



## **REQUEST FOR PROPOSAL**

### **Multi-State Lottery Association Operational Security Assessment and Audit 2019**

The Multi-State Lottery Association (MUSL) is seeking a qualified, responsible Bidder to provide a comprehensive risk-based Operational Security Assessment and Audit (OSAA) on the design and effectiveness of its operational security.

Bidder selection will be contingent upon the completion of background checks and MUSL's review and acceptance of the results of the background checks.

Proposals shall consist of two (2) Submittals, which shall be provided in two separate sealed envelopes: the Technical Submittal and the Cost Submittal. Bidders' Proposals will be received until April 26, 2019 3:00 p.m. Central Time. Sealed bids are to be submitted to:

Procurement  
MULTI-STATE LOTTERY ASSOCIATION  
4400 NW Urbandale Drive  
Urbandale, IA 50322

Bidders are encouraged to visit [MUSL.com](http://MUSL.com) to review MUSL's organizational structure and mission.

## **SECTION 1 GENERAL INFORMATION**

### **1.1 PURPOSE**

The Multi-State Lottery Association (MUSL) is a non-profit, government-benefit association owned and operated by its member lotteries. Each MUSL member lottery offers one or more multi-jurisdictional lottery games administered with the assistance of MUSL. All profits are retained by the individual lotteries and are used to fund projects or purposes approved by their authorizing ligatures.

The purpose of this Request for Proposal (RFP) is to allow MUSL to choose a Bidder that will conduct a comprehensive, risk-based, evaluation on the design and effectiveness of operational security, including but not limited to, a gap-analysis and realistic cost benefit recommendations for improvement.

It is anticipated that obligations under this contract will commence on May 27 2019 and completed no later than December 31, 2019.

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

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

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

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

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

In submitting a proposal the bidder agrees that it will not bring any claim or have any cause of action against MUSL or its members based on any misunderstanding concerning the

information provided or MUSL's or its members' failure, negligent or otherwise, to provide the bidder with pertinent information as intended under the terms of the RFP.

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

### 1.3 BIDDER QUESTIONS

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

All written questions regarding this RFP shall be directed to:

[Procurement@musl.com](mailto:Procurement@musl.com)

Subject Line: Operational Security Assessment and Audit

OR

PROCUREMENT DEPARTMENT

Multi-State Lottery Association

4400 NW Urbandale Drive, Urbandale, IA 50322

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

### 1.4 SUBMISSION OF PROPOSALS

Only one Proposal will be accepted from each Bidder.

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

Bidders must submit their Proposal as the two Submittals defined above. The Submittals shall be labeled appropriately. The original of each Submittal must be provided, in addition to three (3) copies. Additionally, one (1) digital copy shall be sent to [procurement@musl.com](mailto:procurement@musl.com). Each Proposal must also be accompanied by a signed Bidder's certification included with the RFP (Appendix A).

## **1.5 TRANSMITTAL LETTER**

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

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

1. The Bidder will provide the services requested in this RFP in accordance with this RFP and the Bidder's proposal;
2. The Bidder is warranting that it has not made any material misrepresentation or omission in connection with its Proposal;
3. The Bidder has not acted with other Bidders to restrict competition for this solicitation;
4. The Bidder has not agreed to pay any person or entity (other than a bona fide employee of the Bidder) a fee or commission conditioned on the award of this contract; and,
5. The person signing the transmittal letter has the power to make the above representations, and bind the Bidder to the terms of the Bidder's Proposal.
6. The Bidder's Scope of Ownership as identified in Section 1.20 below.

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

## **1.6 SUBMISSION OF DISCLOSURE DOCUMENTS**

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

## 1.7 DATES RELEVANT TO THIS RFP

April 10, 2019	RFP released
April 17, 2019	Bidders' questions are due by 3:00 p.m. CT in accordance with Section 1.3 above
April 19, 2018	MUSL responses to Bidders' questions emailed to all bidders
April 26, 2019	Proposals due by 3:00 p.m. CT.
May 03, 2019	MUSL clarifying/follow-up questions with Bidders.
May 08-10, 2019	Potential Presentations to MUSL Evaluation Committee, Urbandale, Iowa
No later than May 14, 2019	Bidder Selection, subject to successful Background Checks
May 16, 2019	Begin Background Checks Process; Contract Review
May 27, 2019	Contract begins
June 26, 2019	Draft Report due
July 24, 2019	Final report with Managements comments.

All dates are subject to change by MUSL.

