certificates.

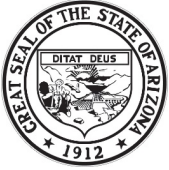
All such certificates of insurance and policy endorsements must be received by the State before work commences. The State's receipt of any certificates of insurance or policy endorsements that do not comply with this written agreement shall not waive or otherwise affect the requirements of this agreement.

Each insurance policy required by this Contract must be in effect at, or prior to, commencement of work under this Contract. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.

All certificates required by this Contract shall be sent directly to the Arizona Lottery. The State of Arizona project/contract number and project description shall be noted on the certificate of insurance. The State of Arizona reserves the right to require complete copies of all insurance policies required by this Contract at any time.

SUBCONTRACTORS: Contractor's certificate(s) shall include all subcontractors as insureds under its policies or Contractor shall be responsible for ensuring and/or verifying that all subcontractors have valid and collectable insurance as evidenced by the certificates of insurance and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum Insurance Requirements identified above. The Department reserves the right to require, at any time throughout the life of this contract, proof from the Contractor that its subcontractors have the required coverage.

APPROVAL and MODIFICATIONS: The Contracting Agency, in consultation with State Risk, reserves the right to review or make modifications to the insurance limits, required coverages, or endorsements throughout the life of this contract, as deemed necessary. Such action will not require a formal Contract amendment but may be made by administrative action.



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EXCEPTIONS: In the event the Contractor or subcontractor(s) is/are a public entity, then the Insurance Requirements shall not apply. Such public entity shall provide a certificate of self-insurance. If the Contractor or subcontractor(s) is/are a State of Arizona agency, board, commission, or university, none of the above shall apply.

6.3 Indemnification

To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless the State of Arizona, and its departments, agencies, boards, commissions, universities, and any jurisdiction or agency issuing permits for any work included in the project, and their respective directors, officers, officials, agents and employees (hereinafter referred to as "Indemnitee") from and against any and all claims, actions, liabilities, costs, losses, or expenses, (including reasonable attorney's fees), (hereinafter collectively referred to as "Claims") arising out of actual or alleged bodily injury or personal injury of any person (including death) or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Contractor or any of Contractor's directors, officers, agents, employees, volunteers or subcontractors. This indemnity includes any claim or amount arising or recovered under the Workers' Compensation Law or arising out of the failure of Contractor to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by Contractor from and against any and all Claims. It is agreed that Contractor will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. This indemnification will survive the termination of the above listed contract with the Contractor.

This indemnity shall not apply if the contractor or sub-contractor(s) is/are an agency, board, commission or university of the State of Arizona.

6.4 Patent and Copyright Indemnification

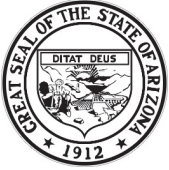
CONTRACTOR/VENDOR (NOT PUBLIC AGENCY). With respect to Materials or Services provided or proposed by a Contractor Indemnitor for performance under the Contract, Contractor shall indemnify, defend and hold harmless State Indemnitees against any third-party claims for liability, costs, and expenses, including, but not limited to reasonable attorneys' fees, for infringement or violation of any patent, trademark, copyright, or trade secret by the Materials and the Services. With respect to the defense and payment of claims under this subparagraph:

1. State shall provide reasonable and timely notification to Contractor of any claim for which Contractor may be liable under this paragraph;
2. Contractor, with reasonable consultation from State, shall have control of the defense of any action on an indemnified claim including all negotiations for its settlement or compromise;
3. State may elect to participate in such action at its own expense; and
4. State may approve or disapprove any settlement or compromise, provided that, (i) State shall not unreasonably withhold or delay such approval or disapproval and (ii) State shall cooperate in the defense and in any related settlement negotiations.

If Contractor is a public agency, this paragraph 6.4 does not apply.

6.5 Force Majeure

6.5.1 DEFINITION. For this paragraph, "force majeure" means an occurrence that is (a) beyond the control of the affected party, (b) occurred without the party's fault or negligence, and (c) something the party was unable to prevent by exercising reasonable diligence. Without limiting the generality of the foregoing, force majeure expressly includes acts of God, acts of the public enemy, war, riots, strikes, mobilization, labor disputes, civil disorders, fire, flood, lockouts, injunctions-intervention-acts, failures or refusals to act by government authorities, and, subject to paragraph 7.66 [*Performance in Public Health Emergency*], declared public health emergencies. Force majeure expressly does not include late delivery caused by congestion at a manufacturer's plant or elsewhere, an oversold condition of the market, late performance by a Subcontractor unless the delay arises out of an occurrence of force majeure, or inability of either Contractor or any Subcontractor to acquire or maintain any required insurance, bonds, licenses, or permits.



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- 6.5.2 RELIEF FROM PERFORMANCE. Except for payment of sums due, the parties are not liable to each other if an occurrence of force majeure prevents its performance under the Contract. If either party is delayed at any time in the progress of their respective performance under the Contract by an occurrence of force majeure, the delayed party shall notify the other no later than the following working day after the occurrence, or as soon as it could reasonably have been expected to recognize that the occurrence had effect in cases where the effects were not readily apparent. In any event, the notice must make specific reference to this paragraph specifying the causes of the delay in the notice and, if the effects of the occurrence are on-going, provide an initial notification and thereafter the delayed party shall provide regular updates until such time as the effects are fully known. To the extent it is able, the delayed party shall cause the delay to cease promptly and notify the other party when it has done so. The parties shall extend the time of completion by Contract Amendment for a period equal to the time that the results or effects of the delay prevented the delayed party from performing.
- 6.5.3 EXCUSABLE DELAY IS NOT DEFAULT. Failure in performance by either party will not constitute default hereunder or give rise to any claim for damages or loss of anticipated profits if and to the extent that such failure was or is being caused by an occurrence of force majeure.
- 6.5.4 DEFAULT DIMINISHES RELIEF. Entitlement to relief from the effects of an occurrence of force majeure is diminished to the extent that the delay did or will result from the affected party's default unrelated to the occurrence, in which case and to that extent the other party's normal remedies and the affected party's obligations would apply undiminished.

**6.6 Third Party
Antitrust
Violations**

Contractor assigns to State any claim for overcharges resulting from antitrust violations to the extent that those violations concern materials or services supplied by third parties to Contractor toward fulfillment of the Contract.

6.7 Performance Bond

Within ten (10) days of Contract award, the Contractor must provide a performance bond in an amount not less than five million dollars (\$5M) for the initial transition period of performance and conditioned on the Contractor's faithful performance. Once a successful transition has taken place and the Contractor has assumed all operational responsibilities under the Contract, the Lottery will determine, in its sole discretion, whether to continue performance bond requirements for the remainder of the Contract.

7.0 Warranties

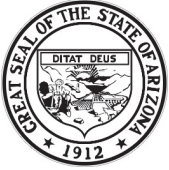
**7.1 Conformity to
Requirements**

Contractor warrants that, unless expressly provided otherwise elsewhere in the Contract, the Materials and Services will for 1 (one) year after acceptance and in each instance: (1) conform to the requirements of the Contract, which by way of reminder include without limitation all descriptions, specifications, and drawings identified in the Scope of Work and any Contractor affirmations included as part of the Contract; (2) be free from defects of material and workmanship; (3) conform to or perform in a manner consistent with current industry standards; and (4) be fit for the intended purpose or use described in the Contract. Mere delivery or performance does not substitute for express acceptance by State. Where inspection, testing, or other acceptance assessment of Materials or Services cannot be done until after installation, the forgoing warranty will not begin until State's acceptance.

**7.2 Contractor
Personnel**

Contractor warrants that its personnel will perform their duties under the Contract in a professional manner, applying the requisite skills and knowledge, consistent with industry standards, and in accordance with the requirements of the Contract. Contractor further warrants that its key personnel will maintain any certifications relevant to their work, and Contractor shall provide individual evidence of certification to State's authorized representatives upon request.

Contractor shall provide an adequate number of appropriately qualified and authorized individuals dedicated to the successful performance of the Contract. Contractor shall at a minimum, designate those specific Key Personnel required by the State along with all other Key



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Personnel who will support Contractor's performance of the services described herein. Contractor shall maintain a list of all such Key Personnel and their respective information and keep this list and the State updated in this regard throughout the Term of the Contract. Should the actions or inactions of Contractor's Key Personnel delay, compromise, aggravate or otherwise prove to be disharmonious to the Contractor's successful performance of the required Services, at the State's reasonable request Contractor shall replace or reassign such Key Personnel. Any replacement Key Personnel shall be of comparable knowledge, skills and abilities as the previous Key Personnel. All replacement Key Personnel shall be presented to the State for review and approval.

7.3 Intellectual Property

Contractor warrants that the Materials and Services do not and will not infringe or violate any patent, trademark, copyright, trade secret, or other intellectual property rights or laws, except only to the extent the Specifications do not permit use of any other product and Contractor is not and cannot reasonably be expected to be aware of the infringement or violation.

7.4 Licenses and Permits

Contractor warrants that it will maintain all licenses required under paragraph 3.7 [*Contractor Licenses*] and all required permits valid and in force.

7.5 Operational Continuity

Contractor warrants that it will perform without relief notwithstanding being sold or acquired; no such event will operate to mitigate or alter any of Contractor's duties hereunder absent a consented delegation under paragraph 5.3 [*Assignment and Delegation*] that expressly recognizes the event.

7.6 Performance in Public Health Emergency

Contractor warrants that it will:

1. have in effect promptly after commencement a plan for continuing performance in the event of a declared public health emergency that addresses, at a minimum: (a) identification of response personnel by name; (b) key succession and performance responses in the event of sudden and significant decrease in workforce; and (c) alternative avenues to keep sufficient product on hand or in the supply chain; and
2. provide a copy of its current plan to State within 3 (three) business days after State's written request. If Contractor claims relief under paragraph 6.5 [*Force Majeure*] for an occurrence of force majeure that is a declared public health emergency, then that relief will be conditioned on Contractor having first implemented its plan and exhausted all reasonable opportunity for that plan implementation to overcome the effects of that occurrence, or mitigate those effects to the extent that overcoming entirely is not practicable.

For clarification of intent, being obliged to implement the plan is not of itself an occurrence of force majeure, and Contractor will not be entitled to any additional compensation or extension of time by virtue of having to implement it. Furthermore, failure to have or implement an appropriate plan will be a material breach of contract.

7.7 Lobbying

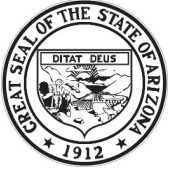
7.7.1 PROHIBITION.

