

## PROFESSIONAL SERVICES AGREEMENT

This Agreement ("Agreement") is entered into as of March 1, 2015 ("Effective Date") and will end on February 28, 2018, by and between the State of Delaware, Department of Finance, Division of Lottery, 1575 McKee Road, Suite 102, Dover, DE 19904 ("the Lottery"), and Duffield Associates ("Duffield") a corporation, with corporate headquarters at 5400 Limestone Road, Wilmington, DE 19808.

WHEREAS, the Lottery desires to obtain certain services to assist the Lottery in meeting its obligations and activities defined in Section 30, Delaware Lottery Accessibility Process, of Lottery Rules and Regulations, and other accessibility related Laws and administrative compliance programs; and

WHEREAS, Duffield desires to provide such services to the Lottery on the terms set forth below;

WHEREAS, the Lottery and Duffield represent and warrant that each party has full right, power and authority to enter into and perform under this Agreement;

FOR AND IN CONSIDERATION OF the premises and mutual agreements herein, the Lottery and Duffield agree as follows:

### **1. Services.**

1.1 Duffield shall perform for the Lottery, the services specified in the Appendices to this Agreement, attached hereto and made a part hereof.

1.2 Any conflict or inconsistency between the provisions of the following documents shall be resolved by giving precedence to such documents in the following order: (a) this Agreement (including any amendments or modifications thereto); (b) the Lottery's request for proposals, attached hereto as Appendix B; and (c) Duffield's response to the request for proposals, attached hereto as Appendix C. The aforementioned documents are specifically incorporated into this Agreement and made a part hereof.

1.3 The Lottery may, at any time, by written order, make changes in the scope of this Agreement and in the services or work to be performed. No services, for which additional compensation may be charged by Duffield, shall be furnished without the written authorization of the Lottery. When the Lottery desires any addition or deletion to the deliverables or a change in the Services to be provided under this Agreement, it shall notify Duffield, who shall then submit to the Lottery a "Change Order" for approval authorizing said change. The Change Order shall state whether the change shall cause an alteration in the price or the time required by Duffield for any aspect of its performance under this Agreement. Pricing of changes shall be

consistent with those established within this Agreement.

1.4 Duffield will not be required to make changes to its scope of work that result in Duffield's costs exceeding the current unencumbered budgeted appropriations for the services. Any claim of either party for an adjustment under Section 1 of this Agreement shall be asserted in the manner specified in the writing that authorizes the adjustment.

## **2. Payment for Services and Expenses.**

2.1 The term of the initial contract shall be from March 1, 2015 through February 28, 2018. This contract will be in effect for a three (3) year operational term, or such shorter period as the Lottery may determine due to causes such as contract termination or loss of statutory authority by the Lottery.

The Lottery reserves the right to extend the contract at its sole option for one (1) years periods each, up to a maximum of three (3) one-year extensions, at a rate of compensation negotiated by the parties, provided that any such option to extend is exercised by the Lottery at least 90 days prior to the end of the initial contract period, or any extension thereof, or at a time mutually agreed upon by both parties.

2.2 The Lottery will pay Duffield for the performance of services described in Appendix A, Statement of Work.

2.3 Duffield shall be compensated for services rendered during the current term of this Agreement on the basis of actual hours directly applied to tasks or services identified and authorized by the Lottery in Appendix A, Statement of Work, and invoiced by task, retailer or applicant name, and standard hourly rate as described in "Appendix C" and attached hereto.

2.4 Hours for services rendered shall be recorded by Duffield by category according to the tasks listed in Appendix A, Statement of Work.

2.5 For any requested service outside the approved Scope of Work, Duffield shall present an estimate outlining the scope of the sub-project and amount to be charged. Work on the project shall commence upon the Lottery's approval of the proposal. Duffield shall not bill the Lottery for any amount in excess of the amount sated in the proposal without the prior approval of the Lottery and a mutually agreed to change in the scope of the project.

