

**CONTRACT FOR
FOR
DRAWING WITNESS SERVICES FOR
THE STATE LOTTERY COMMISSION OF INDIANA
WITNESSETH:**

WHEREAS, the Lottery issued a Request for Proposals for Drawing Witness Services (hereinafter "RFP 3036" or "RFP") on September 2, 2010; and

WHEREAS, Vendor responded to said RFP 3036 by a Proposal dated September 24, 2010 and

WHEREAS, the Lottery has selected Vendor's Proposal as the Proposal which best addresses the requirements specified in RFP 3036; and

WHEREAS, the Lottery and Vendor wish to enter into this Contract to govern the parties' relationship with respect to providing draw witness services set forth in the RFP;

NOW THEREFORE, this Contract ("this Contract"), entered into by the State Lottery Commission of Indiana doing business as the Hoosier Lottery (herein referred to as the "Lottery") and E.C. Ortiz & Co. LLP (herein referred to as the "Vendor"), is executed pursuant to the terms and conditions set forth herein and in consideration of those mutual undertakings and covenants, the parties agree as follows:

**PART I
CONTACTOR DUTIES, RELATIONSHIP, AND PERFORMANCE**

- 1.1 Duties of the Vendor.** Vendor shall provide the products and services necessary to carry out the requirements set forth in RFP 3036 for Drawing Witness Services dated September 2, 2010 in accordance with the terms of the Vendor's proposal dated September 24, 2010, as may be amended or supplemented. RFP 3036 and the Proposal are hereby incorporated by reference into this Contract and any reference to this Contract herein shall be deemed also to refer to such incorporated documents unless otherwise indicated. Any inconsistency or ambiguity in this Contract shall be resolved by giving precedence in the following order: (1) This Contract, (2) the Vendor's Proposal, (3) the RFP, and (4) attachments or exhibits to the RFP. The Vendor shall execute its responsibilities by following and applying at all times the highest professional and technical guidelines and standards.
- 1.2 Additional Products and Services.** The Lottery may during the term of this Contract acquire additional products or services whether or not designated in the Proposal. If such goods or services are designated in the Proposal, the Lottery shall compensate Vendor at the prices quoted in the Proposal. The parties agree to negotiate a price for items not in the Proposal.

- 1.3 **Independent Vendor.** In the performance of this Contract, both parties shall act in an individual capacity and not as agents, employees, partners, joint venturers or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purposes whatsoever. Neither party will make commitments on behalf of the other without prior written approval of the other party.
- 1.4 **Assignment; Successors.** Vendor may not sell, assign, subcontract or pledge its rights and obligations under this Contract or take any other action which may tend to encumber the direct contractual relationship between the Lottery and the Vendor without express prior written consent of the Lottery, which shall not be unreasonably withheld. Notwithstanding any such assignment or subcontract, the Vendor shall remain obligated to the Lottery for performance of the obligations of the Vendor under this Contract.

PART II
CONSIDERATION, EXPENSES, AND TERMS OF PAYMENT

- 2.1 **Consideration.** For performing the duties set forth above, Vendor will be paid according to hourly rates; ninety-four dollars (\$94.00) per hour for mid-day drawings, and one hundred twenty dollars (\$120.00) for evening drawings. Any promotional drawings will take place during the mid-day draw, unless authorized in writing by the Lottery.
- 2.2 **Taxes.** The Lottery is exempt from state, federal, and local taxes. The Lottery will not be responsible for any taxes levied on the Vendor or any other person or entity as a result of this Contract.
- 2.3 **Penalties/Interest/Attorney's Fees.** The Lottery will in good faith perform its required obligations hereunder and does not agree to pay any penalties, interest, or attorney's fees, except as permitted by Indiana law.
- 2.4 **Payment Terms.** Vendor shall submit detailed billing statements to the Lottery and the Lottery shall pay such statements, subject to satisfactory completion of the billed work and resolution of any disputes, within thirty (30) days of its receipt thereof.
- 2.5 **Financial Audits.** Vendor acknowledges that it may be required to submit to an audit of funds paid through this Contract. Any such audit shall be conducted in accordance with IC 5-11-1, et. seq. and audit guidelines specified by the Lottery.
- 2.6 **Guaranteed Most Favorable Terms.** Contractor warrants that all of the prices, terms, warranties and benefits granted by Contractor under the contract are the same as or more favorable to the Lottery than those offered or made available by Contractor for comparable products or services to other customers. In the event that during the term of the contract Contractor shall offer to any other customer any

lower unit price for any product or service (or components thereof) provided under the contract, then Contractor shall immediately notify the Lottery of any such unit price and shall afford such price to the Lottery, effective as of the date on which such price is made available to any other customer.