**Proposals and disclosure documents must be received** by the Procurement Department, Multi-State Lottery Association, 4400 NW Urbandale Drive, Urbandale, IA 50322, **by no later than 3:00 p.m. Central Time on April 26, 2018.**

## **1.8 COST ACCEPTED BY BIDDERS**

MUSL is not responsible for any costs incurred by a Bidder that are related to the preparation or delivery of the proposal, any on-site inspection or off-site presentation which may be required, or any other activities related to this RFP. MUSL will pay its own travel expenses that may be associated with this RFP.

## **1.9 RESERVED**

## **1.10 CLARIFICATIONS TO PROPOSALS**

Clarifications from Bidders may be requested by MUSL for the purpose of resolving ambiguities or questions about the information presented in the proposals. Clarification responses shall be in writing and shall address only the information requested. Clarifications of proposals will be issued by MUSL designated contact (see above). Responses to clarifications shall be submitted within a reasonable time as specified by MUSL.

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

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

## **1.12 SOURCES OF INFORMATION USED BY MUSL IN ADDITION TO THE PROPOSALS**

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

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

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

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

### **1.13 STANDARDS APPLICABLE TO THE AWARD**

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

#### **THE SUCCESSFUL BIDDER MUST PASS A SECURITY BACKGROUND CHECK PERFORMED BY LOTTERY OFFICIALS OR LAW ENFORCEMENT OFFICIALS.**

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

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

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

## **1.15 PROPOSAL REJECTION**

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

## **1.16 REQUESTS FOR CONFIDENTIALITY**

Proposals will not be opened publicly so that MUSL may evaluate requests for confidentiality. Proposals will be shown only to the MUSL Evaluation Team, personnel with technical or experiential insight and, if requested, members of the Audit Committee.

Any request for confidential treatment of information must be included in the transmittal letter described in this RFP. The request must also include the name, address, and telephone number of the person authorized by the Bidder to respond to any inquiries by MUSL concerning the confidential status of the materials. The Bidder must also state in the transmittal letter the reasons such confidentiality is necessary. Any documents submitted which contain confidential information must be marked on the outside as containing confidential information, and each page upon which confidential information appears must be marked as containing confidential information. The confidential information must be clearly identifiable to the reader wherever it appears. All copies of the proposal submitted, as well as the original proposal, must be marked in this manner.

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

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

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



## **1.17 COPYRIGHTS**

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

## **1.18 PROPOSALS PROPERTY OF MUSL**

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

MUSL reserves the right to use any and all information contained in a proposal to the extent permitted by law. Due to the creative nature of the lottery industry, many marketing ideas have been presented, designed, and developed by lottery personnel or associated outside related agencies unknown to Bidders. MUSL will have the right to use ideas or adaptations of ideas that are presented in the proposals if deemed “non-original” or “previously submitted”.

## **1.19 CONTRACT PROVISIONS**

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

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

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

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

## **1.20 SCOPE OF OWNERSHIP**

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

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

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

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

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

The Bidder shall assure that details of MUSL's operations, security related matters or results of their services are not disclosed to persons or organizations other than the personnel and/or subcontractors of the Bidder whose assistance has been approved in advance by MUSL. Upon award of a contract resulting from this RFP, the successful Bidder shall be required to complete a Non-Disclosure Agreement (and return the signed Agreement) prior to commencement of services.

## **1.21 CONTRACTOR WARRANTIES**

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

The successful Bidder will represent and warrant that in the performance of the Contract, its work product and the information, data, designs, processes, inventions, techniques,

devices and other such intellectual property furnished, used, or relied upon by the Bidder will not infringe on any copyright, patent, trademark, trade dress or other intellectual property rights held by a third-party.

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

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

## **1.22 LIQUIDATED DAMAGES**

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

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

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

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

## **SECTION 2 DISCLOSURE REQUIREMENTS**

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

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

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

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

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

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

### **2.2 USE OF INFORMATION**

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

## **SECTION 3 PROJECT SCOPE**

### **3.1 GOALS**

MUSL's Audit Committee is charged with assuring the soundness of the Association's operational policies, procedures, standards and practices. It is MUSL's policy to engage an independent third party to perform a risk based assessment on the design and effectiveness of its operational security and provide a gap analysis identifying areas for potential improvement.

MUSL seeks to engage an independent firm to perform an operational security risk assessment, evaluate the design and effectiveness of its current security posture and respective policies and procedures and provide a security risk gap analysis. Recommendations are expected to balance risks, costs and benefits.

- 3.1.1** A detailed report of findings and recommendations will be provided to MUSL's Executive Director and coordinated through the Chief Audit Executive.
- 3.1.2** Management will provide a formal response to Contractors findings and recommendations.
- 3.1.3** Contractors firm will produce a final report with management's responses and provide comments on the reasonableness of those responses.
- 3.1.4** The final report will be presented to the Audit Committee.
- 3.1.5** An executive summary will be required for the Executive Committee and the Board of Directors in that order.
- 3.1.6** Contractors firm may be called upon to present or discuss Contractors findings with MUSL's Management, the Audit Committee, the Executive Committee and/or the Board of Directors.