2.6 All payments should be sent to Duffield Associates Inc., 5400 Limestone Road, Wilmington, DE 19808. Duffield shall render its invoices monthly for personnel time incurred during the prior month for services rendered. Such

invoices shall be charges by consultants for each project, for each aspect of the project by category as listed in Appendix A. The statement shall include the retailer ID# for each location surveyed and a brief description of the accomplishments of the month for each category addressed in the invoice.

2.7 Invoices submitted by Duffield shall reflect the actual billable hours incurred during the month prior. Invoices submitted by the Duffield shall be paid by the Lottery within thirty (30) days of receipt. In the event the Lottery disputes a portion of an invoice, the Lottery agrees to pay the undisputed portion of the invoice within thirty (30) days of receipt and to provide Duffield a detailed statement of the Lottery's position on the disputed portion of the invoice within thirty (30) days of receipt.

2.8 Unless provided otherwise in an Appendix, all expenses incurred in the performance of the services are to be paid by Duffield. If an Appendix specifically provides for expense reimbursement, Duffield shall be reimbursed only for reasonable expenses incurred by Duffield in the performance of the services, including, but not necessarily limited to, travel and lodging expenses, communications charges, and computer time and supplies.

2.9 The Lottery is a sovereign entity, and shall not be liable for the payment of federal, state and local sales, use and excise taxes, including any interest and penalties from any related deficiency, which may become due and payable as a consequence of this Agreement.

2.10 The Lottery shall subtract from any payment made to Duffield all damages, costs and expenses caused by Duffield's negligence, resulting from or arising out of errors or omissions in Duffield's work products, which have not been previously paid to Duffield.

2. 11 Invoices can be submitted electronically to the following email:

**Lottery\_accounting@state.de.us**

or submitted by mail to:

**Delaware State Lottery  
Accounting Department  
1575 McKee Road, Suite 102  
Dover, DE 19904**

**3. Responsibilities of Duffield.**

3.1 The Lottery is an extremely sensitive enterprise because of the nature of the business and because it is government-affiliated. Therefore, it is essential that its operation and the operation of other enterprises that would be linked to it in the public mind, avoid not only impropriety but also the appearance of impropriety. Because of this, Duffield is expected to:

- A. Offer services consistent with the standard of care generally accepted for professional and technical services.
- B. Use its reasonable best efforts to prevent the Lottery industry from becoming embroiled in unfavorable publicity.
- C. Avoid promotional activities that could be interpreted as improper and embarrassing to the Lottery.
- D. Make sales presentations in a responsible manner and when it is felt necessary to point out the superiority of its goods or services over those of its competitors, to do so in such a manner as to avoid unfavorable publicity for the lottery industry.

3.2 Duffield agrees that the services to be provided under this Agreement are expert professional services, and therefore neither the services requested under this Agreement, nor any interest herein, nor any claim arising hereunder, shall be transferred or assigned to any other party or parties without the prior written consent of the Lottery.

3.3 Duffield agrees to apply its best efforts in the provision of all professional services provided for under the terms of the Agreement.

3.4 Duffield will assume sole responsibility for the provision of the professional services under the executed contract and the Lottery will consider the Duffield to be the sole point of contact with regard to contractual matters.

3.5 Duffield shall keep complete and accurate books, records and accounts of all transactions, costs, expenses, receipts, and services performed hereunder. In the event of a dispute or discrepancy, and upon reasonable notice, Duffield shall afford to the Lottery an opportunity to examine Duffield's books, records and accounts pertaining to all work and/or services rendered for or on behalf of the Lottery and to make copies of or extracts from the books, records and accounts.

3.6 Permitted or required approval by the Lottery of any products or services furnished by Duffield shall not in any way relieve Duffield of responsibility for the professional and technical accuracy and adequacy of its work. The Lottery's review, approval, acceptance, or payment for any of Duffield's services herein shall not be

construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement, and Duffield shall be and remain liable in accordance with the terms of this Agreement and applicable law for all damages to the Lottery caused by Duffield's performance or failure to perform under this Agreement.