(a) Contractor warrants that:

- i. it will not engage in lobbying activities, as defined in 40 CFR part 34 and A.R.S. § 41-1231, et seq., using monies awarded under the Contract, provided that, the foregoing does not intend to constrain Contractor's use of its own monies or property, including without limitation any net proceeds duly realized under the Contract or any value thereafter derived from those proceeds; and
- ii. upon award of the Contract, it will disclose all lobbying activities to State to the extent they are an actual or potential conflict of interest or where such activities could create an appearance of impropriety.

(b) Contractor shall implement and maintain adequate controls to assure compliance with (a) above.

(c) Contractor shall obtain an equivalent warranty from all Subcontractors and shall include an equivalent no-lobbying provision in all Subcontracts.



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7.7.2 EXCEPTION. This paragraph does not apply to the extent that the Services are defined in the Contract as being lobbying for State's benefit or on State's behalf.

7.8 Survival of Warranties

All representations and warrants made by Contractor under the Contract will survive the expiration or earlier termination of the Contract.

8.0 State's Contractual Remedies

8.1 Liquidated Damages

The parties to this Contract understand and agree that the equipment and services as defined in the Scope of Work must be extremely reliable. Any Contract delay or breach of Contract will disrupt the Lottery's operations and will lead to damages.

The parties agree that proving the actual loss of revenue will be extremely impractical and difficult, and the goods and services under this Contract are not readily available on the open market. The parties will use established liquidated damages formula to resolve issues that arise under certain specified damages categories and that the liquidated damages established in this Section are fair and reasonable.

All recommendations for the assessment of liquidated damages are subject to review, modification, and approval of the Lottery.

Liquidated damages shall be assessed as a monetary damage assessment (which may be paid through the performance bond if not collected directly from the Contractor). If the parties cannot mutually agree on the imposition and amount of the assessment, the Lottery will pursue the assessment by following the procedures in A.A.C. §R2-7-B905 for making a claim against the Contractor.

Liquidated damages shall not reduce the Lottery's entitlement to Marketing Services (shall not be "financed" by Lottery monies), and shall be paid by the Contractor.

The Lottery reserves the right, in its sole discretion:

To determine the existence of any factors relevant to the assessment of liquidated damages (such as the fact or length of downtime or degraded performance);

To waive any liquidated damages as determined by the Lottery, but the waiver of any liquidated damages due the Lottery shall constitute a waiver only as to such liquidated damages and not a waiver of any future liquidated damages;

To assess liquidated damages under each section applicable to any given incident, and to calculate any liquidated damages assessment based on the cumulative effect of two or more damages categories.

The assessment of liquidated damages will be in addition to, and not in lieu of, such other remedies as may be available to the Lottery.

The Contractor shall not be required to pay liquidated damages for delays due to matters as enumerated in the Section entitled "Force Majeure" or for delays due to changes which are requested in writing by the Lottery or for time delays specifically caused by or approved by the Lottery.

In all of the liquidated damages sections, there shall be no proration of damages for partial periods.

8.2 Notification of Liquidated Damages

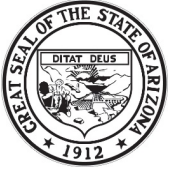
Upon determination that liquidated damages are to be assessed, the Lottery shall notify the Contractor of the assessment in writing.

8.3 Severability of Liquidated Damages Clauses

If any clause of this provision is determined to be unenforceable, the remainder of the provision will remain in effect.

8.4 Assessment of Liquidated Damages – Categories and Standards

Liquidated damages may be assessed as described in the following categories and in the amounts listed in the succeeding table that correspond to the following categories:



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Failure to Commence Operations. The Contractor fails to have staffing, or strategic plans in place as provided in the written timeline as agreed to by both the Lottery and the Contractor, such delay being the fault of the Contractor.

Failure to provide timely pre-initiative analysis. The Contractor fails to provide pre-initiative analysis of proposed marketing or promotional campaigns.

Failure to provide post-initiative analysis. The Contractor fails to provide post-initiative analysis of completed marketing or promotional campaigns.

Failure to Clear Usage of Licensed Properties or Materials. The Contractor fails to procure permission to use licensed properties of materials prior to a marketing or promotional campaign using such materials.

Failure to Research and Obtain Clearance for Design and Use of Arizona Lottery Marks. The Contractor fails to adequately research the ability of the Lottery to use marks prior to implementation of new word or design marks.

Failure to produce PR statements within the time periods required.

Production of erroneous advertising materials. Failure to produce and/or deliver sales-related materials within the time frames set for game launches.

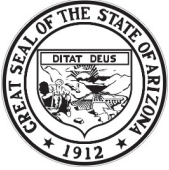
Failure to notify the Lottery of a change of personnel within two (2) business days of the change, as required by section 6.1 of the Scope of Work.

Failure to produce documents as requested for the Lottery to perform an audit under section 3.3 of the Uniform Terms and Conditions within ten (10) days of the request.

Failure to disclose in-kind or financial benefits received by the Contractor from a third-party vendor.

8.5 Damages Assessment Formulae and Maximum Damages

| Damages Category | Damages Assessment Formulae & Maximum Damages |
|--|--|
| Failure to Commence Operations | \$1,000.00 per day. |
| Failure to provide timely pre-initiative analysis | \$50 per day, beginning from the implementation date set by the Lottery for that request |
| Failure to provide post-initiative analysis | \$50 per day , beginning from the completion date set by the Lottery for that request |
| Failure to Clear Usage of Licensed Properties or Materials | \$10,000 per occurrence. |
| Failure to Research and Obtain Clearance for Design and Use of Arizona Lottery Marks | \$500.00 per day that launch is delayed, or \$1000 per day that the uncleared mark is in circulation in the marketplace. |
| Failure to produce PR statements within the time periods required | \$1,000.00 per occurrence |
| Production of erroneous advertising materials | \$100.00 per day that the material is in circulation per each affected retailer. |
| Failure to notify the Lottery of a change of personnel. | \$100.00 per day from the final due date of the notice of change to the date of actual notice of change. |
| Failure to produce documents. | \$500.00 per day from the final due date of the request for documents to the date of actual delivery of the documents. |
| Failure to disclose in-kind or financial benefits. | Equal to the value of the in-kind or financial benefit, as determined by the Lottery. |



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8.6 Payment of Liquidated Damages

The Contractor shall pay the balance to the Lottery within thirty (30) calendar days of written demand for payment from the Lottery.

If the amount due is not paid in full, the balance may be deducted from subsequent payments owed to the Contractor. At the Lottery's sole option, the Lottery may obtain payment of assessed liquidated damages through one or more claims upon the Performance Bond or by acceptance of materials or services of an amount equal in value to the assessed liquidated damages.

Definition of Day. "Day," for purposes of assessing liquidated damages, means a consecutive twenty-four (24) hour calendar day, or any fraction of that period.

9.0 Contract Termination

No modifications to uniform terms and conditions section

10.0 Contract Claims

10.1 Claim Resolution

Notwithstanding any law to the contrary, all contract claims or controversies under the Contract are to be resolved according to Arizona Revised Statutes Title 41, Chapter 23, Article 9, and rules adopted thereunder, including judicial review under A.R.S. § 12-1518.

10.2 Mandatory Arbitration

In compliance with A.R.S. § 12-1518, the parties agree to comply in a judicial review proceeding with any applicable, mandatory arbitration requirements.

11.0 General Provisions for Materials

11.1 Applicability

Article 11 applies to the extent the Work is or includes Materials.

11.2 Off-Contract Materials

Contractor shall ensure that the design and/or procedures for the Materials ordering method prevents Orders for off-contract items or excluded items. Notwithstanding that State might have its own internal administrative rules regarding off-contract or excluded item ordering, and endeavors to prevent such orders from occurring, Contractor is responsible for not accepting any such Orders, State may, at its discretion, return any such items under subparagraph 11.17 or cancel any such Order under subparagraph 11.18, in either case being without obligation and at Contractor's expense. As used above, "off-contract item" refers to any product not included in the scope of the Contract and for which no price or compensation has been established contractually, and "excluded item" refers to any product expressly stated in the Contract as being excluded from the Contract.

11.3 Compensation for Late Deliveries

Contractor shall have clear, published policies in place regarding late delivery, order cancellation, discounts, or rebates given to compensate for late deliveries, etc., and make them readily available to those Eligible Agencies, and Co-Op Buyers if applicable, that are likely to need them

11.4 Indicate Shipping Costs on Order

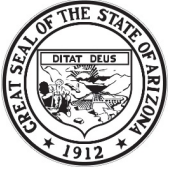
Contractor shall identify and provide the required substantiating documentation for the amount it intends to add for shipping in the Order acknowledgment if shipping is additional to the contracted price or rate for an item; otherwise, Contractor shall indicate that shipping is included in the Order price (in other words, every Order must indicate clearly whether or not shipping is included in the Order price, and if not included, how much is to be added and why that amount is the correct or appropriate one)

11.5 Current Products

Contractor shall keep all products being offered under the Contract: (a) in current and ongoing production; (b) in its advertised product lines; (c) as models or types that are actively functioning in other paying customer environments; and (d) in conformance to the requirements of the Contract

11.6 Maintain Comprehensive Selection

Contractor shall provide at all times the comprehensive selection of products for which a price is established in the Commercial Document for ordering by Eligible Agencies, and Co-Op Buyers if applicable.



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11.7 Additional Products

State, at its discretion, may modify the scope of the Contract by Contract Amendment to include additional products or product categories so long as they are within the general scope of the ones originally covered by the Contract. Once the Contract Amendment has been fully executed, Contractor shall then update all applicable catalogs and price lists and make them available to all affected entities at no additional cost. Either party may make the request to add products to the Contract; regardless of who makes the request, the parties shall negotiate in good faith a fair price for any additional products, but State may elect not to add some or all of the products in question if no agreement is reached on pricing in a timely manner. Contractor's request or proposal in response to State's request must include: (a) documentation demonstrating that the additional products meet or exceed the specifications for the original products while remaining in the same product groups as the original ones; and (b) documentation demonstrating that the proposed price for the additional products is both fair and reasonable and at the same level of discount relative to market price as were the original ones. Demonstration of (b) typically requires showing how prices at which sales are currently or were last made to a significant number of buyers compare to the prices or discounts (as applicable) being proposed for the additional products

11.8 Discounted Products

If a product or groups of products covered by the Contract are discontinued by the manufacturer, Contractor shall notify State within 5 (five) business days after receiving the manufacturer's notification. State, at its discretion, will either allow Contractor to provide substitutes for the discontinued products or delete the products from the scope of the Contract, both of which will be accomplished by Contract Amendment. Contractor shall then update all applicable catalogs and price lists and make them available to all affected entities at no additional cost. The parties shall negotiate in good faith a fair price for any substitute product, but State may elect to delete the products from the scope of the Contract if no agreement is reached on substitute pricing in a timely manner. When notifying State of the discontinuance, Contractor shall provide: (a) manufacturer's announcement or documentation stating that the products have been discontinued, with identification by model/part number; (b) documentation demonstrating that the substitute products meet or exceed the specifications for the discontinued products while remaining in the same product groups as were the discontinued ones; and (c) documentation demonstrating that the proposed price for the substitute products is both fair and reasonable and at the same level of discount relative to market price as were the discontinued ones.