Except as may be required by law, all work product and deliverables including but not limited to the draft and final reports shall remain confidential, and may not be released to any third party without explicit written authorization from MUSL's Executive Director and/or Board President. See Confidentiality, below.

### **3.2 REQUIRED SERVICES**

- 3.2.1** Contractor shall conduct a comprehensive operational security risk assessment and audit in accordance with professional and industry standards as agreed upon with MUSL, including but not limited to, the World Lottery Association Security

Controls Standard (WLA-SCS:2016), Control Objectives for Information and Related Technology (COBIT), Committee of Sponsoring Organizations (COSO), International Organization for Standardization (ISO), Center for Internet Security (CIS), National Institute of Standards and Technologies (NIST) SP800-171 Rev. 1, or others. Applicable Standards will be referenced as the basis for key observations, gap analysis and recommendations, as applicable.

- 3.2.2** Contractor shall ensure at all times that Contractor’s key personnel on Contractor’s project team possess the necessary skills, abilities and experience to perform the following in accordance with the highest professional and industry standards.
- 3.2.3** MUSL may request the Contractor to perform additional services related to, but not contemplated by the Agreement. Should this occur, Contractor shall communicate to MUSL the scope of the additional services and any corresponding fees. Contractor and MUSL must mutually agree to the scope of services, including fees and estimated hours, in writing prior to commencing the additional services.
- 3.2.4** Contractor shall work under the direction of MUSL’s Chief Audit Executive.

### **3.3 SCOPE**

Contractor shall include, but is not limited to, the following areas of focus:

- 3.3.1** Control environment – integrity and ethical values, organizational structure and governance, assignment of responsibility, human resources and commitment to competence.
- 3.3.2** Security of game draws – adequacy and accuracy of draw procedures and monitoring controls; both physical and logical.
- 3.3.3** Access management, internal and external – least privilege role alignment, segregation of duties, active directory, password management, other.
- 3.3.4** System development life cycle – adequacy of the system/software cycle from development to production.
- 3.3.5** System configuration – standardization, change management, patch management, web server and database specific configurations.
- 3.3.6** Integrity of draw data - MUSL draw data reporting systems.
- 3.3.7** Draw contingency plan(s).
- 3.3.8** Data security – network access, data loss prevention, encryption methodologies, wireless security, router, switches, firewalls, and IDS/IPS

- 3.3.9 Network architecture – existence and accuracy of network diagrams and adequacy of design.
- 3.3.10 Physical architecture – existence and accuracy of diagrams, rack and system positions, physical cabling and connections and physical operating environment.
- 3.3.11 Adequacy and effectiveness of IT monitoring controls, security tools, processes and operational oversight.
- 3.3.12 Perform a gap analysis on the “as is” state of operational security and identify opportunities for a “future” state.
- 3.3.13 Other aspects of operational security as agreed with MUSL

**Out-of-scope** – the following areas are being evaluated and addressed through MUSL internal initiatives and/or not in scope for the 2019 the OSAA.

- 3.3.14 Procedures related to MUSL Rule 2 and claim validation Standards, also known as Minimum Game Security Standard.
- 3.3.16 Network vulnerability assessment and scans.
- 3.3.17 Business continuity plan.

#### 3.4 **WORK PHASES**

Contractor shall deliver Services in accordance with the following work plan which is comprised of four phases: **(1) project planning and management, (2) fieldwork and fact finding, (3) analysis and (4) report development and delivery.**

##### 3.4.1 **PHASE 1 – PROJECT PLANNING AND MANAGEMENT**

Contractor shall:

1. Confirm start date, scope, objectives, work plan, schedule, and logistics with the Chief Audit Executive.
2. Obtain and review applicable policies, procedures and system architecture documentation. Schedule kick-off meeting to initiate project.
3. Schedule walk-through interviews with key process owners.
4. Conduct contract quality assurance assessments on major tasks and deliverables through the term of the Contract and any extensions.
5. Provide weekly progress updates to the Chief Audit Executive including a summary of key encumbrances or delays.
6. Method of communication will be mutually agreed between contractor and MUSL.

