

# STATE OF NEW HAMPSHIRE LOTTERY COMMISSION



## RFP LOT 2020-02 e-Instant Lottery Games

August 29, 2019



Over \$2 Billion and Counting for our Schools

**STATE OF NEW HAMPSHIRE  
LOTTERY COMMISSION**

**e-Instant Lottery Games  
RFP LOT 2020-02**

**SECTION 1 – Overview and Schedule**

**A. Executive Summary**

The New Hampshire Lottery Commission (Lottery, NHLC) is seeking proposals from established gaming companies for the development, design, implementation and related services for iLottery e-Instant Games to be sold on NHLC’s iLottery portal via a secure connection and remote gaming server (RGS). For the purposes of this Request for Proposals (RFP), “e-Instant” is defined as games that are akin to instant scratch games at retail, but are sold via an internet and mobile based platform and offer varying degrees of complexity and entertainment value. e-Instant outcomes must be predetermined through the use of a Lottery-approved prize structure and cannot utilize skill for winner determination. New Hampshire’s iLottery platform requires e-Instant games with a stake for purchase, and that funds instantly be allocated to iLottery accounts to award prizes associated with a predetermined prize structure, up to a predetermined amount. Prizes won over the Lottery’s online claim threshold are claimable only at the New Hampshire Lottery headquarters in Concord, New Hampshire. Games that solely award coupons or free play are not considered to be an e-Instant for the purposes of this RFP.

NHLC launched iLottery on September 4, 2018 in partnership with NeoPollard Interactive (NPI) utilizing NPI’s gaming platform and portal. NPI’s open architecture allows third-party developers to utilize this portal for the sale of e-Instants, subject to integration with the NPI system and the Lottery’s advertising agency of record.

NHLC intends to award contracts to at least one qualified vendor. Each resultant contract will not obligate NHLC to make a purchase but will set the terms and conditions for potential future purchase orders by NHLC for e-Instant games between the contract effective date and June 30, 2025.

Prior to execution of a contract, the selected contractor(s) will collaborate with NPI and the Lottery’s advertising agency of record to develop a plan to integrate their games within the NPI portal. This integration plan must be approved by NHLC and will be part of the final contractual agreement between the parties.

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**B. Schedule**

The following table provides a Schedule of Events for this RFP through contract finalization and approval. NHLC reserves the right to amend this Schedule at its sole discretion and at any time through a published Addendum.

<b>EVENT</b>	<b>DATE</b>	<b>LOCAL TIME</b>
RFP Released to Proposers (Advertisement)	August 29, 2019	
Proposer Inquiry Period Ends	September 12, 2019	4:00 p.m.
Final Agency Responses to Proposer Inquiries	September 26, 2019	
Proposers Submit Proposals	October 11, 2019	10:00 a.m.
Estimated Oral Presentations	October 28 – November 1, 2019	
Estimated Notification of Selection	November 12, 2019	
Estimated Date of Approval of Final Agreement	To be determined. Based on submittal and approval of integration plan.	

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## **SECTION 2 – Agency Background and iLottery Portal**

NHLC is an executive branch commission of the State of New Hampshire responsible for operating lottery sales and for regulating charitable gaming within the State. NHLC is the oldest legal lottery in modern times in the United States, selling its first ticket in 1964. Effective July 1, 2017, NHLC was authorized to conduct sales of lottery tickets “through the use of mobile applications by mobile devices or over the Internet,” pursuant to RSA 284:21-h, II (2)(e). On September 4, 2018, NHLC launched New Hampshire iLottery via a portal from the website nhlottery.com. The iLottery portal supports the sale of several e-Instants with price points ranging between \$.01 and \$30.00. The portal also supports the sale of the multijurisdictional draw-based games (DBG) Mega Millions and Powerball.

The iLottery portal is operated by NPi through the use of its Central Gaming System (CGS), back office and player account management system, and integrated third-party contractors. Appendix C illustrates the conceptual architecture of the NPi system and a high level view of how integration will occur. The transactional and e-Instant/game information is transmitted through secure APIs (application programming interfaces) from the Vendor’s RGS (remote gaming system) to the NPi system. A copy of that data is also stored on the Vendor’s RGS.

From September 4, 2018 to June 30, 2019, there were 46,867 registered users for the iLottery platform with 23,303 first time depositors. As of June 30, 2019, the net gaming revenue was \$6.4 million for ten months since launch, with the goal in FY20 to reach almost \$10 million.

The current agreement to utilize the NPi platform runs through June 30, 2025. Since the launch, NHLC has been implementing e-Instants developed and supplied by NPi. It is NHLC’s intent to continuously expand the game library available to players and to introduce new e-Instants on a pre-determined schedule, currently set to one per month. Accordingly, NHLC is seeking proposals from multiple game providers to supply NHLC e-Instants that can be integrated with the existing NPi platform. NHLC expects integration costs will be borne by the successful proposers and will not be paid directly by NHLC or NPi.

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## **SECTION 3 – Process for Submitting a Proposal**

### **A. Proposal Submission, Deadline, and Location Instructions**

Proposals submitted in response to this RFP must be received by NHLC no later than the time and date specified in the Schedule outlined in Section I. Proposals may be submitted by US Mail, delivery service, or in person at 14 Integra Drive, Concord, NH 03301. Proposals must be addressed to:

**New Hampshire Lottery Commission  
Kelley-Jaye Cleland, Director of Product Development and Sales  
14 Integra Drive, Concord NH 03301**

Proposals must be clearly marked as follows:

**STATE OF NEW HAMPSHIRE  
RESPONSE TO RFP LOT 2020-02  
e-Instant Lottery Games**

Unless waived as a non-material deviation in accordance with Section 6-I, late submissions will not be accepted and will be returned to the Proposer unopened. Delivery of the Proposals shall be at the Proposer's expense. The time of receipt shall be considered when a Proposal has been officially documented by NHLC, in accordance with its established policies, as having been received at the location designated above. NHLC accepts no responsibility for mislabeled mail or mail that is not delivered or is undeliverable for whatever reason. Any damage that may occur due to shipping shall be the Proposer's responsibility.

All Proposals submitted in response to this RFP must consist of one (1) original and five (5) clearly identified copies of the Proposal, including all required attachments. **Note the Technical and Price proposals must be separated and clearly marked as detailed in Section 5 below.**

### **B. Proposal Inquiries**

All inquiries concerning this RFP, including but not limited to requests for clarifications, questions, and any changes to the RFP, shall be submitted via email to the following RFP designated Points of Contact:

TO: Kelley-Jaye Cleland, [Kelley-Jaye.Cleland@lottery.nh.gov](mailto:Kelley-Jaye.Cleland@lottery.nh.gov)

CC: Jay Lau, [Jay.Lau@lottery.nh.gov](mailto:Jay.Lau@lottery.nh.gov)

Inquiries must be received by the RFP Points of Contact no later than the conclusion of the Proposer Inquiry Period (see Schedule of Events, Section 1). Inquiries received later than the conclusion of the Proposer Inquiry Period shall not be considered properly submitted and may not be considered.

NHLC intends to issue official responses to properly submitted inquiries on or before the date specified in the Schedule of Events, Section 1; however, this date is subject to change at NHLC's discretion. NHLC may consolidate and/or paraphrase questions for sufficiency and clarity. NHLC may, at its discretion, amend this RFP on its own initiative or in response to issues raised by inquiries, as it deems appropriate. Oral statements, representations, clarifications, or modifications concerning the RFP shall not be binding upon NHLC. Official responses by NHLC will be made only in writing by the process described above.

**C. Restriction of Contact with Agency Employees**

From the date of release of this RFP until an award is made and announced regarding the selection of a Proposer, all communication with personnel employed by or under contract with NHLC regarding this RFP is forbidden unless first approved by the RFP Points of Contact listed in the Proposal Inquiries section, herein. NHLC employees have been directed not to hold conferences and/or discussions concerning this RFP with any potential contractor during the selection process, unless otherwise authorized by the RFP Points of Contact. Proposers may be disqualified for violating this restriction on communications. Nothing in this section shall prevent the NHLC from maintaining contact with existing vendors for normal business operations and planning, unrelated to this RFP.

**D. Validity of Proposal**

Proposals must be valid for one hundred and eighty (180) days following the deadline for submission of Proposals in Schedule of Events, or until the Effective Date of any resulting Contract, whichever is later.

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## **SECTION 4 – Scope of Work**

The Scope of Work for this RFP is providing e-Instant Games that can be integrated into the NPi iLottery system for the New Hampshire Lottery and all related services. The successful iLottery proposer(s) will be awarded a contract to set the terms and conditions for future purchases of e-Instant games. The contract will not obligate the NHLC to make any purchases under the contract. The NHLC at its own discretion may or may not choose to engage with contracted iLottery game vendors for reasons including, but not limited to, cost, game launch schedule, quality of games, total game portfolio, ability and timeliness of Vendor to launch games according the NHLC needs. The NHLC expressly reserves the right to choose one vendor or multiple vendors. Note: the NHLC will not permit bidders to propose separate price matrices for perceived primary, secondary, or tertiary contracts. An overview of required services follows.

A. The Vendor will provide the following:

- iLottery games to the NHLC with a minimum of 25 off-the-shelf options. See Section 5, Subsection II for an overview of games potentially desired.
- Integration with the NPi gaming and reporting platform utilizing single sign on (SSO) via the existing Player Account Management (PAM).
- A remote gaming server (RGS), primary and secondary servers within the State of New Hampshire, as well as Quality Assurance (QA) and User Acceptance Testing (UAT) servers. The RGS is responsible for storing and serving up e-Instant information for game play as well as game replay, through a secure application programming interface (API). All servers must be 100% dedicated to the NHLC. Lottery data cannot be comingled with data from another lottery or customer of the Vendor.
- All e-Instants available for players in demo or free play mode with option for purchasing.
- Ability to offer games for free and integrate into the existing customer relationship management tools currently in place.
- Game thumbnails images for the website via API to marketing agency of record with game data (costs per ticket, game name, and the win-up-to amount).
- All aspects of each game including:
  - Graphics of the game;
  - Promotional banners for customer relationship management and acquisition purposes (to be approved by the Lottery);
  - The status bar within each game displaying balance, ticket costs, number of tickets, help and sound icons, and other items to be determined;
  - Sound for each game set to off, but able to be turned on similar to current functionality;
  - Space bar utilization to play game;
  - Utilizing the payout designated by the NHLC;
  - Full technical support for each game in QA, UAT, and Production sites;
  - Help Page content for each game in web and mobile to comply with the Lottery's standard;
  - Working papers for each game to comply with the Lottery's standard; and
  - Back office to configure free games and bonuses and to connect to the NPi free games API.
- The Lottery requests that games are similar in functionality and user experience as existing games to maintain consistency for players.
- Integration with marketing agency of record to support game launches on a schedule determined by the Lottery.
- Integration/sharing of raw game data into the Lottery's business intelligence (BI) tool, currently housed with the Lottery's advertising agency of record.
- 24/7/365 technical support.
- Daylight Savings support on a schedule determined by the Lottery and NPi.

- Data for each game including, but not limited to, tickets purchased, amounts wagered, session length, total bettors, average bet per player per game, number of distinct bettors, payout, gender, and other demographic parameters to be determined.
  - At any point the Lottery reserves the right to require vendors to integrate with the Lottery's Independent Control System (ICS) for e-Instant game balancing.
- B. The Vendor will work collaboratively with the NHLC in the design of bespoke NHLC-specific e-Instants, in accordance with a schedule set by the NHLC in conjunction with the Vendor, to make possible the winning of an immediately payable prize.
- C. The Vendor may supply e-Instants containing licensed products from third party vendors, subject to contractual agreement between the NHLC and the third-party or a licensing agreement with the Vendor.
- D. The Vendor will coordinate with other NHLC vendors and the NHLC to ensure system integration and compatibility with the NHLC iLottery gaming system. All costs for NHLC's iLottery/e-Instant integration will be borne by the third-party vendor; not NPi, the Lottery or the Lottery's advertising agency of record.**
- E. The Vendor will provide access to the same technology and product options the Vendor may develop during the life of the contract, and/or offer to its other iLottery game customers.
- F. The Vendor will present new technology-based product options to the NHLC on a regular basis; emphasis should be on stable, proven games and services the Vendor can support with at least the same level as similar products or services already described in the RFP.
- G. Willingness and ability to develop games using new technology not identified in this RFP and to adapt games as needed based on technological changes within the iLottery platform.

