



Request for Proposal

Centralized Internal Control System

Issued by

Multi-State Lottery Association

Date Issued: November 28, 2023

Proposals to the RFP are Due on February 20, 2024, no later than 3:00 P.M. CT

All correspondence regarding the RFP must be emailed to Procurement@MUSL.com, with the subject line Central ICS.

INTRODUCTION

The Multi-State Lottery Association (MUSL) is an unincorporated non-profit association owned and operated by thirty-nine (39) governmental lotteries (Member Lotteries)¹. There are currently nine (9) Licensee Lotteries². MUSL assists Member Lotteries in the sale of Powerball®, Mega Millions®, Lotto America®, and 2by2®.

Companies interested in learning more about MUSL and its games are encouraged to visit the official websites at MUSL.com and Powerball.com.

A. REQUEST FOR PROPOSAL

Each MUSL Member and Licensee Lottery reports sales information to MUSL before each multi-jurisdictional drawing. It is required that lotteries report sales that are identical between two systems: the central/computer gaming system (CGS), which is responsible for printing tickets and recording each lottery's sales transactions to verify a ticket is authentic, and the internal control system (ICS), which acts as an auditing function to verify the work of the CGS.

Prior to each drawing, information from the CGS and ICS must match, or balance. Every data entry must be transmitted between the two systems so that ticket sales are verified. Some lotteries use more than one CGS for different methods of game sales (e.g., traditional counter sales and internet sales).

Additionally, after each drawing, each CGS and ICS must verify matching winners' information to determine whether a Grand Prize jackpot has been won, ensure that game drawings do not result in parimutuel payouts, and, confirm correct prize payout information.

To further support the Member Lotteries in their missions to offer entertaining games in a socially responsible manner, MUSL is requesting proposals for a Central ICS as further outlined in this

¹ Member Lotteries: Arizona; Arkansas; Colorado; Connecticut; District of Columbia; Delaware; Florida; Iowa; Idaho; Indiana; Kansas; Kentucky; Louisiana; Maine; Maryland; Minnesota; Missouri; Mississippi; Montana; North Carolina; North Dakota; Nebraska; New Hampshire; New Mexico; New York; Oklahoma; Oregon; Pennsylvania; Puerto Rico; Rhode Island; South Carolina; South Dakota; Tennessee; Texas; US Virgin Islands; Vermont; Wisconsin; West Virginia; and Wyoming

² Licensee Lotteries: California; Georgia; Illinois; Massachusetts; Michigan; New Jersey; Ohio; Virginia; Washington

Request for Proposal (RFP). This Central ICS will operate in parallel to the individual lottery ICS and will act as an alternative means of matching CGS data to ensure sales and winners report balancing prior to and following draws. MUSL is committed to maintaining the integrity and security of the multi-jurisdictional games its Members offer. We are seeking solutions that will eliminate draw and sales reporting delays.

Currently, there are 52 CGS that provide data. MUSL is requesting a Central ICS solution that will obtain data from all 52 CGS for processing and reporting, and all CGS that may be added in the future.

It is intended that MUSL will select a vendor that is able to provide, fully operate, and support a comprehensive solution for a Central ICS. The MUSL Central ICS will perform all of the following functions: 1) act as an auditing service and backup system to collect sales (not specific winner) information for Member and Licensee lotteries located across the U.S.; 2) capture all lotteries' transactions from every CGS used by each of the Member and Licensee lotteries; and, 3) report those sales, by lottery system, to MUSL.

This project does not replace the ICS in any of the lotteries; rather, it will operate in parallel to existing lottery ICS and further support the lotteries by providing another jurisdictional reporting service.

Proposals should include detailed information regarding the development, implementation, and operation of a MUSL Central ICS as defined by the Project Requirements below. Proposals should provide information in an organized manner, detailing responses for each of the Project Requirements (Hardware; Software; Security; Implementation; User Acceptance Testing; Ongoing Management, Operation, and Support; Recovery Time Objectives and Recovery Point Objectives; Service Level Agreement; and, Cost Proposal).

Proposals must also recognize that interface options and solutions will communicate with every CGS used by the Member and Licensee Lotteries, and not a single, or a consolidated centralized gaming system solution. Proposals with multiple solutions should rank, in priority, which solution the Vendor recommends, with "1" being the best recommended solution, etc.

MUSL will consider options for on-premises or cloud solutions, so long as every option comports with applicable security requirements certified by World Lottery Association Security Control Standards (WLA SCS) and other security provisions as may also be required by MUSL.

B. PROJECT REQUIREMENTS

MUSL intends to enter into a master services agreement with the successful company with a contract term of five (5) years, with potential extensions of up to ten (10) years, provided the vendor successfully performs all requirements on a consistent and continual basis during the term of the contract.

For purposes of this RFP, the ICS means all hardware (including computer, servers, monitors, printer, and uninterrupted power supply), software, supplies, and related services necessary to operate and maintain a computer system designed to independently process real-time transactions:

- all daily transactions of relevant multi-jurisdictional lottery games processed by all lottery gaming systems;
- independently process all drawing-specific transactions for each drawing-style game; and,

- all accounting activity, including but not limited to sales, winners, winner shares, validations (all prize payouts), and, retailer adjustments if necessary.

MUSL anticipates that establishing at least two production and one test system Central ICS will be necessary, must operate simultaneously and independently, and accept and process transactions in real, or near-real time from all lottery CGS. The production ICS shall have a time-synchronizing mechanism to ensure consistent time recording and reporting for events and transactions.

A third ICS, used for testing must be identical to the production ICS in hardware, software, and configuration, and be available for use by MUSL, with full support from the Vendor.

Real-time data feed sources must be specified; off-line data collection should also be provided.

1. ICS Hardware

Three (3) ICS will be required: a) the primary production ICS ("ICS Prod 1"); b) a second production ICS ("ICS Prod 2"); and c) one (1) test ICS ("ICS TEST") used for MUSL user acceptance testing and security operations, located at a site to be determined. If vendors recommend additional production and/or test systems, the rationale should be provided in the Proposal.