### **3.4.2 PHASE 2 – FIELDWORK AND FACTFINDING**

1. Conduct a kick-off meeting with the applicable MUSL staff describing the goals, objectives, approach, and estimated timelines.
2. Perform a comprehensive information technology and information security risk assessment based on professionally recognized standards; see paragraph 2.2.1.
3. Evaluate the adequacy and completeness of technology, security and pertinent operational documents.
4. Develop an interview schedule to help assure the appropriate staff are available for the area under review.
5. Fieldwork will principally be performed at MUSL's headquarters in Urbandale, IA. Additional locations may be necessary based on the outcome of the comprehensive risk assessment.
6. Test the effectiveness of operational, physical and logical controls.
7. Perform a gap analysis on the existing design of controls.
8. Report any significant risks or events immediately upon identification.

### **3.4.3 PHASE 3 – ANALYSIS**

Contractor shall:

1. Perform supplemental inquiries, observations and inspections, as necessary. Evaluate the effectiveness of existing security controls.
2. Identify potential operational security gaps and recommend opportunities for improvements.
3. Summarize risks and recommendations as findings.

### **3.4.4 PHASE 4 – REPORT DELIVERY AND DEVELOPMENT**

Contractor shall:

1. Develop a Draft Report which shall include a detailed operational security risk assessment, design and structure gap analysis, test results on the effectiveness of policies, procedures and controls and recommendations for improvement and others issues that come to the Contractors attention during the course of Contractors review.
2. Contractor will conduct a closing meeting with MUSL's Executive Director and other personnel, as appropriate.



3. The initial draft report should be delivered to MUSL’s Chief Audit Executive on or before by June 26, 2019. Such report shall include an issues matrix (“Findings Matrix”) to identify high, medium and low risk areas and recommendations. The Chief Audit Executive will perform an initial review and convey the draft report to MUSL’s Executive Director and relevant staff for further comment.
4. Incorporate MUSL staff’s input, clarifications and management responses in a second draft including your comments on the reasonableness of management’s responses and/or remediation plans.
5. A second draft report will be submitted to the Chief Audit Executive no later than five (5) working days after receipt of management responses. The Chief Audit Executive will review the second draft and convey it to MUSL’s Executive Director and staff for review.
6. A final report should be delivered to the Chief Audit Executive on or before July 24, 2019. The Chief Audit Executive will submit the final report to MUSL’s Executive Director for review and approval.
7. Deliver ten (10) bound copies of the Final Report and an electronic copy of the Final Report, encrypted in MUSL’s-approved protocol to the Chief Audit Executive.
8. Contractor shall be prepared to present their findings to the Audit Committee, Executive Committee and the full Board of Directors. Times and dates will be coordinated between MUSL and the Contractor.

### **3.5. JOINT RESPONSIBILITIES AND OPERATIONAL CONDUCT OF THE CONTRACTOR AND MUSL**

#### **3.5.1 PERSONNEL**

1. Contractor and the Chief Audit Executive shall each mutually coordinate and facilitate interviews, discussion and follow-up questions with MUSL personnel.
2. Delays or unavailability of MUSL personnel should be immediately conveyed to the Chief Audit Executive for resolution.
3. Under no circumstances shall the Contractor or Contractor’s staff have, or presume to have, the authority to direct MUSL’s personnel to change or modify any MUSL’s practice, procedure or policy.

### **3.5.2 ACCESS**

1. Contractor and MUSL shall mutually coordinate and facilitate access to all documents, records, information, sites, networks and systems as reasonably required for Contractor's Services under this contract.
2. MUSL will provide Contractor access to all personnel required to fulfill this audit during the time period referenced.
3. Physical and logical access will be provided in accordance with MUSL Security policies, procedures and protocols.
4. Internet access will be provided in accordance MUSL's policies and procedures.
5. Access to a photocopier and scanner will be provided by MUSL.

### **3.5.3 WORK SPACE ACCOMMODATIONS**

1. Work space will be provided for Contractor including a lockable cabinet.
2. Other physical requirements should be identified in the Contractors proposal.

### **3.5.4 DOCUMENTATION**

1. *On-site*: MUSL shall provide Contractor reasonable on-site access to required documentation for various network components, hardware, and proprietary systems/applications as required to perform the Services. MUSL reserves the right to limit such on-site access for security or confidentiality purposes (see Access, above).
2. *Off-site*: MUSL shall provide Contractor reasonable off-site access to documentation upon completion of the respective background checks.

## **3.6 USE OF ELECTRONIC COMMUNICATION**

In the interest of facilitating Services to MUSL, Contractor may communicate by electronic mail (e-mail) over the Internet. Such communications must not include information that is confidential. While MUSL recognizes and accepts that Contractor has no control over the possibility of unauthorized interception of these communications once they have been sent, Contractor shall use the most stringent industry protocols to keep all such communications secure. Confidential information must be uploaded to MUSL's secure web portal or Contractor's web portal with equivalent security. MUSL is unable to accept encrypted email attachments.