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## **SECTION 5 – Content and Requirements for a Proposal**

Proposals must be divided into two separately sealed and clearly marked envelopes. The technical proposal must be marked with the Proposer’s name and “**NHLC RFP LOT 2020-02 Technical Proposal.**” A separately sealed price proposal must be marked with the Proposer’s name and “**NHLC RFP LOT 2020-02 Price Proposal.**”

### **I. The Technical Proposal Contents**

This section details all items the vendors will be evaluated on in the Technical Proposal. Read each section in detail and respond accordingly. If Proposer does not have experience in a specific area, does not offer the product, or does not have the capability, please write N/A.

#### **A. Company Background and Experience**

Provide a brief description of the Proposer’s company including, but not limited to, the number of years in business, the primary location(s) of the business, the number of employees, and state, province, and countries in which the company is actively engaged in supplying e-Instant iLottery gaming products.

#### **B. Financial Capabilities**

Provide an audited financial statement concerning operations for the previous two (2) complete fiscal years and an un-audited financial statement covering the interim period since the close of the most recent fiscal year. Audited financial statements may be submitted in PDF format and can be provided on a CD or flash drive.

These statements shall include, but not necessarily be limited to:

- a. Statements of Net Assets;
- b. Statements of Revenues, Expenses and Changes in Fund Net Assets; and
- c. Statement of Cash Flows prepared in accordance with Generally Accepted Accounting Principles (GAAP).

#### **C. Proposed Project Team**

Provide a brief outline of the key personnel who would be assigned to work with NHLC if the Proposer were to be awarded a contract, including:

- a. The project manager and associated personnel;
- b. Technical lead and associated personnel;
- c. Content lead and associated personnel;
- d. System integration personnel who will be responsible for integrating with the iLottery system;
- e. Personnel who will be part of and in charge of the game launch process;
- f. Game developers, including art, graphics, and prize structure personnel; and
- g. Daily point of contact for NHLC.

Include résumés for these personnel which summarizes their experiences on similar past or current projects.

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#### **D. Past and Current Projects With e-Instant Games**

Identify at least three US states, Canadian Provinces, or other foreign jurisdictions where the Proposer has the following; note, at least one of the jurisdictions must be in the US:

- a. Live e-Instant Games available for purchase and in demo mode, operating at the time of this Proposal.
- b. Provide a summary of:
  1. How long the Proposer has provided e-Instant games in that location;
  2. The types of games provided;
  3. The technology with which the games are built;
  4. Whether the games are limited or unlimited series;
  5. Whether the games are offered on the Proposer's own system or a third-party system;
  6. With which vendors and systems the Proposer has integrated; and
  7. Description of games' success in terms of ticket sales, gross revenues, and net revenues to the jurisdiction. Provide this in a comparative format, indicating a percentage of total sales for which each game is responsible. This must also include the payout for the game in comparison to other games and length of time on market.
  8. Include any other key metrics to assist NHLC in fully understanding the games' performance.
  9. Provide a contact name and title in each jurisdiction of a person willing to serve as a reference for the Proposer.

#### **E. Games Portfolio and Process**

Provide details and a means of access to your games portfolio for evaluation. Respond to each capability statement below:

- a. Provide access to your e-Instants library featuring at least twenty-five (25) e-Instants for evaluation. Define what technology the games are built on. Games using Flash and HTML5 are currently supported, although the Lottery prefers games in HTML5. The Lottery is looking for games that are unique and creative, while also complementing the existing portfolio. Detail how your games are creative, have market relevance, and complement the NHLC's existing game portfolio at the time of this RFP.
- b. Give examples of each category of games: off-the-shelf, customized, makeover, and bespoke e-Instants you have launched with three lottery partners. If Proposer has not launched all categories of games, indicate so. Explain why the games fall within each category (required).
- c. Provide a list of e-Instant licensed properties, noting which are off-the-self, customized, makeover, or bespoke. Also note where each has launched and its success relative to other games launched in market. (The NHLC may want to utilize licensed properties and recognizes the pricing of licensed properties may vary depending on the brand. Prices for licensed properties are negotiable.)
- d. Document a basic timeline from inception to launch for each category of game. This must include number of days, weeks, and months; and key tasks and deliverables along the timeline. This includes, but is not limited to, prize structure creation, game testing in UAT, feedback and necessary changes, working paper development and sign off, game help paper development and sign off, and the launch process.
- e. Provide two additional examples of retail crossover games you have launched with lottery partners. The Lottery is seeking to promote both its traditional retail channel along with its new iLottery channel. Retail crossover games are iLottery games that leverage retail products; and conversely, retail games that leverage iLottery content.

- f. Give examples of in-game responsible gaming tools you offer. These in-game tools are in addition to responsible gaming controls provided by the iLottery system provider.
- g. Provide examples of single ticket, multi-ticket, and multi-ticket bonus round games. If other types of e-Instants are offered by the Vendor, provide details of those games. Give a prize structure example launched in the US, Canadian Provinces, and other foreign jurisdictions that utilizes single ticket, multi-ticket, and multi-ticket bonus rounds.
- h. Able to offer multi-price points within games. Describe how you have launched this feature in other jurisdictions. Include a prize structure example launched in the US, Canadian Provinces, and other foreign jurisdictions that utilize multi-price points within the game.
- i. Provide unlimited series of tickets for e-Instants; i.e., when tickets are purchased, they are replaced with the same prize. Provide three examples where Proposer has delivered unlimited or limited series ticket functionality to the US, Canadian Provinces, and other foreign jurisdictions; and for each example, note which type of ticket series was utilized. If you have only provided limited series, please detail your ability to provide unlimited series.
- j. Able to provide games that are branded completely to the New Hampshire Lottery. Provide thorough details on how games are branded specific to individual lottery clients. Screen shots and explanations are encouraged. Proposer's response must pertain to standard game offering, under standard game pricing. In no event shall game customization fees apply to Proposer's offer to brand games completely to NHLC.
- k. Provide game help page content offered for other lottery jurisdictions. Game help pages are those a player accesses in-game to understand how to play the game; how to win; learn game nuances; and see prize structure and odds. Instructions on how to play must be provided for mobile and desktop platforms.
- l. Supply working paper example template; it does not need to be the actual working papers for another lottery jurisdiction.
- m. Furnish thumbnail images and banners that support each e-Instant and draw based game launched in other jurisdictions.
- n. Detail the game development process for each category of game. Also provide the roadmap of future game development, including emerging technologies and trends. Provide a proposed roadmap of releases of your games on the NHLC's iLottery platform; be sure to address seasonality and variety of playstyles.
- o. Detail standard game launch process on production noting roles and responsibilities, communication plan, testing, and timelines.
- p. Detail your experience in building custom-built/bespoke/tailor-made games for a lottery. Describe the process of working with North American lotteries in creating a tailor-made game. Include at least one case study detailing the process from concept to launch, and how the game performed in comparison to other similar playstyle games already in market.

- q. All e-Instants provided must be supported on mobile and desktop platforms, and multiple browsers offering the same play experience. Browsers include but are not limited to Internet Explorer, Edge, Chrome, Safari, and Firefox.

## **F. Marketing Support**

Proposer must provide marketing services that support the iLottery program. Respond to each experience criteria below:

- a. Provide key marketing assets related to your games' content. Describe in detail standard game assets and types currently provided to and used by lottery partners. Note the platform type where the assets are kept and how the NHLC, NPi and the NHLC's marketing agency of record can access assets.
- b. Describe marketing assets used to support e-Instant launches that are a part of the standard offering, such as game screenshots, how to play videos, videos of bonus rounds, and messaging for the selling points of games.
- c. Provide marketing materials suited for promotional banners featured on the Lottery's website or within email communication to players. Provide three (3) marketing pieces delivered to lottery partners for customer relationship marketing (CRM) and three (3) marketing pieces delivered for acquisition. Materials must be accompanied with a brief description of the promotional piece. Provide results from each piece including registrations, deposits, conversion rates, sales, and bets. This work will be evaluated based on creative design, call to action, and results.
- d. Provide game promotions to support e-Instants. Does Proposer support free games and bonuses for integration into the New Hampshire iLottery platform? Describe in detail the support and/or execution of game promotions for lottery partners, citing specific examples employed with US lottery partners.
- e. Detail your ability to provide an API for a raw data feed to ad agency of record or other designated party for incorporation into BI tool.

## **G. Technical Capabilities, Support, and Security**

- a. Detail ability to integrate with NPi's PAM using SSO in a reasonable timeframe, and reinforce staff support with technical skill and experience to assist and manage the process. List with what parties the Proposer has integrated previously; in what capacity; and whether they have been SSO. If Proposer has previously integrated with another platform for a lottery, detail the timeline, milestones, hurdles, and lessons learned.
- b. Provide system up-time guarantee as well as actual performance for the past three full fiscal years (July 1, 2016 through June 30, 2019).
- c. The Lottery requires the RGS to retain specific information including but may not be limited to:
  - 1. All transactions for each e-Instant. This includes the wager amount, the outcome of the game, and prize won/not won tied to each player/wager.

2. Each wager/ticket played outcome is required to be seen by players. Currently players can see a full dynamic replay of their wagers, stored in their play history for sixty (60) days, which is the expectation for all e-Instants history views. The Lottery prefers to see each vendor support a full, dynamic replay of each wager. However, the Lottery will accept a static image of the wager result showing winning and non-winning results, transaction number, amount wagered and tickets played: essentially a screenshot of the outcome. Detail the ability to provide the game outcome or replay on demand, stored in players' accounts. The Lottery requires this to be accessed via the player's account simply by clicking "view," thereby triggering the vendor's RGS to serve up the dynamic or static game replay. The history must be available to players in their account for sixty (60) days.
  3. All transaction information must also be stored in case the Lottery needs to research a player's wager and for annual auditing. The history must be stored in the RGS for the duration of the contract plus three (3) years.
- d. The Lottery requires the play experience be secure and seamless to the player. The player should not know they are playing e-Instant games from different vendors and should not fear their personal information could be compromised. They should know their session playing your game will not end until they want it to end. Describe the ability to provide this experience to players, and how a consistent and secure playing experience can be provided for the NHLC players.
  - e. For each e-Instant, a player must be able to play the game in demo mode. While in demo mode, a pop-up must be enabled offering that the player can switch to money mode, providing a link to Money Play. The pop-up timing and look and feel must be similar to what is currently in place. Detail the ability to execute this request.
  - f. Provide details on the back office system the Lottery will access to view wagers and other game-specific details not disseminated fully through the NPi system.
  - g. List all liquidated damages assessed against the Proposer and any fees, penalties, fines or other payments made by contractor for failure to meet service level agreements over the past three (3) fiscal years.
  - h. Provide details on customer support. What hours does Proposer supply customer support to the Lottery, how are issues communicated, and how quickly are issues resolved?
  - i. Describe system update practices:
    1. How often system updates are performed;
    2. Whether e-Instants experience downtime during updates;
    3. How system updates are communicated to the Lottery;
    4. What is the regular maintenance schedule; and
    5. How many system updates were performed for each customer in the past three (3) full fiscal years, and what was the scope of each update?
  - j. Describe the data centers where the servers will be located. Lottery RGS locations and their conditions are subject to site inspection and approval by the NHLC Security and Compliance teams.

## II. The Price Proposal Contents

Submit pricing for each type of game expressed as a percentage of net gaming revenue as set forth in the pricing sheet attached as Appendix B, revenue to be paid to the Proposer based on the category of game set forth below. Net gaming revenue is defined as tickets sold less prizes and bonuses paid. Below is an overview and definition of each type of game. Note that the details of what each e-Instant is comprised of is included, but not limited to, what is detailed in Section 4a.

1. Off-the-Shelf – Defined as ready-made games that have been successfully launched by other customers. To adapt them to NHLC, Proposer will provide basic localization and prize structure configuration, including:
  - Changing game name;
  - Essential text changes;
  - Prize structure configuration: payout, number of tickets, denominations, prizes, odds and series size; and
  - Help page configuration.
  