11.9 Forced Substitutes

11.10 Recalls

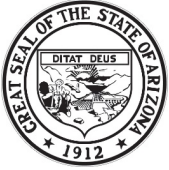
Forced substitutions will not be permitted; Contractor shall obtain State's prior written consent before making any discretionary substitution for any product covered by the Contract.

In the event of a recall notice, technical service bulletin, or other important notification affecting a product offered under the Contract (collectively, "recalls" hereinafter), Contractor shall send timely notice to State for each applicable Order referencing the affected Order and product. Notwithstanding whatever protection Contractor might have under A.R.S. § 12-684 with respect to a manufacturer, Contractor shall handle recalls entirely and without obligation on State's part, other than to permit removal of installed products, retrieval of stored products, etc., as necessary to implement the recall

11.11 Delivery

11.11.1 PRICING. Unless stated otherwise in the Commercial Document, all Materials prices set forth therein are FCA (seller's dock) Incoterms®2010, with "seller's dock" meaning the last place of manufacturing, assembly, integration, final packing, or warehousing before departure to designated point of delivery to State. For reference, the foregoing is to be construed as equivalent to "F.o.b. Origin, Contractor's Facility" under [FAR 52.247-30](#)

11.11.2 LIABILITY. Unless stated otherwise in the Commercial Document or an Order, Contractor's liability for all Materials is DDP (State-designated receiving point per Order) Incoterms®2010, but with unloading at destination included. For reference, the foregoing is to be construed as equivalent to "F.o.b. Destination, Within Consignee's Premises" under [FAR 52.247-35](#).



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11.12 Delivery Time

11.11.3 PAYMENT. Unless stated otherwise in the Commercial Document or an Order, State shall reimburse Contractor the costs of the difference between DDP (State-designated receiving point per Order) and FCA (seller's dock) with no mark-up, which Contractor shall itemize and invoice separately

11.13 Delivery Locations

Unless stated otherwise in the Commercial Document generally or in the applicable Order particularly, Contractor shall make delivery within 2 (two) business days after receiving each Order

Contractor shall offer deliveries to every location served under the scope of the Contract, specifically

1. if the Contract is for a single State agency in a single area, then Contractor shall deliver to any agency location in that area;
2. if the Contract is for a single State agency in all its locations, then Contractor shall deliver to any of that agency's location in Arizona;
3. if the Contract is for statewide use but excludes certain areas, then Contractor shall deliver to any Eligible Agency or Co-Op Buyer location that is not in the excluded areas; and
4. if the Contract is for unrestricted statewide use, then:
 - i. Contractor shall deliver to any Eligible Agency or Co-Op Buyer anywhere in Arizona;
 - b) If a prospective Co-Op Buyer outside Arizona wishes to order against the Contract, Contractor agrees to negotiate in good faith any fair and reasonable price or lead time adjustments necessary to serve that location if practicable to do so within the scope of its normal business; and,
 - c) if the Commercial Document indicates defined delivery areas and prices, those always apply unless the Order expressly states otherwise and Contractor accepts it.

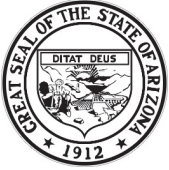
11.14 Conditions at Delivery Location

Contractor shall verify receiving hours and conditions (i.e. height/weight restrictions, access control, etc.) with the relevant purchaser for the receiving site before scheduling or making a delivery. State will neither allow extra charges for wait time, comebacks, or the like nor excuse late delivery if Contractor has failed to make the verification or comply with the applicable conditions. Contractor shall make each delivery to the specific location indicated in the Order, which Contractor acknowledges might be inside an industrial building, institutional building, low-rise office building, or high-rise office building instead of a normal receiving dock. Contractor might be required to make deliveries to locations inside a secured perimeter at certain institutional facilities such as prisons where prior clearances are required for each delivery and driver individually. Contractor shall contact each such facility directly to confirm its most-current security clearance procedures, allowable hours for deliveries, visitor dress code, and other applicable rules. State will neither allow extra charges for wait time, comebacks, or the like nor excuse late delivery if Contractor has failed to make the confirmation or comply with the applicable conditions

11.15 Materials

11.16 Acceptance

State has the right to make acceptance of Materials subject to a complete inspection on delivery and installation, if installation is Contractor's responsibility. State may apply as acceptance criteria conformity to the Contract, workmanship and quality, correctness of constituent materials, and any other matter for which the Contract or applicable laws state a requirement, whether stated directly or by reference to another document, standard, reference specification, etc. Contractor shall remove any rejected Materials from the delivery location, or from any immediate environs to which it might have been reasonably necessary to move it, carry it off the delivery premises, and subsequently deliver an equal number or quantity of conforming items. State will not owe Contractor any payment for rejected Materials, and State may, at its discretion, withhold or make partial payment for any rejected Materials that have been



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returned to Contractor in those instances where State has agreed to permit repair instead of demanding replacement.

Contractor shall, at no additional cost and without entitlement to extension of any delivery deadline or specified time for performance, remove or exchange and replace any defective or non-conforming delivered or installed Materials

11.17 Correcting Defects

1. Contractor shall be solely responsible for the cost of any associated cutting and patching, temporary protection measures, packing and crating, hoisting and loading, transportation, unpacking, inspection, repacking, reshipping, and reinstallation if installation is within the scope of the Contract.
2. If Contractor fails to do so in a timely manner, State will be entitled to exercise its remedies under paragraph 8.5 [*Right of Offset*] of the Uniform Terms and Conditions.
3. Whether State will permit Contractor to repair in place or demands that Contractor remove and replace is at State's discretion in each instance, provided that, State shall not apply that discretion punitively if repair in place is practicable and doing so would not create safety hazards, put property at risk, unreasonably interfere with operations, create public nuisance, or give rise to any other reasonable concern on State's part.

11.18 Returns

State may, at its discretion, return for full credit and with no restocking charges any delivered Materials unused in the original packaging, including any instruction manuals or other incidental item that accompanied the original shipment, within thirty (30) days after receipt. If State elects to return delivered Materials, then State shall pay all freight, delivery, and transit insurance costs to return the products to the place from which Contractor shipped them, provided that, if State returns delivered Materials because they are defective or non-conforming or for any other reason having to do with Contractor fault or error, then State will not be responsible for paying freight, delivery, or transit insurance costs to return the products and may, at its discretion, either have those billed directly to Contractor or offset them under paragraph 8.5 [*Right of Offset*] of the Uniform Terms and Conditions.

Order Cancellations

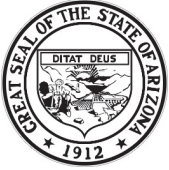
State may cancel Orders within a reasonable period after issuance and at its discretion. The same method as that used for ordering will be used for cancellation. If State cancels an Order, then State shall:

1. pay Contractor for any portion of the Materials and Services from that Order that have been properly delivered or performed as of the cancellation effective date plus one (1) additional business day
2. reimburse Contractor for:
 - (a) its actual, documented costs incurred in fulfilling the Order up to the cancellation effective date plus one (1) additional business day;
 - (b) the cost of any obligations it incurred in fulfilling the Order up to the cancellation effective date plus one (1) additional business day that demonstrably cannot be canceled, or that have pre-established cancellation penalties specified in the relevant Subcontracts, to the extent the penalties are reasonable and customary for the work in question; and,
3. Contractor shall not charge or be entitled to charge State for any new costs it incurs after receiving the cancellation notice.

By way of reminder, State is not liable for any products that were produced, shipped, or delivered or any services that were performed before Contractor had acknowledged the corresponding Order

11.19 Product Safety

Materials as-shipped must comply with applicable safety regulations and standards. Unless expressly stated otherwise in the Scope of Work, State is not responsible for making any Materials safe or compliant following acceptance and is relying exclusively on Contractor to deliver only products that are already safe and compliant



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11.20 Hazardous Materials

Contractor shall timely provide State with any “Safety Data Sheets” (SDS) and any other hazard communication documentation required under the US Department of Labor’s Occupational Safety and Health Administration (OSHA) “Hazard Communication Standard” (often referred to as the “HazCom 2012 Final Rule”) that is reasonably necessary for State to comply with regulations when it or its other contractors install, handle, operate, repair, maintain or remove any Materials. Note that, in the past, those documents might have been referred to as “Material Safety Data Sheets” or “Product Safety Data Sheets”, but State (and this Contract) use only the more up-to-date “SDS” reference. Contractor shall ensure that all its relevant personnel understand the nature of and hazards associated with, to the extent it they are Contractor’s responsibility under the Contract, the design, shipping, handling, delivery, installation, repair and maintenance of any portion of the Work that is, contains or will become upon use a hazardous material, with “hazardous material” being any material or substance that is:
(1) identified now or in the future as being hazardous, toxic or dangerous under applicable laws; or
(2) subject to statutory or regulatory requirement governing special handling, disposal or cleanup

12.0 General Provisions for Services

12.1 Applicability

Article 12 applies to the extent the Work is or includes Services.

12.2 Comprehensive Services Offering

Contractor shall provide the comprehensive range of services for which a price is established in the Pricing Document for ordering by Eligible Agencies, and Co-Op Buyers if co-op buying applies.

12.3 Additional Services

State at its discretion may modify the scope of the Contract by Contract Amendment to include additional services or service categories that are within the general scope of the ones originally covered by the Contract if it determines that doing so is in its best interest. Once the Contract Amendment is fully executed, Contractor shall then update all applicable price lists and make them available to all affected entities at no additional cost. Either party may make the request to add services to the Contract; regardless of who makes the request, the parties shall negotiate in good faith a fair price for any additional services, but State may elect not to add some or all of the services in question if no agreement is reached on pricing in a timely manner. Contractor’s request or proposal in response to State’s request must include documentation demonstrating that the proposed price for the additional services is both fair and reasonable and comparable to the original ones.

