

**MANITOBA LIQUOR AND LOTTERIES CORPORATION
PURCHASE OF GOODS CONTRACT**

Contract Number: [insert contract number]

Dated as of the day of [insert month], 20[insert year].

BETWEEN:

MANITOBA LIQUOR AND LOTTERIES CORPORATION
1555 Buffalo Place, Winnipeg, Manitoba R3T 1L9

(called “MBLL”),

- and -

[INSERT LEGAL NAME OF SUPPLIER]
[insert address of Supplier provider]

(called the “Supplier”).

MBLL and the Supplier agree as follows:

SECTION 1.00 - TERM OF CONTRACT

1.01 This Contract comes into effect on [insert date] and shall continue until [insert date] (the “Term”) unless delayed, suspended, or extended beyond that date under section 15.00 or terminated before that date under section 16.00, with an option for MBLL to extend for an additional term of [insert number of months/years if applicable].

SECTION 2.00 - ENTIRE CONTRACT

2.01 This document and the attached Schedule “A” contain the entire Contract between the parties. There are no undertakings, representations or promises, express or implied, other than those contained in this Contract.

SECTION 3.00 - GOODS TO BE SUPPLIED

3.01 MBLL agree to retain the Supplier to provide the goods and products outlined in the attached Schedule “A” (the “Products”). The Supplier agrees to provide the Goods and Deliverables on the terms and conditions set out in this Contract.

3.02 Any amendments (modifications, additions or deletions) to this Contract shall only be effective if such amendments are made in writing and agreed upon by both parties, as evidenced by the signatures of each party’s authorized representatives.

3.03 MBLL and the Supplier agree that any goods or products supplied by the Supplier outside the scope of Schedule “A”, as amended, shall be deemed to be gratuitous on the Supplier’s part, and MBLL has no liability for payment or otherwise with respect to such product or goods.

- 3.04 Products may be ordered by MBLL by written notice, by telephone, by electronic mail, or by any other method of electronic data transfer agreed to between MBLL and the Supplier. A written confirmation order shall be issued by the Supplier in respect of all telephoned or faxed orders. An order sent by electronic mail, or otherwise sent electronically, will be deemed to have been received by the Supplier upon receipt by MBLL of a confirmation or an electronic verification number. Each order will specify the quantities of Products required and the delivery locations to which those Products are to be delivered. An order may specify delivery to multiple Delivery Locations. Each order must be accompanied by a valid Purchase Order. Each Purchase Order must quote the contract number of this Agreement. MBLL will not be obligated to pay for Products shipped without a valid Purchase Order.

SECTION 4.00 - PERFORMANCE OF SUPPLIER'S OBLIGATIONS

4.01 The Supplier represents and warrants that:

- (a) the Supplier has all necessary power and authority to enter into this Agreement;
- (b) this Agreement is enforceable against the Supplier in accordance with its terms;
- (c) the execution, delivery and performance of this Agreement will not violate, nor be in conflict with, nor constitute a default under, any contract, agreement or undertaking (whether verbal or written) to which the Supplier is a party, or by which it is bound or under any judgment, decree, order or law applicable to the Supplier;
- (d) the Supplier has all right and title to the Products, free and clear of any charges, liens, encumbrances, security interests and other interests and, upon acceptance, MBLL shall have title to the Products free and clear of any charges, liens, security interests, encumbrances or other interests;
- (e) to the extent that the MBLL will require use of the intellectual property rights of any third party in connection with the Products, the Supplier, at its sole expense, has obtained from the third party all necessary licenses, consents or assignments of those intellectual property rights for the benefit of MBLL;
- (f) the Products comply with, and the Supplier in the performance of this Agreement shall comply with, all applicable laws, ordinances, rules and regulations, including without limitation, all laws governing occupational health and safety and protection of the environment;
- (g) the Supplier possesses all permits, licences, authorizations and regulatory approvals necessary in connection with the sale of the Products to MBLL;
- (h) the Product is licensed for use and sale in Canada;
- (i) the Products will be new and will conform with the specifications as requested by MBLL, and with all written specifications, drawings, and other descriptions of the manufacturer thereof and will be of merchantable quality, fit and sufficient for the purposes for which they are intended as evidenced in this Agreement, of good materials, design and workmanship, free from defects, and will fulfill satisfactorily any operating conditions specified in this Agreement;