The Production ICS must be geographically located in different areas of the United States, which may include the cloud, subject to being in different cloud regions. The selected vendor must have a business continuity / disaster recovery plan that includes support staff in different geographic locations.

2. ICS Software

Specifically, Proposals should provide details on software development and functions in these, and all other pertinent areas:

- (a) near real-time sales balancing, and pre-draw balancing and post-draw winners balancing.
- (b) transferring sales data from different gaming systems for all Lotteries to the proposed Central ICS, including how communications with multiple CGSs will be achieved.
- (c) receiving winning numbers drawn from each draw conducted.
- (d) creating a validation, winners, and winner share file(s).
- (e) exception reporting.
- (f) fraud detection.
- (g) ability to integrate with a centralized customer relationship management system.
- (h) identifying operating systems that are compatible with the proposed ICS.

The contents of each board of play shall be verified to match between the ICS and CGS through a cryptographically secure hash algorithm (i.e., SHA-256 or SHA-512) before the draw. The data to be included in the input for the hash shall be all items that a Lottery uses to uniquely identify a transaction. Examples of this data may include but are not limited to date and time, serial number, terminal number, retailer number, draw number, play selections, and wager amount.

Ownership of all intellectual property must also be reported in Proposals. Vendors must provide certification that the proposed system and software does not infringe on any existing patents or other intellectual property rights owned by others. Vendors will be required to fully defend and indemnify MUSL and all participating lotteries from any third-party lawsuits regarding intellectual property infringement.

The software must be scalable, and Proposals must indicate the number of transactions per second their solution(s) is (are) capable of processing.

The source code for the ICS will be placed in a third-party escrow arrangement with a designated escrow agent that shall be identified to MUSL, and which shall be directed to release the deposited source code in accordance with a standard escrow agreement acceptable to MUSL. All updates, corrections, and/or enhancements to the source code will be certified in writing to MUSL. Proposals should include, as a separate line item, the costs of transfer of ownership of the source code to MUSL.

See section 7 regarding conformance to the differing, multiple and changing CGS systems, and indicate how continuing conformance can be achieved.

3. Customer Relationship Management

MUSL expects to establish a centralized Customer Relationship Management (CRM) program issued through a separate RFP.

Integration of the CRM with the Central ICS must be anticipated by the Central ICS vendor. Lotteries have separate VIP and other player retention programs. Overlap of data from the Lotteries will be addressed, and solutions regarding implementation of a centralized CRM that provides access to data by the Lotteries is a critical component of this initiative. Proposals will offer anticipated solutions for eventual CRM integration.

4. Security

The successful Vendor must have a World Lottery Association Security Control Standard (WLA SCS) Level 2 certification and the ISO/IEC 27017 if a cloud solution is offered.

The Central ICS requirements will include at least the following:

- (a) an approved cryptographic hash function applied to the complete set of transactions for each of the CGS sales reports, and the total sales.
- (b) dedicated networks, separated from other networks by use of firewalls.
- (c) means and methods to identify unauthorized access to, and tampering with, ICS transactional records/data.
- (d) MUSL management and oversight of updates and changes to the ICS.

Physical facilities offered by the Vendor shall include these minimum requirements:

- (a) security camera surveillance and recording of all ICS operator areas, each ICS, and every door that provides access to the ICS, maintained for forty-five (45) days.
- (b) sole approval by MUSL of the individual operator accounts, operators of, and access to ICS and ICS areas.
- (c) permanent walls for the ICS room.
- (d) ICS room entry doors that shut and lock automatically.
- (e) fire suppression systems that will not harm the integrity of stored data on the ICS.

5. Implementation

Proposals must provide the methodology(ies) and process(es) used, and a proposed implementation schedule (number of days, weeks, or months), including milestones. The proposed schedule should include staffing requirements for Vendor and MUSL.

During the implementation, MUSL expects weekly meetings with the Vendor so that the Project can remain on schedule, and any issues that arise can be resolved quickly. MUSL and the successful Vendor will each designate a Project Manager who will be the primary contacts throughout the duration of the implementation phase. Vendors should provide a curriculum vitae of each proposed Project Manager(s) for this project.

6. User Acceptance Testing (UAT)

MUSL, all Lotteries, and CGS operators will engage in UAT. Proposals must include detailed information that advises MUSL on the requirements (hardware, software, etc.) necessary for all UAT, and how UAT will be secured by the Vendor, MUSL, and lotteries.

7. Ongoing Management, Operation, and Support

Proposals must describe in detail how the Vendor will ensure the ongoing operation of the Central ICS by Vendor W2 employees (not independent contractors). MUSL expects the successful Vendor to train MUSL staff on the ICS, but also anticipates that the successful Vendor will provide the necessary management, overall operation, and customer support necessary for its smooth operation. Vendor support staff must be available 24/7/365.

Proposals must include how the Central ICS solution will acknowledge receipt of transactions received from a CGS, and continually balance the transactional data throughout a draw period. Additionally, in the event of error(s), the proposals must include how quickly communications to the CGS will be accomplished, and in what format (i.e., text, email, etc.). Real-time error checking by the ICS is required.

The successful vendor's system must be updated to adjust to changes in sales and winner data reporting from each lottery's CGS(s). This will require working with fifty-two (52) plus distinct CGS systems and more as are added or changed, to meet software changes, release dates, testing schedules and to accommodate the differing types of transactional files.

8. Recovery Time Objectives (RTO) and Recovery Point Objectives (RPO)

Proposals must include the RTO and RPO associated with your ICS proposal. Indicate the RTO and RPO for all types of system errors, including but not limited to network and/or database error(s) and transactional processing.

9. Service Level Agreement (SLA)

Vendors submitting Proposals in response to this RFP will be required to operate and maintain the Central ICS.

10. Configuration Diagram

Proposals must include a configuration diagram.