3.7 Replacement of staff persons assigned to conduct inspections may be subject to review and approval by the Lottery. Upon receipt of written notice from the Lottery that an employee of Duffield is unsuitable to the Lottery for good cause, Duffield shall remove such employee from the performance of services and substitute in his/her place a suitable employee.

3.8 Duffield shall furnish to the Lottery's designated representative copies of all correspondence to regulatory agencies for review prior to mailing such correspondence.

3.9 Duffield agrees that its officers and employees will cooperate with the Lottery in the performance of services under this Agreement and will be available for consultation with the Lottery at such reasonable times with advance notice as to not conflict with their other responsibilities.

3.10 Duffield has or will retain such employees as it may need to perform the services required by this Agreement. Such employees shall not be employed by the Lottery or any other political subdivision of Delaware.

3.11 Duffield will not use the Lottery's name, logos, images, nor any data or results arising from the procurement process or the Agreement either express or implied, in any of its advertising or sales materials without the Lottery's express written consent.

3.12 Certain officers or employees of Duffield or of any subcontractor, who participate in reviewing accessibility issues at retail establishments, shall not play any Lottery games offered by the Lottery or be paid a prize in any Lottery game during the term of this Agreement. Duffield shall provide a list of these employees to the Lottery Office annually. This restriction shall not apply to play or collection of prizes at any State of Delaware licensed casino.

3.13 The rights and remedies of the Lottery provided for in this Agreement are in addition to any other rights and remedies provided by law.

#### **4. Responsibilities of the Lottery.**

4.1 In connection with Duffield's provision of the Services, the Lottery shall perform those tasks and fulfill those responsibilities specified in the appropriate

Appendices.

4.2 The Lottery agrees that its officers and employees will cooperate with Duffield in the performance of services under this Agreement and will be available for consultation with Duffield at such reasonable times with advance notice as to not conflict with their other responsibilities.

4.3 The services performed by Duffield under this Agreement shall be subject to review for compliance with the terms of this Agreement by the Lottery's designated representatives. The Lottery representatives may delegate any or all responsibilities under the Agreement to appropriate staff members, and shall so inform Duffield by written notice before the effective date of each such delegation.

4.4 The review comments of the Lottery's designated representatives may be reported in writing as needed to Duffield. It is understood that the Lottery's representatives' review comments do not relieve Duffield from the responsibility for the professional and technical accuracy of all work delivered under this Agreement.

4.5 The Lottery shall, without charge, furnish to or make available for examination or use by Duffield as it may request, any data which the Lottery has available, including as examples only and not as a limitation:

- a. Copies of reports, surveys, records, and other pertinent documents;
- b. Copies of previously prepared reports, job specifications, surveys, records, ordinances, codes, regulations, other document, and information related to the services specified by this Agreement.

Duffield shall return any original data provided by the Lottery.

4.6 The Lottery shall assist Duffield in obtaining data on documents from public officers or agencies and from private citizens and business firms whenever such material is necessary for the completion of the services specified by this Agreement.

4.7 Duffield will not be responsible for accuracy of information or data supplied by the Lottery or other sources to the extent such information or data would be relied upon by a reasonably prudent contractor.

4.8 The Lottery agrees not to use Duffield's name, either express or implied, in any of its advertising or sales materials. Duffield reserves the right to reuse the nonproprietary data and the analysis of industry-related information in its continuing analysis of the industries covered.

**5. Work Product.**

5.1 All materials, information, documents, and reports, whether finished, unfinished, or draft, developed, prepared, completed, or acquired by Duffield for the Lottery relating to the services to be performed hereunder shall become the property of the Lottery and shall be delivered to the Lottery's designated representative upon completion or termination of this Agreement, whichever comes first. Duffield shall not be liable for damages, claims, and losses arising out of any reuse of any work products on any other project conducted by the Lottery. The Lottery shall have the right to reproduce all documentation supplied pursuant to this Agreement.