- (j) the Products have received all applicable approvals for from any organization that licenses or certifies the Products;
- (k) the Products are free of hazardous substances, except for those Products which the Supplier has informed MBLL contain Hazardous Substances as set out in Schedule “A”;
- (l) to the extent the Products include services, the services will:
 - (i) be performed in a conscientious, professional and worker-like manner, with reasonable skill, care and diligence, in accordance with industry standards; and
 - (ii) be performed by employees, Suppliers or agents who are qualified and competent and have the appropriate skills and experience to perform the duties assigned to them.
- (m) in respect of Software only:
 - (i) the Supplier has all necessary right to sell the software to MBLL or to grant a license in the software to MBLL;
 - (ii) the Supplier has the necessary intellectual property rights and interests required to perform its obligations hereunder and to provide MBLL with all rights or licenses that MBLL requires hereunder;
- (n) The above representations and warranties are in addition to all other warranties as may be express or implied at law or equity. The representations shall be true and correct during the entire term of the Agreement and shall survive the expiry or early termination of this Agreement until all of the obligations of the Supplier hereunder have been fulfilled.

SECTION 5.00 - SHIPMENT OF PRODUCTS

- 5.01 Unless otherwise agreed to in this Agreement, the Supplier shall be solely responsible for, and shall prepay, all freight costs, packing costs and insurance costs relating to the delivery of the Products to the Delivery Location. The Supplier shall pack and protect all Products in accordance with best practices, having regard to methods of carriage and handling and to weather conditions likely applicable to the transportation and delivery to the delivery locations.
- 5.02 The Supplier shall comply with all applicable laws, and all corporate and industry standards respecting the safe and proper handling, transportation, cartage and delivery of the Products and, in the event of any conflict amongst any of them, the most stringent provision shall apply.
- 5.03 The applicable Purchase Order number or product code number, lot number, description, expiry date and quantity of contents are to appear on all packages, shipping documents and invoices. Goods imported to Canada and shipped directly to MBLL shall include in the Canadian Customs form sent with the shipment the full description of the contents of the shipment, including, if applicable, the nature of any Product and its attachments and accessories. The Supplier shall provide an Exporter’s Certificate of Origin with the documents provided to the freight carrier.

- 5.04 The Supplier shall provide MBLL with all relevant information concerning the safe and proper mode of employment, handling, use and implementation of the Products and MBLL shall have the full right to duplicate and use such information, including schematics, drawings, technical documentation, operating instructions, manuals and other information as MBLL deems appropriate. The Supplier shall provide MBLL with copies of the information in hard copy and, if available, in electronic format.
- 5.05 MBLL shall not be liable for payment of any Products delivered in excess of the quantities ordered, and the Supplier shall pick up such over-shipments within twenty four (24) hours following MBLL's notification of such over-shipment. All goods held by MBLL under this subsection shall be held at the Supplier's risk.

SECTION 6.00 - TITLE

- 6.01 Title, ownership and risk of loss of or damage to the Products will pass to MBLL upon acceptance. "Acceptance" means with respect to those Products that require testing to ensure proper performance, written verification by MBLL of its inspection and acceptance of the Products; and with respect to those Products that do not require testing to ensure proper performance, written verification by MBLL of its receipt of the Products. However, in the event a Supplier provides to MBLL a skid which contain multiple products, including the Products, Acceptance shall only occur when MBLL has unpacked the skid and provided written verification to the Supplier of its receipt of each product contained in the skid.
- 6.02 MBLL shall have the right to inspect all Products supplied to determine whether the Products appear to be in accordance with the requirements of this Agreement.

SECTION 7.00 - PAYMENT

- 7.01 Invoices may only be submitted to MBLL's accounts payable department after acceptance of goods. Invoices can be submitted by email to accounts payable@mbll.ca. MBLL shall pay all non-disputed invoiced amounts within thirty (30) days of receipt of invoice in proper form, or in such other time period as agreed to by the parties in writing. MBLL may request to make all payments by Electronic Funds Transfer (EFT), where possible Contractor will make every effort to comply.
- 7.02 All amounts invoiced to MBLL by the Supplier shall accord with MBLL's policies, as may be amended from time to time, and shall separately identify all duties, taxes and levies, where applicable, which are levied or imposed in connection with the supply of the Products. The Supplier shall not be entitled to receive, and shall not invoice MBLL for, any fees, costs, charges or out-of-pocket expenses, including any transportation or handling charges, unless they have been pre-approved by MBLL in writing. Unless otherwise directed by MBLL, each of the Supplier's invoices shall comply with the following:
- (a) each invoice shall include:
 - (i) the MBLL Purchase Order number, if any; and
 - (ii) the prices for Products covered by the invoice;
 - (iii) invoices related to a period of time or a point in time shall be rendered within fourteen (14) days of the end of the period of time or the occurrence of the point in time, as the case may be;

- (iv) all charges and credits are to be shown on the invoice;
- (b) invoices shall not be rendered prior to the date that the applicable Products have been delivered to the delivery locations.