2. Customized – Defined as existing off-the-shelf games which, from regulation or other customer reasons, require minor design and multimedia changes, including all of the off-the-shelf changes plus:
  - New logo and animation (if already exist in the game flow);
  - Minor graphic changes;
  - Minor animation changes;
  - Minor sound changes; and
  - Minor game flow changes (front-end, not game mechanics).
  
3. Makeover – Defined as complete re-skinning of an existing game’s mechanics, while creating a new multimedia layer of graphics and sounds:
  - Prize structure configuration: payout, number of tickets, denominations, prizes, odds and series size;
  - Complete new graphics, animations and sounds; and
  - Minor flow changes (front-end, not game mechanics).
  
4. Bespoke – Defined as a completely new game that would be created by Proposer in conjunction with the NHLC, including:
  - New game prize structure;
  - New game engine;
  - New game flow; and
  - New graphics, animations and sounds.

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## **SECTION 6 – Evaluation of Proposals**

### **A. Criteria for Evaluation and Scoring**

Each responsive Proposal will be evaluated and scored based on the responses above to Section 5 A–G. NHLC will select Vendor(s) based upon the criteria and standards contained in this RFP and from applying the weighting in this section. Section 5 A–G delineates the full list of items the Lottery will consider in:

- A. **Company Background and Experience:** Demonstrate a high level of experience with lotteries and specifically providing e-Instants; demonstrate ability to support the NHLC as well as existing customers.
- B. **Financial Capabilities:** Demonstrate company is financially healthy, stable, and operates with integrity.
- C. **Proposed Project Team:** Demonstrate company employs sufficient personnel to support the NHLC project as well as existing customers; ensure project team has experience with projects of similar size and scope, as well as knowledge in iLottery space.
- D. **Past and Current Projects with e-Instants:** Demonstrate company has experience launching e-Instants in demo and money mode in at least three jurisdictions, at least one of which is in the United States; demonstrate success and knowledge with e-Instants.
- E. **Games Portfolio and Process:** Demonstrate e-Instant portfolio of a variety of e-Instant games in HTML5 and other technologies; detail timelines for launch; demonstrate ability to provide games and game assets that are similar in user experience as current games and complement current portfolio.
- F. **Marketing Support:** Demonstrate ability and experience in providing and supporting games with marketing assets for acquisition and CRM efforts; detail ability to provide raw data for BI tool; describe other promotional capabilities and support.
- G. **Technical Capabilities, Support and Security:** Demonstrate successful integrations with gaming platforms; demonstrate successful and secure data storage in RGS; demonstrate seamless user experience; detail uptime guarantee and history; detail wager view capacity and consistent play ability. Detail system maintenance, customer support and liquidated damages history.

<b>Evaluation of Technical and Price Proposals</b>		
<b>EVALUATION CRITERIA</b> (see Section 5 for full list of items to be scored)	<b>POINTS</b>	<b>%</b>
Company Background and Experience	40	10
Financial Capabilities	60	15
Proposed Project Team	60	15
Past and Current Project with e-Instants	60	15
Games Portfolio and Process	80	20
Marketing Support	40	10
Technical Capabilities, Support and Security	60	15
<b>TOTAL TECHNICAL EVALUATION</b>	<b>400</b>	<b>80%</b>
Off-the-Shelf	45	45
Customized	10	10
Makeover	20	20
Bespoke/Tailor-Made	25	25
<b>TOTAL PRICE EVALUTION</b>	<b>100</b>	<b>20%</b>
<b>TOTAL POINTS</b>	<b>500</b>	<b>100%</b>

## **B. Initial Screening**

NHLC will conduct an initial screening step to verify Proposer compliance with the technical submission requirements set forth in the RFP and the minimum content set forth in Section 5 of this RFP. NHLC may waive or offer a limited opportunity to cure immaterial deviations from the RFP requirements if it is determined to be in the best interest of the State.

## **C. Preliminary Technical Scoring of Proposals**

NHLC will establish an evaluation team to initially score the Technical Proposals. This evaluation team will review the technical proposals and give a preliminary score to the Technical Proposals under the guidelines set forth in Section 6. Should a Proposer fail to achieve 350 points in the preliminary scoring, it will receive no further consideration from the evaluation team and the Proposer's Price Proposal will be returned unopened. Price Proposals will remain sealed during the preliminary technical review.

## **D. Oral Interviews and Product Demonstrations**

If NHLC determines that it is appropriate, proposers may be invited to oral interviews and/or product demonstrations including demonstrations of any e-Instants proposed by the Vendor. The NHLC retains the sole discretion to determine whether to conduct oral interviews and product demonstrations, with which proposers, and the number of interviews. Proposers are advised that the NHLC may decide to conduct interviews with less than all responsive proposers.

The purpose of oral interviews and product demonstrations is to clarify and expound upon information provided in the written Proposals. Proposers are prohibited from altering the basic substance of their Proposals during the oral interviews and product demonstrations. The NHLC may ask the Proposer to provide written clarifications of elements in their Technical Proposal regardless of whether it intends to conduct oral interviews.

Information gained from oral interviews and product demonstrations will be used to refine technical review scores assigned from the initial review of the Proposals. The formal meeting will be two hours with an additional thirty (30) minutes for questions, the presentation and demonstration will include but is not limited to:

- Review of game portfolio: type, price points, ability to customize, top 10 performing games, types of games, crossover games, etc.;
- Review of integration plan: confirm integration team; confirm scope of work; discuss similar integrations for other lottery customers;
- Review of technical and customer support capabilities; review service level guarantees; review performance of service level guarantees for the last 3 years; uptime of system guarantee and actual uptime for the last five (5) years;
- Review of game development process; and
- Review of new game deployment process: launch process, marketing support, and deployment team.

## **E. Final Technical Scoring of Proposals**

Following oral interviews and product demonstrations, reference checks (if applicable and/or appropriate), and/or review of written clarifications of Proposals requested by the NHLC, the evaluation team will determine a final score for each Technical Proposal.



## **F. Price Proposal Review**

Price Proposals will be reviewed upon completion of the final technical scoring of Proposals. The Proposer's Price Proposal will be allocated a maximum potential score of 100 points. Proposers must receive an overall Price Proposal score of 30 out of the 100 total points possible to be considered favorable to the NHLC. Proposers are advised that **this is not a low bid award**, and that the scoring of the Price Proposal will be combined with the scoring of the Technical Proposal to determine the overall highest scoring Proposer.

The following formula will be used to assign points for costs:

**Proposer's Price Score per Category of Game = (Lowest Proposed Price per Category / Proposer's Proposed Price per Category) × Number of Points for Pricing Category**

For the purpose of use of this formula, the lowest proposed price is defined as the lowest price proposed by a Proposer for that category who has scored above the minimum necessary for consideration on the Technical Score.

## **G. No Best and Final Offer**

The Proposal should be submitted initially on the most favorable terms which the Proposer can offer. There will be no best and final offer procedure. The Proposer should be prepared to accept this RFP for incorporation into a contract resulting from this RFP. Nothing herein shall be construed to prevent the negotiation of certain contract terms, including price after the final selection of proposals. Contract negotiations may incorporate some or all of the Proposal.

## **H. Final Selection**

NHLC will conduct selections based on the final evaluation of the proposals and notify the successful Proposer(s) of the need to create an integration plan. NHLC will also begin contract negotiations with the selected Proposer(s).

## **I. Rights of NHLC in Accepting and Evaluating Proposals**

NHLC reserves the right to:

- Make independent investigations in evaluating Proposals;
- Request additional information to clarify elements of a Proposal;
- Waive minor or immaterial deviations from the RFP requirements, if determined to be in the best interest of the State;
- Omit any planned evaluation step if, in NHLC's view, the step is not needed; and
- At its sole discretion, reject any and all Proposals at any time.

## **J. Plan for Integration with the New Hampshire iLottery Platform**

Proposers who have been identified as qualifying for selection will be advised of their pending selection and given a set period of time to meet with NPi and the advertising agency of record to develop an integration plan for review and acceptance by NHLC. The final approved integration plan will become a component of any future contract between NHLC and the Proposer. The integration plan must include, at a minimum, a work plan and schedule which will allow for launch of Proposer's games on the iLottery platform within twelve (12) months of the date of contract. Note, though integration onto the platform is required within twelve (12) months of the date of contract, the Lottery is not required to launch any particular vendor's games in twelve (12) months. The schedule of game launch is determined by the Lottery. All integration plans must include:

- a. Timeline: Vendor will create a project plan with estimated timeline for the integration of their games to NPi's iLottery portal and NeoSphere reporting platform. The project plan should account for working with the Lottery's marketing agency of record to place and launch the game(s) successfully on the iLottery webpage. The project plan must list tasks with their timelines, and include a testing phase on both QA and UAT. Provide the project plan in Gantt chart format.

- b. Milestones: Identify the major milestones in the project plan and incorporate into the Gantt chart. Milestones will need signoff from the Lottery before moving to the next phase. Upon Lottery approval of the integration plan, it will then be part of the contract.
- c. Reports: A status report and up to date project plan will be provided on a weekly basis prior to a 30-minute conference call led by the Vendor. Expected attendees will be from the Vendor, NPi, Lottery, the Lottery's marketing agency of record, and others as required. Meeting minutes as well as action items will be documented and distributed after the call by the Vendor. Note that this call is not a working session. It is an opportunity to provide project status to the Lottery and make the Lottery aware of any issues or potential roadblocks that will impact the timeline.
- d. Document Sharing: Detail how and where integration documents and daily working documents post-integration (maintenance documents, game documents, specifications, etc.) will be shared with relevant parties and with dedicated users (no shared accounts permitted).

*Remainder of page intentionally left blank.*

## **SECTION 7 – Terms and Conditions Related to the RFP Process**

### **A. RFP Addendum**

NHLC reserves the right to amend this RFP at its discretion, prior to the Proposal submission deadline. In the event of an addendum/addenda to this RFP, NHLC, at its sole discretion, may extend the Proposal submission deadline, as it deems appropriate.

### **B. Non-Collusion**

The Proposer's signature on a Proposal submitted in response to this RFP guarantees that the prices, terms and conditions, and Work quoted have been established without collusion with other Proposers and without effort to preclude NHLC from obtaining the best possible competitive Proposal.

### **C. Property of NHLC**

All material received in response to this RFP shall become the property of the State and will not be returned to the Proposer. Upon Contract award, the State reserves the right to use any information presented in any Proposal.

### **D. Confidentiality of a Proposal**

Unless necessary for the approval of a Contract, the substance of a Proposal must remain confidential until the Effective Date of any Contract resulting from this RFP. A Proposer's disclosure or distribution of Proposals other than to NHLC will be grounds for disqualification.

### **E. Public Disclosure**

Pursuant to RSA 21-G:37, all responses to this RFP shall be considered confidential until the award of a Contract. At the time of receipt of Proposals, NHLC will post the number of responses received with no further information. No later than five (5) business days prior to submission of a Contract to the Governor & Executive Council pursuant to this RFP, NHLC will post the name and rank or score of each Proposer. In the event that the Contract does not require Governor & Executive Council approval, NHLC shall disclose the rank or score of the Proposals at least five (5) business days before final approval of the Contract.

The content of each Proposer's Proposal shall become public information upon the award of any resulting Contract. Any information submitted as part of a response to this Request for Proposal (RFP) may be subject to public disclosure under RSA 91-A. In addition, in accordance with RSA 9-F:1, any Contract entered into as a result of this RFP will be made accessible to the public online via the website Transparent NH (<http://www.nh.gov/transparentnh/>). Accordingly, business financial information and proprietary information such as trade secrets, business and financials models and forecasts, and proprietary formulas may be exempt from public disclosure under RSA 91-A:5, IV.

If you believe any information being submitted in response to this Request for Proposal, Bid or Information should be kept confidential as financial or proprietary information; you must specifically identify that information in a letter to NHLC, and must mark/stamp each page of the materials that you claim must be exempt from disclosure as "CONFIDENTIAL." A designation by the Proposer of information it believes exempt does not have the effect of making such information exempt. NHLC will determine the information it believes is properly exempted from disclosure.

