

# Mandatory Requirements of Agreement

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**Assignment of the Agreement** - The Agreement is not assignable except with the prior written approval of the Lottery. Monies payable under the Agreement are not assignable except with the prior written approval of the Lottery and the Chief Financial Officer of the State of Florida. In the event of such approval, the terms and conditions hereof will apply to and bind the party or parties to whom the Agreement is assigned as fully and completely as the Contractor is there under bound and obligated. No assignment, if any, will operate to release the Contractor from its liability for the prompt and effective performance of its obligations under the Agreement.

**Audit** - The Contractor is required to maintain its books, records and other evidence pertaining to the Agreement in accordance with generally accepted accounting principles (GAAP) and such other procedures specified by the State of Florida. The Lottery reserves the right to audit all Contractor's and subcontractors' procedures and records using its employees, its designees or other State agencies to the extent permitted by law. The Contractor must maintain on file for a period of three (3) years after the expiration/termination or from final payment on, the Agreement whichever is later, all supporting documentation for charges and/or reports to the Lottery. These files must be available for audit by the Lottery during this time period at the Lottery's discretion.

**Availability of Funds** - The state of Florida's and the Lottery's performance and obligation to pay under the Agreement are contingent upon an annual appropriation by the Florida Legislature.

**Benefit** - The Agreement is for the benefit of the Lottery and the Contractor and not for the benefit of any third party or person.

**Contractor Ethics and Integrity** - The Contractor is obligated to meet high standards for ethics and integrity under the Agreement:

- The Contractor and its employees will not accept pay, remuneration, or gratuity of any value for performance on or information derived from the Agreement from any person or entity other than the Lottery.
- The Contractor and its employees will not offer or give any gift, gratuity, favor, entertainment, loan, or any other thing of material monetary value to any Lottery employee.
- The Contractor and its employees will not disclose any business sensitive or confidential information gained by virtue of the Agreement to any party without the written consent of the Lottery.
- The Contractor and its employees will take no action in the performance of the Agreement to create an unfair, unethical, or illegal competitive advantage for itself or others.

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- The Contractor and its employees will not have any financial or personal interests relating to the project (other than the Agreement itself) without the express written consent of the Lottery.

For violation of the above provisions, the Lottery may terminate the Agreement, receive restitution from the Contractor, debar the Contractor, and take any other appropriate actions against the Contractor.

**Controlling Law** - The validity, interpretation and performance of the Agreement will be governed by and construed under the laws of the State of Florida. Any and all civil or administrative actions against the Lottery arising under the Agreement will be instituted in the appropriate court in Leon County, Florida.

**Ethics Policy; Gifts Prohibited** - Lottery employees are prohibited by the Lottery's ethics rule, 53ER12-18, Florida Administrative Code, from accepting anything of value from a lobbyist or principal of a lobbyist or from an entity doing business with the Lottery. A copy of the rule can be obtained from the Florida Lottery, Office of the General Counsel, 250 Marriott Drive, Tallahassee, Florida 32399-4011. The Contractor agrees that it will not offer or provide to any Lottery employee any gift or other item of value that would violate the Lottery's ethics rule and acknowledges that the Lottery may unilaterally cancel this Agreement if the Contractor violates this provision.

**E-Verify Employment Eligibility Verification Program** - Pursuant to State of Florida Executive Orders Nos.: 11-02 and 11-116, the Contractor is required to utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment of all new employees hired by the Contractor during the Agreement term. Also, the Contractor must include in related subcontracts a requirement that subcontractors performing work or providing services pursuant to the state contract utilize the E-Verify system to verify employment of all new employees hired by the subcontractor during the Agreement term.

**Force Majeure** - Except as otherwise provided herein, neither the Contractor nor the Lottery will be liable for any delay in or failure of performance of any covenant contained herein, nor will any such delay or failure of performance constitute default hereunder, to the extent that such delay or failure is caused by force majeure. As used herein "force majeure" is strictly limited to an event which is outside the control of the party and cannot be reasonably avoided or deterred by such party, to include fire, explosion, action of the elements, terrorism, rationing, war, or civil disturbance. The existence of such causes of delay or failure will extend the period for performance to such extent as may be necessary to enable complete performance in the exercise of reasonable diligence after the causes of delay or failure have been removed.

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Anything in the foregoing notwithstanding, the Lottery, in its sole discretion, may elect to terminate the Agreement upon occurrence of any force majeure if continuation of the Agreement is materially threatened or hindered by reason of extended delay or failure of performance.

During a period of non-performance due to Force Majeure, payments from the Lottery to the Contractor will be suspended.

**Independent Contractor** - The Contractor, its employees, agents and subcontractors performing under the Agreement are not officers, employees, or agents of the Lottery. The Contractor is an independent contractor and will not hold itself out as nor claim to have any other relationship with the Lottery or the State of Florida by reason hereof.

## **Invoices and Payment to Contractor**

1. Invoices for commodities and/or services delivered must be submitted in detail sufficient for a proper pre-audit and post audit thereof. All invoices must be submitted to: Financial Transactions, Florida Lottery, 250 Marriott Drive, Tallahassee, Florida 32301-4020. Delays in payment may occur if invoices are not submitted to the aforementioned unit. If invoices are submitted to other units within the Lottery, payment delays will not be considered the fault of the Lottery.
2. Payment must be made in accordance with Section 215.422, Fla. Stat. Upon receipt of the commodities and/or services provided by the Contractor to the Lottery, the Lottery will have ten (10) working days to inspect and approve the commodities and/or services. The Lottery will within twenty (20) days thereafter, deliver a request for payment to the Department of Financial Services. The twenty (20) days will be measured from the latter of the date the invoice is received or the date the commodities and/or services are received, inspected and approved.