11. Cost Proposals

Cost proposals must include all costs to provide, maintain, operate, and support the ICS solution, or each solution offered in the proposal. Additionally, costs associated with provision of the network is a required component of the Cost Proposals.

C. VENDOR / COMPANY REQUIREMENTS

Proposals must include the following information about your company:

- (1) Number of years in business, and number of employees;
- (2) List of Customers for which you have provided a reporting system that is complex;
- (3) Number of software developers;
- (4) Number of support service personnel that provide 24/7/365 support (list W2 and independent contractors separately);
- (5) Specific experience in developing, implementing, and maintaining complex systems that are multi-functional and that have been integrated with separate systems managed by other companies;
- (6) Type and limits of all insurance; and,
- (7) Any other information that will be helpful in determining the company's qualifications for this Project.

D. 2023-2024 TIMELINE FOR THE RFP (MAY BE REVISED BY MUSL)

November 28, 2023 – RFP issued; posted to MUSL.com; PublicGaming.com; NASPL.org

December 18 – Questions from interested Vendors due by 3:00 pm CT (email only: **subject line:** Central ICS; **email:** Procurement@MUSL.com)

January 9, 2024 – Responses to Vendor Questions (anonymized, and posted to MUSL.com)

February 20 - Proposals Due by 3:00 pm CT (email only: **subject line:** Central ICS; **email:** Procurement@MUSL.com)

March 5 - 8 – Vendor interviews and demonstrations (at the discretion of MUSL)

April 11 – Initial Selection

May - June – Contract Negotiation

June – July – Project Kick-off Meeting

E. PROPOSAL FORMAT

Proposals must be submitted in PDF format to Procurement@MUSL.com, with the **subject line** Central ICS. Other communications (including with lotteries and MUSL staff) may be grounds for disqualification.

Information that fully addresses the requirements of this RFP must be included in the Proposals. Generalized information that is not relevant to the project requirements as provided for in this RFP is discouraged and may be grounds for disqualification.

In addition to specific information addressing all Project Requirements, Proposals must include a transmittal letter, on company letterhead, signed by an officer of the company that represents and warrants that the company:

- (1) will provide the services requested in this RFP in accordance with this RFP and the company's Proposal, which will remain valid for a period of 180 days from submission;
- (2) has not made any material misrepresentation or omission in connection with its Proposal;
- (3) has not acted with other entities, including other companies that might submit a proposal, to restrict competition for this solicitation; and,
- (4) has not agreed to pay any person or entity (other than a bona fide employee of the company) a fee or commission conditioned on the award of this contract.

F. EVALUATION AND VENDOR SELECTION

The Vendor Evaluation and Selection process will begin on February 20, 2024.

The following criteria will be used for consideration of Proposals (order not necessarily indicative of evaluation weighting): Viability of proposed solution; ability to work with CGS vendors and implement a seamless and functional Central ICS; project team experience in developing, operating, and maintaining a centralized system with multiple reporting points; and costs.

MUSL may contact any Vendor for clarifications or additional information regarding their Proposals and may negotiate contract terms including a statement of work (SOW), deliverables, budget, and pay-for-performance provisions. A sample statement of work is included in this RFP.

MUSL may contact any client or former client of the Vendor for additional information regarding the Vendor's services and performance.

MUSL will notify all Vendors submitting proposals as to the selection.

Sample contractual terms are located on the following pages; additional terms and conditions will be required. Vendors must submit a copy of terms and conditions used by their companies.

G. MUSL CONTACT INFORMATION

Thank you for your interest in this Project. Vendors are advised that the contact for this RFP is Procurement@musl.com, with the subject line **Central ICS**.

Attempts to contact other MUSL employees may be grounds for disqualification from the RFP process.

Note: The Selected Vendor, its owners, and staff who will be assigned to work on this Project may be subject to successful completion of financial and criminal history background checks. Any resulting contract will include requirements regarding confidentiality, bonding and insurance, compliance with MUSL security requirements, intellectual property assurances and other provisions.

Vendors are responsible for their own costs in developing and submitting a proposal. MUSL will not reimburse any vendor costs incurred in the submission of their Proposal.

By issuing this RFP MUSL is not offering to enter into a contract with any interested Vendor, nor does acceptance of a proposal or additional information constitute an agreement to enter into a contract with any interested Vendor. Vendor selection schedule may change.

The terms "vendor" and "company" are used interchangeably in this RFP.

SAMPLE
STATEMENT OF WORK
FOR
(PROJECT NAME)
As agreed to by
THE MULTI-STATE LOTTERY ASSOCIATION
And
VENDOR/SUPPLIER NAME

Pursuant to the Agreement, signed by the Multi-State Lottery Association and (NAME OF VENDOR) (“Parties”) on **XXX, 20XX**, this Statement of Work (SOW) is hereby incorporated and made a part of the Agreement. Any modifications to the SOW must be mutually agreed to in writing and signed by the Parties in accordance with the Change Order provisions identified below.

1. Introduction

Describe the deliverables-based services and/or goods and each of the deliverables at a summary level.

2. Background

Why MUSL is contracting for this deliverables-based service. Provide useful information regarding the MUSL organization, project history, future plans or any other relevant information regarding the work to be performed. Identify the Project Managers for the Project.

3. Scope

(Example - Provide a detailed listing of what will be required for the project)

- Scope of work
- Security measures
- Roles and responsibilities of the supplier and MUSL
- Detailed description of deliverables (see chart below)
- Acceptance criteria
- Project completion criteria and date
- Project schedule
- Identify who from MUSL, and who from the vendor will be responsible for monitoring and tracking the services and performance
- A kickoff meeting will be held no later than **XXXXXX, 20XX** at a location and time selected by MUSL where the Vendor and its staff will be introduced to MUSL staff.