5.2 Duffield retains all title and interest to the data it furnished and/or generated pursuant to this Agreement. Retention of such title and interest does not conflict with the Lottery's rights to the materials, information and documents developed in performing the project. Upon final payment, the Lottery shall have a perpetual, nontransferable, non-exclusive paid-up right and license to use, copy, modify and prepare derivative works of all materials in which Duffield retains title, whether individually by Duffield or jointly with the Lottery. Any and all source code developed in connection with the services provided will be provided to the Lottery, and the aforementioned right and license shall apply to source code. The parties will cooperate with each other and execute such other documents as may be reasonably deemed necessary to achieve the objectives of this Section.

5.3 In no event shall Duffield be precluded from developing for itself, or for others, materials that are competitive with the Deliverables, irrespective of their similarity to the Deliverables. In addition, Duffield shall be free to use its general knowledge, skills and experience, and any ideas, concepts, know-how, and techniques within the scope of its consulting practice that are used in the course of providing the services.

5.4 Notwithstanding anything to the contrary contained herein or in any attachment hereto, any and all intellectual property or other proprietary data owned by Duffield prior to the effective date of this Agreement ("Preexisting Information") shall remain the exclusive property of Duffield even if such Preexisting Information is embedded or otherwise incorporated into materials or products first produced as a result of this Agreement or used to develop such materials or products. The Lottery's rights under this section shall not apply to any Preexisting Information or any component thereof regardless of form or media.

**6. Confidential Information.**

To the extent permissible under 29 *Del. C.* § 10001, et seq., the parties to this

Agreement shall preserve in strict confidence any information, reports or documents obtained, assembled or prepared in connection with the performance of this Agreement.

**7. Warranty.**

7.1 Duffield warrants that its services will be performed in a good and workmanlike manner. Duffield agrees to re-perform any work not in compliance with this warranty brought to its attention within a reasonable time after that work is performed.

7.2 Third-party products within the scope of this Agreement are warranted solely under the terms and conditions of the licenses or other agreements by which such products are governed. With respect to all third-party products and services purchased by Duffield for the Lottery in connection with the provision of the Services, Duffield shall pass through or assign to the Lottery the rights Duffield obtains from the manufacturers and/or vendors of such products and services (including warranty and indemnification rights), all to the extent that such rights are assignable.

**8. Indemnification; Limitation of Liability.**

8.1 Duffield shall indemnify and hold harmless the State of Delaware, the Delaware Lottery, its agents and employees, from any and all liability, suits, actions or claims, together with all reasonable costs and expenses (including attorneys' fees) directly arising out of (A) the negligence or other wrongful conduct of the Duffield, its agents or employees, or (B) Duffield's breach of any material provision of this Agreement not cured after due notice and opportunity to cure, provided as to (A) or (B) that (i) Duffield shall have been notified promptly in writing by the Lottery of any notice of such claim; and (ii) Duffield shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise.

8.2 The Lottery agrees that Duffield' total liability to the Lottery for any and all damages whatsoever arising out of or in any way related to this Agreement from any cause, including but not limited to contract liability or Duffield negligence, errors, omissions, strict liability, breach of contract or breach of warranty shall not, in the aggregate, exceed fees paid to Duffield.

In no event shall Duffield be liable for special, indirect, incidental, economic, consequential or punitive damages, including but not limited to lost revenue, lost profits, replacement goods, loss of technology rights or services, loss of data, or interruption or loss of use of software or any portion thereof regardless

of the legal theory under which such damages are sought, and even if Duffield has been advised of the likelihood of such damages.