12.4 Off-Contract Services

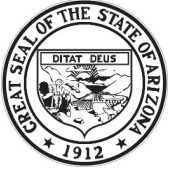
Contractor shall ensure that the design and/or procedures for the Services ordering method prevents Orders for off-contract or excluded services. Notwithstanding that State might have its own internal administrative rules regarding off contract or excluded service ordering, and endeavors to prevent such orders from occurring, Contractor is responsible for not accepting any such Orders. State may, at its discretion, cancel any such Order without obligation. As used above, “off-contract service” refers to any service not included in the scope of the Contract and for which no price or compensation has been established contractually, and “excluded service” refers to any service expressly excluded from the scope of the Contract.

12.5 Removal of Personnel

Notwithstanding that Contractor is in every circumstance responsible for hiring, assigning, directing, managing, training, disciplining, and rewarding its personnel, State may at its discretion and without the obligation to demonstrate cause instruct Contractor to remove any of its personnel from State’s facilities or from further assignment under the Contract. In such cases, Contractor shall promptly replace them with other personnel having equivalent qualifications, experience, and capabilities.

12.6 Transitions

During commencement, Contractor shall attend transition meetings with any outgoing vendors to coordinate and ease the transition so that the effect on State’s operations is kept to a minimum. State may elect to have outgoing vendors complete some or all of their work or orders in progress to ease the transition as is safest and most efficient in each instance, even if that scope is covered under the Contract. Conversely, State anticipates having a continued need



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for the same materials and services upon expiration or earlier termination of the Contract. Accordingly, Contractor shall work closely with any new (incoming) vendor and State to ensure as smooth and complete a transfer as is practicable. State's representative shall coordinate all transition activities and facilitate joint development of a comprehensive transition plan by both Contractor and the incoming vendor. As with the incoming transition, State may permit Contractor (outgoing) to complete work or orders in progress to ease the transition as is safest and most efficient in each instance.

The Contractor will be required to assume an assignment of ongoing contractual obligations incurred by the previous contractor to allow continuity of all goods and services currently in place.

The State shall have the right to extend offers of employment to any Contractor employees to protect the continuance of service to the State. All non-competition agreements for such employees shall be disregarded in this case. Contractor shall provide reasonable access to these employees and will not interfere with the State's efforts to hire them.

12.7 Accuracy of Work

Contractor is responsible for the accuracy of the Services, and shall promptly make all necessary revisions or corrections resulting from errors and omissions on its part without additional compensation. Acceptance by State will not relieve Contractor of responsibility for correction of any errors discovered subsequently or necessary clarification of any ambiguities.

12.8 Requirements at Services Location

Contractor personnel shall perform their assigned portions of the Services at the specific location indicated in the Order (if applicable). Contractor acknowledges that the location might be inside an industrial building, institutional building, or one of various office types and classes. Additionally, if performing the Services requires Contractor personnel to work inside a secured perimeter at certain institutional facilities such as prisons where prior clearances are required, Contractor shall contact the facility directly to confirm its most-current security clearance procedures, allowable hours for work, visitor dress code, and other applicable rules. State will neither allow extra charges for wait time, comebacks, or the like nor excuse late performance if Contractor has failed to make the confirmation or comply with the applicable conditions.

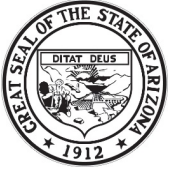
12.9 Services Acceptance

State has the right to make acceptance of Services subject to acceptance criteria. State may apply as acceptance criteria conformity to the Contract, accuracy, completeness, or other indicators of quality or other matter for which the Contract or law states a requirement, whether stated directly or by reference to another document, standard, reference specification, etc. State will not owe Contractor any payment for un-accepted Services; and State may, at its discretion, withhold or make partial payment for any rejected Services if Contractor is still in the process of re-performing or otherwise curing the grounds for State's rejection.

12.10 Corrective Action Required

Notwithstanding any other guarantees, general warranties, or particular warranties Contractor has given under the Contract, if Contractor fails to perform any material portion of the Services, including failing to complete any contractual deliverable, or if its performance fails to meet agreed-upon service levels or service standards set out in or referred to in the Contract, then Contractor shall perform a root-cause analysis to identify the source of the failure and use all commercially reasonable efforts to correct the failure and meet the Contract requirements as promptly as is practicable.

1. Contractor shall provide to State a report detailing the identified cause and setting out its detailed corrective action plan promptly after the date the failure occurred (or the date when the failure first became apparent, if it was not apparent immediately after occurrence).
2. State may demand to review and approve Contractor's analysis and plans, and Contractor shall make any corrections State instructs and adopt State's recommendations so far as is commercially practicable, provided that State may insist on any measures it determines within reason to be necessary for safety or protecting property and the environment.



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3. Contractor shall take the necessary action to avoid any like failure in the future, if doing so is appropriate and practicable under the circumstances.

13.0 Data and Information Handling

13.1 Applicability

Article 13 applies to the extent the Work includes handling of any (1) State's proprietary and sensitive data or (2) confidential or access-restricted information obtained from State or from others at State's behest.

13.2 Data Protection and Confidentiality of Information

Contractor warrants that it will establish and maintain procedures and controls acceptable to State for ensuring that State's proprietary and sensitive data is protected from unauthorized access and information obtained from State or others in performance of its contractual duties is not mishandled, misused, or inappropriately released or disclosed. For purposes of this paragraph, all data created by Contractor in any way related to the Contract, provided to Contractor by State, or prepared by others for State are proprietary to State, and all information by those same avenues is State's confidential information. To comply with the foregoing warrant:

1. Contractor shall: (a) notify State immediately of any unauthorized access or inappropriate disclosures, whether stemming from an external security breach, internal breach, system failure, or procedural lapse; (b) cooperate with State to identify the source or cause of and respond to each unauthorized access or inappropriate disclosure; and (c) notify State promptly of any security threat that could result in unauthorized access or inappropriate disclosures; and
2. Contractor shall not: (a) release any such data or allow it to be released or divulge any such information to anyone other than its employees or officers as needed for each person's individual performance of his or her duties under the Contract, unless State has agreed otherwise in advance and in writing; or (b) respond to any requests it receives from a third party for such data or information, and instead route all such requests to State's designated representative.

13.3 Personally Identifiable Information.

Without limiting the generality of paragraph 13.2, Contractor warrants that it will protect any personally identifiable information ("PII") belonging to State's employees' or other contractors or members of the general public that it receives from State or otherwise acquires in its performance under the Contract.

For purposes of this paragraph:

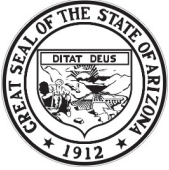
1. PII has the meaning given in the [federal] Office of Management and Budget (OMB) *Memorandum M-17-12 Preparing for and Responding to a Breach of Personally Identifiable Information*, January 3, 2017; and
2. "protect" means taking measures to safeguard personally identifiable information and prevent its breach that are functionally equivalent to those called for in that OMB memorandum and elaborated on in the [federal] General Services Administration (GSA) *Directive CIO P 2180.1 GSA Rules of Behavior for Handling Personally Identifiable Information*.

NOTE (1): For convenience of reference only, the OMB memorandum is available at:

<https://dpcl.d.defense.gov/Privacy/Authorities-and-Guidance/>

NOTE (2): For convenience of reference only, the GSA directive is available at:

<http://www.gsa.gov/portal/directive/d0/content/658222>



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14.0 Information Technology Work

14.1 Applicability

Article 14 applies to any Invitation for Bids, Request for Proposals, or Request for Quotations for "Information Technology," as defined in A.R.S. § 41-3501(6) 6: "... computerized and auxiliary automated information processing, telecommunications and related technology, including hardware, software, vendor support and related services, equipment and projects" if and to the extent that the Work is or includes Information Technology.

14.2 Background Checks

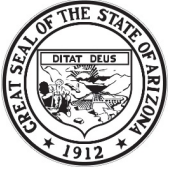
Each of Contractor's personnel who is an applicant for an information technology position must undergo the security clearance and background check procedure, which includes fingerprinting, as required by A.R.S. § 41-710. Contractor shall obtain and pay for the security clearance and background check. Contractor personnel who will have administrator privileges on a State network must additionally provide identify and address verification and undergo State-specified training for unescorted access, confidentiality, privacy, and data security.

14.3 Information Access

- 14.3.1 **SYSTEM MEASURES.** Contractor shall employ appropriate system management and maintenance, fraud prevention and detection, and encryption application and tools to any systems or networks containing or transmitting State's proprietary data or confidential information.
- 14.3.2 **INDIVIDUAL MEASURES.** Contractor personnel shall comply with applicable State policies and procedures regarding data access, privacy, and security, including prohibitions on remote access and obtaining and maintaining access IDs and passwords. Contractor is responsible to State for ensuring that any State access IDs and passwords are used only by the person to whom they were issued. Contractor shall ensure that personnel are only provided the minimum only such level of access necessary to perform his or duties. Contractor shall on request provide a current register of the access IDs and passwords and corresponding access levels currently assigned to its personnel.
- 14.3.3 **ACCESS CONTROL.** Contractor is responsible to State for ensuring that hardware, software, data, information, and that has been provided by State or belongs to or is in the custody of State and is accessed or accessible by Contractor personnel is only used in connection with carrying out the Work, and is never commercially exploited in any manner whatsoever not expressly permitted under the Contract. State may restrict access by Contractor personnel, or instruct Contractor to restrict access their access, if in its determination the requirements of this subparagraph are not being met.

14.4 Pass-Through Indemnity

- 14.4.1 **INDEMNITY FROM THIRD PARTY.** For computer hardware or software included in the Work as discrete units that were manufactured or developed solely by a third party, Contractor may satisfy its indemnification obligations under the Contract by, to the extent permissible by law, passing through to State such indemnity as it receives from the third-party source (each a "Pass-Through Indemnity") and cooperating with State in enforcing that indemnity. If the third party fails to honor its Pass-Through Indemnity, or if a Pass-Through Indemnity is insufficient to indemnify State Indemnitees to the extent and degree Contractor is required to do by the Uniform Terms and Conditions, then Contractor shall indemnify, defend and hold harmless State Indemnitees to the extent the Pass-Through Indemnity does not.
- 14.4.2 **NOTIFY OF CLAIMS.** State shall notify Contractor promptly of any claim to which a Pass-Through Indemnity might apply. Contractor, with reasonable consultation from State, shall control of the defense of any action on any claim to which a Pass-Through Indemnity applies, including negotiations for settlement or compromise, provided that:
- (a) State reserves the right to elect to participate in the action at its own expense;
 - (b) State reserves the right to approve or reject any settlement or compromise on reasonable grounds and if done so timely; and



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- (c) State shall in any case cooperate in the defense and any related settlement negotiations.