4. Deliverables

- Deliverables must be provided on the dates specified. Any changes to the delivery date must have prior approval (in writing) by the MUSL project manager, or contract manager, or designee.
- All deliverables must be submitted in a format pre-approved by the MUSL project manager.
- If the deliverable cannot be provided within the scheduled timeframe, the Vendor is required to contact the MUSL project manager in writing with a reason for the delay and the proposed revised schedule. The request for a revised schedule must include the impact on related tasks and the overall project, including any impacts

to project costs.

- A request for a revised schedule must be reviewed and approved, in writing, by the MUSL project manager before being effective. Contract Terms and Conditions may dictate that an amendment be entered into, and should reflect the appropriate remedies, costs, and other actions based on the facts related to the request for a revised schedule.
- MUSL will complete a review of each submitted deliverable within specified working days from the date of receipt and identify if the deliverable is accepted (per the acceptance criteria), or, if the deliverable is rejected as not meeting the agreed-upon deliverable. Vendor will have time to correct the deficiencies.

Sample Delivery Schedule

No.	Item	(optional column for payment amount associated with the deliverable or other requirements)	Due Date	Recipient
1				
2				
3				
4				
5				
6				
7				
8				
9				
10				
11	Project completion/sign off by MUSL			

5. Performance Monitoring

(Example – at a minimum, MUSL should consider the following items when developing their SOW)

- The Vendor is required to provide MUSL’s project manager with weekly written progress reports of this project. Items to be covered in the progress report may include:
 - 1) Required documents (plans, estimates, schedules, analyses)
 - 2) Description of all work performed and completed during the week for which the progress report is provided and shall present the work to be performed during the subsequent week.
 - 3) Identification of outstanding issues encountered with an explanation of the cause, proposed resolution, and timeframe in which the issue will be resolved.
 - 4) Schedule of progress/status meetings with the MUSL project manager.

6. Invoices

Describe the Vendor’s responsibilities for invoicing MUSL including invoice content, frequency/schedule and instructions for submitting invoices. Payments will be made in accordance with the Contract.

7. MUSL/Vendor-Furnished Equipment and Workspace

Specify what equipment and/or workspace the MUSL will provide or the expectations of what the Vendor will provide.

8. Pricing

The main purpose of this section is to detail the pricing for the deliverables-based services. Vendors should also provide a summary of any assumptions and exclusions.

(Example - expand or revise as needed)

Deliverable No.	Deliverable Name	Price

9. Acceptance Criteria

(Example – expand or revise as needed)

Deliverable No.	Deliverable Name/Acceptance Criteria	Accepted (y/n)

(Payments should be made based on MUSL’s Acceptance of the Deliverables.)

10. Change Order Process

Changes to the original scope of the project shall be identified through a change order proposal, which shall be in writing, and submitted to the other party. The proposal shall describe the specific change(s) needed, why it wasn’t identified in the original project scope, and how it will assist in successful completion of the project. The proposal shall also include the increase or decrease in costs associated with the proposed change.

The other party shall have three (3) business days to review and discuss with the other party. If accepted, the proposal shall be signed, and dated by both parties. If rejected, the parties may discuss alternatives to the proposal, and jointly develop a change order proposal for review, and signature.

SAMPLE AGREEMENT

This Agreement (“**Agreement**”) is made and entered into on the last date of execution by the Multi-State Lottery Association, (“**MUSL**”) with offices located at 8101 Birchwood Court, Suite R, Johnston, Iowa 50131, and **XXX** with offices at **XXX** (“**Contractor**”) (each a “**Party**” and collectively the “**Parties**”).

RECITALS

WHEREAS, MUSL is an association of governmental lotteries organized to assist, facilitate, and coordinate among its Participating Lottery members one or more multi-jurisdiction lottery games; and

WHEREAS, MUSL issued a Request for Proposal (“**RFP**”) for services related to **XXX**

WHEREAS, Contractor submitted a Proposal on **XXX** (the “**Proposal**”); and

WHEREAS, MUSL desires to have Contractor provide the Services as identified in the RFP and the Proposal (“**the Project**”); and

WHEREAS, each Party has legal authority to enter into this Agreement; and

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual promises hereinafter set forth, and intending to be legally bound, the parties hereto agree as follows:

1. Services to be Provided by Contractor. Contractor shall perform all Services, and issue all Reports as required by the RFP and Contractor’s Proposal and by this reference, incorporated into the terms and conditions of this Agreement. The order of preference in the event of a conflict in terms shall be resolved by the terms of the documents in this order: Agreement, RFP, Contractor’s proposal. Services shall be performed within the timeframe as mutually agreed to by the Parties, and as may be set out in a Statement of Work (SOW). The fee for the services shall be as indicated in Contractor’s Proposal. For purposes of this Agreement, the term “Contractor” includes any subcontractors; use of subcontractors must be approved in advance by MUSL. Services shall be performed during the hours specified by MUSL.

Any Report regarding the work performed under this agreement is issued solely for the benefit of the MUSL, and is to the scope defined in the RFP, the Proposal, and this Agreement.

2. Costs. Contractor shall be paid a fixed fee of **\$XXX** for all Services required by the RFP and as identified in Contractor’s Proposal. Invoices shall be submitted to ap@musl.com, or by USPS or overnight services to the Director of Finance, Multi-State Lottery Association, 8101 Birchwood Court, Suite R, Johnston, Iowa 50131, and undisputed amounts shall be paid within 30 days of receipt of the invoice. The Parties shall make all reasonable efforts to resolve disputed amounts. MUSL will not pre-pay for services.

3. Key Personnel. Contractor’s personnel assigned to this project are those identified in Contractor’s Proposal and any substitutions made as allowed below (“Key Personnel”). Contractor shall ensure at all times that only Contractor’s personnel who have undergone background testing as required by MUSL are on Contractor’s project team for this project, and also ensures that those personnel possess the necessary skills, abilities and experience to perform the following in accordance with the highest professional and industry standards. Substitutions may be made only with approval in writing from MUSL and prior to the substitution.

Contractor shall work under the direction of and provide all information concerning the Project to MUSL’s project manager(s) or designee(s).