PART III
CONTRACT TERM AND RENEWAL

- 3.1 **Term.** This Contract shall be effective for a period of two (2) years. It shall commence on October 16, 2010 and shall remain in effective through October 15, 2012.
- 3.2 **Extension of Time.** The Lottery may, in its sole discretion, renew this Contract for two (2) additional period(s) of one (1) year on the same terms and conditions as provided herein by giving written notice to the Contractor on or before the end of the current term or renewal.

PART IV
DISPUTES, TERMINATION, DEFAULT, AND REMEDIES

- 4.1 **Disputes.** The Vendor and the Lottery agree to act immediately to resolve any and all disputes that may arise with respect to this Contract. Time is of the essence in the resolution of disputes. The Vendor and the Lottery agree to abide by all administrative rules governing the Lottery with respect to Vendor Appeals and Claims, including but not limited to 65 IAC 2-5-6 et seq. The Vendor agrees that, the existence of a dispute notwithstanding, it will continue without delay to carry out all its responsibilities under this Contract that are not affected by the dispute.

The Lottery may withhold payments on work that is in good faith dispute, pending resolution of the dispute, but shall in no event withhold timely payment of all undisputed work. The nonpayment by the Lottery to the Vendor of one or more disputed work items in accordance with the terms of this Contract shall not be deemed an act of default and will not be cause for Vendor to terminate the Contract.

- 4.2 **Termination.** Notwithstanding any other provision of this Contract to the contrary, this Contract may be terminated in whole or in part upon the following conditions:
- 4.2.1 **Insolvency.** The Lottery may immediately terminate this Contract without liability of the Lottery and without prejudice to any rights and causes of action the Lottery may have against the Vendor, if:
- (i) Vendor files a voluntary petition or is the subject of an involuntary petition in bankruptcy or is adjudged bankrupt;
 - (ii) Vendor makes a general assignment for the benefit of creditors; or
 - (iii) A receiver is appointed due to the Vendor's insolvency and the appointment is not dismissed within thirty (30) days.

4.2.2 Default. When the Lottery determines that the Vendor has failed to perform any provision of this Contract and that the Vendor has failed to cure such failure to perform within thirty (30) days after written notice by the Lottery, the Lottery may immediately terminate this Contract without liability to the Lottery and without prejudice to any right or cause of action the Lottery may have against the Vendor. In addition, if the Lottery terminates this Contract, it may acquire, under the terms and in the manner the Lottery considers appropriate, supplies or services similar to those terminated, and the Vendor will be liable to the Lottery for any excess costs for those supplies or services. The rights and remedies provided herein shall not be exclusive and are in addition to any other available rights and remedies provided at law or in equity or under this Contract.

4.2.3 Convenience. The Lottery may terminate this Contract, in whole or in part, when it is in the best interest of the Lottery or the State of Indiana as determined by the Lottery. Termination of services shall be effected by delivery to the Vendor of a Termination Notice at least thirty (30) days prior to the termination effective date. If this Contract is so terminated, the Lottery shall be liable only for payment in accordance with the terms of this Contract for services rendered prior to the effective date of termination.

4.2.4 State Action. The Lottery may immediately terminate this Contract without prejudice to any right or cause of action the Lottery may have against Vendor if the State of Indiana enacts a statute or the Governor of the State of Indiana issues a mandate that removes the authority or ability of the Lottery to continue its operations. In the event of such action, the Lottery shall send written notice of the action to the Vendor.

The Lottery shall have no other liability or obligation to Vendor in connection with any termination under this Section, including, but not limited to any obligations for claims of lost profits or other consequential damages.

4.3 Force Majeure. In the event that either party is unable to perform any of its obligations under this Contract or to enjoy any of its benefits because of natural disaster or decrees of governmental bodies not the fault of the affected party (hereinafter referred to as a "Force Majeure Event"), the party who has been so affected shall immediately give notice to the other party and shall do everything possible to resume performance. Upon receipt of such notice, all obligations under this Contract shall be immediately suspended. If the period of nonperformance exceeds thirty (30) days from the receipt of notice of the Force Majeure Event, the party whose ability to perform has not been so affected may, by giving written notice, terminate this Contract.