Marking of the entire Proposal or entire sections of the Proposal (e.g. pricing) as confidential will neither be accepted nor honored. Notwithstanding any provision of this RFP to the contrary, Proposer pricing will be subject to disclosure upon approval of the Contract. NHLC will endeavor to maintain the confidentiality of portions of the Proposal that are clearly and properly marked confidential.

If a request is made to NHLC to view portions of a Proposal that the Proposer has properly and clearly marked confidential, NHLC will notify the Proposer of the request and of the date NHLC plans to release the records. By submitting a Proposal, Proposers agree that unless the Proposer obtains a court order, at its sole expense, enjoining the release of the requested information, NHLC may release the requested information on the date specified in NHLC's notice without any liability to the Proposers.

#### **F. Non-Commitment**

Notwithstanding any other provision of this RFP, this RFP does not commit NHLC to award a Contract. NHLC reserves the right, at its sole discretion, to reject any and all Proposals, or any portions thereof, at any time; to cancel this RFP; and to solicit new Proposals under a new acquisition process.

#### **G. Proposal Preparation Cost**

By submitting a Proposal, a Proposer agrees that in no event shall NHLC be either responsible for or held liable for any costs incurred by a Proposer in the preparation of or in connection with the Proposal, or for Work performed prior to the Effective Date of a resulting Contract.

#### **H. Ethical Requirements**

From the time this RFP is published until a contract is awarded, no bidder shall offer or give, directly or indirectly, any gift, expense reimbursement, or honorarium, as defined by RSA 15-B, to any elected official, public official, public employee, constitutional official, or family member of any such official or employee who will or has selected, evaluated, or awarded an RFP, or similar submission. Any bidder that violates RSA 21-G:38 shall be subject to prosecution for an offense under RSA 640:2. Any bidder who has been convicted of an offense based on conduct in violation of this section, which has not been annulled, or who is subject to a pending criminal charge for such an offense, shall be disqualified from bidding on the RFP, or similar request for submission and every such bidder shall be disqualified from bidding on any RFP or similar request for submission issued by any state agency. A bidder that was disqualified under this section because of a pending criminal charge which is subsequently dismissed, results in an acquittal, or is annulled, may notify the Department of Administrative Services, which shall note that information on the list maintained on the State's internal intranet system, except in the case of annulment, the information, shall be deleted from the list.

#### **I. Challenges on Form or Process of the RFP**

Any challenges regarding the validity or legality of the form and procedures of this RFP, including but not limited to the evaluation and scoring of Proposals, shall be brought to the attention of NHLC at least ten (10) business days prior to the Proposal Submission Deadline. By submitting a Proposal, the Proposer is deemed to have waived any challenges to the form or procedures set forth in this RFP.

#### **J. Venue and Forum**

With respect to any and all legal actions or proceedings arising out of this RFP or any Contract resulting hereunder, a Bidder, by submission of a proposal, consents to the venue and jurisdiction of the courts of the State of New Hampshire.

## **SECTION 8 – Contract Terms and Award**

### **A. Non-Exclusive Contract**

Any resulting contracts from this RFP will be considered non-exclusive. NHLC intends to retain at least one and potentially multiple contractors to provide the services or deliverables identified under this procurement and further reserves the right to award by item, part or portion of an item, group of items, or total proposal. NHLC further reserves the right to contract for additional similar services or deliverables at a future date. The Lottery reserves the right to choose the games that best meet its financial goals, satisfaction of the players, budget, and programmatic abilities. If two or more vendors offer similar games, the Lottery has the discretion to choose which game suits it best.

### **B. Award**

If NHLC decides to award a Contract(s) as a result of this RFP process, any award(s) will be contingent upon approval of the Contract by the Governor and Executive Council of the State of New Hampshire and upon continued appropriation of funding for the Contract.

### **C. Standard Contract Terms**

The Agency will require the successful Proposer to execute a Contract using the Standard Terms and Conditions of the State of New Hampshire which is attached as Appendix A.

The Term of the Contract will be from the date of approval through June 30, 2025. The Contract term may be extended by an additional term of two (2) years at the sole option of the State, subject to the Parties' prior written agreement on terms and applicable fees for each extended term, contingent upon satisfactory Contractor performance, and Governor and Executive Council approval.

The NHLC may consider modifications of this form during negotiations. To the extent that a Proposer believes that exceptions to the standard form contract will be necessary for the Proposer to enter into the Agreement, the Proposer should note those issues during the Proposer Inquiry Period. The NHLC will review requested exceptions and accept, reject or note that it is open to negotiation of the proposed exception at its sole discretion. If the NHLC accepts a Proposer's exception, the NHLC will, at the conclusion of the inquiry period, provide notice to all potential proposers of the exceptions which have been accepted and indicate that exception is available to all potential proposers. Any exceptions to the standard form contract that are not raised during the Proposer Inquiry Period are waived. In no event is a Proposer to submit its own standard contract terms and conditions as a replacement for the State's terms in response to this solicitation.

<End>

# **Appendix A: Standard Terms and Conditions**

## **SECTION 1 – GENERAL PROVISIONS**

Notice: This agreement and all of its attachments shall become public upon submission to Governor and Executive Council for approval. Any information that is private, confidential or proprietary must be clearly identified to the agency and agreed to in writing prior to signing the contract.

**AGREEMENT**

The State of New Hampshire and the Contractor hereby mutually agree as follows:

**GENERAL PROVISIONS**

**1. IDENTIFICATION.**

1.1 State Agency Name New Hampshire Lottery Commission		1.2 State Agency Address 14 Integra Drive Concord, NH 03301	
1.3 Contractor Name		1.4 Contractor Address	
1.5 Contractor Phone Number	1.6 Account Number	1.7 Completion Date	1.8 Price Limitation
1.9 Contracting Officer for State Agency Charles R. McIntyre, Executive Director		1.10 State Agency Telephone Number 603-271-3391	
1.11 Contractor Signature		1.12 Name and Title of Contractor Signatory	
1.13 Acknowledgement: State of _____, County of _____  On _____, before the undersigned officer, personally appeared the person identified in block 1.12, or satisfactorily proven to be the person whose name is signed in block 1.11, and acknowledged that s/he executed this document in the capacity indicated in block 1.12.			
1.13.1 Signature of Notary Public or Justice of the Peace  [Seal]			
1.13.2 Name and Title of Notary or Justice of the Peace			
1.14 State Agency Signature  <div style="text-align: right;">Date:</div>		1.15 Name and Title of State Agency Signatory	
1.16 Approval by the N.H. Department of Administration, Division of Personnel <i>(if applicable)</i>  By: _____ Director, On: _____			
1.17 Approval by the Attorney General (Form, Substance and Execution) <i>(if applicable)</i>  By: _____ On: _____			
1.18 Approval by the Governor and Executive Council <i>(if applicable)</i>  By: _____ On: _____			

**2. EMPLOYMENT OF CONTRACTOR/SERVICES TO BE PERFORMED.** The State of New Hampshire, acting through the agency identified in block 1.1 (“State”), engages contractor identified in block 1.3 (“Contractor”) to perform, and the Contractor shall perform, the work or sale of goods, or both, identified and more particularly described in the attached EXHIBIT A which is incorporated herein by reference (“Services”).

**3. EFFECTIVE DATE/COMPLETION OF SERVICES.**  
3.1 Notwithstanding any provision of this Agreement to the contrary, and subject to the approval of the Governor and Executive Council of the State of New Hampshire, if applicable, this Agreement, and all obligations of the parties hereunder, shall become effective on the date the Governor and Executive Council approve this Agreement as indicated in block 1.18, unless no such approval is required, in which case the Agreement shall become effective on the date the Agreement is signed by the State Agency as shown in block 1.14 (“Effective Date”).

3.2 If the Contractor commences the Services prior to the Effective Date, all Services performed by the Contractor prior to the Effective Date shall be performed at the sole risk of the Contractor, and in the event that this Agreement does not become effective, the State shall have no liability to the Contractor, including without limitation, any obligation to pay the Contractor for any costs incurred or Services performed. Contractor must complete all Services by the Completion Date specified in block 1.7.

**4. CONDITIONAL NATURE OF AGREEMENT.** Notwithstanding any provision of this Agreement to the contrary, all obligations of the State hereunder, including, without limitation, the continuance of payments hereunder, are contingent upon the availability and continued appropriation of funds, and in no event shall the State be liable for any payments hereunder in excess of such available appropriated funds. In the event of a reduction or termination of appropriated funds, the State shall have the right to withhold payment until such funds become available, if ever, and shall have the right to terminate this Agreement immediately upon giving the Contractor notice of such termination. The State shall not be required to transfer funds from any other account to the Account identified in block 1.6 in the event funds in that Account are reduced or unavailable.

**5. CONTRACT PRICE/PRICE LIMITATION/PAYMENT.**  
5.1 The contract price, method of payment, and terms of payment are identified and more particularly described in EXHIBIT B which is incorporated herein by reference.  
5.2 The payment by the State of the contract price shall be the only and the complete reimbursement to the Contractor for all expenses, of whatever nature incurred by the Contractor in the performance hereof, and shall be the only and the complete compensation to the Contractor for the Services. The State shall have no liability to the Contractor other than the contract price.

5.3 The State reserves the right to offset from any amounts otherwise payable to the Contractor under this Agreement those liquidated amounts required or permitted by N.H. RSA 80:7 through RSA 80:7-c or any other provision of law.  
5.4 Notwithstanding any provision in this Agreement to the contrary, and notwithstanding unexpected circumstances, in no event shall the total of all payments authorized, or actually made hereunder, exceed the Price Limitation set forth in block 1.8.

**6. COMPLIANCE BY CONTRACTOR WITH LAWS AND REGULATIONS/ EQUAL EMPLOYMENT OPPORTUNITY.**  
6.1 In connection with the performance of the Services, the Contractor shall comply with all statutes, laws, regulations, and orders of federal, state, county or municipal authorities which impose any obligation or duty upon the Contractor, including, but not limited to, civil rights and equal opportunity laws. This may include the requirement to utilize auxiliary aids and services to ensure that persons with communication disabilities, including vision, hearing and speech, can communicate with, receive information from, and convey information to the Contractor. In addition, the Contractor shall comply with all applicable copyright laws.  
6.2 During the term of this Agreement, the Contractor shall not discriminate against employees or applicants for employment because of race, color, religion, creed, age, sex, handicap, sexual orientation, or national origin and will take affirmative action to prevent such discrimination.  
6.3 If this Agreement is funded in any part by monies of the United States, the Contractor shall comply with all the provisions of Executive Order No. 11246 (“Equal Employment Opportunity”), as supplemented by the regulations of the United States Department of Labor (41 C.F.R. Part 60), and with any rules, regulations and guidelines as the State of New Hampshire or the United States issue to implement these regulations. The Contractor further agrees to permit the State or United States access to any of the Contractor’s books, records and accounts for the purpose of ascertaining compliance with all rules, regulations and orders, and the covenants, terms and conditions of this Agreement.

**7. PERSONNEL.**  
7.1 The Contractor shall at its own expense provide all personnel necessary to perform the Services. The Contractor warrants that all personnel engaged in the Services shall be qualified to perform the Services, and shall be properly licensed and otherwise authorized to do so under all applicable laws.  
7.2 Unless otherwise authorized in writing, during the term of this Agreement, and for a period of six (6) months after the Completion Date in block 1.7, the Contractor shall not hire, and shall not permit any subcontractor or other person, firm or corporation with whom it is engaged in a combined effort to perform the Services to hire, any person who is a State employee or official, who is materially involved in the procurement, administration or performance of this



Agreement. This provision shall survive termination of this Agreement.

7.3 The Contracting Officer specified in block 1.9, or his or her successor, shall be the State's representative. In the event of any dispute concerning the interpretation of this Agreement, the Contracting Officer's decision shall be final for the State.

**8. EVENT OF DEFAULT/REMEDIES.**

8.1 Any one or more of the following acts or omissions of the Contractor shall constitute an event of default hereunder ("Event of Default"):

8.1.1 failure to perform the Services satisfactorily or on schedule;

8.1.2 failure to submit any report required hereunder; and/or

8.1.3 failure to perform any other covenant, term or condition of this Agreement.