14.5 Systems and Controls

In consideration for State having agreed to permit Pass-Through Indemnities in lieu of direct indemnity, Contractor agrees to establish and keep in place systems and controls appropriate to ensure that State funds under this Contract are not knowingly used for the acquisition, operation, or maintenance of Materials or Services in violation of intellectual property laws or a third party's intellectual property rights.

14.6 Redress of Infringement.

14.6.1 REPLACE, LICENSE, OR MODIFY. If Contractor becomes aware that any Materials or Services infringe, or are likely to be infringing on, any third party's intellectual property rights, then Contractor shall at its sole cost and expense and in consultation with State either:

- (a) replace any infringing items with non-infringing ones;
- (b) obtain for State the right to continue using the infringing items; or
- (c) modify the infringing item so that they become non-infringing, so long as they continue to function as specified following the modification.

14.6.2 CANCELLATION OPTION. In every case under 14.6.1, if none of those options can reasonably be accomplished, or if the continued use of the infringing items is impracticable, State may cancel the relevant Order or terminate the Contract and Contractor shall take back the infringing items. If State does cancel the Order or terminate the Contract, Contractor shall refund to State:

- (a) for any software created for State under the Contract, the amount State paid to Contractor for creating it;
- (b) for all other Materials, the net book value of the product provided according to generally accepted accounting principles; and
- (c) for Services, the amount paid by State or an amount equal to 12 (twelve) months of charges, whichever is less.

14.6.3 EXCEPTIONS. Contractor will not be liable for any claim of infringement based solely on any of the following by a State Indemnitee:

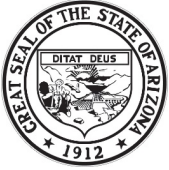
- (a) modification or use of Materials other than as contemplated by the Contract or expressly authorized or proposed by a Contractor Indemnitor;
- (b) operation of Materials with any operating software other than that supplied by Contractor or authorized or proposed by a Contractor Indemnitor; or
- (c) combination or use with other products in a manner not contemplated by the Contract or expressly authorized or proposed by a Contractor Indemnitor.

14.7 First Party Liability Limitation

14.7.1 LIMIT. Subject to the provisos that follow below and unless stated otherwise in the Special Terms and Conditions, State's and Contractor's respective first party liability arising from or related to the Contract is limited to the greater of \$1,000,000 (one million dollars) or 3 (three) times the purchase price of the specific Materials or Services giving rise to the claim.

14.7.2 PROVISOS. This paragraph 14.7 limits liability for first party direct, indirect, incidental, special, punitive, and consequential damages relating to the Work regardless of the legal theory under which the liability is asserted. This paragraph 14.7 does not limit liability arising from any:

- (a) Indemnified Claim against which Contractor has indemnified State Indemnitees under paragraph 6.3;
- (b) claim against which Contractor has indemnified State Indemnitees under paragraph 6.4; or



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(c) provision of the Contract calling for liquidated damages or specifying amounts or percentages as being at-risk or subject to deduction for performance deficiencies.

14.7.3 **PURCHASE PRICE DETERMINATION.** If the Contract is for a single-agency and a single Order (or if no Order applies), then “purchase price” in Subparagraph 14.7.1 above means the aggregate Contract price current at the time of Contract expiration or earlier termination, including all Contract Amendments having an effect on the aggregate price through that date. In all other cases, “purchase price” above means the total price of the Order for the specific equipment, software, or services giving rise to the claim, and therefore a separate limit will apply to each Order.

14.7.4 **NO EFFECT ON INSURANCE.** This paragraph does not modify the required coverage limits, terms, and conditions of, or any insured’s ability to claim against, any insurance that Contractor is required by the Contract to provide, and Contractor shall obtain express endorsements that it does not.

**14.8 Information
Technology Warranty**

14.8.1 **SPECIFIED DESIGN.** Where the Scope of Work for information technology Work provides a detailed design specification or sets out specific performance requirements, Contractor warrants that the Work will provide all functionality material to the intended use stated in the Contract, provided that, the foregoing warranty does not extend to any portions of the Materials that are:

- (a) modified or altered by anyone not authorized by Contractor to do so;
- (b) maintained in a way inconsistent to any applicable manufacturer recommendations; or
- (c) operated in a manner not within its intended use or environment.

14.8.2 **COTS SOFTWARE.** With respect to Materials provided under the Contract that are commercial-off-the-shelf (COTS) software, Contractor warrants that:

- (a) to the extent possible, it will test the software before delivery using commercially available virus detection software conforming to current industry standards;
- (b) the COTS software will, to the best of its knowledge, at the time of delivery be free of viruses, backdoors, worms, spyware, malware, and other malicious code that could hamper performance, collect unlawfully any personally identifiable information, or prevent products from performing as required by the Contract; and
- (c) it will provide a new or clean install of any COTS software that State has reason to believe contains harmful code.

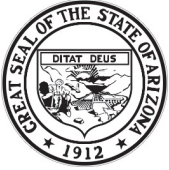
14.8.3 **PAYMENT HAS NO EFFECT.** The warranties in this paragraph are not affected by State’s inspection, testing, or payment.

14.9 Specific Remedies

Unless expressly stated otherwise elsewhere in the Contract, State’s remedy for breach of warranty under paragraph 14.8 includes, at State’s discretion, re-performance, repair, replacement, or refund of any amounts paid by State for the nonconforming Work, plus (in every case) Contractor’s payment of State’s additional, documented, and reasonable costs to procure materials or services equivalent in function, capability, and performance at that first called for. For clarification of intent, the foregoing obligations are limited by the limitation of liability in paragraph 14.7. If none of the foregoing options can reasonably be effected, or if the use of the materials by State is made impractical by the nonconformance, then State may seek any remedy available to it under law.

**14.10 Section 508
Compliance**

Unless specifically authorized in the Contract, any electronic or information technology offered to the State of Arizona under this Contract shall comply with A.R.S. § 18-131 and § 18-132 and Section 508 of the Rehabilitation Act of 1973, which requires that employees and members of the public shall have access to and use of information technology that is comparable to the



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access and use by employees and members of the public who are not individuals with disabilities.

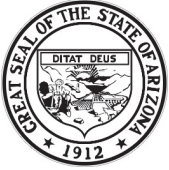
14.11 Cloud Applications

The following are required for Contractor of any "cloud" solution that hosts State data outside of the State's network, or transmits and/or receives State data.

1. Submit a completed Arizona Baseline Infrastructure Security Controls assessment spreadsheet as found at: <https://aset.az.gov/resources/policies-standards-and-procedures>, and mitigate or install compensating controls for any issues of concern identified by State. Contractor is required to provide any requested documentation supporting the review of the assessment. The assessment shall be re-validated on a minimum annual basis.
2. State reserves the right to conduct Penetration tests or hire a third party to conduct penetration tests of the Contractor's application. Contractor will be alerted in advance and arrangements made for an agreeable time. Contractor shall respond to all serious flaws discovered by providing an acceptable timeframe to resolve the issue and/or implement a compensating control.
3. Contractor must submit copy of system logs from cloud system to State of AZ security team on a regular basis to be added to the State SIEM (Security Information Event Monitor) or IDS (Intrusion Detection System).

Contractor must employ a government-rated cloud compartment to better protect sensitive or regulated State data.

End of Section 2-C



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SECTION 2-D:
Uniform Terms and Conditions

Version: 9 (7/1/2013)

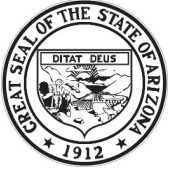
1.0 Definition of Terms

As used in the Contract, the terms listed below are defined as follows:

- | | |
|--------------------------------|--|
| 1.1 Attachment | "Attachment" means any item the solicitation requires the Offeror to submit as part of the Offer. |
| 1.2 Contract | "Contract" " means the combination of the Solicitation, including the Uniform and Special Instructions to Offerors, the Uniform and Special Terms and Conditions, and the Specifications and Statement or Scope of Work; the Offer and any Best and Final Offers; and any Solicitation Amendments or Contract Amendments. |
| 1.3 Contract Amendment | "Contract Amendment" means a written document signed by the Procurement Officer that is issued for the purpose of making changes in the Contract. |
| 1.4 Contractor | "Contractor" means any Person who has a Contract with the State. |
| 1.5 Days | "Days" means calendar days unless otherwise specified. |
| 1.6 Exhibit | "Exhibit" means any item labeled as an Exhibit in the Solicitation or placed in the Exhibits section of the Solicitation. |
| 1.7 Gratuity | "Gratuity" means a payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received. |
| 1.8 Materials | "Materials" means all property, including equipment, supplies, printing, insurance and leases of property but does not include land, a permanent interest in land or real property or leasing space. |
| 1.9 Procurement Officer | "Procurement Officer" means the person, or his or her designee, duly authorized by the State to enter into and administer Contracts and make written determinations with respect to the Contract. |
| 1.10 Services | "Services" has the meaning given in A.R.S. § 41-2503(35), which, for convenience of reference only, is "... the furnishing of labor, time, or effort by [the] [C]ontractor or [S]ubcontractor which does not involve the delivery of a specific end product other than required reports and performance [but] does not include employment agreements or collective bargaining agreements." Services includes Building Work and the service aspects of software described in paragraph 1.8. |
| 1.11 State | "State" means the State of Arizona and Department or Agency of the State that executes the Contract. |
| 1.12 State Fiscal Year | "State Fiscal Year" means the period beginning with July 1 and ending June 30. |
| 1.13 Subcontract | "Subcontract" means any Contract, express or implied, between the Contractor and another party or between a subcontractor and another party delegating or assigning, in whole or in part, the making or furnishing of any material or any service required for the performance of the Contract. |

2.0 Contract Interpretation

- | | |
|------------------------|--|
| 2.1 Arizona Law | The Arizona law applies to this Contract including, where applicable, the Uniform Commercial Code as adopted by the State of Arizona and the Arizona Procurement Code, Arizona Revised |
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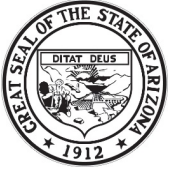
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Statutes (A.R.S.) Title 41, Chapter 23, and its implementing rules, Arizona Administrative Code (A.A.C.) Title 2, Chapter 7.