4.4 Faithful Performance Bond. Pursuant to IC 4-30-8-5, Vendor, as a major procurement vendor, shall furnish to the Lottery a Performance Bond at the time of the execution of this Contract equal to the full amount estimated to be paid annually under this Contract. The Performance Bond may be in the form of an unconditional, irrevocable letter of credit, cash deposited in the form of either a

cashier's check, certified check, or a surety bond or securities satisfactory to the Lottery. Any change in work, extension of time or termination of this Contract, if any, made pursuant to this Contract shall in no way release the Vendor or any of its sureties from any of their obligations. Such bond shall contain a waiver of notice of any change to this Contract. The bond shall remain in effect throughout the initial term and any and all extension terms of this Contract. Notwithstanding any other provisions relating to the beginning of the term, this Contract will not become effective until the Performance Bond required by this section is delivered in the correct form and amount to the Lottery. Vendor will forfeit the Performance Bond or a portion thereof if Vendor fails to perform pursuant to the terms of this Contract.

PART V
**INTELLECTUAL PROPERTY, RECORDS,
AND CONFIDENTIALITY**

- 5.1 Infringement of Patents, Trademarks, and Copyrights.** Vendor warrants that the products and services to be provided by Vendor under the Contract shall not infringe upon any patents, trademarks, or copyrights of any other person. Vendor shall obtain, at its expense, any and all licenses or consents of others required to avoid infringement in connection with its performance under this Contract. Vendor shall defend the Lottery against any claim that services and/or materials supplied hereunder infringe upon any U.S. patent, copyright, or trademark. Vendor shall pay any and all judgments, costs, and expenses of any kind, including without limitation attorney's fees, against or incurred by the Lottery in connection with any such claims.
- 5.2 Confidentiality of Vendor Information.** Vendor acknowledges that the Lottery is subject to the Access to Public Records Act of Indiana such that any writing, paper, report, study, map, photograph, book, card, tape recording, or other material that is created, received, retained, maintained, or filed by or with the Lottery, regardless of form or characteristics, may be considered a public record and any person may have a right to inspect and copy the same. To the extent that the Vendor discloses to the Lottery certain information that is considered confidential and proprietary under the Access to Public Records Act, including without limitation trade secrets and confidential financial information, Vendor agrees to identify such confidential or proprietary information by plainly marking the same as "Confidential Information." The Lottery agrees to maintain the confidentiality of the Vendor's marked information to the extent allowed under the Indiana Access to Public Records Act and other applicable law.
- 5.3 Confidentiality of Lottery Information.** The Vendor understands and agrees that data, materials, and information disclosed to Vendor by the Lottery may contain confidential and protected information. The Vendor covenants that data, material, and information gathered, based upon, or disclosed to the Vendor for the purpose of this Contract, will not be disclosed to or discussed with third parties without the prior written consent of the Lottery.

The data, materials and information subject to this agreement does not include any information which: (i) was known to Vendor notwithstanding disclosure by the Lottery; (ii) is available or becomes generally available to the public other than through a breach of this Agreement by Vendor; (iii) is acquired or received rightfully and without confidential limitation by Vendor from a third party; (iv) is independently developed by Vendor without breach of this Agreement; or (v) is required by applicable law or court order.

- 5.4 Access to Records.** The Vendor and its sub Vendors, if any, shall maintain all books, documents, papers, accounting records, and other evidence pertaining to all costs incurred under this Contract. They shall make such materials available at their respective offices at all reasonable times during this Contract term, and for three (3) years from the date of final payment under this Contract, for inspection by the Lottery or its authorized designees. Copies shall be furnished at no cost to the Lottery if requested.