## **3.7 MUSL RESPONSIBILITIES**

During the term of this Contract, MUSL will:

1. Make all management decisions and perform all management functions in connection with all Services resulting from this engagement, as deemed necessary and appropriate by MUSL’s Executive Director or as directed by the Chair of the Audit Committee and/or Board President; and
2. Establish or maintain internal controls, including ongoing monitoring activities.

### **3.8 DELIVERABLES AND PROJECT SCHEDULE**

Contractor shall complete all Services and deliver all deliverables in accordance with the specifications and requirements set forth in this RFP by no later than the date or dates set forth herein. MUSL reserves the right to extend the deliverables dates; any other changes to the deliverables dates will be by mutual written agreement of MUSL and the Contractor.

### **3.9 COMMUNICATIONS**

Contractor shall communicate with the Chief Audit Executive whenever requested, and whenever Contractor encounters major issues that impact the project (e.g. potential delays, inability to obtain necessary information, breaches in security etc.). Additionally, Contractor shall provide weekly status reports to the Chief Audit Executive throughout the term of this Contract.

### **3.10 REPORTING**

Contractor shall create and deliver to the Chief Audit Executive a preliminary Operational Security Assessment and Audit draft report (“Preliminary Draft”), a secondary Security Audit draft report (“Secondary Draft”) and a final report (“Final Report”) in confidential formats pursuant to the schedule outlined in **3.3.4** above.

### **3.11 PROJECT SCHEDULES**

The anticipated key scheduling milestones for Services are:

1. Engagement Commencement on May 27, 2019
2. Initial Planning date completion TBD
3. On-site Fieldwork date completion TBD

4. Preliminary Draft Report due to MUSL June 26, 2019
5. Secondary Draft Report due to MUSL approximately July 12, 2019
6. Final Report due to MUSL approximately July 24, 2019

*Note – refinement of these key dates shall be as determined in the Agreement or as mutually agreed by MUSL and the selected contractor.*

### **3.12 CONFIDENTIALITY**

Any information, whether proprietary or not, made known to or discovered by Contractor during the performance of or in connection with a Contract resulting from this RFP shall be kept confidential and not be disclosed to any person other than MUSL or the Member Lotteries and the other Indemnified Parties without the express permission of MUSL. The selected Bidder shall immediately notify MUSL in writing if it is requested to disclose any information made known to or discovered by it during the performance of the Contract or at any time thereafter.

Except as may be required by law, all work product and deliverables including but not limited to the draft and final reports shall remain confidential, and may not be released to any third party not explicitly authorized in writing by MUSL. **Any unauthorized release of information or findings shall be subject to payment of liquidated damages as defined in the Contract.**

If Contractor is ever required or requested to provide information or documents regarding the Services under this RFP to any party other than MUSL or a Member Lottery in connection with governmental regulations or activities, or a legal, arbitration or administrative proceeding (including a grand jury investigation), in which Contractor is not a party. Contractor shall immediately advise MUSL of any such requests or requirements and MUSL may initiate such legal action as MUSL deems appropriate to protect information from discovery.

### **3.13 OWNERSHIP**

At the end of the Contract, all work product, documents, data, draft and final reports and all other materials developed as a result of the Contract shall be the property of and shall be delivered to MUSL. Contractor shall have no right to retain or use those materials in any way other than as permitted by MUSL.

## **SECTION 4 MANDATORY REQUIREMENTS**

- 4.1 GENERAL REQUIREMENTS.** In providing the following information and disclosures, Bidder shall respond with as much detail as would be helpful to MUSL in determining Bidder’s ability to provide the necessary goods and services.

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

**A. ORGANIZATION**

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

**B. EXPERIENCE**

Bidder Qualifications

1. Provide resumes for all persons to be assigned to this project.

2. State the experience which the bidder, the bidder's key personnel, and the personnel which will be assigned to MUSL contract have had in providing services similar to those described in this RFP.

### **C. LITIGATION**

1. Provide a description of any contracts which Bidder was awarded but was unable to honor.
2. Provide a description of any pending and/or threatened litigation involving Bidder.
3. Describe any past litigation involving Bidder, and the outcome of the same.
  - a. List any US lotteries to which you have supplied similar operational security assessments or audits in the past 10 years.

### **D. FINANCIAL STABILITY**

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

### **E. REFERENCES**

1. List all lotteries to which Bidder has provided services and describe in detail the nature of those services.
2. Provide five (5) business references that are currently using goods and services similar to those being proposed in this RFP, and include: the contact name; email address; telephone number; and, address.