8.2 Upon the occurrence of any Event of Default, the State may take any one, or more, or all, of the following actions:

8.2.1 give the Contractor a written notice specifying the Event of Default and requiring it to be remedied within, in the absence of a greater or lesser specification of time, thirty (30) days from the date of the notice; and if the Event of Default is not timely remedied, terminate this Agreement, effective two (2) days after giving the Contractor notice of termination;

8.2.2 give the Contractor a written notice specifying the Event of Default and suspending all payments to be made under this Agreement and ordering that the portion of the contract price which would otherwise accrue to the Contractor during the period from the date of such notice until such time as the State determines that the Contractor has cured the Event of Default shall never be paid to the Contractor;

8.2.3 set off against any other obligations the State may owe to the Contractor any damages the State suffers by reason of any Event of Default; and/or

8.2.4 treat the Agreement as breached and pursue any of its remedies at law or in equity, or both.

**9. DATA/ACCESS/CONFIDENTIALITY/PRESERVATION.**

9.1 As used in this Agreement, the word "data" shall mean all information and things developed or obtained during the performance of, or acquired or developed by reason of, this Agreement, including, but not limited to, all studies, reports, files, formulae, surveys, maps, charts, sound recordings, video recordings, pictorial reproductions, drawings, analyses, graphic representations, computer programs, computer printouts, notes, letters, memoranda, papers, and documents, all whether finished or unfinished.

9.2 All data and any property which has been received from the State or purchased with funds provided for that purpose under this Agreement, shall be the property of the State, and shall be returned to the State upon demand or upon termination of this Agreement for any reason.

9.3 Confidentiality of data shall be governed by N.H. RSA chapter 91-A or other existing law. Disclosure of data requires prior written approval of the State.

**10. TERMINATION.** In the event of an early termination of this Agreement for any reason other than the completion of the Services, the Contractor shall deliver to the Contracting Officer, not later than fifteen (15) days after the date of termination, a report ("Termination Report") describing in detail all Services performed, and the contract price earned, to and including the date of termination. The form, subject matter, content, and number of copies of the Termination Report shall be identical to those of any Final Report described in the attached EXHIBIT A.

**11. CONTRACTOR'S RELATION TO THE STATE.** In the performance of this Agreement the Contractor is in all respects an independent contractor, and is neither an agent nor an employee of the State. Neither the Contractor nor any of its officers, employees, agents or members shall have authority to bind the State or receive any benefits, workers' compensation or other emoluments provided by the State to its employees.

**12. ASSIGNMENT/DELEGATION/SUBCONTRACTS.** The Contractor shall not assign, or otherwise transfer any interest in this Agreement without the prior written notice and consent of the State. None of the Services shall be subcontracted by the Contractor without the prior written notice and consent of the State.

**13. INDEMNIFICATION.** The Contractor shall defend, indemnify and hold harmless the State, its officers and employees, from and against any and all losses suffered by the State, its officers and employees, and any and all claims, liabilities or penalties asserted against the State, its officers and employees, by or on behalf of any person, on account of, based or resulting from, arising out of (or which may be claimed to arise out of) the acts or omissions of the Contractor. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant in paragraph 13 shall survive the termination of this Agreement.

**14. INSURANCE.**

14.1 The Contractor shall, at its sole expense, obtain and maintain in force, and shall require any subcontractor or assignee to obtain and maintain in force, the following insurance:

14.1.1 comprehensive general liability insurance against all claims of bodily injury, death or property damage, in amounts of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate ; and

14.1.2 special cause of loss coverage form covering all property subject to subparagraph 9.2 herein, in an amount not less than 80% of the whole replacement value of the property.

14.2 The policies described in subparagraph 14.1 herein shall be on policy forms and endorsements approved for use in the State of New Hampshire by the N.H. Department of Insurance, and issued by insurers licensed in the State of New Hampshire.

14.3 The Contractor shall furnish to the Contracting Officer identified in block 1.9, or his or her successor, a certificate(s) of insurance for all insurance required under this Agreement. Contractor shall also furnish to the Contracting Officer identified in block 1.9, or his or her successor, certificate(s) of insurance for all renewal(s) of insurance required under this Agreement no later than thirty (30) days prior to the expiration date of each of the insurance policies. The certificate(s) of insurance and any renewals thereof shall be attached and are incorporated herein by reference. Each certificate(s) of insurance shall contain a clause requiring the insurer to provide the Contracting Officer identified in block 1.9, or his or her successor, no less than thirty (30) days prior written notice of cancellation or modification of the policy.

**15. WORKERS' COMPENSATION.**

15.1 By signing this agreement, the Contractor agrees, certifies and warrants that the Contractor is in compliance with or exempt from, the requirements of N.H. RSA chapter 281-A (*"Workers' Compensation"*).

15.2 To the extent the Contractor is subject to the requirements of N.H. RSA chapter 281-A, Contractor shall maintain, and require any subcontractor or assignee to secure and maintain, payment of Workers' Compensation in connection with activities which the person proposes to undertake pursuant to this Agreement. Contractor shall furnish the Contracting Officer identified in block 1.9, or his or her successor, proof of Workers' Compensation in the manner described in N.H. RSA chapter 281-A and any applicable renewal(s) thereof, which shall be attached and are incorporated herein by reference. The State shall not be responsible for payment of any Workers' Compensation premiums or for any other claim or benefit for Contractor, or any subcontractor or employee of Contractor, which might arise under applicable State of New Hampshire Workers' Compensation laws in connection with the performance of the Services under this Agreement.

**16. WAIVER OF BREACH.** No failure by the State to enforce any provisions hereof after any Event of Default shall be deemed a waiver of its rights with regard to that Event of Default, or any subsequent Event of Default. No express failure to enforce any Event of Default shall be deemed a waiver of the right of the State to enforce each and all of the provisions hereof upon any further or other Event of Default on the part of the Contractor.

**17. NOTICE.** Any notice by a party hereto to the other party shall be deemed to have been duly delivered or given at the time of mailing by certified mail, postage prepaid, in a United States Post Office addressed to the parties at the addresses given in blocks 1.2 and 1.4, herein.

**18. AMENDMENT.** This Agreement may be amended, waived or discharged only by an instrument in writing signed by the parties hereto and only after approval of such amendment, waiver or discharge by the Governor and Executive Council of the State of New Hampshire unless no

such approval is required under the circumstances pursuant to State law, rule or policy.

**19. CONSTRUCTION OF AGREEMENT AND TERMS.**

This Agreement shall be construed in accordance with the laws of the State of New Hampshire, and is binding upon and inures to the benefit of the parties and their respective successors and assigns. The wording used in this Agreement is the wording chosen by the parties to express their mutual intent, and no rule of construction shall be applied against or in favor of any party.

**20. THIRD PARTIES.** The parties hereto do not intend to benefit any third parties and this Agreement shall not be construed to confer any such benefit.

**21. HEADINGS.** The headings throughout the Agreement are for reference purposes only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

**22. SPECIAL PROVISIONS.** Additional provisions set forth in the attached EXHIBIT C are incorporated herein by reference.

**23. SEVERABILITY.** In the event any of the provisions of this Agreement are held by a court of competent jurisdiction to be contrary to any state or federal law, the remaining provisions of this Agreement will remain in full force and effect.

**24. ENTIRE AGREEMENT.** This Agreement, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire Agreement and understanding between the parties, and supersedes all prior Agreements and understandings relating hereto.

## SECTION 2 –GENERAL TERMS AND CONDITIONS

### INTRODUCTION

This Contract is by and between the State of New Hampshire, acting through the New Hampshire Lottery Commission (“State” or “NHLC”), and Full Contractor Name a State Name Type of business formation (“Contractor”), having its principal place of business at Business Address, City, State, Zip.

#### 1. CONTRACT ELEMENTS

This Agreement consists of the following, which are incorporated by reference and which together with any and all amendments hereto, is hereafter referred to as the “Agreement”:

- a. The State of New Hampshire P-37 Terms and Conditions with Appendices;
- b. This RFP and all amendments thereto; and
- c. The contractor’s proposal.

In the event of a conflict in language between any of the above-mentioned documents, the language of the State of New Hampshire P-37 Terms and Conditions with Appendices shall govern over all other documents and the language of the RFP and RFP Amendments shall govern over the contractor’s proposal.

#### 2. EXTENSION IN CASE OF EMERGENCY

Notwithstanding the contract term set forth in this Agreement, NHLC reserves the right to reactivate or further extend the initial contract, or any extension thereof, at the rates and upon the terms and conditions then in effect on thirty (30) days’ notice for one (1) or more ninety (90) day periods not to exceed 180 days total.

#### 3. TIMING OF WORK

Contractor shall commence work upon issuance of a Notice to Proceed by the State. Time is of the essence in the performance of Contractor’s obligation under the contract.

#### 4. WORK HOURS

Unless otherwise agreed to by the State, the Contractor’s project management personnel shall work a minimum of forty (40) hour weeks between the hours of 8:00 a.m. and 5:00 p.m., (Eastern Time), excluding State of New Hampshire holidays. This management requirement does not alleviate the need for Contractor to operate 24/7/365 and to provide coverage for hours when project management staff are not available.

#### 5. NON-EXCLUSIVE CONTRACT

The State reserves the right, at its discretion, to retain other vendors to provide any of the Services or Deliverables identified under this Agreement. Contractor shall make best efforts to coordinate work with all other State vendors performing services which relate to the work or deliverables set forth in the Agreement.

#### 6. PRIME CONTRACTOR RESPONSIBILITIES

The Contractor may have subcontractors; however, the Contractor must accept full responsibility for and will be liable to the NHLC for subcontractor's performance. The NHLC will consider the Contractor to be the sole point of contact with regard to all contractual matters, including payment of any and all charges resulting from the contract.

## 7. CHANGE OF OWNERSHIP

In the event that Contractor should change more than 50% of ownership for any reason whatsoever that results in a change of control of the Contractor, the State shall have the option of:

- a. continuing under the Agreement with Contractor, its successors or assigns for the full remaining term of the Agreement;
- b. continuing under the Agreement with Contractor, its successors or assigns for such period of time as determined necessary by the State; or
- c. immediately terminate the Agreement without liability to or further compensation owed to Contractor, its successors or assigns.

## 8. TERMINATION FOR DEFAULT

**The Parties agree that Part I, Section 8 of the Agreement is deleted and replaced as follows:**

Any one or more of the following acts or omissions of the Contractor may, at the sole discretion of the State, constitute an event of default hereunder ("Event of Default")

- a. Failure to perform the Services satisfactorily or on schedule;
- b. Failure to perform the Services in a lawful manner;
- c. Failure to submit any report required; and/or
- d. Failure to perform any other covenant, term or condition of the Contract

### Remedies upon Default

Upon the occurrence of any Event of Default, the State may take any one or more, or all, of the following actions:

- e. The State shall provide Contractor written notice of default and require it to be remedied within a reasonable period of time. ("Cure Period"). If Contractor fails **to cure the default within the Cure Period, the State may terminate the Contract with a written notice of termination and/or treat the Contract as breached and pursue its remedies at law or in equity or both.**
- f. Give Contractor a written notice specifying the Event of Default and suspending all payments to be made under the Agreement and ordering that the portion of the Contract price which would otherwise accrue to Contractor during the period from the date of such notice until such time as the State determines that Contractor has cured the Event of Default shall never be paid to Contractor.
- g. Set off against any other obligations the State may owe to the Contractor any damages the State suffers by reason of any Event of Default;
- h. Procure Services that are the subject of the Contract from another source and Contractor shall be liable for reimbursing the State for the replacement Services, and all administrative costs directly related to the replacement of the Contract and procuring the Services from another source, such as costs of competitive bidding, mailing, advertising, applicable fees, charges or penalties, and staff time costs; all of which shall be subject to the limitations of liability set forth in the Contract.

### State Default

The Contractor shall provide the State with written notice of default, and the State shall cure the default within thirty (30) days.