- 2.2 Implied Terms** Each provision of law and any terms required by law to be in this Contract are a part of this Contract as if fully stated in it.
- 2.3 Contract Order of Precedence** In the event of a conflict in the provisions of the Contract, as accepted by the State and as they may be amended, the following shall prevail in the order set forth below:
- 2.3.1. Special Terms and Conditions;
 - 2.3.2. Uniform Terms and Conditions;
 - 2.3.3. Statement or Scope of Work;
 - 2.3.4. Specifications;
 - 2.3.5. Attachments;
 - 2.3.6. Exhibits;
 - 2.3.7. Documents referenced or included in the Solicitation.
- 2.4 Relationship of Parties** The Contractor under this Contract is an independent Contractor. Neither party to this Contract shall be deemed to be the employee or agent of the other party to the Contract.
- 2.5 Severability** The provisions of this Contract are severable. Any term or condition deemed illegal or invalid shall not affect any other term or condition of the Contract..
- 2.6 No Parole Evidence** This Contract is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no usage of the trade shall supplement or explain any terms used in this document and no other understanding either oral or in writing shall be binding.
- 2.7 No Waiver** Either party's failure to insist on strict performance of any term or condition of the Contract shall not be deemed a waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it.

3.0 Contract Administration and Operation

- 3.1 Records** Under A.R.S. § 35-214 and § 35-215, the Contractor shall retain and shall contractually require each subcontractor to retain all data and other "records" relating to the acquisition and performance of the Contract for a period of five years after the completion of the Contract. All records shall be subject to inspection and audit by the State at reasonable times. Upon request, the Contractor shall produce a legible copy of any or all such records.
- 3.2 Non-Discrimination** The Contractor shall comply with State Executive Order No. 2009-09 and all other applicable Federal and State laws, rules and regulations, including the Americans with Disabilities Act.
- 3.3 Audit** Pursuant to ARS § 35-214, at any time during the term of this Contract and five (5) years thereafter, the Contractor's or any subcontractor's books and records shall be subject to audit by the State and, where applicable, the Federal Government, to the extent that the books and records relate to the performance of the Contract or Subcontract.
- 3.4 Facilities Inspection and Materials Testing** The Contractor agrees to permit access to its facilities, subcontractor facilities and the Contractor's processes or services, at reasonable times for inspection of the facilities or materials covered under this Contract. The State shall also have the right to test, at its own cost, the materials to be supplied under this Contract. Neither inspection of the Contractor's facilities nor materials testing shall constitute final acceptance of the materials or services. If the State determines noncompliance of the materials, the Contractor shall be responsible for the payment of all costs incurred by the State for testing and inspection.
- 3.5 Notices** Notices to the Contractor required by this Contract shall be made by the State to the person indicated on the Offer and Acceptance form submitted by the Contractor unless otherwise



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stated in the Contract. Notices to the State required by the Contract shall be made by the Contractor to the Solicitation Contact Person indicated on the Solicitation cover sheet, unless otherwise stated in the Contract. An authorized Procurement Officer and an authorized Contractor representative may change their respective person to whom notice shall be given by written notice to the other and an amendment to the Contract shall not be necessary.

**3.6 Advertising,
Publishing and
Promotion of Contract**

The Contractor shall not use, advertise or promote information for commercial benefit concerning this Contract without the prior written approval of the Procurement Officer.

3.7 Property of the State

Any materials, including reports, computer programs and other deliverables, created under this Contract are the sole property of the State. The Contractor is not entitled to a patent or copyright on those materials and may not transfer the patent or copyright to anyone else. The Contractor shall not use or release these materials without the prior written consent of the State.

**3.8 Ownership of
Intellectual Property**

Any and all intellectual property, including but not limited to copyright, invention, trademark, trade name, service mark, and/or trade secrets created or conceived pursuant to or as a result of this contract and any related subcontract ("Intellectual Property"), shall be work made for hire and the State shall be considered the creator of such Intellectual Property. The agency, department, division, board or commission of the State of Arizona requesting the issuance of this contract shall own (for and on behalf of the State) the entire right, title and interest to the Intellectual Property throughout the world. Contractor shall notify the State, within thirty (30) days, of the creation of any Intellectual Property by it or its subcontractor(s). Contractor, on behalf of itself and any subcontractor(s), agrees to execute any and all document(s) necessary to assure ownership of the Intellectual Property vests in the State and shall take no affirmative actions that might have the effect of vesting all or part of the Intellectual Property in any entity other than the State. The Intellectual Property shall not be disclosed by contractor or its subcontractor(s) to any entity not the State without the express written authorization of the agency, department, division, board or commission of the State of Arizona requesting the issuance of this contract.

**3.9 Federal Immigration
and Nationality Act**

The contractor shall comply with all federal, state and local immigration laws and regulations relating to the immigration status of their employees during the term of the contract. Further, the contractor shall flow down this requirement to all subcontractors utilized during the term of the contract. The State shall retain the right to perform random audits of contractor and subcontractor records or to inspect papers of any employee thereof to ensure compliance. Should the State determine that the contractor and/or any subcontractors be found noncompliant, the State may pursue all remedies allowed by law, including, but not limited to; suspension of work, termination of the contract for default and suspension and/or debarment of the contractor.

3.10 E-Verify Requirements

In accordance with A.R.S. § 41-4401, Contractor warrants compliance with all Federal immigration laws and regulations relating to employees and warrants its compliance with Section A.R.S. § 23-214, Subsection A.

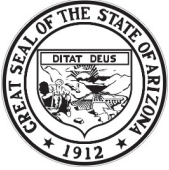
**3.11 Offshore Performance
of Work Prohibited.**

Any services that are described in the specifications or scope of work that directly serve the State of Arizona or its clients and involve access to secure or sensitive data or personal client data shall be performed within the defined territories of the United States. Unless specifically stated otherwise in the specifications, this paragraph does not apply to indirect or 'overhead' services, redundant back-up services or services that are incidental to the performance of the contract. This provision applies to work performed by subcontractors at all tiers.

4.0 Costs and Payments

4.1 Payments

Payments shall comply with the requirements of A.R.S. Titles 35 and 41, Net 30 days. Upon receipt and acceptance of goods or services, the Contractor shall submit a complete and accurate invoice for payment from the State within thirty (30) days.



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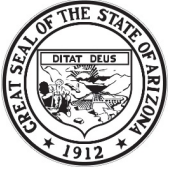
- 4.2 Delivery** Unless stated otherwise in the Contract, all prices shall be F.O.B. Destination and shall include all freight delivery and unloading at the destination.
- 4.3 Applicable Taxes**
- 4.3.1. Payment of Taxes. The Contractor shall be responsible for paying all applicable taxes.
- 4.3.2. State and Local Transaction Privilege Taxes. The State of Arizona is subject to all applicable state and local transaction privilege taxes. Transaction privilege taxes apply to the sale and are the responsibility of the seller to remit. Failure to collect such taxes from the buyer does not relieve the seller from its obligation to remit taxes.
- 4.3.3. Tax Indemnification. Contractor and all subcontractors shall pay all Federal, state and local taxes applicable to its operation and any persons employed by the Contractor. Contractor shall, and require all subcontractors to hold the State harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under Federal, and/or state and local laws and regulations and any other costs including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation.
- 4.3.4. IRS W9 Form. In order to receive payment the Contractor shall have a current I.R.S. W9 Form on file with the State of Arizona, unless not required by law
- 4.4 Availability of Funds for the Next State fiscal year** Funds may not presently be available for performance under this Contract beyond the current state fiscal year. No legal liability on the part of the State for any payment may arise under this Contract beyond the current state fiscal year until funds are made available for performance of this Contract.
- 4.5 Availability of Funds for the current State fiscal year** Should the State Legislature enter back into session and reduce the appropriations or for any reason and these goods or services are not funded, the State may take any of the following actions:
- 4.5.1. Accept a decrease in price offered by the contractor;
- 4.5.2. Cancel the Contract; or
- 4.5.3. Cancel the contract and re-solicit the requirements

5.0 Contract Changes

- 5.1 Amendments** This Contract is issued under the authority of the Procurement Officer who signed this Contract. The Contract may be modified only through a Contract Amendment within the scope of the Contract. Changes to the Contract, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials, directed by a person who is not specifically authorized by the procurement officer in writing or made unilaterally by the Contractor are violations of the Contract and of applicable law. Such changes, including unauthorized written Contract Amendments shall be void and without effect, and the Contractor shall not be entitled to any claim under this Contract based on those changes.
- 5.2 Subcontracts** The Contractor shall not enter into any Subcontract under this Contract for the performance of this contract without the advance written approval of the Procurement Officer. The Contractor shall clearly list any proposed subcontractors and the subcontractor's proposed responsibilities. The Subcontract shall incorporate by reference the terms and conditions of this Contract.
- 5.3 Assignment and Delegation** The Contractor shall not assign any right nor delegate any duty under this Contract without the prior written approval of the Procurement Officer. The State shall not unreasonably withhold approval.

6.0 Risk and Liability

- 6.1 Risk of Loss** The Contractor shall bear all loss of conforming material covered under this Contract until received by authorized personnel at the location designated in the purchase order or Contract. Mere receipt does not constitute final acceptance. The risk of loss for nonconforming materials shall remain with the Contractor regardless of receipt.
- 6.2 Indemnification**
- 6.2.1. Contractor/Vendor Indemnification (Not Public Agency) The parties to this contract agree that the State of Arizona, its departments, agencies, boards and commissions shall be



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indemnified and held harmless by the contractor for the vicarious liability of the State as a result of entering into this contract. However, the parties further agree that the State of Arizona, its departments, agencies, boards and commissions shall be responsible for its own negligence. Each party to this contract is responsible for its own negligence.

6.2.2. Public Agency Language Only Each party (as 'indemnitor') agrees to indemnify, defend, and hold harmless the other party (as 'indemnitee') from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as 'claims') arising out of bodily injury of any person (including death) or property damage but only to the extent that such claims which result in vicarious/derivative liability to the indemnitee, are caused by the act, omission, negligence, misconduct, or other fault of the indemnitor, its officers, officials, agents, employees, or volunteers."