Invoices which have to be returned to the Contractor because of the Contractor's preparation errors or disputes will result in a delay in the payment. The invoice payment requirements will not start until a properly completed invoice is provided to the Lottery. Undisputed amounts are subject to the invoice payment requirements. All invoices for commodities and/or services must be cross-referenced to the Agreement in such a manner that the Lottery can identify the authority for the charge.

If a warrant is not issued within forty (40) days, a separate interest penalty as specified in Section 55.03, Fla. Stat., will be due and payable, in addition to the invoice amount, to the Contractor. Interest penalties of less than one dollar (\$1.00) will not be enforced unless the Contractor requests payment.

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A Vendor Ombudsman Program has been established within the Department of Financial Services. The duties of this program include acting as an advocate for vendors who may be experiencing problems in obtaining timely payments from a state agency. The Vendor Ombudsman Program may be contacted at (850) 413-5516, or by calling the Department of Financial Services Consumer Hotline at 1-800-342-2762.

3. The Florida Department of Financial Services offers a centralized Vendor Portal found at: <http://www.myfloridacfo.com/Division/AA/Vendors/default.htm> which provides pertinent information pertaining to vendor payment status, direct deposits and training opportunities. From this website vendors may also access the W-9 submission and information portal. State of Florida agencies are not permitted to make payments to any vendor that does not have a verified Substitute Form W-9 on file with the Department of Financial Services. For additional assistance please contact (850) 413-5510.

**Modification of Agreement** - The Agreement represents the entire agreement of the parties. The Agreement may only be modified or amended if documented in writing and upon mutual agreement/acknowledgement of the parties.

**Public Access to Records** - All documents, papers, letters, or other materials relating to the Agreement that are made or received by the Contractor in conjunction with the Agreement, except those matters which, under the Agreement, Florida law or Florida Lottery rules are confidential, are required to be available for public access and copying in the manner specified by Chapter 119, Florida Statutes. The Contractor is required to provide the public with access to public records on the same terms and conditions that the Lottery would provide the records and at a cost that does not exceed the allowable cost under Chapter 119. The Contractor must ensure that records that are exempt or confidential and exempt from disclosure are not disclosed except as authorized by law.

If the Contractor receives a request for information pursuant to this clause, the Contractor will notify the Lottery prior to complying with such request. The Lottery may unilaterally cancel the Agreement for the Contractor's refusal to allow access to public records.

The Lottery will notify the Contractor within three (3) business days of any public records request which include confidential information submitted by the Contractor in order to provide the opportunity to protect any trade secrets or intellectual property deemed by the Contractor.

**Public Records Transfer** - Upon the expiration of the Agreement, all records made or received in conjunction with the Agreement must be transferred to the Lottery, at no cost. All records stored electronically must be provided at no cost to the Lottery, in a format as determined by the Lottery, upon Agreement expiration. Any and all duplicate public records that are exempt or confidential and exempt must be shredded upon expiration of the Agreement.

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This clause does not elevate the Contractor's responsibility to maintain books, records or other evidence required for auditing purposes.

**Public Entity Crime** – An entity, person or affiliate who has been placed on the discriminatory vendor list or the convicted vendor list following a conviction for a public entity crime may not:

- submit a bid, proposal, or reply for an agreement to provide any goods or services to a public entity;
- submit a bid, proposal, or reply for an agreement with a public entity for the construction or repair of a public building or public work;
- submit a bid, proposal, or reply on leases of real property to a public entity;
- be awarded or perform work as a contractor, supplier, subcontractor, or consultant under an agreement with any public entity;
- transact business with any public entity, if on the discriminatory vendor list; or
- transact business with any public entity in excess of the threshold amount provided in s. 287.017 for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list.

The Contractor represents and warrants that it is not on the discriminatory or convicted vendor lists and that it will promptly notify the Lottery if its name is placed on the list during the term of the Agreement.

**Severability** - If any clause, term, or provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then such event will not affect, impair, or render invalid or unenforceable the remainder of the Agreement or any other clause, term, or condition hereof, except as is necessary to preserve the particular rights and obligations of the parties as established herein.

**Unauthorized Aliens** - The employment of unauthorized aliens by any contractor is considered a violation of the Immigration and Nationality Act, 8 U.S.C. § 1324a. If the Contractor knowingly employs unauthorized aliens, such violation will be cause for unilateral cancellation of the Agreement.

**Waiver** - Waiver of a breach of any provision hereof does not constitute a waiver of any subsequent breach of such provision or of any other provision in the Agreement.

**Warranties of Contractor** - The Contractor covenants and warrants as follows:

1. It is lawfully organized and constituted under all federal, state and local laws, ordinances and other authorities of its domicile and is otherwise in full compliance with all legal requirements of its domicile.

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2. It is possessed of the legal authority and capacity to enter into and perform the Agreement; and the Contractors' representative executing the Agreement is an Authorized Representative of the Contractor.
3. It has been duly authorized to operate and do business in the State of Florida and all places where it shall be required to conduct business under the Agreement; that it has obtained or will obtain, at no cost to the State of Florida, all necessary licenses and permits required in connection with the Agreement; and that it will fully comply with all laws, decrees, labor standards and regulations of its domicile and such other location where performance may occur during the term of the Agreement.
4. It has no present interest and will not acquire any interest that would conflict in any manner with the Agreement duties and obligations under the Agreement.
5. The services rendered will in all respects conform to, and function in accordance with, the specifications and designs requested in the Agreement.
6. Its performance under the Agreement will not infringe on any patent, copyright, trademark, service mark or other intellectual property rights of any other person or entity and will not constitute the unauthorized use of any trade secret of any other person or entity.