### Termination for Convenience

The State may, at its sole discretion, terminate the Contract for convenience, in whole or in part, by thirty (30) days written notice to Contractor. In the event of a termination for convenience, the State shall pay Contractor the agreed upon price, if separately stated in this Contract, for Deliverables for which Acceptance has been

given by the State. Amounts for Services or Deliverables provided prior to the date of termination for which no separate price is stated under the Contract shall be paid, in whole or in part, generally in accordance with Contract Exhibit B, *Price and Payment Schedule*, of the Contract. During the thirty (30) day period, Contractor shall wind down and cease Services as quickly and efficiently as reasonably possible, without performing unnecessary Services or activities and by minimizing negative effects on the State from such winding down and cessation of Services. The State will be responsible only for reasonable costs to the Contractor in winding down Services under this provision.

#### Termination for Conflict of Interest

The State may terminate the Contract with 15 days written notice if it determines that a conflict of interest exists, including but not limited to, a violation by any of the parties hereto of applicable laws regarding ethics in public acquisitions and procurement and performance of Contracts. In such case, the State shall be liable for cost of all services provided through the date of termination but will not be liable for any costs for incomplete Services or winding down the contract activities.

#### Termination Procedure

Upon termination of the Contract, the State, in addition to any other rights provided in the Contract, may require Contractor to deliver to the State any property, including without limitation, Software and Written Deliverables, for such part of the Contract as has been terminated. After receipt of a notice of termination, and except as otherwise directed by the State, Contractor shall:

- a. Stop work under the Contract on the date, and to the extent specified, in the notice;
- b. Promptly, but in no event longer than ten (10) days after termination, terminate its orders and subcontracts related to the work which has been terminated and settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the State to the extent required, which approval or ratification shall be final for the purpose of this Section;
- c. Take such action as the State directs, or as necessary to preserve and protect the property related to the Contract which is in the possession of Contractor and in which the State has an interest;
- d. Transfer title to the State and deliver in the manner, at the times, and to the extent directed by the State, any property which is required to be furnished to the State and which has been accepted or requested by the State;
- e. Provide written Certification to the State that Contractor has surrendered to the State all said property.

#### Transition Services upon Termination

If an awarded contract is not renewed, or is terminated prior to the completion of a project, or if the work on a project is terminated, for any reason, the Contractor shall provide, for a period up to ninety (90) days after the expiration or termination of this project or contract, all reasonable transition assistance requested by the State at no additional cost, to allow for the expired or terminated portion of the services to continue without interruption or adverse effect, and to facilitate the orderly transfer of such services to the State or its designees ("transition services").

### **9. ACCOUNTING RECORDS**

The Contractor is required to maintain its books, records and all other evidence pertaining to the contract in accordance with generally accepted accounting principles and other procedures specified by the NHLC. These records will be available to the NHLC, its internal auditors or external auditors (and other designees) and the New Hampshire Office of Legislative Budget Assistant at all times during the contract period and any extension thereof, and for five (5) full years from the expiration date and/or final payment on the contract or extension thereof, whichever is later.

**10. AUTHORITY OF THE NHLC**

On all questions concerning the interpretation of specifications, the acceptability and quality of work performed, the execution of the work, the assessment of liquidated damages, and the determination of payment due or to become due, the decision of the NHLC shall be final and binding.

**11. COOPERATION OF THE PARTIES**

Contractor and NHLC agree to cooperate fully, to work in good faith and to mutually assist each other in the performance of the Contract. In this connection, the parties will meet to resolve problems associated with the Contract. Neither party will unreasonably withhold its approval of any act or request of the other to which its approval is necessary or desirable.

**12. GOVERNING LAW, VENUE AND JURISDICTION**

As set forth in Part I, Section 19, this agreement shall be construed in accordance with the laws of the State of New Hampshire. Any action on this Agreement may only be brought in the State of New Hampshire in accordance with the dispute resolution procedures of this Agreement set forth herein. The Parties agree to venue in Merrimack County Superior Court.

**13. FORCE MAJEURE**

Neither Contractor nor the State shall be responsible for delays or failures in performance resulting from events beyond the control of such party and without fault or negligence of such party. Such events shall include, but not be limited to, acts of God, strikes, lock outs, riots, and acts of War, epidemics, acts of Government, fire, power failures, nuclear accidents, earthquakes, and unusually severe weather.

**14. INDEMNIFICATION FROM INTELLECTUAL PROPERTY INFRINGEMENT CLAIMS**

Contractor shall indemnify, defend and hold harmless the NHLC, State of New Hampshire, its officers and employees from and against all losses, liabilities, damages (including taxes), and all related costs and expenses (including 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 against the State to the extent that such action or proceeding is based on a claim that any piece of equipment, software, commodity or service supplied by the 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, trade secret or other proprietary right of any person or entity, which right is enforceable under the laws of the United States.

The NHLC shall observe all existing federal and state copyrights and trademarks; however, the NHLC reserves the right to select game designs that have been, in whole or in part, originated by the NHLC, originated by another lottery, originated by the contractor, or originated by another contractor.

The Contractor shall indemnify all e-Instant games, regardless of which party designed the game. For all e-Instant games by the Contractor, a thorough search of potential trademark and related infringements, as detailed above, is necessary.

**15. INSURANCES**

In addition to the policies required under Part I Section 14 and 15, the Contractor shall purchase and maintain the following policies of insurance for claims which may arise out of or result from the Contractor's operations under the contract, whether such operations be by the 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. Errors and Omissions Insurance with limits of not less than \$2,000,000 per claim, to be in force and effect at all times, which will indemnify the Contractor and the State for direct loss which may be incurred due to any error caused by the Contractor, its officers, employees, agents, subcontractors or assigns regardless of negligence. The State shall be named as an additional insured on this policy;
- b. Cyber Liability Insurance with limits of not less than \$2,000,000 per claim, to be in force and effect at all times, which will indemnify the Contractor and the State for financial losses that occur as a result of data breaches or other cyber related events. The State shall be named as an additional insured on this policy;
- c. A Fidelity Bond in the amount of one million dollars (\$1,000,000) covering any loss to the State due to any fraudulent or dishonest act on the part of the Contractor's officers, employees, agents or subcontractors. If the Contractor utilizes agents and subcontractors who are not covered by the Fidelity Bond, it is the responsibility of the Contractor to ensure those agents and subcontractors maintain coverage of the same. If the agents or subcontractors are found guilty of fraudulent or dishonest acts regarding the terms of this contract and they do not have Fidelity Bond coverage, the Contractor will be held liable to cover any loss associated with incident to the State of New Hampshire.

Certificates of insurance must be furnished to the Lottery on date of contract execution.

#### **16. BUSINESS CONTINUITY AND DISASTER RECOVERY PLAN**

Contractor must provide the State with their proposed Business Continuity and Disaster Recovery Plan to be used in the event that the Contractor's primary place of business is rendered inoperable due to acts of terrorism, forces of nature or other unforeseen events.

#### **17. RECORD RETENTION**

Contractor and its Subcontractors shall maintain all project records including but not limited to books, records, documents, and other evidence of accounting procedures and practices, which properly and sufficiently reflect all direct and indirect costs invoiced in the performance of their respective obligations under the Contract. Contractor and its Subcontractors shall retain all such records for three (3) years following termination of the Contract, including any extensions. Records relating to any litigation matters regarding the Contract shall be kept for one (1) year following the termination of all litigation, including the termination of all appeals or the expiration of the appeal period.

Upon prior notice and subject to reasonable time frames, all such records shall be subject to inspection, examination, audit and copying by personnel so authorized by the State and federal officials so authorized by law, rule, regulation or Contract, as applicable. Access to these items shall be provided within Merrimack County of the State of New Hampshire, unless otherwise agreed by the State. Delivery of and access to such records shall be at no cost to the State during the three (3) year period following termination of the Contract and one (1) year term following litigation relating to the Contract, including all appeals or the expiration of the appeal period. Contractor shall include the record retention and review requirements of this section in any of its subcontracts.

The State agrees that books, records, documents, and other evidence of accounting procedures and practices related to Contractor's cost structure and profit factors shall be excluded from the State's review unless the cost of any other Services or Deliverables provided under the Contract is calculated or derived from the cost structure or profit factors.

**18. TAXES, FEES AND ASSESSMENTS**

Contractor shall pay all taxes, fees and assessments, however designated, levied or based. The State of New Hampshire is exempt from State and local sales and use taxes on the services provided pursuant to this contract.

**19. NEWS RELEASES**

News releases pertaining to this RFP or the services, study, data, or project to which it relates cannot not be made public without prior written NHLC approval, and then only in accordance with the explicit written instructions from the NHLC. No results of the program are to be released without prior approval of the NHLC and then only to persons designated.

**20. ADVERTISING**

Contractor agrees not to use the NHLC name, logos, images, nor any data or results arising from this procurement without prior written approval by the NHLC.

**21. NHLC APPROVAL OF STAFFING**

The NHLC reserves the right to disapprove of any employee of the Contractor who is assigned to the NHLC contract, either at contract inception or during the term.

Background Checks

The State may require, and at its sole expense, conduct reference and background screening of the Contractor’s Contract Manager, Project Manager and Key Project Staff. The State shall maintain the confidentiality of background screening results in accordance with the Contract Agreement.

**22. COMPENSATION DURING CONTRACT**

The submitted invoices will be confirmed by the NHLC based on management and accounting reports. Confirmed invoices will be paid within thirty (30) days of receipt. All invoices for a fiscal year must be provided to the NHLC before the end of that fiscal year so year-end inventory and reconciling can be accurate.

The State fiscal year is July 1st through June 30th. Payments to the Contractor from the NHLC in any given fiscal year are contingent upon enactment of legislation.

**23. TRAVEL EXPENSES**

Contractor must assume all reasonable travel and related expenses incurred by Contractor in performance of its obligations under this Agreement. All labor rates in this Agreement will be considered “fully loaded”, including, but not limited to: meals, hotel/housing, airfare, car rentals, car mileage, and out of pocket expenses.

**24. SHIPPING FEES**

The State will not pay for any shipping or delivery fees unless specifically itemized in this Agreement.

**25. TICKET PURCHASE AND PRIZE PAYMENT RESTRICTIONS**

No Contractor, subcontractor or related entity, or officer, director, partner, employee, or owner of the Contractor or of any current subcontractor or related entity, and no spouse, child, brother, sister, or parent residing in the household in the principal place of abode of any such individual shall purchase a New Hampshire Lottery ticket or be paid a prize in any New Hampshire Lottery game. The Contractor shall ensure that this requirement is made known to each affected individual.



## 26. CONTRACTOR ETHICS AND INTEGRITY

The Contractor is obligated to meet high standards for ethics and integrity under this Contract:

- a. The Contractor and employees shall not offer or give any gift, gratuity, favor, entertainment, loan, or any other thing of material monetary value to any NHLC employee.
- b. The Contractor and employees of the Contractor shall not disclose any business sensitive or confidential information gained by virtue of this Contract to any party without the consent of the Executive Director of the NHLC.
- c. The Contractor and employees shall take no action in the performance of this Contract to create an unfair, unethical, or illegal competitive advantage for itself or others.

For violation of the above provisions, the NHLC may terminate the contract, receive restitution from the Contractor, debar the Contractor, or take any other appropriate actions against the Contractor.

## 27. CONFIDENTIALITY REQUIREMENTS

### State Confidential Information

In performing its obligations under this Agreement, Contractor may gain access to information of the State, including State Confidential Information. "State Confidential Information" shall include, but not be limited to, information exempted from public disclosure under New Hampshire RSA Chapter 91-A: *Access to Public Records and Meetings* (see e.g. RSA Chapter 91-A: 5 *Exemptions*). *Confidential Information also includes any and all information owned or managed by the State of NH - created, received from or on behalf of any Agency of the State or accessed in the course of performing contracted services - of which collection, disclosure, protection, and disposition is governed by state or federal law or regulation. This information includes, but is not limited to Protected Health Information (PHI), Personally Identifiable Information (PII), Personal Financial Information (PFI), Federal Tax Information (FTI), Social Security Numbers (SSN), Payment Card Industry (PCI), and or other sensitive and confidential information.* Contractor shall not use the State Confidential Information developed or obtained during the performance of, or acquired, or developed by reason of the Agreement, except as directly connected to and necessary for the performance of the Agreement. Contractor shall maintain the confidentiality of and protect from unauthorized use, disclosure, publication, and reproduction (collectively "release"), all State Confidential Information.