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

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

### **G. INABILITY TO PLAY LOTTERY**

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

## **SECTION 5 INSURANCE REQUIREMENTS**

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

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

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

## **SECTION 6 FINANCIAL INFORMATION**

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

## **SECTION 7 COST PROPOSAL**

Preference will be given to bidders submitting a firm fixed price proposal. Alternatively, time and material proposals will include estimated hours, by task, level of staff and billing rates.

Appendix A

**BIDDER CERTIFICATION**

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

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

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Name

---

Title

---

Entity submitting proposal



---

Date

## **Appendix B**

### **INITIAL BIDDER DISCLOSURE**

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

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

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

- 16.** If any control person of the bidder, or subcontractor of the bidder, or any employee of either assigned to this project, is a member of the immediate family of any employee of MUSL or its members or has a close personal relationship to any employee of MUSL or its members, indicate each person and employee.
- 17.** The bidder must state whether any of the following has occurred:

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

## APPENDIX C NON-DISCLOSURE AGREEMENT

This Non-Disclosure Agreement (the "**Agreement**"), effective as of \_\_\_\_\_ (the "**Effective Date**"), is entered into by and between \_\_\_\_\_ ("\_\_\_\_\_"), a \_\_\_\_\_ having its principal place of business at \_\_\_\_\_ and the Multi-State Lottery Association ("MUSL"), a non-profit government benefit association having its principal place of business at 4400 NW Urbandale Drive, Urbandale Iowa 50322 (together, the "**Parties**", and each, a "**Party**").

WHEREAS, in connection with the Operational Security Assessment and Audit (OSAA) ("Purpose"), MUSL desires to share certain information that is non-public, confidential or proprietary in nature.

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

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

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

the Disclosing Party's unpatented inventions, ideas, methods and discoveries, trade secrets, know-how, unpublished patent applications and other confidential intellectual property;

all designs, specifications, documentation, components, source code, object code, images, icons, audio-visual components and objects, schematics, drawings, protocols, processes, and other visual depictions, in whole or in part, of any of the foregoing;

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

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

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

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

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

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

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

Recipient Obligations. The Recipient shall:

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

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

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

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

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

are subject to confidentiality duties or obligations to the Recipient that are no less restrictive than the terms and conditions of this Agreement; and

be responsible for any breach of this Agreement caused by any of its Representatives.

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

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

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

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

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

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

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

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

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

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

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

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

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

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



**Remedies.** Each Party acknowledges and agrees that money damages might not be a sufficient remedy for any breach or threatened breach of this Agreement by the Recipient. Therefore, in addition to all other remedies available at law (which neither Party waives by the exercise of any rights hereunder), MUSL shall be entitled to seek specific performance and injunctive and other equitable relief as a remedy for any such breach or threatened breach, and the Parties hereby waive any requirement for the securing or posting of any bond or the showing of actual monetary damages in connection with such claim.

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

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

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

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

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

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

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

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

**MULTI-STATE LOTTERY ASSOCIATION**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Date

**CONTRACTOR**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Date

## Appendix D

### AGREEMENT FOR THE OPERATIONAL SECURITY ASSESSMENT AND AUDIT

This agreement is made by and between the Multi-State Lottery Association (MUSL), an unincorporated government benefit association, and CONTRACTOR (Contractor), located at ADDRESS.

1. **Incorporation of Documents.** MUSL's Request for Proposal (RFP) for a comprehensive, risk-based operational security assessment and audit and the Contractor's response to the Request for Proposal (Contractor's Proposal) are incorporated by reference into this agreement as though fully set forth.

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

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

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

2. **Term.** The initial contract term will not exceed a duration of twelve (12) months from the dating of signing.
3. **Contractor's Duties.** The Contractor shall perform as set forth in this agreement, the Contractor's Proposal, and as required by the RFP. In the event that any of the employees specified in the Contractor's Proposal become unavailable to the Contractor, the Contractor shall replace them with employees with comparable expertise.

The purpose of this agreement is to provide MUSL with an operational security assessment and audit, as more fully set forth in Exhibit A to this Agreement. Contractor and MUSL agree that the following terms and conditions shall govern the provision of these services.

- 4. Payments to Contractor.** The Contractor agrees to submit an invoice to MUSL requesting payment for the services rendered based on the prices set forth in this agreement. This fee shall include all costs incurred by the Contractor in providing services as set forth in this agreement, the RFP, and the Contractor's Proposal. Invoices shall be submitted to the Director of Finance, Multi-State Lottery Association, 4400 NW Urbandale Drive, Urbandale, IA 50322 or to [ap@musl.com](mailto:ap@musl.com), and undisputed amounts will be paid within 45 days of receipt.
- 5. Termination for Cause.** MUSL may terminate this Agreement upon written notice for the breach by the Contractor, if such breach is not cured, provided that a cure if feasible, within the timeframe for cure set forth in the written notice of breach by MUSL. Breach events include, but are not limited to, Contractor's failure to adhere to confidentiality clauses in this Agreement, failure to perform as set forth by this Agreement or Contractor's failure to provide equipment, goods, and services that meet the specifications and requirements set forth in this Agreement, without limitation the representations and warranties set forth in this Agreement.