SECTION 8.00 - REJECTION OF PRODUCTS

- 8.01 MBLI shall have a minimum of period of sixty (60) days, or such longer period as the parties may in writing agree, from the date of delivery and/or installation of the Product(s), as applicable (the "Inspection Period"), to conduct testing of the Products as MBLI deems appropriate. MBLI may reject any and all defective Products or Products which fail to comply with the specifications. On or before the expiry of the Inspection Period, MBLI may notify the Supplier if any of the Products are defective or fail to conform to the Specifications or otherwise do not comply with the terms hereof. MBLI may request the Supplier to rectify any defects. If MBLI requests the Supplier to rectify defects the Inspection Period shall be extended until twenty (20) days after the date upon which the Supplier has rectified the defects. If, upon expiry of the Inspection Period, including any extension thereof on account of rectification of defects, Acceptance has not occurred, MBLI shall return the Products to the Supplier at the Supplier's sole expense and risk.
- 8.02 Acceptance shall not prejudice any rights of MBLI under this Agreement or in law in respect of defective Product, regardless of any verification of Acceptance or other document executed by MBLI.
- 8.03 The Supplier shall refund to MBLI any money paid for returned Products or, upon request from MBLI, credit that amount to the account of MBLI within thirty (30) days of the date upon which MBLI notifies the Supplier of its refusal to accept the Products. The refund or credit for Products returned under this section shall not be subject to any re-stocking charge.
- 8.04 Products delivered in error, unauthorized late deliveries, unordered Products, defective Products and Products not in accordance with the specifications will be returned to the Supplier at the Supplier's sole expense and risk. If the Supplier does not provide return instructions within a reasonable time after being requested to do so, MBLI may dispose of those Products, as it deems appropriate, at the Supplier's sole expense and risk and MBLI shall have no liability or responsibility to the Supplier whatsoever in that regard. Return of Products shall not prejudice any other right or remedy available to MBLI with respect to those Products.

SECTION 9.00 - CONFIDENTIALITY OF INFORMATION AND PROTECTION OF PERSONAL INFORMATION

- 9.01 While this Contract is in effect, and at all times thereafter, the Supplier and any officers, employees or agents of the Supplier:
- (a) shall treat as confidential all information, documents and materials, including (without limitation) all data, research, reports, drawings, designs, plans, photographs and other materials, acquired or to which access has been given in the course of, or incidental to, the performance of this Contract, including any Personal Information (as defined in *The Freedom of Information and Protection of Privacy Act* (Manitoba)) or the *Personal Information Protection and Electronic Documents Act*, (collectively, "Confidential Information");

- (b) shall not, without first obtaining written permission from MBLL,
 - (i) use, or permit use of, Confidential Information except for the proper performance of the Supplier's obligations under this Contract, or
 - (ii) disclose, or permit disclosure of Confidential Information to any person, corporation or organization; and
- (c) shall comply with any rules or directions made or given by MBLL with respect to safeguarding or ensuring the confidentiality of the Confidential Information.

9.02 Except for Personal Information, the obligations of confidentiality set out in section 9.01 do not apply to any Confidential Information which:

- (a) is known to the public through no act of the Supplier at the time of the acquisition thereof by the Supplier;
- (b) after the acquisition thereof by the Supplier, becomes known to the public through no act of the Supplier;
- (c) is already known to the Supplier at the time of disclosure and is not known by the Supplier to be subject to any obligation of confidence of any kind; or
- (d) is lawfully received by the Supplier from a third party who is lawfully in possession of such Confidential Information.

SECTION 10.00 - LIABILITY FOR INJURY, ETC. TO SUPPLIER

10.01 MBLL shall not be liable for any injury to the Supplier, or to any officers, employees or agents of the Supplier, or for any damage to or loss of property of the Supplier, or of the officers, employees or agents of the Supplier, caused by or in any way related to the performance of this Contract.

10.02 Subsection 12.01 does not apply if the injury, damage or loss was caused by the wrongful or negligent act of an officer or employee of MBLL while acting within the scope of his or her employment.

SECTION 11.00 - INDEMNIFICATION BY SUPPLIER

11.01 The Supplier shall use due care in the performance of the obligations under this Contract to ensure that no person is injured, no property is damaged or lost and no rights are infringed.

