

## LOT 2020-03 Legal Services

### New Hampshire Lottery Commission/Tri-State Lotto Commission Legal Consultant Services RFP

#### Request for Proposal for Legal Consulting Services Issued March 9, 2020

#### I. GENERAL DESCRIPTION

The New Hampshire Lottery Commission (“NHLC”) and Tri-State Lotto Commission (“TSLC”), in partnership with the Department of Justice (“DOJ”) is soliciting proposals from qualified intellectual property attorneys and/or law firms (“Proposers”) for assistance and counsel by a legal consultant(s) that possesses extensive experience in patents, copyright and trademark matters. Litigation support in those areas is desirable.

The objective of this Request for Proposal (“RFP”) is to engage qualified Proposer(s) to assist and counsel the NHLC and TSLC, under the supervision and direction of the DOJ, in the area of intellectual property service mark watch service, protection of service marks owned by the NHLC and TSLC, filing of documents needed to obtain additional trademarks as needed and litigation support. Detailed information is provided in the Statement of Work herein (Section II).

The NHLC and the TSLC intend to engage one Proposer that can provide the NHLC and TSLC with the overall best value. The NHLC and TSLC intend to enter into a not to exceed contract with a selected Proposer in which all payments to the Proposer cannot exceed total price limitation. A contract resulting from the RFP shall remain in effect for a period of two (2) years with the NHLC and TSLC retaining sole option to extend the contract, at its discretion, for one period of two (2) years each at the same hourly price as the initial two (2) years.

The available funding for the initial two-year engagement (excluding the contract extension) is estimated to total \$15,000 (\$7,500 per year) for NHLC and \$10,000 (\$5,000 per year) for TSLC. The cost shall include trademark watch expenses, continued use and renewal declaration filings, USPTO filings and legal fees. To the extent that the contract funding allows, action against an infringing mark shall also be performed under the terms of the contract.

#### II. STATEMENT OF WORK

1. Perform an annual trademark watch service for the federally registered U.S. service marks owned by the NHLC and TSLC (see Appendix D). Future service marks may be needed as the lottery’s game portfolio changes. The vendor will review any watch notices, provide the NHLC and TSLC with an analysis of any potential infringement and provide recommendations of proceeding.
2. Prepare and file any Powers of Attorney as needed to continue use and renewal of filings for service mark registrations.

3. The Proposer, at the request of NHLC or TSLC, must be available to provide assistance and counseling on other intellectual property law related issues and matters including, but not limited to, pending or threatened litigation.

### III. INFORMATION REQUIRED IN PROPOSAL

#### 1. Experience and Qualifications:

- a. Provide a description of how the Proposer will staff this engagement, included but not limited to, the identity of the attorney that will act as lead counsel and such other attorney(s) as are required to accomplish the goals of this engagement. Describe in detail their individual professional experience, qualifications, relevant background, education, training, special knowledge, skills and abilities, and anticipated duties.
- b. Provide a practice group profile in the case of a firm, or any other written statement that clearly and concisely sets forth the Proposer's relevant experience and qualifications.
- c. Provide a detailed description of other similar engagements undertaken by the Proposer and its proposed staff in the subject area with emphasis on activities relevant and related to the proposed engagement.

#### 2. References:

Identify all government clients, state or federal, including the name, address, telephone number, date of service and contact person's name, of clients to which the Proposer is providing or has provided similar legal services, including the name, address, telephone number, date of service and contact person's name, of clients to which the Proposer is providing or has provided similar legal services.

#### 3. Fees:

*Proposers are strongly encouraged to provide a significant government discount.*

Include a blended hourly rate of work during the term, or any extensions thereof. The blended hourly rates must be inclusive of all administrative charges, if any, including but not limited to telephone calls, file review, copying, facsimile transmissions, messenger service and travel. All quoted rates shall remain in effect for the full term of the contract, and any extensions thereof, with no increases.

#### 4. Conflicts of Interest/Disciplinary Proceedings

Disclose any past or present accounts, relationships, other employment, or engagements that the Proposer or any partner, associate, member or employee of the Proposer has or has had that may create a conflict of interest or the appearance of a conflict of interest in performing legal services for the NHLC and TSLC.