At MUSL's direction, Key Personnel may be required to undergo security awareness and ethics training and meet specific security-related requirements or provide specific security and ethics assurances as deemed necessary by MUSL.

4. Deliverables and Project Schedule. Contractor shall complete all Services and provide all deliverables in accordance with the specifications and requirements set forth in this Agreement, the Proposal, an applicable Statement of Work ("SOW"), or as mutually agreed to by the Parties. MUSL reserves the right to extend the deliverable dates; any other changes will be by mutual written agreement of the MUSL and the Contractor.

Deliverables include any tangible or intangible items or things that have been or will be prepared, created, maintained, serviced or developed by the Contractor at any time following the effective date of the Agreement, for or on behalf of MUSL.

5. Confidentiality. Each party acknowledges that in the course of the Project it may learn from the other party certain non-public personal or otherwise confidential information. Each party shall regard any and all non-public or confidential information it receives which in any way relates or pertains to the other party, including its members, licensees, customers and employees, as confidential. Each party shall take commercially reasonable steps to not disclose, reveal, copy, sell, transfer, assign, or distribute any or any part of such information in any form, to any person or entity, or permit any of its employees, agents, or representatives to do so for any purpose other than as required under this Agreement, and expressly as part of the Project.

Contractor shall maintain as confidential and shall not disclose to third parties without MUSL's prior express written permission all information and deliverables not otherwise publicly available, whether proprietary or not, made known to or discovered by Contractor or furnished by Contractor to MUSL or furnished by MUSL to Contractor during the performance of or in connection with this Agreement. Contractor shall immediately notify (within three (3) days of the request) MUSL in writing if Contractor receives a request to disclose such information during this Agreement or at any time thereafter.

If Contractor is required or requested to provide information or documents regarding any services performed under this Agreement to any party other than MUSL, Contractor shall immediately (within three (3) days of the request) notify or advise MUSL of any such requests or requirements. MUSL may initiate such legal action as MUSL deems appropriate to protect information from discovery to protect MUSL's interests.

MUSL agrees that the Report is proprietary to the Contractor and to MUSL, and will not release the Report to any other parties external to the Agreement except its members without prior written approval of Contractor. Contractor will not release the Report to any party external to the Agreement without express written approval from the Executive Director (or designee as provided in writing) of MUSL.

6. Return of Information. Upon request of MUSL, and upon expiration or termination of this Agreement, Contractor shall return all documents and any other tangible information as provided under this Agreement (including but not necessarily limited to confidential information provided by MUSL or developed by Contractor), and any copies, notes, memoranda, records, drawings, manuals, computer software, data, work product, draft and final reports or other documents or materials. Contractor shall provide written confirmation of the destruction of all electronic files containing confidential information either obtained by Contractor or created by Contractor in performance of this Agreement. This does not apply to any information which is or becomes public knowledge through a source other than Contractor and through no fault of Contractor; is or becomes lawfully available to Contractor from a source other than MUSL; or, is disclosed by Contractor with MUSL's prior written approval.

This Section shall survive Termination and/or the Term of this Agreement. Contractor also expressly agrees that no use of the information gained from this Project shall be used in public speeches, presentations or in any public forum unless MUSL has provided express written consent. Damages pursuant to this section shall apply should Contractor not adhere to the requirements.

7. Liquidated Damages. Contractor and the MUSL hereby acknowledge and agree to the following: 1) if Contractor does not provide or perform the requirements referred to or listed in this Agreement, damage to MUSL will result; 2) establishing the precise measure of MUSL's damages in the event of default by Contractor may be costly, time consuming, or difficult or impossible to accurately estimate or calculate; 3) the liquidated damages amounts set forth in this section represent a good faith effort to quantify the damages that could reasonably be anticipated at the time of execution of this Agreement; 4) the damages set forth herein are just and reasonable; 5) nothing contained in this section shall be construed as relieving Contractor from performing all contractual requirements as set forth in its Proposal and as required by this Agreement and the RFP, whether or not the requirements are set forth herein; 6) it is the Parties' mutual intention that this section provide for liquidated damages to compensate the MUSL upon the occurrence of such an event, rather than penalties to deter Contractor from breaching this Agreement and/or to punish Contractor upon the occurrence of such an event; and, 7) MUSL may therefore in its sole discretion, deduct damages from the compensation otherwise due to Contractor. All assessments of damages shall be within the sole discretion of the MUSL.

(a) Liquidated Damages Assessment. Once MUSL has determined that liquidated damages are to be assessed, MUSL shall notify Contractor of the assessment(s). Failure to notify does not impact MUSL's assessment of damage and is not a condition precedent thereto. MUSL will withhold liquidated damages from payments to Contractor, or, if no payments have been made, MUSL will make demand of payment of liquidated damages. The Contractor must make payment within thirty (30) days of MUSL's demand. In the event the Contractor fails to pay within the thirty (30) day period, MUSL may make a claim for payment from the bonds, insurance or lines of credit proffered by Contractor under this Agreement, or MUSL may seek payment directly from Contractor in the event such bonds, insurance or lines of credit are insufficient or no longer available.

(b) Failure to Assess Liquidated Damages. The failure of MUSL to assess liquidated damages in any instance where the MUSL is entitled to liquidated damages pursuant to the terms of this Agreement shall not constitute waiver in any fashion of the MUSL's rights to assessment of liquidated damages.

7.1 Severability of Individual Liquidated Damages Clauses. If any portion of this liquidated damages provision is determined to be unenforceable, the other portions of this provision shall remain in full force and effect.

7.2 Specific Liquidated Damages.

(a) Failure to Maintain Confidentiality. Should Contractor fail to adhere to the Confidentiality provisions of this Agreement at any time, whether prior to the completion of Contractor services and deliverables under this Agreement or at any time thereafter, Contractor may be assessed liquidated damages in an amount up to \$100,000 per incident.