Subject to applicable federal or State laws and regulations, Confidential Information shall not include information which:

- a. shall have otherwise become publicly available other than as a result of disclosure by the receiving party in breach hereof;
- b. was disclosed to the receiving party on a non-confidential basis from a source other than the disclosing party, which the receiving party believes is not prohibited from disclosing such information as a result of an obligation in favor of the disclosing party;
- c. is developed by the receiving party independently of, or was known by the receiving party prior to, any disclosure of such information made by the disclosing party; or
- d. is disclosed with the written consent of the disclosing party.

A receiving party also may disclose Confidential Information to the extent required by an order of a court of competent jurisdiction. Any disclosure of the State Confidential Information shall require the prior written approval of the State. Contractor shall immediately notify the State if any request, subpoena or other legal process is served upon Contractor regarding the State Confidential Information, and Contractor shall cooperate with the State in any effort the State undertakes to contest the request, subpoena or other legal process, at no additional cost to the State.

In the event of the unauthorized release of State Confidential Information, Contractor shall immediately notify the State, and the State may immediately be entitled to pursue any remedy at law and in equity, including, but not limited to, injunctive relief.

#### Contractor Confidential Information

Contractor shall clearly identify in writing all information it claims to be confidential or proprietary upon providing such information to the State. For the purposes of complying with its legal obligations, the State is under no obligation to accept the Contractor's designation of material as confidential. Contractor acknowledges that the State is subject to State and federal laws governing disclosure of information including, but not limited to, RSA Chapter 91-A. The State shall maintain the confidentiality of the identified Contractor Confidential Information insofar as it is consistent with applicable State and federal laws or regulations. In the event the State receives a request for the information identified by Contractor as confidential, the State shall notify Contractor and specify the date the State will be releasing the requested information. At the request of the State, Contractor shall cooperate and assist the State with the collection and review of Contractor's information, at no additional expense to the State. Any effort to prohibit or enjoin the release of the information shall be Contractor's sole responsibility and at Contractor's sole expense. If Contractor fails to obtain a court order enjoining the disclosure, the State shall release the information on the date specified in the State's notice to Contractor, without any liability to the State.

#### Survival

All of the terms in Contract Warranties and Representations of this Agreement shall survive the termination or expiration of the Agreement.

## **28. CONTRACT WARRANTIES & REPRESENTATIONS**

#### System

The Contractor warrants that any Systems provided under this Agreement will operate to conform to the Specifications, terms, and requirements of this Agreement.

#### Software

The Contractor warrants that any Software provided as part of this Agreement, including but not limited to the individual modules or functions furnished under the Contract, is properly functioning within the System, compliant with the requirements of the Contract, and will operate in accordance with the Specifications and Terms of the Contract.

For any breach of the above Software warranty, in addition to all its other remedies at law and in equity, at the State's option the Contractor shall (a) the correction of program errors that cause breach of the warranty, or if Contractor cannot substantially correct such breach in a commercially reasonable manner, the State may end its program license if any and recover the fees paid to Contractor for the program license and any unused, prepaid technical support fees the State has paid for the program license; or (b) the re-performance of the deficient Services, or (c) if Contractor cannot substantially correct a breach in a commercially reasonable manner, the State may end the relevant Services and recover the fees paid to Contractor for the deficient Services.

#### Compatibility

Contractor warrants that all System components, including but not limited to the components provided, including any replacement or upgraded System Software components provided by Contractor to correct Deficiencies or as an Enhancement, shall operate with the rest of the System without loss of any functionality.

## Services

Contractor warrants that all Services to be provided under this Agreement will be provided expediently, in a professional manner, in accordance with industry standards and that Services will comply with performance standards, Specifications, and terms of the Contract.

### A. LIQUIDATED DAMAGES

Contractor agrees that it will meet service levels as set forth below. The State may assess liquidated damages in the amount specified for each material failure to meet an agreed upon service level. The Parties agree that it will be extremely impractical and difficult to determine actual damages as a result of any material deviation from the service level agreements. Liquidated damages are not intended as a penalty. It is expressly agreed that the waiver of any liquidated damages due the State shall constitute a waiver only as to such liquidated damages and not a waiver of any future liquidated damages. Failure to demand payment of liquidated damages within any period of time shall not constitute a waiver of such claim by the State.

## Conditions for Assessment of Liquidated Damages

### I. Timely and Accurate Reports and Files

#### a. Conditions

The Contractor fails to provide timely, sufficient and accurate computer files within the specified time frames and descriptions in the contract.

#### b. Damages

For each late, insufficient or inaccurate computer file required by this contract, the Executive Director of the NHLC may impose liquidated damages in the amount up to \$1,000 per day per file, until the required accurate file is provided to the NHLC.

### II. Warranty on e-Instant Payout

#### a. Condition

The total payout of an e-Instant varies from what the Lottery standard is for each game, as documented in the game working papers.

#### b. Damages

Damages in the amount of up to 5% of the total net gaming revenue for said game, as determined by the Lottery, will be assessed.

### III. Warranty on e-Instant Launch

#### a. Condition

The e-Instant game is unable to launch on designated day and time due to failure of Vendor-technical or otherwise.

#### b. Damages

Damages in the amount of \$10,000 per day will be assessed.

### IV. Warranty on e-Instant Functionality

#### a. Condition

The e-Instant is not functioning on the Production site for 60 minutes or more due to the Vendor's technical failure.

#### b. Damages

Damages of \$1,000 per hour will be assessed for a non-functioning game.

#### V. Warranty on Active Player Sessions

- a. Condition  
Player's session times out without player prompting.
- b. Damages  
Damages of \$1,000 per instance will be assessed for session time-outs.

#### VI. Warranty on Viewing Previous Wagers

- a. Condition  
Player clicks "view" in their history but is unable to view a dynamic or static replay of wagers.
- b. Damages  
Damages of \$1,000 per instance will be assessed per instance of non-viewable previously played wagers.

#### VII. System Integration

- a. Condition  
Vendor shall complete all installation preparations as required, complete system testing to the Lottery's satisfaction, pass Lottery acceptance testing, comply with all other contractual requirement in effect during the implementation period, and achieve readiness for production operations.
- b. Damages  
Damages of \$1,000 per day may be assessed per instance of non-readiness in UAT and/or Production for system integration.

#### VIII. Unauthorized Software and/or Hardware Modifications

- a. Condition  
Vendors shall not modify any software or hardware without the prior written approval from the appropriate parties at the Lottery.
- b. Damages  
If the Vendor modifies any software or hardware without the prior written approval from the appropriate parties at the Lottery, the Lottery may issue a written order that the change or modification be removed and the System restored to its previous operating state at the Vendor's expense. "Modification" does not include replacement of component with an essentially similar working component in the event of necessary maintenance.  
Further, the Lottery may impose liquidated damages up to \$5,000 per violation in addition to any other damages that may occur as a result of unauthorized modification.

#### IX. Unauthorized Access

- a. Condition  
Vendors shall preclude personnel not authorized by the Lottery from accessing the NHLC servers or facilities, computer systems and software and any gaming data.
- b. Damages  
If the Vendor fails to preclude access by unauthorized personnel, the Lottery may impose liquidated damages up to \$5,000 for each person and for each incident in violation. Each and every act that permits access by an unauthorized person is an incident.

#### X. Failure to Report Incidents

- a. Condition  
It will be the responsibility of the Vendor to immediately report all significant incidents related to the operation of the RGS. The immediate reporting shall be delivery personally or by telephone within one (1) hour of the discovery of the incident, followed by a lottery address to the Lottery

Executive Director within 24 hours of the incident. All written reports and notification may be sent by courier or facsimile copy directly to the Lottery Executive Director. At a minimum, each of the following types of events require a written report:

- i. RGS failure
- ii. API or data transmission failure
- iii. E-Instant failure
- iv. Emergency software or hardware changes
- v. Security violations
- vi. Other condition as defined by a memorandum of understanding
- vii. Any issue or situation that may cause damage to the integrity, reputation, or public image of the NHLC.

b. Damages

In the event the Vendor fails to report incidents as defined above, the Lottery may impose liquidated damages up to \$1,000 per day (or fraction thereof) until an incident is correctly reported.

XI. Failure to Remedy Audit Recommendations

a. Condition

Vendor fails to address recommendations made as a result of a system or operational audit by a recognized authority such as the State of New Hampshire or Lottery approved auditors.

b. Damages

In the event audit recommendations addressing any of the Vendor's operation or system activities are not corrected within 60 days of notification, unless specifically exempted by the Executive Director, the Vendor may be changed liquidated damages of \$5,000 at the end of the initial 60 day period and an additional \$5,000 each subsequent 30 day period or any portion thereof, for which the audit recommendation corrections are not completed.

XII. Failure to Provide Software/Game Testing and Quality Software/Game Turnover

a. Condition

Vendor fails to provide a quality assurance test plan or a report on the quality assurance test, or fails to provide quality tested software or e-Instant in accordance with game documents, liquidated damages may be assessed.

b. Damages

If the Vendor fails to provide untested software or games and is turned over for user acceptance testing and it does not meet standards or game specifications, the Vendor may be changed liquidated damages of \$1,000 for the first violation and \$1,000 for each subsequent violation for the same software or game.

**B. SERVICE LEVEL AGREEMENTS**

To be negotiated with successful proposer(s).

**29. DATA SECURITY REQUIREMENTS**

Restriction on Data Use

Business Use and Disclosure of Confidential Information.

1. The Contractor, including but not limited to all its directors, officers, employees and agents, must not use, disclose, maintain or transmit Confidential Information except as reasonably necessary as outlined under this Contract.
2. The Contractor must not disclose any Confidential Information in response to a request for disclosure on the basis that it is required by law, in response to a subpoena, etc., without first notifying the State so that the State has an opportunity to consent or object to the disclosure.

3. The Contractor agrees that State Data or derivative there from disclosed to an End User must only be used pursuant to the terms of this Contract.
4. The Contractor agrees State Data obtained under this Contract may not be used for any other purposes that are not indicated in this Contract.
5. The Contractor agrees to grant access to the data to the authorized representatives of the State for the purpose of inspecting to confirm compliance with the terms of this Contract.

#### Methods of Secure Transmission of Data

1. Application Encryption. If End User is transmitting State data containing Confidential Data between applications, the Contractor attests the applications have been evaluated by an expert knowledgeable in cyber security and that said application's encryption capabilities ensure secure transmission via the internet.
2. Computer Disks and Portable Storage Devices. End User may not use computer disks or portable storage devices, such as a thumb drive, as a method of transmitting State data.
3. Encrypted Email. End User may only employ email to transmit Confidential Data if email is encrypted and being sent to and being received by email addresses of persons authorized to receive such information.
4. Encrypted Web Site. If End User is employing the Web to transmit Confidential Data, the Contractor will be responsible to ensure that data is encrypted when it is transmitted via a Web site.
5. File Hosting Services, also known as File Sharing Sites. End User may not use file hosting services, such as Dropbox or Google Cloud Storage, to transmit Confidential Data.
6. Ground Mail Service. End User may only transmit Confidential Data via *certified* ground mail within the continental US and when sent to a named individual.
7. Laptops and PDA. If End User is employing portable devices to transmit Confidential Data said devices must be encrypted and password-protected.
8. Open Wireless Networks. End User may not transmit Confidential Data via an open wireless network. End User must employ a virtual private network (VPN) when remotely transmitting via an open wireless network.
9. Remote User Communication. If End User is employing remote communication to access or transmit Confidential Data, a virtual private network (VPN) must be installed on the End User's mobile device(s) or laptop from which information will be transmitted or accessed.
10. SSH File Transfer Protocol (SFTP), also known as Secure File Transfer Protocol. If End User is employing an SFTP to transmit Confidential Data, End User will structure the Folder and access privileges to prevent inappropriate disclosure of information. SFTP folders and sub-folders used for transmitting Confidential Data will be coded for 24-hour auto-deletion cycle (i.e. Confidential Data will be deleted every 24 hours).
11. Wireless Devices. If End User is transmitting Confidential Data via wireless devices, all data must be encrypted to prevent inappropriate disclosure of information.