**9. Employees.**

9.1 Duffield has and shall retain the right to exercise full control over the employment, direction, compensation and discharge of all persons employed by Duffield in the performance of the services hereunder; provided, however, that it will, subject to scheduling and staffing considerations, attempt to honor the Lottery's request for specific individuals.

9.2 Except as the other party expressly authorizes in writing in advance, neither party shall solicit, offer work to, employ, or contract with, whether as a partner, employee or independent contractor, directly or indirectly, any of the other party's Personnel during their participation in the services or during the twelve (12) months thereafter. For purposes of this Section 10.2, "Personnel" includes any individual or company a party employs as a partner, employee or independent contractor and with which a party comes into direct contact in the course of the services.

9.3 Possession of a Security Clearance, as issued by the Delaware Department of Public Safety, may be required of any employee of Duffield who will be assigned to this project.

**10. Independent Contractor.**

10.1 It is understood that in the performance of the services herein provided for, Duffield shall be, and is, an independent contractor, and is not an agent or employee of the Lottery and shall furnish such services in its own manner and method except as required by this Agreement. Duffield shall be solely responsible for, and shall indemnify, defend and save the Lottery harmless from all matters relating to the payment of its employees, including compliance with social security, withholding and all other wages, salaries, benefits, taxes, exactions, and regulations of any nature whatsoever.

10.2 Duffield acknowledges that Duffield and any subcontractors, agents or employees employed by Duffield shall not, under any circumstances, be considered employees of the Lottery, and that they shall not be entitled to any of the benefits or rights afforded employees of the Lottery, including, but not limited to, sick leave, vacation leave, holiday pay, Public Employees Retirement System benefits, or health, life, dental, long-term disability or workers' compensation insurance benefits. The Lottery will not provide or pay for any liability or medical insurance, retirement contributions or any other benefits for or on behalf of the Lottery or any of its officers, employees or other agents.

10.3 Duffield shall be responsible for providing liability insurance for its personnel.

10.4 As an independent contractor, Duffield has no authority to bind or commit the Lottery. Nothing herein shall be deemed or construed to create a joint venture, partnership, fiduciary or agency relationship between the parties for any purpose.

## **11. Suspension.**

11.1 The Lottery may suspend performance by Duffield under this Agreement for such period of time as the Lottery, at its sole discretion, may prescribe by providing written notice to Duffield at least 30 working days prior to the date on which the Lottery wishes to suspend. Upon such suspension, the Lottery shall pay Duffield its compensation, based on the percentage of the project completed and earned until the effective date of suspension, less all previous payments. Duffield shall not perform further work under this Agreement after the effective date of suspension. Duffield shall not perform further work under this Agreement after the effective date of suspension until receipt of written notice from the Lottery to resume performance.

11.2 In the event the Lottery suspends performance by Duffield for any cause other than the error or omission of the Duffield, for an aggregate period in excess of 30 days, Duffield shall be entitled to an equitable adjustment of the compensation payable to Duffield under this Agreement to reimburse Duffield for additional costs occasioned as a result of such suspension of performance by the Lottery based on appropriated funds and approval by the Lottery.

## **12. Termination.**

12.1 This Agreement may be terminated in whole or in part by either party in the event of substantial failure of the other party to fulfill its obligations under this Agreement through no fault of the terminating party; but only after the other party is given:

- a. Not less than 30 calendar days written notice of intent to terminate; and
- b. An opportunity for consultation with the terminating party prior to termination.

12.2 This Agreement may be terminated in whole or in part by the Lottery for its convenience, but only after Duffield is given:

- a. Not less than 30 calendar days written notice of intent to terminate;

and

- b. An opportunity for consultation with the Lottery prior to termination.