(b) Failure to Return Confidential Information. Should Contractor fail to return all documents and things pertaining to the Project or confidential information provided by MUSL at the termination of this Agreement, Contractor may be assessed liquidated damages in an amount up to \$50,000 per incident.

(c) Internal Control System Installation. Contractor must complete installation preparations as required, complete system testing to MUSL's satisfaction, pass Lottery Acceptance Testing, and comply with all other requirements of the Agreement by the dates specified in the Agreement.

(i) MUSL may impose liquidated damages of \$1,000.00 per day for each calendar day that the System is not available for Acceptance Testing as required by the Agreement.

- (ii) MUSL may impose liquidated damages of \$1,000.00 per day of delay in the completion of Acceptance Testing as required by the Agreement.
- (iii) MUSL may impose liquidated damages of \$5,000.00 per day of delay in operation of the System.
- (iv) MUSL may impose liquidated damages of \$1,000.00 per day for each calendar day of delay in the operation of the Back-up Computer at the Back-up Site.
- (v) MUSL may impose liquidated damages of \$500.00 per day for each and every failure to provide a deliverable item required by the Agreement or to comply with any other requirement in effect, until such requirement is provided or performed. For the purposes of this provision, "deliverable item" means items specifically required to be delivered by the Contractor under the Agreement prior to the date specified in the Agreement.

(d) Internal Control Computer System.

(i) The Internal Control System shall not be unavailable, inoperable, or down ("Down") more than two (2) minutes during each one (1) day. The determination of being Down is determined by MUSL through analysis of system audit files.

(ii) MUSL may impose liquidated damages when the total time during which the Internal Control System is down during an operational day exceeds two (2) minutes according to the following schedule:

- a. Entire System Down: When, due to Contractor's hardware, software, or connection malfunction, MUSL is unable to produce accurate and complete reports in the required timeframes to balance sales and winning tickets and/or conduct a drawing, MUSL may assess liquidated damages in the amount of \$1,000 per hour, up to a maximum of \$20,000 per day.
- b. Failure of Production ICS: When, due to Contractor's hardware, software, or connection malfunction, a single production ICS (i.e., one of the primary configuration or the back-up ICS) is unavailable for longer than twenty-four (24) hours, MUSL may assess Liquidated Damages in the amount of \$2,000 per day or a portion thereof commencing with the twenty-fifth hour of the outage.
- c. Failure of Test ICS: When, due to Contractor's hardware, software, or connection malfunction, the Test ICS is unavailable for longer than seventy-hours (72) hours, MUSL may assess Liquidated Damages in the amount of \$1,000 per day or a portion thereof commencing with the seventy-third hour of the outage.

e. Timely, Accurate, and Additional Reports.

(i) The Contractor must produce and deliver timely, sufficient, accurate and unaltered reports including data transmissions within specified timeframes. Reports shall be produced and delivered on both an on-request, and scheduled basis according to the schedule mutually approved by the Contractor and MUSL. Should the Contractor deliver a report, deemed by MUSL as untimely, insufficient, or inaccurate, MUSL shall immediately notify the Contractor and provide the Contractor with the report name, date, and time that the report was produced. Once this information has been received by the Contractor, the Contractor shall have two (2) hours in which to deliver a corrected report to MUSL. For each late, insufficient, or altered report that is not delivered or corrected within the two (2) hours after

notification to the Contractor, MUSL may impose liquidated damages in the amount of \$500.00 per day, per report until the report is provided, made sufficient, or corrected. Contractor shall have sixty (60) days to implement requests for Additional Reports, with Acceptance Testing and Approval by MUSL. Failure to provide Additional Reports in the timeframe may result in liquidated damages in the amount of \$100.00 per day until the Additional Report is provided.

f. Failure to Implement Requests for System Changes.

(i) The Contractor shall implement requests for System changes required by MUSL at such time as may be agreed to in writing by MUSL and the Contractor or within sixty (60) days of a request by MUSL for System changes if no time has been agreed to by MUSL and the Contractor. The Contractor must complete Acceptance Testing of the request for System change, and receive MUSL's written approval of such test, within the applicable time period. MUSL may impose liquidated damages of up to \$2,000.00 for each day that the request for System change is not completed as required.

g. Unauthorized Software/Hardware Modifications. Contractor shall not modify any ICS software or ICS hardware without the prior written approval of MUSL. Should Contractor violate this clause, MUSL may impose liquidated damages of up to \$10,000 per incident, in addition to any other damages which may occur as a result of such unauthorized modification.

h. Unauthorized Access. The Contractor shall preclude any person who is not authorized, in writing by MUSL from accessing the computer facility and/or computerized system, except for the Contractor's employees and suppliers of support products and services. Contractor shall preclude access to any data by any person except as specifically authorized, in writing by MUSL. Unauthorized access shall be defined as each and every act which permits access to use of data or equipment without written authorization or a series of acts by which unauthorized access to data or equipment is attempted after an initial breach of security.

If the Contractor fails to preclude access to the computer facility by unauthorized personnel, MUSL may impose liquidated damages up to \$10,000.00 for each person, for each occurrence or violation. If the Contractor fails to preclude unauthorized access to data or equipment, MUSL may impose liquidated damages up to \$10,000.00 for each occurrence or violation. An occurrence shall be defined as each and every act that permits access by an unauthorized person.

i. Third Party Integration. Contractor is required to work with other vendors. Failure to do so may result in liquidated damages, which will be assessed per incident.

8. Term. The term shall be from the Agreement execution date through **XXX**, or as otherwise mutually agreed to by the Parties.

9. Termination. MUSL may terminate this Agreement, in whole or in part, at any time, at will and without cause and will be responsible only for paying compensation to Contractor as indicated below.

MUSL shall not be liable for any costs incurred if termination by MUSL is for cause and, in the sole discretion of MUSL, such cause materially threatened the security or integrity of MUSL, or if, in the sole discretion of MUSL, Contractor failed to provide any goods or services of material value or benefit to MUSL.