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

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

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

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

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

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

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

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

**8. Non-Exclusive.** The contract will not be exclusive as related to projects for the OSAA project.

**9. Indemnification.**

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

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

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

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

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

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

MUSL will not agree to indemnify the Contractor for any reason.



**10. Compliance with Laws.** Contractor shall comply with all applicable laws and rules when performing. This also requires that the Contractor pay all taxes, fees, and assessments, however designated, levied, or based upon the goods and services supplied by the Contractor.

**11. Insurance.** Contractor shall maintain adequate insurance for the performance of the contract and, by submission of a bid, agrees to indemnify and save harmless and to defend all legal or equitable actions brought against MUSL, its Members and their individual jurisdictions, and any agency, officer and/or employee or agent of them, for and from all claims of liability which is or may be the result of Contractor's actions during the performance of the contract. The purchase or non-purchase of such insurance or the involvement of Contractor in any legal or equitable defense of any action brought against Contractor based upon work performed pursuant to the contract will not waive any defense which MUSL, its Members and their individual jurisdictions, and any agency, officer and/or employee or agent might otherwise have against such claims, specifically including the defense of sovereign immunity where applicable, and MUSL, its Members and their individual jurisdictions, and any agency, officer and/or employee or agent thereof shall not be financially responsible for the consequences of work performed, pursuant to said contract.

- b. **General Liability Insurance** coverage with limits of not less than \$2,000,000 for injury to any one person, \$2,000,000 for any one occurrence of personal injury and \$2,000,000 for any one occurrence of property damage.
- c. **Property Insurance** on all buildings, furniture, fixtures, computer and communications equipment used in fulfilling the requirements of this Agreement. Coverage shall insure personal property including contents, equipment, and mobile items against fire, theft, collision, and flood. MUSL and the individual Members of MUSL will not be responsible for insuring any equipment or facilities included in or associated with the contract.
- d. **Automotive Liability Insurance** covering drivers and vehicles employed in connection with the operation of the contract with limits of not less than \$1,000,000 for personal injury to each person and \$250,000 for property damage.

- e. **Errors and Omissions Insurance** with limits of not less than \$1,000,000 per claim, to be in force and effect at all times which will indemnify Contractor and MUSL and the individual Members of MUSL and their jurisdictions for direct loss which may be incurred due to any error caused by Contractor, its officers, employees, agents, subcontractors or assigns regardless of negligence. MUSL shall be named as an additional insured on this policy.
  - f. **Workers' Compensation Insurance** as required by law.
  - g. Errors and Omissions Insurance must continue until one year past the term of the contract. All other insurances covered by this section must be effective when performance commences under the contract and continue through the life of the contract and any authorized extensions.
  - h. Certificates of insurance must be furnished to MUSL on date of contract execution, with the exception of the certificate for Errors and Omissions Insurance, which must be furnished to MUSL prior to installation of the first system.
  - i. The required insurance coverages shall be written for not less than any limits of liability as required by the contract, and shall include contractual liability as applicable to Contractor's obligations under the Indemnification clause of the contract. Self-insurance coverage will not be acceptable.
- 12. No Assignment.** Assignment of the contract will not be allowed without the written consent of MUSL.
- 13. No News Releases.** Contractor shall not issue any news releases pertaining to this procurement process nor during the performance of the contract without prior written approval by MUSL.
- 14. No use of MUSL or member Intellectual Property.** Contractor agrees not to use MUSL's or any member lottery's name, logos, images, nor any data or results arising from this procurement process or contract as a part of any commercial advertising without prior written approval by MUSL.
- 15. Sensitive Operation.**

**15.1** MUSL is an extremely sensitive enterprise because of the nature of the business and because it is government operated. Therefore, it is essential that its operation, and the operation of other enterprises that would be linked to it in the public mind, avoid not only impropriety but also the appearance of impropriety. Because of these concerns, Contractor is expected to:

- a. Offer goods and services only of the highest standards.
- b. Use its best efforts to uphold the integrity of MUSL and its member lotteries and prevent the Lottery industry from becoming embroiled in unfavorable publicity.
- c. Make sales presentations in a responsible manner and when it is necessary to point out the superiority of their goods or services over those of their competitors, to do so in such a manner as to avoid unfavorable publicity for MUSL and its member lotteries.
- d. Avoid promotional activities which could be interpreted as improper and produce embarrassment to MUSL and its member lotteries.
- e. Report discovered security problems only to MUSL.