- a. List any and all pending litigation in which the Proposer represents a client against the State of New Hampshire, State of Maine, State of Vermont and/or any of its

departments, boards, agencies, other state entities, or officers, employees or agents.

- b. Describe in detail any pending complaints or investigations, or any made or concluded within the past five years, or by regulatory body or court regarding the conduct of Proposer, or any of its present or former members, employees and associates.
- c. Identify any actual or potential conflict between the Proposer's or its identified staff's family business, or financial interests and the services provided under this RFP.

**5. Transmittal Letter:**

A completed and fully executed Transmittal Letter (see RFP Appendix B: *Transmittal Letter*) **must** be included in the proposal.

**IV. SELECTION PROCESS**

The NHLC and the TSLC will select a Proposer based upon criteria, standards contained in this RFP.

**1. Criteria**

**Criteria 1: Prior Experience, Knowledge and Qualifications**

The NHLC and the TSLC seek to engage a highly qualified Proposer with extensive experience in providing legal services to government entities, state or federal, in the area of intellectual property law including patents, copyright and trademark matters. The attorney(s) proposed to work on this engagement should have extensive work experience and educational background in the area of intellectual property law. Prior experience as general counsel or providing legal services under and engagement with state agencies strongly preferred. The NHLC and TSLC seek to engage Proposer with good client relations and excellent customer service record as evidenced by available references from current or former clients.

Up to 75 points will be awarded based on the elements set forth in criteria 1.

**Criteria 2: Cost**

The NHLC and the TSLC seek to retain Proposer to perform the work at *competitive government rates*. Proposer is strongly encouraged to provide a significant government discount from normal commercial rates charges to its clients. The NHLC and the TSLC will not pay additional charges outside of the proposed rates, thus, all proposed rates must be fully loaded.

Up to 25 points will be awarded based on the cost of the proposal as determined by the following formula:

$$(\text{Lowest Proposal Cost} / \text{Proposer's Cost}) * 25 \text{ points} = \text{Proposers Score}$$

The Lowest Proposal Cost will be determined by the lowest submitted cost in a compliant and responsive proposal.

2. **Planned Evaluation Steps**

**The NHLC and TSLC plan to use the following steps:**

- a. Perform initial evaluation of proposals
- b. The NHLC and TSLC may elect, at its sole discretion, to interview Proposer(s) to gain a fuller understanding on the proposals as it deems necessary, select a proposer without any discussion or interviews, and to request additional information. If the NHLC and TSLC elect to interview any Proposer(s), the official NHLC/TSLC Contact will contact prospective Proposer(s) to schedule the time and place of the interviews. Proposers selected by the NHLC/TSLC for interviews should send lead attorney that will be a primary contact with the NHLC and TSLC along with significant members of the legal team,
- c. Request best and final offer, as determined necessary by the NHLC and TSLC, and
- d. Perform final evaluation of proposals.

**The NHLC and TSLC reserve the right to:**

- a. Consider any source of information in evaluating proposals.
- b. Omit any planned evaluation step if, the NHLC/TSLC's discretion, the step is not needed; and
- c. Notwithstanding any provision of the RFP to the contrary, the NHLC and TSLC reserves the right to: reject any and all proposals at its discretion and at any time; reject any parts of proposals; not award a contract; re-advertise the RFP; postpone or cancel this RFP at any time; waive any irregularities or inconsistencies in the RFP or proposals; and take whatever action is in the NHLC and TSLC's best interest as determined by the NHLC and TSLC in its sole discretion.

**APPENDIX A: SCHEDULE OF EVENTS**

The following table provides the tentative schedule of events for this RFP through contract finalization and the NHLC and TSLC's issuance of a notice to proceed to the successful Proposer.