**6.3 Indemnification –
Patent and Copyright**

The Contractor shall indemnify and hold harmless the State against any liability, including costs and expenses, for infringement of any patent, trademark or copyright arising out of Contract performance or use by the State of materials furnished or work performed under this Contract. The State shall reasonably notify the Contractor of any claim for which it may be liable under this paragraph. If the contractor is insured pursuant to A.R.S. § 41-621 and § 35-154, this section shall not apply.

6.4 Force Majeure

6.4.1 Except for payment of sums due, neither party shall be liable to the other nor deemed in default under this Contract if and to the extent that such party's performance of this Contract is prevented by reason of force majeure. The term "force majeure" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Without limiting the foregoing, force majeure includes acts of God; acts of the public enemy; war; riots; strikes; mobilization; labor disputes; civil disorders; fire; flood; lockouts; injunctions-intervention-acts; or failures or refusals to act by government authority; and other similar occurrences beyond the control of the party declaring force majeure which such party is unable to prevent by exercising reasonable diligence.

6.4.2. Force Majeure shall **not** include the following occurrences:

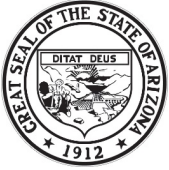
- 6.4.2.1. Late delivery of equipment or materials caused by congestion at a manufacturer's plant or elsewhere, or an oversold condition of the market;
- 6.4.2.2. Late performance by a subcontractor unless the delay arises out of a force majeure occurrence in accordance with this force majeure term and condition;
- 6.4.2.3. Inability of either the Contractor or any subcontractor to acquire or maintain any required insurance, bonds, licenses or permits.

6.4.3. If either party is delayed at any time in the progress of the work by force majeure, the delayed party shall notify the other party in writing of such delay, as soon as is practicable and no later than the following working day, of the commencement thereof and shall specify the causes of such delay in such notice. Such notice shall be delivered or mailed certified-return receipt and shall make a specific reference to this article, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing when it has done so. The time of completion shall be extended by Contract Amendment for a period of time equal to the time that results or effects of such delay prevent the delayed party from performing in accordance with this Contract.

6.4.4. Any delay or failure in performance by either party hereto shall not constitute default hereunder or give rise to any claim for damages or loss of anticipated profits if, and to the extent that such delay or failure is caused by force majeure.

**6.5 Third Party Antitrust
Violations**

The Contractor assigns to the State any claim for overcharges resulting from antitrust violations to the extent that those violations concern materials or services supplied by third parties to the Contractor, toward fulfillment of this Contract.



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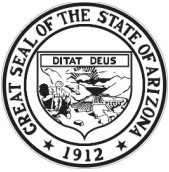
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7.0 Warranties

- 7.1 Liens** The Contractor warrants that the materials supplied under this Contract are free of liens and shall remain free of liens.
- 7.2 Quality** Unless otherwise modified elsewhere in these terms and conditions, the Contractor warrants that, for one year after acceptance by the State of the materials, they shall be:
- 7.2.1. Of a quality to pass without objection in the trade under the Contract description;
 - 7.2.2. Fit for the intended purposes for which the materials are used;
 - 7.2.3. Within the variations permitted by the Contract and are of even kind, quantity, and quality within each unit and among all units;
 - 7.2.4. Adequately contained, packaged and marked as the Contract may require; and
 - 7.2.5. Conform to the written promises or affirmations of fact made by the Contractor.
- 7.3 Fitness** The Contractor warrants that any material supplied to the State shall fully conform to all requirements of the Contract and all representations of the Contractor, and shall be fit for all purposes and uses required by the Contract.
- 7.4 Inspection/Testing** The warranties set forth in subparagraphs 7.1 through 7.3 of this paragraph are not affected by inspection or testing of or payment for the materials by the State.
- 7.5 Compliance with Laws** The materials and services supplied under this Contract shall comply with all applicable Federal, state and local laws, and the Contractor shall maintain all applicable license and permit requirements.
- 7.6 Survival of Rights and Obligations after Contract Expiration or Termination**
- 7.6.1. Contractor's Representations and Warranties. All representations and warranties made by the Contractor under this Contract shall survive the expiration or termination hereof. In addition, the parties hereto acknowledge that pursuant to A.R.S. § 12-510, except as provided in A.R.S. § 12-529, the State is not subject to or barred by any limitations of actions prescribed in A.R.S., Title 12, Chapter 5.
 - 7.6.2. Purchase Orders. The Contractor shall, in accordance with all terms and conditions of the Contract, fully perform and shall be obligated to comply with all purchase orders received by the Contractor prior to the expiration or termination hereof, unless otherwise directed in writing by the Procurement Officer, including, without limitation, all purchase orders received prior to but not fully performed and satisfied at the expiration or termination of this Contract.

8.0 State's Contractual Remedies

- 8.1 Right to Assurance** If the State in good faith has reason to believe that the Contractor does not intend to, or is unable to perform or continue performing under this Contract, the Procurement Officer may demand in writing that the Contractor give a written assurance of intent to perform. Failure by the Contractor to provide written assurance within the number of Days specified in the demand may, at the State's option, be the basis for terminating the Contract under the Uniform Terms and Conditions or other rights and remedies available by law or provided by the contract.
- 8.2 Stop Work Order**
- 8.2.1. The State may, at any time, by written order to the Contractor, require the Contractor to stop all or any part, of the work called for by this Contract for period(s) of days indicated by the State after the order is delivered to the Contractor. The order shall be specifically identified as a stop work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage.
 - 8.2.2. If a stop work order issued under this clause is canceled or the period of the order or any extension expires, the Contractor shall resume work. The Procurement Officer shall make an equitable adjustment in the delivery schedule or Contract price, or both, and the Contract shall be amended in writing accordingly.



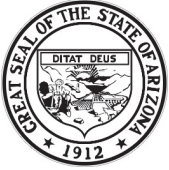
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- 8.3 Non-exclusive Remedies** The rights and the remedies of the State under this Contract are not exclusive.
- 8.4 Nonconforming Tender** Materials or services supplied under this Contract shall fully comply with the Contract. The delivery of materials or services or a portion of the materials or services that do not fully comply constitutes a breach of contract. On delivery of nonconforming materials or services, the State may terminate the Contract for default under applicable termination clauses in the Contract, exercise any of its rights and remedies under the Uniform Commercial Code, or pursue any other right or remedy available to it.
- 8.5 Right of Offset** The State shall be entitled to offset against any sums due the Contractor, any expenses or costs incurred by the State, or damages assessed by the State concerning the Contractor's non-conforming performance or failure to perform the Contract, including expenses, costs and damages described in the Uniform Terms and Conditions.

9.0 Contract Termination

- 9.1 Cancellation for Conflict of Interests** Pursuant to A.R.S. § 38-511, the State may cancel this Contract within three (3) years after Contract execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the Contract on behalf of the State is or becomes at any time while the Contract or an extension of the Contract is in effect an employee of or a consultant to any other party to this Contract with respect to the subject matter of the Contract. The cancellation shall be effective when the Contractor receives written notice of the cancellation unless the notice specifies a later time. If the Contractor is a political subdivision of the State, it may also cancel this Contract as provided in A.R.S. § 38-511.
- 9.2 Gratuities** The State may, by written notice, terminate this Contract, in whole or in part, if the State determines that employment or a Gratuity was offered or made by the Contractor or a representative of the Contractor to any officer or employee of the State for the purpose of influencing the outcome of the procurement or securing the Contract, an amendment to the Contract, or favorable treatment concerning the Contract, including the making of any determination or decision about contract performance. The State, in addition to any other rights or remedies, shall be entitled to recover exemplary damages in the amount of three times the value of the Gratuity offered by the Contractor.
- 9.3 Suspension or Debarment** The State may, by written notice to the Contractor, immediately terminate this Contract if the State determines that the Contractor has been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body. Submittal of an offer or execution of a contract shall attest that the contractor is not currently suspended or debarred. If the contractor becomes suspended or debarred, the contractor shall immediately notify the State.
- 9.4 Termination for Convenience** The State reserves the right to terminate the Contract, in whole or in part at any time when in the best interest of the State, without penalty or recourse. Upon receipt of the written notice, the Contractor shall stop all work, as directed in the notice, notify all subcontractors of the effective date of the termination and minimize all further costs to the State. In the event of termination under this paragraph, all documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the State upon demand. The Contractor shall be entitled to receive just and equitable compensation for work in progress, work completed and materials accepted before the effective date of the termination. The cost principles and procedures provided in A.A.C. R2-7-701 shall apply.
- 9.5 Termination for Default** 9.5.1. In addition to the rights reserved in the contract, the State may terminate the Contract in whole or in part due to the failure of the Contractor to comply with any term or condition of the Contract, to acquire and maintain all required insurance policies, bonds, licenses and permits, or to make satisfactory progress in performing the Contract. The Procurement Officer shall provide written notice of the termination and the reasons for it to the Contractor.



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9.5.2. Upon termination under this paragraph, all goods, materials, documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the State on demand.

9.5.3. The State may, upon termination of this Contract, procure, on terms and in the manner that it deems appropriate, materials or services to replace those under this Contract. The Contractor shall be liable to the State for any excess costs incurred by the State in procuring materials or services in substitution for those due from the Contractor.

9.6 Continuation of Performance Through Termination

The Contractor shall continue to perform, in accordance with the requirements of the Contract, up to the date of termination, as directed in the termination notice.

10.0 Contract Claims

10.1 Contract Claims

All contract claims or controversies under this Contract shall be resolved according to A.R.S. Title 41, Chapter 23, Article 9, and rules adopted thereunder.

11.0 Arbitration

11.1 Arbitration

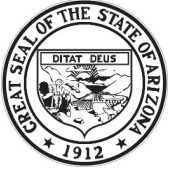
The parties to this Contract agree to resolve all disputes arising out of or relating to this contract through arbitration, after exhausting applicable administrative review, to the extent required by A.R.S. § 12-1518, except as may be required by other applicable statutes (Title 41).

12.0 Comments Welcome

12.1 Comments Welcome

The State Procurement Office periodically reviews the Uniform Terms and Conditions and welcomes any comments you may have. Please submit your comments to: State Procurement Administrator, State Procurement Office, 100 North 15th Avenue, Suite 201, Phoenix, Arizona, 85007.