If this Agreement is terminated, compensation, if any, shall be limited to reasonable expenses for good and valuable (as determined by MUSL) products, materials, supplies, and services provided by Contractor and accepted by MUSL through the termination date for which Contractor have not yet been compensated. MUSL will make no

payments to Contractor for work not provided to MUSL, work in progress, or raw materials acquired unnecessarily in advance by Contractor, in excess of MUSL's delivery requirements, or initiated by Contractor after receipt of notice of termination.

10. Exclusivity. This Agreement is non-exclusive as related to the services provided and nothing in this Agreement precludes MUSL from procuring the same or similar services from another vendor.

11. Indemnification. Contractor shall indemnify, defend and hold harmless the Indemnified Parties from and against all actions, losses, liabilities, suits, penalties, fines, damages and claims (including taxes), and all reasonably related costs and expenses (including reasonable attorneys' fees and disbursements and costs of investigation, litigation, settlement, judgments, interest and penalties), whether based on negligence, strict liability, intellectual property infringement or any other culpable conduct, arising from or in connection with any of the following:

(a) Any claim, demand, action, citation or legal proceeding arising out of or resulting from (i) the Services and deliverables provided by Contractor, (ii) performance of the work, duties, responsibilities, actions or omissions of Contractor or any of its subcontractors under this Agreement, or (iii) a breach of any representation or warranty made by Contractor in this Agreement, including, but not limited to, Contractor's unauthorized disclosure of MUSL confidential information.

(b) Any claim, demand, action, citation or legal proceeding arising out of or related to occurrences that Contractor failed to insure against, or which Contractor's insurer has declined coverage of, as provided for under this Agreement.

(c) 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, which may be incurred, suffered, or required in whole or in part by an actual or alleged act or omission of Contractor, or by any of its subcontractors, or by anyone directly or indirectly employed by any of them.

(d) Any claim, demand, action, citation or legal proceeding resulting from any negligent or intentional act or omission of Contractor or any of its subcontractors, including failing to follow MUSL security-related requirements as required in this Agreement.

(e) Any claim, demand, action, citation or legal proceeding resulting from any claim of intellectual property infringement from vendor's systems, software or any other element of the goods and service provided under this Agreement.

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 licensees or their individual jurisdictions.

This section shall survive the termination of this Agreement.

12. Compliance with Laws. Each Party shall comply with all applicable laws, rules and regulations when performing under this Agreement. This also requires that Contractor to pay all taxes, fees, and assessments, however designated or levied, or based upon the goods and services supplied by Contractor.

13. Non-Discrimination. Contractor agrees that it shall not discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, sexual orientation, marital status, national origin, ancestry or disability of a qualified individual with a disability.

14. Bonds and Insurance. All required bonds and insurance must be issued by companies or financial institutions which are financially rated Excellent or better by A.M. Best Company and duly licensed, admitted, and authorized to do business in Iowa by the Insurance Division of the State of Iowa.

Proof of bonding or insurance must be furnished to MUSL no later than the date of Agreement execution and periodically thereafter as renewed.

Contractor shall maintain insurance for claims set forth below which may arise out of or result from Contractor's operations under this Agreement, whether such operations be by Contractor or by any subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- (a) Claims under workers' compensation, disability benefit and other similar employee benefit acts as required by law in each jurisdiction in which Contractor does business.
- (b) Claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees or subcontractors.
- (c) Claims for damages because of injury to or destruction of tangible property, including loss of use resulting therefrom.
- (e) General Liability Insurance coverage with limits of not less than \$1,000,000 for injury to any one person, \$5,000,000 for any one occurrence of personal injury and \$2,000,000 for any one occurrence of property damage.
- (f) Property Insurance on all buildings, furniture, fixtures, computer and communications equipment used in operating and supporting the services provided under this Agreement in an amount equal to or greater than the actual replacement cost thereof. Coverage shall insure personal property including contents, equipment, and mobile items against fire, theft, collision, and flood. MUSL (including its member lotteries and licensee lotteries) is not responsible for insuring any of Contractor's equipment or facilities included in or associated with this Agreement.
- (g) Automotive Liability Insurance covering drivers and vehicles employed in connection with the operation of this Agreement.
- (h) Errors and Omissions Insurance with limits of not less than \$5,000,000 to be in force and effect beginning one week prior to the beginning of services under this Agreement. Insurance coverage must insure Contractor and the Indemnified Parties for direct loss which may be incurred due to any error caused by Contractor, its officers, employees, agents, subcontractors or assigns in the provision of services, regardless of negligence. Coverage must continue until one year past the expiration of this Agreement
- (i) Cyber Liability requirements of not less than \$10,000,000.

Contractor may not elect to provide entirely or in part for the insurance protections described above through self-insurance.

15. Assignment. No right or obligation of Contractor under this Agreement may be assigned by Contractor without the prior written approval of MUSL, and in the event of any such approval, the terms and conditions hereof shall apply to and bind the party or parties to whom the right or obligation is assigned as fully and completely as Contractor is hereunder bound and obligated. No assignment shall operate to release Contractor from its liability for the timely and effective performance of its obligations hereunder. Assignments made in violation of this provision shall be null and void.

16. News Releases. Contractor shall not issue any news releases, media statements, or any other advertising or presentation materials (verbally or in writing) pertaining to this Agreement or Project, without prior written approval

from MUSL.

17. Use of MUSL Intellectual Property. Contractor agrees not to use the names, logos, images, nor any data or results arising from this procurement process or Agreement as a part of any commercial advertising or for any reason without prior written approval by MUSL.

18. Force Majeure. For the purposes of this contract, “force majeure” is defined as “an act of God or any other cause of like kind not reasonably within a party’s control, and which, by the exercise of due diligence of such party, could not have been preened or is unable to be overcome.” Contractor must inform MUSL in writing within three (3) days of the existence of any such force majeure or otherwise waives this right as a defense.

Neither Contractor nor MUSL shall be liable to the other for any delay in or failure of performance under this Agreement 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 delay or failure shall extend the period for performance in the exercise of reasonable diligence until after the cause of delay or failure has been removed.