<b>EVENT</b>	<b>ESTIMATED DATE</b>
1. RFP released to Proposers (on or about)	March 9, 2020
2. Proposer inquiry period (no later than)	March 23, 2020

- |  |                |
|--|----------------|
| 3. NHLC and TSLC responses to inquiries, by: | April 10, 2020 |
| 4. Final date for proposal submission        | April 24, 2020 |
| 5. Proposer interviews, if any               | TBD            |
| 6. Anticipated contract finalization         | TBD            |
| 7. Anticipated contact approval              | TBD            |

**1. Proposal Submission, Deadline and Location Instructions**

Proposals submitted in response to this RFP must be received by the NHLC/TSLC no later than the time and date specified in RFP Appendix A: *Schedule of Events*. Proposals must be addressed to:

New Hampshire Lottery Commission  
 14 Integra Drive  
 Concord, New Hampshire 03301  
 c/o Maura McCann

Proposals must be clearly marked as follows:

New Hampshire Lottery Commission/Tri-State Lotto Commission  
 Response to RFP  
 Legal Consultant Services

Late submissions will not be accepted and will remain unopened. Delivery of the proposals shall be at the Proposer’s sole expense. The time of receipt shall be considered when a proposal has been officially documented by the NHLC/TSLC as having been received at the location designated above. The NHLS and TSLC accept no responsibility for mislabeled mail. All proposals submitted in response to this RFP must consist of one (1) original and one clearly identified copy of the proposal, including all required attachments, accompanied by the transmittal letter described in RFP Appendix B: *Transmittal Letter*, herein. The original and copy shall be bound separately, delivered in a sealed containers, and permanently marked as indicated above. One (1) copy of the proposed Transmittal Letter shall be signed by the official authorized to legally bind the Proposer and shall be marked “ORIGINAL”. A Proposer’s disclosure or distribution of its proposal other than to the NHLC and TSLC will be grounds for disqualification.

**2. Proposal Inquiries**

All inquiries concerning this RFP, including but not limited to, requests for clarifications, questions and any changes to the RFP, shall be emailed, citing the RFP title, page, section and paragraph and submitted to the following RFP Point of Contact:

Maura McCann  
New Hampshire Lottery Commission  
14 Integra Drive  
Concord, New Hampshire 03301  
Telephone: (603) 271-7111  
[maura.mccann@lottery.nh.gov](mailto:maura.mccann@lottery.nh.gov)

The NHLC and TSLC assume no liability for assuring accurate/complete e-mail transmission/receipt and is not responsible for acknowledging receipt. Inquiries must be received by the NHLC and TSLC's Point of Contact no later than the conclusion of the Proposer Inquiry Period (see RFP Appendix A: *Schedule of Events*). Inquiries received later than the conclusion of the Proposer Inquiry Period may not be considered properly submitted and not be considered at the discretion of the NHLC and TSLC. The NHLC and TSLC intend to issue official responses to properly submitted inquiries on or before the date specified in the RFP Appendix A: *Schedule of Events*; however, this date may be subject to change at the NHLC and TSLC's discretion. The NHLC and TSLC may consolidate and/or paraphrase questions for sufficiency and clarity. The NHLC and TSLC may, at its discretion, amend this RFP on its own initiative or in response to issues raised by inquiries, as it deems appropriate at any time. Official responses will be made by email and in writing.

### **3. Non-collusion**

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

### **4. Validity of Proposal**

Proposals must be valid for one hundred and eighty (180) days following the deadline for submission of proposals in RFP Appendix A: *Schedule of Events*, of until the effective date of any resulting contract, whichever is later.

### **5. Property of NHLC and TSLC**

All material received in response to this RFP shall become the property of the NHLC and TSLC and will not be returned to the Proposer.

### **6. Confidentiality of a Proposal**

A proposal must remain confidential until the effective date (for NHLC, date of approval by the New Hampshire Governor and Council, for the TSLC, date of approval by the Tri-State Lotto Commission) of any resulting contract as a result of this RFP.

## **7. Public Disclosure**

Subject to applicable law or regulations governing confidentiality of State Records, including, but not limited to, the Right to Know Law, N.H. RSA Chapter 91-A, the content of all proposals shall become public information upon the effective date (for NHLC, date of approval by the New Hampshire Governor and Council, for the TSLC, date of approval by the Tri-State Lotto Commission) of any resulting contract.

## **8. Proposal Preparation Cost**

By submitting a proposal, a Proposer agrees that in no event shall the NHLC or TSLC 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.