12.3 If termination for default is effected by the Lottery, the Lottery will pay Duffield that portion of the compensation which has been earned as of the effective date of termination but:

- a. No amount shall be allowed for anticipated profit on performed or unperformed services or other work, and
- b. Any payment due to Duffield at the time of termination may be adjusted to the extent of any additional costs occasioned to the Lottery by reason of Duffield's default.
- c. Upon termination for default, the Lottery may take over the work and prosecute the same to completion by agreement with another party or otherwise. In the event Duffield shall cease conducting business, the Lottery shall have the right to make an unsolicited offer of employment to any employees of Duffield assigned to the performance of the Agreement, notwithstanding the provisions of Section 10.2.

12.4 If after termination for failure of Duffield to fulfill contractual obligations it is determined that Duffield has not so failed, the termination shall be deemed to have been effected for the convenience of The Lottery.

12.5 The rights and remedies of The Lottery and Duffield provided in this section are in addition to any other rights and remedies provided by law or under this Agreement.

12.6 Gratuities.

12.6.1 The Lottery may, by written notice to Duffield, terminate this Agreement if it is found after notice and hearing by The Lottery that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by Duffield or any agent or representative of Duffield to any officer or employee of The Lottery with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending or making of any determinations with respect to the performance of this Agreement.

12.6.2 In the event this Agreement is terminated as provided in 12.6.1 hereof, the Lottery shall be entitled to pursue the same remedies against Duffield it could pursue in the event of a breach of this Agreement by Duffield.

12.6.3 The rights and remedies of the Lottery provided in Section 12.6 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

**13. Severability.**

If any term or provision of this Agreement is found by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, the same shall not affect the other terms or provisions hereof or the whole of this Agreement, but such term or provision shall be deemed modified to the extent necessary in the court's opinion to render such term or provision enforceable, and the rights and obligations of the parties shall be construed and enforced accordingly, preserving to the fullest permissible extent the intent and agreements of the parties herein set forth.

**14. Assignment; Subcontracts.**

14.1 Any attempt by Duffield to assign or otherwise transfer any interest in this Agreement without the prior written consent of the Lottery shall be void. Such consent shall not be unreasonably withheld.

14.2 Services specified by this Agreement shall not be subcontracted by Duffield, without prior written approval of the Lottery.

14.3 Approval by the Lottery of Duffield's request to subcontract or acceptance of or payment for subcontracted work by the Lottery shall not in any way relieve Duffield of responsibility for the professional and technical accuracy and adequacy of the work. All subcontractors shall adhere to all applicable provisions of this Agreement.

14.4 Duffield shall be and remain liable for all damages to the Lottery caused by negligent performance or non-performance of work under this Agreement by Duffield, its subcontractor or its sub-subcontractor.

14.5 The compensation due shall not be affected by the Lottery's approval of the Duffield's request to subcontract.

**15. Force Majeure.**

Neither party shall be liable for any delays or failures in performance due to circumstances beyond its reasonable control.

**16. Non-Appropriation of Funds.**

16.1 Validity and enforcement of this Agreement is subject to appropriations by the General Assembly of the specific funds necessary for contract performance. Should such funds not be so appropriated the Lottery may immediately terminate this Agreement, and absent such action this Agreement shall be terminated as to any obligation of the State requiring the expenditure of money for which no specific appropriation is available, at the end of the last fiscal year for which no appropriation is available or upon the exhaustion of funds.

16.2 Notwithstanding any other provisions of this Agreement, this Agreement shall terminate and the Lottery's obligations under it shall be extinguished at the end of the fiscal year in which the Lottery fails to appropriate monies for the ensuing fiscal year sufficient for the payment of all amounts which will then become due.

**17. State of Delaware Business License.**

Duffield and all subcontractors represent that they are properly licensed and authorized to transact business in the State of Delaware as provided in 30 *Del. C.* § 2301.

**18. Complete Agreement.**

18.1 This agreement and its Appendices shall constitute the entire agreement between the Lottery and Duffield with respect to the subject matter of this Agreement and shall not be modified or changed without the express written consent of the parties. The provisions of this agreement supersede all prior oral and written quotations, communications, agreements and understandings of the parties with respect to the subject matter of this Agreement.