End of Section 2-D



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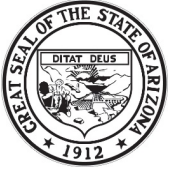
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Exhibit A:
Gaming Data

1. Background

- 1.1. The mission of the AZ Lottery is to support Arizona programs for the public benefit by maximizing revenue in a responsible manner. The AZ Lottery was established to maximize revenue dedicated to various beneficiaries through statutory formulas. With a Governor-appointed Commission and Executive Director overseeing operations, the AZ Lottery works with a retailer network to provide players with innovative, entertaining, and rewarding games.
 - 1.1.1. Beneficiaries. Programs that benefit from the AZ Lottery are identified in Arizona Revised Statute §5-572.
- 1.2. AZ Lottery products compete with other entertainment and consumer products for the discretionary income of the Arizona consumer. The current product mix includes the multi-state jackpot games, Powerball® and Mega Millions®, the in-state draw games, The Pick™, Fantasy 5™, Triple Twist™, Pick 3™, and the instant product, Scratchers®, and the instant online product, Fast Play™.
- 1.3. The AZ Lottery's approach is to constantly refresh its lottery inventory with initiatives in new draw games, approximately fifty to sixty (50-60) new Scratchers and approximately ten (10) new Fast Play games annually to provide players with a variety of new game choices throughout the year.
- 1.4. Approximately three thousand (3,000) retailers make up the AZ Lottery retailer network. The majority of the retailer network is comprised of the grocery category with forty-two percent (42%) of the locations and the convenience store category with approximately forty percent (40%) of the locations. The sales of both these categories combined represent more than ninety-five percent (95%) of the total AZ Lottery game revenues. Additional sales are made from the AZ Lottery's physical office locations, in Phoenix and Tucson.
- 1.5. The AZ Lottery has been successful in increasing revenues and expects the Contractor(s) to assist in continuing this growth. Recent sales and proceeds history follows:

| Draw Games | FY19 | FY18 | FY17 | FY16 | FY15 |
|-------------------|----------------------|----------------------|----------------------|----------------------|----------------------|
| Powerball | \$111,184,626 | \$118,509,867 | \$102,449,615 | \$160,329,555 | \$93,638,449 |
| Mega Millions | \$102,951,884 | \$60,900,765 | \$41,374,249 | \$44,658,835 | \$45,946,133 |
| The Pick | \$44,058,583 | \$40,243,104 | \$31,496,190 | \$33,067,826 | \$25,811,030 |
| Fantasy 5 | \$19,743,211 | \$17,786,257 | \$18,436,608 | \$16,279,219 | \$17,051,734 |
| Fast Play | \$17,753,412 | \$8,099,976 | | | |
| Pick 3 | \$12,276,022 | \$11,710,743 | \$11,124,468 | \$10,556,314 | \$9,734,915 |
| Triple Twist | \$8,630,254 | | | | |
| 5 Card Cash | | \$2,382,590 | \$3,717,420 | \$5,008,182 | |
| All or Nothing | | \$2,144,400 | \$2,872,714 | \$3,526,710 | \$6,198,248 |
| Weekly Winnings | | | | \$744,488 | \$3,551,208 |
| Monopoly | | | | | \$871,720 |
| Total Draw | \$316,597,992 | \$261,777,702 | \$211,471,264 | \$274,171,129 | \$202,803,437 |



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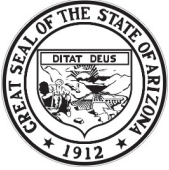
| Scratchers Price Point | FY19 | FY18 | FY17 | FY16 | FY15 |
|-------------------------------|----------------------|----------------------|----------------------|----------------------|----------------------|
| 1.00 | \$17,327,856 | \$17,675,313 | \$17,230,930 | \$18,183,806 | \$21,852,857 |
| 2.00 | \$76,045,580 | \$76,286,420 | \$77,080,640 | \$82,257,128 | \$86,110,390 |
| 3.00 | \$30,416,967 | \$26,204,778 | \$26,348,367 | \$23,323,455 | \$17,793,777 |
| 5.00 | \$150,294,810 | \$144,423,905 | \$131,823,090 | \$141,578,675 | \$150,203,925 |
| 10.00 | \$173,763,390 | \$168,662,410 | \$152,231,750 | \$150,398,690 | \$145,784,060 |
| 20.00 | \$204,007,420 | \$176,364,760 | \$172,393,320 | \$174,963,960 | \$120,285,280 |
| 25.00 | \$6,504,400 | | | | |
| 30.00 | \$91,917,900 | \$101,269,350 | \$55,673,280 | | |
| Scratchers Total Sales | \$750,278,323 | \$710,886,936 | \$632,781,377 | \$590,705,714 | \$542,030,289 |

| Fast Play Price Point | FY19 | FY18 |
|------------------------------|---------------------|--------------------|
| 1.00 | \$2,370,875 | \$909,876 |
| 2.00 | \$2,929,512 | \$1,630,760 |
| 5.00 | \$9,106,485 | \$5,559,340 |
| 10.00 | \$3,346,540 | |
| Fast Play Total Sales | \$17,753,412 | \$8,099,976 |

| Instant Tabs Price Point | FY19 | FY18 | FY17 | FY16 | FY15 |
|---------------------------|--------------------|--------------------|----------------|--------------------|--------------------|
| 0.25 | \$673,764 | \$732,186 | \$762,762 | \$664,482 | \$621,894 |
| 0.50 | \$2,699,880 | \$2,291,940 | \$2,004,420 | \$1,597,560 | \$1,398,480 |
| 1.00 | \$4,556,220 | \$4,350,480 | \$3,621,360 | \$2,603,580 | \$2,176,320 |
| 2.00 | \$1,983,840 | \$1,338,600 | \$1,363,440 | \$1,203,360 | \$943,920 |
| Instant Tabs Total | \$9,913,704 | \$8,713,206 | 7751982 | \$6,068,982 | \$5,140,614 |

| All Games | FY19 | FY18 | FY17 | FY16 | FY15 |
|--------------------|------------------------|----------------------|----------------------|----------------------|----------------------|
| Grand Total | \$1,094,543,431 | \$989,477,820 | \$852,004,623 | \$870,945,825 | \$749,974,340 |

| Transfers | FY19 | FY18 | FY17 | FY16 | FY15 |
|-----------------------|----------------------|----------------------|----------------------|--------------------|--------------------|
| Transfer Total | \$230,361,078 | \$211,913,799 | \$198,099,309 | 210,793,182 | 176,022,030 |



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- 1.6. There is a legislatively allocated allotment for all marketing and advertising activities for the AZ Lottery. Of that Yearly Allotment, the AZ Lottery reserves an amount for internal AZ Lottery spending and allocates an amount to be utilized by the Contractor. The amount allocated to the Contractor on a yearly basis is known, for purposes of this Contract, as the Contractor Allotment. Approximately \$10M per year of the Contractor Allotment is expended in media buying, but that amount is subject to change. The following table shows the Contractor Allotments for Marketing Services for recent years:

| | State Fiscal Year | | | | |
|----------------------|-------------------|--------------|--------------|--------------|--------------|
| | 2015 | 2016 | 2017 | 2018 | 2019 |
| Contractor Allotment | \$14,319,000 | \$11,750,000 | \$13,693,895 | \$14,332,000 | \$14,592,000 |

2. Current Games and Features

- 2.1. The current games and features can be found on the [Arizona Lottery website](#). Games and features change on a regular basis.

Powerball, PowerPlay, Mega Millions, and Megaplier are registered trademarks of MUSL. Scratchers are a registered service mark of the California Lottery. The Pick, Fantasy 5, Pick 3, and Weekly Winnings are trademarks of the AZ Lottery. All or Nothing is a registered trademark of the Texas Lottery.

End of Part 2



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Arizona Department of Administration

State Procurement Office

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Part 1: Solicitation Summary

1.0 What the State Is Soliciting

The Arizona Department of Administration, State Procurement Office division (the State), as authorized under A.R.S. § 41-2501 is seeking to establish one or more contracts to provide Advertising & Marketing Services to the Arizona Lottery.

The State anticipates awarding Contracts to begin providing services by a target date of February 1, 2021.

All resulting contract(s) shall be for the exclusive use of the Arizona Lottery.

Persons With Disabilities

Persons with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting the Solicitation contact person. Requests shall be made as early as possible to allow time to arrange for the accommodation.

OFFERORS SHOULD READ THE ENTIRE SOLICITATION CAREFULLY.

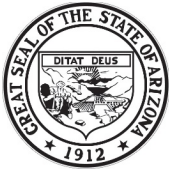
2.0 What's in the Solicitation

| | | |
|--------|---|---|
| Part 1 | Section 1: Solicitation Summary | PART 1 BPM002678 OPEN FIRST Advertising & Marketing Arizona Lottery.PDF (or as amended) |
| Part 2 | Section 2-A: Scope of Work | PART 2 BPM002678 RFP Advertising & Marketing Arizona Lottery.PDF (or as amended) |
| | Section 2-B: Pricing Document | |
| | Section 2-C: Special Terms and Conditions | |
| | Section 2-D: Uniform Terms and Conditions | |
| Part 3 | Section 3-A: Instructions to Offerors | PART 3 BPM002678 Offer Forms Advertising & Marketing Arizona Lottery.DOCX (or as amended) |
| | Section 3-B: Offer Forms | |

3.0 How and When Proposals Are Due

Proposals will only be accepted **online** in “The State’s e-Procurement System” at <https://app.az.gov> until the “Bid/Offer Due Date” indicated in “The State’s e-Procurement System” for the Solicitation No. shown at the top of this page.

Proposals must be in the State Procurement Office’s possession online no later than that deadline.



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Submit technical inquiries about navigating and/or submitting proposals in the State's e-Procurement System to the State's e-Procurement System Help Desk:

- by phone at (602) 542-7600, option 2; or
- by email to app@azdoa.gov

LATE PROPOSALS WILL NOT BE CONSIDERED. No extension or grace period will be given for delays or incomplete proposals caused by internet connectivity problems, file uploading difficulties, or misunderstanding of the requirements or procedures for online submission in "The State's e-Procurement System".

4.0 Pre-Offer Conference

The State **WILL** conduct a Pre-Offer Conference for this Solicitation at the time and place indicated in the solicitation's '**Process**' field as found within "The State's e-Procurement System" (<https://app.az.gov>). Attendance is optional but encouraged. Refer to paragraph 2.7 of the Instructions to Offerors for more information.

5.0 Inquiries

Any question related to this Request for Proposal shall be submitted utilizing the State's "**Discussions with Buyer**" Tab in the e-procurement system. The Offeror shall not contact or ask questions of the department for which the requirement is being procured.

End of Section 1