## **9. Interviews**

The NHLC and TSLC reserve the right to require Proposers to be available for interviews. Any and all costs associated with interviews shall be borne entirely by the Proposer.

## **10. Award**

The NHLC and TSLC plan to execute a not-to-exceed contract under which all payments by the NHLC and TSLC during the term, shall not exceed a total price limitation. If a contract is awarded, the Proposer must obtain written consent from both the NHLC and TSLC before any public announcement or news release is issued pertaining to any contract award. Such permission, at a minimum, will be dependent upon approval of the contract by the Governor and Executive Council of the State of New Hampshire and the Tri-State Lotto Commission.

## **11. Contract Work**

The NHLC and TSLC make no guarantee that any services will be purchased from any contract resulting from this RFP.

## **12. Proposal Selection**

Should the NHLC and TSLC be unable to reach agreement with a Proposer during contract discussions, the NHLC and TSLC may then undertake contract discussions with the second preferred Proposer and so on. Such discussions may continue at the sole option of the NHLC and TSLC with Proposers.

## **13. State of New Hampshire Agreement Form Number P-37**

By submitting a proposal in response to this RFP, the Proposer agrees, if selected to enter into a contract with the NHLC, to the conditions and terms of this RFP and the State of New Hampshire Form P-37 (see Appendix C).

**NEW HAMPSHIRE LOTTERY COMMISSION/TRI-STATE LOTTO COMMISSION  
LEGAL CONSULTANT SERVICES RFP**

**APPENDIX B: TRANSMITTAL LETTER**

**NEW HAMPSHIRE LOTTERY COMMISSION/TRI-STATE LOTTO COMMISSION TRANSMITTAL LETTER FORM:**

Company Name: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

To: NH Lottery Point of Contact Maura McCann  
Telephone (603) 271-7111  
Email: [maura.mccann@lottery.nh.gov](mailto:maura.mccann@lottery.nh.gov)

Dear Ms. McCann,

Proposer name: \_\_\_\_\_ hereby offers to provide to the New Hampshire Lottery Commission and Tri-State Lotto Commission the legal consultant services specified in the lottery's Legal Consultant Services RFP at an hourly rate of \$ \_\_\_\_\_.

Proposer Signor: \_\_\_\_\_ is authorized to legally obligate.

Proposer Name: \_\_\_\_\_

We attest to the fact that:

The price quoted in the proposal was established without collusion with other eligible Proposers and without effort to preclude the NHLC and TSLC from obtaining the best possible competitive price; and the Proposer has read, signed, and included this RFP and any subsequent addendum.

Our official point of contact is \_\_\_\_\_, Title \_\_\_\_\_

Telephone \_\_\_\_\_ Email \_\_\_\_\_

Authorized Signature Printed \_\_\_\_\_

Authorized Signature \_\_\_\_\_

**FORM NUMBER P-37 (version 12/11/2019)**

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		1.2 State Agency Address	
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		1.10 State Agency Telephone Number	
1.11 Contractor Signature  Date:		1.12 Name and Title of Contractor Signatory	
1.13 State Agency Signature  Date:		1.14 Name and Title of State Agency Signatory	
1.15 Approval by the N.H. Department of Administration, Division of Personnel ( <i>if applicable</i> )  By: _____ Director, On: _____			
1.16 Approval by the Attorney General (Form, Substance and Execution) ( <i>if applicable</i> )  By: _____ On: _____			
1.17 Approval by the Governor and Executive Council ( <i>if applicable</i> )  G&C Item number: _____ G&C Meeting Date: _____			

Contractor Initials \_\_\_\_\_  
Date \_\_\_\_\_

**2. 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 B 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 1.17, 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 1.13 (“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 affected by any state or federal legislative or executive action that reduces, eliminates or otherwise modifies the appropriation or availability of funding for this Agreement and the Scope for Services provided in EXHIBIT B, in whole or in part. 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 reduce or terminate the Services under this Agreement immediately upon giving the Contractor notice of such reduction or termination. The State shall not be required to transfer funds from any other account or source 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 C 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 applicable 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 employment opportunity laws. In addition, if this Agreement is funded in any part by monies of the United States, the Contractor shall comply with all federal executive orders, rules, regulations and statutes, and with any rules, regulations and guidelines as the State or the United States issue to implement these regulations. The Contractor shall also comply with all applicable intellectual property 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. The Contractor 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 cured, 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 give the Contractor a written notice specifying the Event of Default and 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 give the Contractor a written notice specifying the Event of Default, treat the Agreement as breached, terminate the Agreement and pursue any of its remedies at law or in equity, or both.