18.2 If the scope of any provision of this Agreement is too broad in any respect whatsoever to permit enforcement to its full extent, then such provision shall be enforced to the maximum extent permitted by law, and the parties hereto consent and agree that such scope may be judicially modified accordingly and that the whole of such provisions of the Agreement shall not thereby fail, but the scope of such provision shall be curtailed only to the extent necessary to conform to the law.

18.3 Duffield may not order any product requiring a purchase order prior to The Lottery's issuance of such order. Each Appendix, except as its terms otherwise expressly provide, shall be a complete statement of its subject matter and shall supplement and modify the terms and conditions of this Agreement for the purposes of that engagement only. No other agreements, representations,

warranties or other matters, whether oral or written, shall be deemed to bind the parties hereto with respect to the subject matter hereof.

**19. Miscellaneous Provisions.**

19.1 In performance of this Agreement, Duffield shall comply with all applicable federal, state and local laws, ordinances, codes and regulations. Duffield shall solely bear the costs of permits and other relevant costs required in the performance of this Agreement.

19.2 Neither this Agreement nor any appendix may be modified or amended except by the mutual written agreement of the parties. No waiver of any provision of this Agreement shall be effective unless it is in writing and signed by the party against which it is sought to be enforced.

19.3 The delay or failure by either party to exercise or enforce any of its rights under this Agreement shall not constitute or be deemed a waiver of that party's right thereafter to enforce those rights, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right.

19.4 Duffield covenants that it presently has no interest and that it will not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. Duffield further covenants, to its knowledge and ability, that in the performance of said services no person having any such interest shall be employed.

19.5 Duffield acknowledges that the Lottery has an obligation to ensure that public funds are not used to subsidize private discrimination. Duffield recognizes that if they refuse to hire or do business with an individual or company due to reasons of race, color, gender, ethnicity, disability, national origin, age, or any other protected status, the Lottery may declare Duffield in breach of the Agreement, terminate the Agreement, and designate Duffield as non-responsible.

19.6 Duffield warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, or a percentage, brokerage or contingent fee. For breach or violation of this warranty, the Lottery shall have the right to annul this contract without liability or at its discretion deduct from the contract price or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

19.7 This Agreement was drafted with the joint participation of both parties and shall be construed neither against nor in favor of either, but rather in accordance

with the fair meaning thereof.

19.8 Duffield shall maintain all public records, as defined by 29 *Del. C.* § 502(7), relating to this Agreement and its deliverables for the time and in the manner specified by the Delaware Division of Archives, pursuant to the Delaware Public Records Law, 29 *Del. C.* Ch. 5. During the term of this Agreement, authorized representatives of the Lottery may inspect or audit Duffield's performance and records pertaining to this Agreement at the Duffield business office during normal business hours.

## **20. Insurance.**

20.1 Duffield shall maintain the following insurance during the term of this Agreement:

- A. Worker's Compensation and Employer's Liability Insurance in accordance with applicable law, **and**
- B. Comprehensive General Liability - \$1,000,000.00 per person/\$3,000,000 per occurrence, **and**
- C. Medical/Professional Liability - \$1,000,000.00 per person/\$3,000,000 per occurrence; or
- D. Miscellaneous Errors and Omissions - \$1,000,000.00 per person/\$3,000,000 per occurrence, or
- E. Automotive Liability Insurance covering all automotive units used in the work with limits of not less than \$100,000 each person and \$300,000 each accident as to bodily injury and \$25,000 as to property damage to others.

20.2 Duffield shall provide forty-five (45) days written notice of cancellation or material change of any policies.

20.3 Before any work is done pursuant to this Agreement, the Certificate of Insurance and/or copies of the insurance policies, referencing the contract number stated herein, shall be filed with the State. The certificate holder is as follows:

Delaware Lottery Office  
McKee Business Park  
1575 McKee Road, Suite 102  
Dover, DE 19904

20.4 In no event shall the State of Delaware be named as an additional

insured on any policy required under this agreement.