PART VI **COMPLIANCE WITH GOVERNING LAWS**

- 6.1 Governing Law.** This Contract shall be construed in accordance with and governed by the laws of the State of Indiana and all claims or suits arising under this Contract shall be brought and maintained in Marion County, Indiana.
- 6.2 Compliance with Laws.** The Vendor shall comply with all applicable federal, state and local laws, rules, regulations and ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. Vendor agrees to indemnify and hold harmless from any loss, damage or liability, resulting from a violation on the part of Vendor of such applicable laws, rules, regulations, ordinances or orders. Vendor acknowledges that the Vendor is specifically subject to Indiana Code §4-30 *et seq.* and the provisions of Title 65 of the Indiana Administrative Code.
- 6.3 Nondiscrimination.** Pursuant to IC 22-9-1-10, the Vendor and its sub Vendors shall not discriminate against any employee or applicant for employment to be employed in the performance of this Contract with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of race, color, religion, sex, disability, national origin, ancestry or any other characteristic protected by law. Breach of this covenant may be regarded as a material breach of this Contract.
- 6.4 Ethical Requirements.** The Vendor and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with the State of Indiana, as set forth in Indiana Code § 4-2-6 *et seq.*, the regulations promulgated there under, and Executive Order 04-08, dated April 27, 2004. If the Vendor is not familiar with these ethical requirements, the Vendor should refer any questions to

the State Ethics Commission, or visit the State Ethics Commission website at <<<<http://www.in.gov/ethics/>>>>. If the Vendor or its agents violate any applicable ethical standards, the Lottery may, in its sole discretion, terminate this Contract immediately upon notice to the Vendor. In addition, the Vendor may be subject to penalties under Indiana Code § 4-2-6-12.

6.5 Drug-Free Workplace Certification. The Vendor hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace. The Vendor will give written notice to the Lottery within ten (10) days after receiving actual notice that the Vendor or an employee of the Vendor in the State of Indiana has been convicted of a criminal drug violation occurring in the Vendor's workplace. The Vendor acknowledges that it may be subject to the provisions of Executive Order 90-5 for the Promotion of a Drug Free Indiana. A determination by the Lottery that the Vendor failed to meet the drug-free workplace requirements constitutes a breach of this contract.

6.6 Licensing Standards: The Vendor and its employees and sub Vendors shall comply with all applicable licensing standards, certification standards, accrediting standards and any other laws, rules or regulations governing services to be provided by the Vendor pursuant to this Contract. The Lottery shall not be required to pay the Vendor for any services performed when the Vendor or its employees or sub Vendors are not in compliance with such applicable standards, laws, rules or regulations. If licensure, certification or accreditation expires or is revoked, or if disciplinary action is taken against the applicable licensure, certification, or accreditation, the Vendor shall notify Lottery immediately and the Lottery, at its option, may immediately terminate this Contract.

The Vendor warrants that the Vendor and its sub Vendors, if any, shall obtain and maintain all required permits, licenses, and approvals, as well as comply with all health, safety, and environmental statutes, rules, or regulations in the performance of work activities for the Lottery. Failure to do so may be deemed a material breach of this Contract and grounds for immediate termination and denial of further work with the Lottery.

6.7 Vendor Qualified to do Business in Indiana. Vendor warrants that it is qualified to conduct business in Indiana and will maintain good standing with the Indiana Secretary of State.

6.8 State Liabilities and Debt Set-off. Vendor shall file appropriate tax returns as provided by Indiana law. Vendor certifies that neither it nor its principal(s) is presently in arrears in payment of its taxes, permit fees or other statutory, regulatory or judicially required payments to the State of Indiana. The Vendor agrees that any payments currently due to the State by it or its principal(s) may be withheld and set off from payments due to the Vendor under this Contract. Any payments that the

Lottery may delay, withhold, deny, or apply under this section shall not be subject to penalty or interest.

PART VII
MISCELLANEOUS TERMS AND CONDITIONS

- 7.1 **Non-Exclusive Contract.** The parties acknowledge and agree that this Contract is non-exclusive and that the Lottery is free to contract for goods and services of any type, including those covered by this Contract, with any party at any time.
- 7.2 **Indemnification.** The Vendor agrees to indemnify, defend, and hold harmless the Lottery, its agents, officers, and employees from all claims and suits including court costs, attorney's fees, and other expenses caused by any act or omission of the Vendor and/or its sub Vendors, if any, in the performance of this Contract.
- 7.3 **Insurance.** The Vendor shall secure and keep in force during the term of this Contract, the following insurance coverage's, covering the Vendor for any and all claims of any nature which may in any manner arise out of or result from this Contract:
1. An errors and omissions policy having a limit per occurrence of at least \$1,000,000;
 2. A fidelity bond naming the Lottery as the insured in an amount of at least \$1,000,000;
 3. A comprehensive general liability policy naming the Lottery as an additional insured and having a limit per occurrence of at least \$1,000,000;
 4. A workers' compensation policy for its employees hired and working in the State of Indiana.