8.3. 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.

**9. TERMINATION.**

9.1 Notwithstanding paragraph 8, the State may, at its sole discretion, terminate the Agreement for any reason, in whole or in part, by thirty (30) days written notice to the Contractor that the State is exercising its option to terminate the Agreement.

9.2 In the event of an early termination of this Agreement for any reason other than the completion of the Services, the Contractor shall, at the State's discretion, 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 B. In addition, at the State's discretion, the Contractor shall, within 15 days of notice of early termination, develop and submit to the State a Transition Plan for services under the Agreement.

**10. DATA/ACCESS/CONFIDENTIALITY/PRESERVATION.**

10.1 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.

10.2 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.

10.3 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.

**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.**

12.1 The Contractor shall not assign, or otherwise transfer any interest in this Agreement without the prior written notice, which shall be provided to the State at least fifteen (15) days prior to the assignment, and a written consent of the State. For purposes of this paragraph, a Change of Control shall constitute assignment. "Change of Control" means (a) merger, consolidation, or a transaction or series of related transactions in which a third party, together with its affiliates, becomes the direct or indirect owner of fifty percent (50%) or more of the voting shares or similar equity interests, or combined voting power of the Contractor, or (b) the sale of all or substantially all of the assets of the Contractor.

12.2 None of the Services shall be subcontracted by the Contractor without prior written notice and consent of the State. The State is entitled to copies of all subcontracts and assignment agreements and shall not be bound by any provisions contained in a subcontract or an assignment agreement to which it is not a party.

**13. INDEMNIFICATION.** Unless otherwise exempted by law, the Contractor shall indemnify and hold harmless the State, its officers and employees, from and against any and all claims, liabilities and costs for any personal injury or property damages, patent or copyright infringement, or other claims asserted against the State, its officers or employees, which arise out of (or which may be claimed to arise out of) the acts or omission of the Contractor, or subcontractors, including but not limited to the negligence, reckless or intentional conduct. The State shall not be liable for any costs incurred by the Contractor arising under this paragraph 13. 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 continuously maintain in force, and shall require any subcontractor or assignee to obtain and maintain in force, the following insurance:

14.1.1 commercial 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 or excess; and

14.1.2 special cause of loss coverage form covering all property subject to subparagraph 10.2 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 ten (10) days prior to the expiration date of each insurance policy. The certificate(s) of insurance and any renewals thereof shall be attached and are incorporated herein by reference.

**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. The 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. 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.

**17. 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.

**18. CHOICE OF LAW AND FORUM.** This Agreement shall be governed, interpreted and 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. Any actions arising out of this Agreement shall be brought and maintained in New Hampshire Superior Court which shall have exclusive jurisdiction thereof.

**19. CONFLICTING TERMS.** In the event of a conflict between the terms of this P-37 form (as modified in EXHIBIT A) and/or attachments and amendment thereof, the terms of the P-37 (as modified in EXHIBIT A) shall control.

**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 or modifying provisions set forth in the attached EXHIBIT A 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 with respect to the subject matter hereof.

**APPENDIX D**

**LIST OF MARKS OWNED BY THE NEW HAMPSHIRE LOTTERY COMMISSION  
AND THE TRI-STATE LOTTO COMMISSION**

**New Hampshire Lottery Commission:**

NEW HAMPSHIRE LOTTERY  
NH LOTTERY (design)  
MONEY PUZZLE  
TINY HOUSE, BIG MONEY  
KENO 603

Serial Number: 76-354,890  
Serial Number: 76-689,144  
Serial Number: 76-708,256  
Serial Number: 87-162,277  
Serial Number: 87-845,608

**Tri-State Lotto Commission:**

Tri-State Megabucks (design)

Serial Number: 76-355,811