**15.2 Security Reporting.** Contractor and Contractor's employees and any subcontractors or subcontractor employees must comply with any security requirements of the RFP, its response, this Agreement, and those implemented at MUSL sites.

Except as required by law, Contractor shall immediately report all suspected or known security incidents or concerns directly to MUSL's Chief Audit Executive (CAE). The CAE will evaluate and act on such matters in accordance with MUSL's incident reporting policy and procedures.

Failure to follow these requirements may constitute cause for termination of this Agreement at the sole determination of MUSL and as per the Indemnification provisions, Contractor shall be liable for any actual damages caused by failure to follow these requirements. Contractor is responsible for assuring their respective personnel are in compliance with these requirements.

Contractor may submit the Code of Conduct and/or Code of Ethics it requires of its employees for review by MUSL. If acceptable, adherence to the same by

Contractor, and subcontractors (if any) shall be required. Contractor's employment handbook and service checklist are sufficient to comply with MUSL's security requirements and by reference are made a part of this Agreement.

**16. Approvals Required.** MUSL must approve all employees, subcontractors or agents involved with performance of the contract.

**17. Notification of Substantial Change Required.** If Contractor experiences a substantial change in financial condition during the term of a contract with MUSL, then MUSL must be notified in writing at the time the change occurs or is identified. A "substantial change" in financial condition is defined as any event that, following generally accepted accounting practices, would require a notation in the audited annual report. Failure to notify MUSL of such a change may result in termination of the contract.

**18. Accounting Records.** Contractor is required to maintain books, records and all other evidence pertaining to the contract in accordance with generally accepted accounting principles (GAAP) and such other procedures specified by MUSL. These records shall be available to MUSL, and its internal or external auditors (and other designees) at all times during the contract period and any extension thereof, and for three (3) full years from the expiration date and/or final payment on the contract or extension thereof, whichever is later.

- a. MUSL's certified public accounting firm or other designate will be given the right to review the work papers of these audits, if considered necessary by MUSL.
- b. MUSL and its independent certified public accountants shall be given a copy of all reports including any management letters issued as a result of the specified audits.
- c. Contractor is required to provide, upon request, copies of filings to the Securities and Exchange Commission.
- d. MUSL reserves the right at any time to audit Contractor's records and operations as they relate to this contract. Such audits may be conducted by MUSL's own auditors or an independent firm specified by MUSL at the expense of Contractor.

**19. Force Majeure.** A Force Majeure occurrence is an event or effect that cannot be reasonably anticipated or controlled. As herein used, Force Majeure means acts of war;

terrorism; action of the elements; governmental interference; rationing; or any other cause which is beyond the control of the party affected and which, by the exercise of reasonable diligence, said party is unable to prevent.

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

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

**20. Ownership of Goods Produced.** All components comprising the DDS (all goods produced, videotaped, filed, or recorded material produced under the terms of this agreement) are solely owned by MUSL. MUSL shall have the right to reproduce or use any products derived from the Contractor's work under the contract without payment of any royalties, fees, etc.

**21. Contractor Not Employee or Agent of MUSL.** The Contractor, its employees, agents or subcontractors performing under this agreement are not employees or agents of MUSL or MUSL members, but is an independent contractor performing pursuant to the terms of this agreement.

**22. Choice of Forum.** The laws of the State of Iowa shall govern and determine all matters arising out of or in connection with this agreement. In the event that any proceeding of a quasi-judicial or judicial nature is brought to determine any matter arising out of or in connection with this agreement, such proceeding must be brought in Polk County District Court for the State of Iowa or in Federal District Court for the Southern District of Iowa in Polk County, Iowa.

**23. Severance.** If any provision of this agreement is held to be invalid or unenforceable, the remainder shall remain valid and enforceable.

**24. Amendment.** This Contract may be amended by mutual agreement of the parties. Any such amendment must be in writing and signed by an authorized representative of the parties.

**25. Notices.** All written notices and communications required by this agreement shall be sent in writing and via email to the following addresses:

Legal Department  
Multi-State Lottery Association  
4400 NW Urbandale Drive  
Urbandale, IA 50322  
Legal@musl.com

CONTRACTOR NAME  
Contact name and email  
CONTRACTOR ADDRESS

**26. Agreement – the Scope of Work and Implementation Schedule** incorporated by reference to the terms and conditions of this Agreement.

The above Agreement entered into on the below dates:

\_\_\_\_\_  
Multi-State Lottery Association

\_\_\_\_\_  
Contractor

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