The Vendor shall provide proof of such insurance coverage by tendering to the undersigned Lottery representative, a certificate of insurance prior to the commencement of this Contract.

The Vendor's insurance coverage must meet the following additional requirements:

1. The insurer must have a certificate of authority issued by the Indiana Department of Insurance.
2. Any deductible or self-insured retention amount or other similar obligation under the insurance policies shall be the sole obligation of the Vendor.
3. The Lottery will be defended, indemnified, and held harmless to the full extent of any coverage actually secured by the Vendor in excess of the minimum requirements set forth above. The duty to indemnify the Lottery under this contract shall not be limited by the insurance required in this Contract.
4. The insurance required in this Contract, through a policy or endorsement, shall include a provision that the policy and endorsements may not be canceled or modified without thirty (30) days' prior written notice to the undersigned Lottery agency.

Failure to provide insurance as required in this Contract may be deemed a material breach of contract entitling the Lottery to immediately terminate this Contract. The Vendor shall furnish a certificate of insurance and all endorsements to the undersigned Lottery agency prior to the commencement of this Contract.

- 7.4 Notice to Parties.** Whenever any notice, statement or other communication is required under this Contract, it shall be sent to the following addresses, unless otherwise specifically advised:

Notices to the Lottery shall be sent to:

Kathryn A. Densborn
Executive Director
Hoosier Lottery
201 S. Capitol Ave.
Suite 1100
Indianapolis, IN 46225

Notices to the Vendor shall be sent to:

Edilberto C. Ortiz
Partner
E.C. Ortiz & Co. LLP
333 South Des Plaines Street, Suite 2-N
Chicago, IL 60661

- 7.5 Severability.** The invalidity of any section, subsection, clause or provision of this Contract shall not affect the validity of the remaining sections, subsections, clauses or provisions of this Contract.
- 7.6 Waiver of Rights.** No right conferred on either party under this Contract shall be deemed waived, and no breach of this Contract excused, unless such waiver is in writing and signed by the party claimed to have waived such right.
- 7.7 Merger & Modification.** This Contract constitutes the entire agreement between the parties. No understandings, agreements, or representations, oral or written, not specified within this Contract will be valid provisions of this Contract. This Contract may not be modified, supplemented, or amended, in any manner, except by written agreement signed by all necessary parties.
- 7.8 Authority to Bind Vendor.** The signatory for the Vendor represents that he/she has been duly authorized to execute this Contract on behalf of the Vendor and has obtained all necessary or applicable approvals to make this Contract fully binding upon the Vendor when his/her signature is affixed, and certifies that this Contract is not subject to further acceptance by Vendor when accepted by the Lottery.

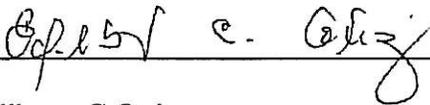
Non-Collusion and Acceptance

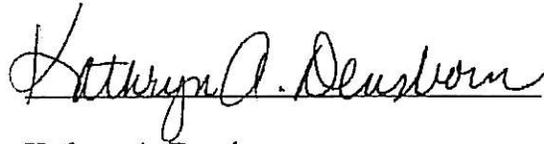
The undersigned attests, subject to the penalties for perjury, that he/she is the Vendor, or that he/she is the properly authorized representative, agent, member or officer of the Vendor, that he/she has not, nor has any other member, employee, representative, agent or officer of the Vendor, directly or indirectly, to the best of the undersigned's knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he/she has not received or paid, any sum of money or other consideration for the execution of this Contract other than that which appears upon the face of this Contract.

In Witness Whereof, Vendor and the Lottery have, through their duly authorized representatives, entered into this Contract. The parties, having read and understand the foregoing terms of this Contract, do by their respective signatures dated below hereby agree to the terms thereof.

E.C. Ortiz & Co. LLP:

State Lottery Commission of Indiana:





Edilberto C. Ortiz
Partner

Kathryn A. Densborn,
Executive Director

Date: October 12, 2010

Date: 10/13/10