**21. Assignment of Antitrust Claims.**

As consideration for the award and execution of this contract by the State, Duffield hereby grants, conveys, sells, assigns, and transfers to the Lottery all of its right, title and interest in and to all known or unknown causes of action it presently has or may now or hereafter acquire under the antitrust laws of the United States and the State of Delaware, relating to the particular goods or services purchased or acquired by the State pursuant to this contract.

**22. Governing Law.**

This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, except where Federal Law has precedence. Duffield consents to jurisdiction venue in the State of Delaware.

**23. Notices.**

Any and all notices required by the provisions of this Agreement shall be in writing and shall be mailed, certified or registered mail, return receipt requested. All notices shall be sent to the following addresses:

TO: Vernon A. Kirk, Director  
Delaware State Lottery  
1575 McKee Road, Suite 102  
Dover, DE 19904

TO: Guy Marcozzi, P.E., President  
Duffield Associates, Inc.  
5400 Limestone Road  
Wilmington, DE 19808

**SIGNATURE PAGE TO FOLLOW**



## **“APPENDIX A”**

### **PERFORMANCE OF SERVICES STATEMENT OF WORK**

1.0 Duffield agrees to render to the Lottery the professional services as described herein, and additional related services designed and rendered in support of the Lottery’s efforts and obligations to provide accessibility to Lottery products, goods, and services by persons with disabilities.

2.0 Duffield professional services will include, but not limited to the following:

2.1 Accessibility Inspections and Site Reports:

2.1.1 Perform technical inspection and re-inspection of existing and proposed licensed Lottery retail outlets to determine compliant accessibility to Lottery products and services by persons with disabilities according to Lottery Rules and Regulations and the American with Disabilities Act (A.DA.).

2.1.2 Establish a methodology and execute a routine procedure for review of retailer outlets to periodically determine the accessibility compliance of the Lottery’s retailer outlet network.

2.1.3 Accessibility Inspection Site Reports:

2.1.3.1 Design and update as needed paper and electronic format (MS WORD; MS EXCEL; Adobe Acrobat; etc.) reports depicting and communicating the results of accessibility inspections.

2.1.3.2 Paper and electronic format inspection reports to be delivered to the Lottery within 10 business days of notification. Exceptions to this timeframe may be requested with certain retailer accounts.

2.2 Record Keeping and Administrative Reporting:

2.2.1 Retain, secure and archive all original inspection and re-inspection reports, documentation, and photography in electronic format.

- 2.2.2 Establish and maintain a database record of all inspections, re-inspections; and, as required, notations of the names and employing organization of any third party individual involved in each site inspection or consultation.
  - 2.2.3 Provide a report itemizing all inspections and respective compliance results as conducted during the previous month.
  - 2.2.4 Provide an annual report summarizing the total number of inspections, re-inspections, and consultations, with itemization of specific consultations and notations of trends and observations for the previous year.
  - 2.2.5 Provide copies of all database and archive documents, records, and images upon reasonable request of the Lottery, and upon termination of this AGREEMENT.
- 2.3 Retailer and Retailer Applicant Assistance:
- 2.3.1 Provide technical assistance to existing retailers and retailer applicants whose locations are found to be non-compliant.
- 2.4 Management Consultation:
- 2.4.1 Attend periodic planning and status review meetings at the Delaware State Lottery Offices. Provide ad hoc and periodic reports to the Delaware Lottery designated official on the status of inspections. Provide expert consultation to the Delaware Lottery designated official to assist in improvement of the Lottery Accessibility Process.
- 2.5 Expert Testimony:
- 2.5.1 Provide expert testimony at administrative and court hearings regarding the results of retailer inspections, Consultant activities performed in support of the Lottery's Accessibility Process, and the status of compliant accessibility within the Lottery's retail outlet network.