If Force Majeure conditions are expected to continue unabated for an indefinite period and Contractor cannot perform services as required by this Agreement, MUSL retains the right to obtain alternative services and/or to terminate this Agreement so that business continuity can be restored without liability to Contractor for any services not performed or not provided.

Contractor shall immediately upon discovery notify MUSL in writing of any delays in performance regardless of responsibility, fault or negligence. If Contractor contends the delay is the responsibility, fault or negligence of MUSL staff, Contractor must provide written notice within three (3) days of the discovery, and to the extent possible, identify the event or individual responsible so MUSL may take appropriate action to remedy the situation. Failure to provide such notice to MUSL as required in this section shall constitute a waiver of Contractor’s right to assert MUSL’s action/inaction as a defense.

19. Intellectual Property - Scope of Ownership. Each party will retain exclusive interest in, and ownership of its Intellectual Property developed before this Agreement or developed outside the Scope of this Agreement. Any Intellectual Property developed solely by a Party under this Agreement, and without participation of, or information from the other Party is and will remain the sole and exclusive property of the developing party. In the event that the Parties jointly develop Intellectual Property, the Parties shall engage in good faith negotiations to establish their respective rights. In the event the Parties cannot reach an agreement with regard to such jointly developed property, each party will have equal ownership and rights in such intellectual property, without further obligation and without a duty to account to the other Party.

20. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Iowa both as to interpretation and performance without regard to any conflict of laws provisions. 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. Contractor acknowledges that MUSL is formed pursuant to the Iowa’s Revised Uniform Unincorporated Nonprofit Association Act.

21. Notice. The Parties agree that all notices given pursuant to the terms of this Agreement shall be sufficient if made in writing, and mailed certified mail, first class postage prepaid, return receipt requested, or sent by overnight service with receipt acknowledged. All notices and other communications hereunder 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); or (c) on the third (3rd) day after the date mailed, by certified

or registered mail (in each case, return receipt requested, postage pre-paid). Any such notice or communication shall be sent to the following addresses or such other addresses as may be designated from time to time by the parties in writing:

As to Contractor:

XXX

As to MUSL:

Executive Director
MULTI-STATE LOTTERY ASSOCIATION
8101 Birchwood Court, Suite R
Johnston, Iowa 50131

With copy to:

22. Miscellaneous

(a) Taxes. Each of the parties shall bear all taxes imposed on it as a result of the existence or operation of this Agreement including, but not restricted to, any tax on or measured by any fee or other payment required to be made by it hereunder, any registration tax, any tax imposed with respect to the granting of or transfer of licenses or other rights hereunder or the payment or receipt of fees or royalties hereunder. In particular, any tax which one party is required to withhold for fees or royalties paid to the other party shall be borne by the other party.

(b) Entire Agreement. This Agreement, the RFP and the Contractor's Proposal constitutes the entire agreement of the parties concerning the subject matter hereof and supersedes all previous agreements whether written or verbal, and may only be amended in writing agreed to and executed by the parties hereto through their duly authorized officers or representatives.

(c) Independent Contractor. Contractor is an independent contractor, and the relationship between the parties shall be governed by the terms of this Agreement and shall not extend to other activities, transactions or agreements. Neither party is in any way the legal representative, partner or agent of, nor has any authority to assume or create any obligation on behalf of the other party.

(d) Severability. If any provision of this Agreement is held illegal, void or unenforceable in a judicial proceeding, such provision shall be severed from this Agreement and shall be inoperative. The parties shall use their best efforts to replace the severed provision with a new provision which is not illegal and which follows the principles of the severed provision as closely as is legally possible. The remainder of this Agreement shall remain in full force and effect and binding on the parties hereto.

(e) Waiver. Failure of either Party to assert any or all of its rights under this Agreement shall not be deemed a waiver of such rights, nor shall any waiver be implied from acceptance of, or payment made for any Service or Deliverable.

(f) Conflict of Interest. Contractor shall, while this Agreement is in effect, avoid situations, agreements or relationships which might cause a conflict of interest and shall immediately notify MUSL if any such conflict does or might appear to arise. No part of the price for this Agreement shall be paid directly or indirectly by the Contractor to an employee of MUSL in connection with any work contemplated or performed in relationship to this Agreement.

(g) Notice of Legal Proceedings. Each party shall immediately advise the other party of any legal notices served on the party which might affect the other party, handle promptly all correspondence from the other party,

reasonably assist and co-operate with the other party's officers, research and sales personnel during their trips to the facilities of the party.

(h) Section Headings. The section headings used herein are for reference and convenience only, and shall not enter into the interpretation of this Agreement.

(i) Counterparts. This Agreement may be executed in any number of counterparts. Any counterpart shall constitute a full and original Agreement for all purposes.

(j) Injunctive and Equitable Relief. Each of the parties expressly acknowledges and agrees that the terms of this Agreement are reasonable and necessary for the protection of the legitimate business interests of the other parties. The parties further acknowledge that a violation of this Agreement would cause serious, immediate and irreparable harm to the other party, and therefore agree that the parties shall be entitled to seek injunctive or other equitable relief without the necessity of proving such harm.

(k) Representations. Each party represents that it possesses all licenses, permits, and any other legal authorization necessary to enter into and fully perform all its obligations hereunder, and will maintain all such licenses, permits and other authorizations in good standing throughout the term.

(l) Prohibition Against Purchasing Certain Lottery Products. Contractor (including any subcontractors or agents) and its Key Personnel and any other persons identified by MUSL are prohibited from purchasing or redeeming any tickets or receiving any prizes from any lottery games for which MUSL provides drawing services. This prohibition shall also apply to any persons residing in the prohibited persons' residence(s).

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first written above.

Contractor

BY: _____ Dated: _____

ITS: _____

MULTI-STATE LOTTERY ASSOCIATION

BY: _____ Dated: _____

ITS: _____