#### Retention and Disposition of Identifiable Records

Unless otherwise directed, the Contractor will only retain the data and any derivative of the data for the duration of this Contract. After such time, the Contractor will have 30 days to destroy the data and any derivative in whatever form it may exist, unless, otherwise required by law or permitted under this Contract. To this end, the parties must:

##### A. Retention

1. The Contractor agrees it will not store, transfer or process data collected in connection with the services rendered under this Contract outside of the United States. This physical location requirement shall also apply in the implementation of cloud computing, cloud service or cloud storage capabilities, and

includes backup data and Disaster Recovery locations.

2. The Contractor agrees to ensure proper security monitoring capabilities are in place to detect potential security events that can impact State of NH systems and/or Department confidential information for contractor provided systems.
3. The Contractor agrees to provide security awareness and education for its End Users in support of protecting Department confidential information.
4. The Contractor agrees to retain all electronic and hard copies of Confidential Data in a secure location and identified in section 8.4
5. The Contractor agrees Confidential Data stored in a Cloud must be in a FedRAMP/HITECH compliant solution and comply with all applicable statutes and regulations regarding the privacy and security. All servers and devices must have currently-supported and hardened operating systems, the latest anti-viral, anti-hacker, anti-spam, anti-spyware, and anti-malware utilities. The environment, as a whole, must have aggressive intrusion-detection and firewall protection.
6. The Contractor agrees to and ensures its complete cooperation with the State's Chief Information Officer in the detection of any security vulnerability of the hosting infrastructure.

## B. Disposition

1. If the Contractor will maintain any Confidential Information on its systems (or its sub-contractor systems), the Contractor will maintain a documented process for securely disposing of such data upon request or contract termination; and will obtain written certification for any State of New Hampshire data destroyed by the Contractor or any subcontractors as a part of ongoing, emergency, and or disaster recovery operations. When no longer in use, electronic media containing State of New Hampshire data shall be rendered unrecoverable via a secure wipe program in accordance with industry-accepted standards for secure deletion and media sanitization, or otherwise physically destroying the media (for example, degaussing) as described in NIST Special Publication 800-88, Rev 1, Guidelines for Media Sanitization, National Institute of Standards and Technology, U. S. Department of Commerce. The Contractor will document and certify in writing at time of the data destruction, and will provide written certification to the Department upon request. The written certification will include all details necessary to demonstrate data has been properly destroyed and validated. Where applicable, regulatory and professional standards for retention requirements will be jointly evaluated by the State and Contractor prior to destruction.
2. Unless otherwise specified, within thirty (30) days of the termination of this Contract, Contractor agrees to destroy all hard copies of Confidential Data using a secure method such as shredding.
3. Unless otherwise specified, within thirty (30) days of the termination of this Contract, Contractor agrees to completely destroy all electronic Confidential Data by means of data erasure, also known as secure data wiping.

### Procedures for Security

Contractor agrees to safeguard the State Confidential Data received under this Contract, and any derivative data or files, as follows:

1. The Contractor will maintain proper security controls to protect State confidential information collected, processed, managed, and/or stored in the delivery of contracted services.
2. The Contractor will maintain policies and procedures to protect State confidential information throughout the information lifecycle, where applicable, (from creation, transformation, use, storage and secure destruction) regardless of the media used to store the data (i.e., tape, disk, paper, etc.).
3. The Contractor will maintain appropriate authentication and access controls to contractor systems that collect, transmit, or store State confidential information where applicable.
4. The Contractor will ensure proper security monitoring capabilities are in place to detect potential security events that can impact State of NH systems and/or State confidential information for contractor

- provided systems.
5. The Contractor will provide regular security awareness and education for its End Users in support of protecting State confidential information.
  6. If the Contractor will be sub-contracting any core functions of the engagement supporting the services for State of New Hampshire, the Contractor will maintain a program of an internal process or processes that defines specific security expectations, and monitoring compliance to security requirements that at a minimum match those for the Contractor, including breach notification requirements.
  7. The Contractor will work with the State to sign and comply with all applicable State of New Hampshire system access and authorization policies and procedures, systems access forms, and computer use agreements as part of obtaining and maintaining access to any Department system(s). Agreements will be completed and signed by the Contractor and any applicable sub-contractors prior to system access being authorized.
  8. The Contractor will not store, knowingly or unknowingly, any State of New Hampshire or Department data offshore or outside the boundaries of the United States unless prior express written consent is obtained from the Information Security Office leadership member within the Department.
  9. Data Security Breach Liability. In the event of any security breach Contractor shall make efforts to investigate the causes of the breach, promptly take measures to prevent future breach and minimize any damage or loss resulting from the breach. The State shall recover from the Contractor all costs of response and recovery from the breach, including but not limited to: credit monitoring services, mailing costs and costs associated with website and telephone call center services necessary due to the breach.
  10. Contractor must, comply with all applicable statutes and regulations regarding the privacy and security of Confidential Information.
  11. Contractor agrees to establish and maintain appropriate administrative, technical, and physical safeguards to protect the confidentiality of the Confidential Data and to prevent unauthorized use or access to it. The safeguards must provide a level and scope of security that is not less than the level and scope of security requirements established by the State of New Hampshire, Department of Information Technology. Refer to Vendor Resources/Procurement at <https://www.nh.gov/doit/vendor/index.htm> for the Department of Information Technology policies, guidelines, standards, and procurement information relating to vendors.
  12. Contractor agrees to maintain a documented breach notification and incident response process. The Contractor will notify NHLC of any security breach within two (2) hours of the time that the Contractor learns of its occurrence. This includes a confidential information breach, computer security incident, or suspected breach which affects or includes any State of New Hampshire systems that connect to the State of New Hampshire network.
  13. Contractor must restrict access to the Confidential Data obtained under this Contract to only those authorized End Users who need such State Data to perform their official duties in connection with purposes identified in this Contract.
  14. The Contractor must ensure that all End Users:
    - a. Comply with such safeguards as referenced above, implemented to protect Confidential Information that is furnished by State under this Contract from loss, theft or inadvertent disclosure.
    - b. Safeguard this information at all times.
    - c. Ensure that laptops and other electronic devices/media containing Confidential Information are encrypted and password-protected.
    - d. Send emails containing Confidential Information only if encrypted and being sent to and being received by email addresses of persons authorized to receive such information.
    - e. Limit disclosure of the Confidential Information to the extent permitted by law.
    - f. Confidential Information received under this Contract and individually identifiable data derived from State Data, must be stored in an area that is physically and technologically secure from access by unauthorized persons during duty hours as well as non-duty hours (e.g., door locks, card



- keys, biometric identifiers, etc.).
- g. Only authorized End Users may transmit the Confidential Data, including any derivative files containing personally identifiable information, and in all cases, such data must be encrypted at all times when in transit, at rest, or when stored on portable media as defined above.
  - h. In all other instances Confidential Data must be maintained, used and disclosed using appropriate safeguards, as determined by a risk-based assessment of the circumstances involved.
  - i. Understand that their user credentials (user name and password) must not be shared with anyone. End Users will keep their credential information secure. This applies to credentials used to access the site directly or indirectly through a third party application.

Contractor is responsible for oversight and compliance of their End Users. State reserves the right to conduct onsite inspections to monitor compliance with this Contract, including the privacy and security requirements provided herein, applicable laws and Federal regulations until such time the Confidential Data is disposed of in accordance with this Contract.

#### Data Breach Notification

RSA 359-C:20 requires public breach notification to individuals whose information has been or may be misused. All legal notifications required as a result of a breach of information collected pursuant to this Contract shall be coordinated with the State.

#### Annual Reporting

Vendors are required to provide the below reports on an annual basis according to the timelines sent in each reporting requirement below.

- Within 90 days after the close of the NHLC fiscal year the Contractor agrees to provide a System and Organization II (SOC II) report to the Chief Compliance Office and Director of Security at the NHLC.
- The Successful Vendor shall have a complete corporate financial audit conducted annually, at its own expense. The audit must follow generally accepted auditing standards (GAAS) or the appropriate non-US equivalent. A copy of the Successful Vendor's certified financial statements shall be provided within one quarter after the close of the Successful Vendor's fiscal year.
- The Vendor shall provide the Lottery with Securities and Exchange Commission (SEC) 10-K reports (or the appropriate non-US equivalent) as they are issued, together with any other reports required pursuant to Section 13 of the Securities and Exchange Act of 1934, as amended.
- A third-party review of the Successful Vendor's New Hampshire operations must also be conducted annually. This audit will be a Statement on Auditing Standards (SAS) 70 audit, Type 2, at the sole discretion and determination of the Lottery, and shall be paid for by the Successful Vendor. For this review the Successful Vendor will suggest, for the Lottery's approval, the firm(s) to perform the work. All financial aspects shall be conducted pursuant to auditing standards as issued by the American Institute of Certified Public Accountants. Annual reviews shall occur on a July through June basis and will be reported to the Lottery not later than forty-five (45) days after the close of the State's fiscal year. The first audit shall cover a partial year ending with the State's fiscal year.

#### Security Reports

The Contractor agrees to immediately report any security procedural violation, violation of law (e.g. theft), or security breach of the equipment, software or material used or to be used in the performance of this contract. The report will be delivered personally or by telephone, followed by a certified letter addressed to the Executive Director of the NHLC or his designee.

Contractor agrees to report any change in, addition to, or deletion from, the information disclosed to the NHLC. The report will be in the form of a letter addressed to the Executive Director of the NHLC and will be delivered within thirty (30) days of the effective date of the change, addition, or deletion.

In particular the Contractor must report the involvement of any of the Contractor's employees, owners, or agents in any known criminal arrest (exclusive of minor traffic violations) or investigation, or any such action or event, should it be reasonably able to construe that event as having some relationship to the security, integrity, and image of the NHLC.

Additional Security Measures

The NHLC reserves the right to require at any time further and additional security measures as it may, in its sole discretion, deem necessary or appropriate to ensure the integrity of the System or of the games.

**30. DISPUTES UNDER THE CONTRACT**

Prior to the filing of any formal proceedings with respect to a dispute (other than an action seeking injunctive relief with respect to intellectual property rights or Confidential Information), the party believing itself aggrieved (the “Invoking Party”) shall call for progressive management involvement in the dispute negotiation by written notice to the other party. Such notice shall be without prejudice to the Invoking Party’s right to any other remedy permitted under the Contract.

The parties shall use reasonable efforts to arrange personal meetings and/or telephone conferences as needed, at mutually convenient times and places, between negotiators for the parties at the following successive management levels, each of which shall have a period of allotted time as specified below in which to attempt to resolve the dispute:

**Dispute Resolution Responsibility and Schedule Table**

<b>LEVEL</b>	<b>CONTRACTOR NAME</b>	<b>STATE</b>	<b><u>CUMULATIVE ALLOTTED TIME</u></b>
<b>Primary</b>	Name Title	Jay Lau Product & Analysis Manager	5 Business Days
<b>First</b>	Name Title	Kelley-Jaye Cleland Director Sales & Product	10 Business Days
<b>Second</b>	Name Title	John Conforti Chief Compliance Officer	15 Business Days
<b>Final</b>	Name Title	Charles McIntyre Executive Director	15 Business Days

The allotted time for the first level negotiations shall begin on the date the Invoking Party’s notice is received by the other party. Subsequent allotted time is days from the date that the original Invoking Party’s notice is received by the other party.

## **Appendix B: Pricing Grid**

**PRICING GRID**

All costs below must be presented in a percentage of net gaming revenue for any e-Instant provided. Points will then be awarded based on the Pricing Matrix and formula of:

**Proposer’s Price Score per Category = (Lowest Proposed Price per Category / Proposer’s Proposed Price per Category) x Number of Points for Pricing Category.**

<b>Game Category</b>	<b>% of Net Gaming Revenue</b>
<b>Off the Shelf</b>	
<b>Customized</b>	
<b>Makeover</b>	
<b>Bespoke/Tailor Made</b>	

## **Appendix C: Conceptual Architecture**

**BASIC CONCEPTUAL ARCHITECTURE OF THE NEOPOLLARD INTERACTIVE SYSTEM WITH THE NEW HAMPSHIRE LOTTERY**

Below is conceptual diagram of the remote gaming server integration. Note that the below concept was provided by NPi for use in this RFP and it is subject to change based solely on NPi’s business and technology needs.