11.02 The Supplier shall be solely responsible for:

- (a) any injury to persons (including death), damage or loss to property or infringement of rights caused by, or related to, the performance of this Contract or the breach of any term or condition of this Contract by the Supplier, or the officers, employees or agents of the Supplier; and
- (b) any omission or wrongful or negligent act of the Supplier, or of the officers, employees or agents of the Supplier;

and shall save harmless and indemnify MBLL, its officers, employees and agents from and against all losses, claims, damages, costs, charges, expenses, liabilities and demands with respect to clauses (a) and (b).

SECTION 12.00 - INSURANCE

- 12.01 The Supplier has purchased and will maintain throughout the Term:
- (a) commercial general liability insurance with minimum coverage limits of FIVE MILLION (\$5,000,000.00) DOLLARS per occurrence for the Services provided by the Supplier pursuant to this Contract; and
 - (b) Armoured Car Cargo Liability insurance or a Fidelity Crime Bond in the amount of TWO MILLION \$2,000,000 covering all liability assumed for the loss of Manitoba's shipments including, but not limited to, employee dishonesty, mysterious disappearance, or destruction;
 - (c) Automobile liability insurance of not less than \$5,000,000 for each accident, covering all owned, non-owned and hired vehicles used in the Proponent's operations;
 - (d) coverage under and enrollment with the Province of Manitoba workers compensation program, and shall ensure that all levies, assessments and penalties made against the Supplier pursuant to *The Workers' Compensation Act* (Manitoba) have been paid by the Supplier.
- 12.02 Insurance coverage specified in items 12.01(a)-(e) above shall:
- (a) be underwritten by insurers acceptable to MBLL and provide that 30 days' prior written notice shall be given to MBLL by the Insurer in the event the policy is materially altered or cancelled;
 - (b) be evidenced by a Certificate(s) of Insurance as written evidence of the required insurance, prior to commencing the Services and at the time of the renewal of each of the policy or policies.
- 12.03 If any Services to be provided pursuant to this Contract are to be provided by a subcontractor engaged by the Supplier, then the required insurance coverages may be purchased and maintained by the subcontractor with respect to the specific Services provided by that subcontractor. However, the Supplier shall be wholly responsible to ensure that the required insurance coverages are maintained and that satisfactory written evidence of same is provided to MBLL.
- 12.04 All of the above policies shall contain a clause which states that the insurers will not cancel or materially alter the policy without giving at least thirty (30) calendar days prior notice in writing to MBLL.
- 12.05 In requiring the foregoing minimum insurance policy coverages, MBLL does not represent that such amounts are adequate to cover all possible claims or losses that may be incurred under this Contract and expressly disclaims such a representation. The Supplier acknowledges that it is solely responsible for determining the adequacy of its insurance coverage.

SECTION 13.00 - WARRANTY

- 13.01 Unless agreed to in writing between the Supplier and MBLL, the Supplier, at its expense (including without limitation the expense of removal, packing, transportation and reinstallation) shall promptly either repair or replace any Products furnished to MBLL which, within twelve (12) months after Acceptance, shall fail to conform to the specifications or to the requirements of this Agreement. Products that are repaired or replaced by the Supplier pursuant to this warranty shall be warranted, according to the terms hereof, for an additional twelve (12) months from the date of the repair or replacement. The Supplier shall at all times be liable for and shall reimburse MBLL for repairs made by MBLL to correct a failure to meet the warranty herein where the Supplier has been given notice of the failure and thereafter has failed to take prompt and effective action to correct the failure in accordance with the foregoing. Should any component of a system supplied by the Supplier fail to function, causing a dysfunction in that system, the warranty period for that system shall be extended for a period equal to the time that the dysfunction existed. Any MBLL repair work to the Products shall not void or diminish any Product warranty, provided that in the event MBLL damages the Product in conducting such repairs, the Supplier shall not be responsible to repair such damage.
- 13.02 The above warranties are in addition to all other warranties as may be express or implied at law or in equity. In the event this Agreement provides for a warranty more favourable to MBLL, the more favourable warranty shall apply.
- 13.03 The Supplier, if a distributor of the Products, hereby assigns to MBLL such assignable rights as the Supplier may have under any and all manufacturers' and other warranties provided with respect to the Products.

SECTION 14.00 - TERMINATION

- 14.01 MBLL may terminate this Contract at any time by giving thirty (30) days' notice in writing to the Supplier.
- 14.02 In addition to its rights under subsection 14.01, and without restricting any other remedies available, MBLL may, at its sole option, immediately terminate this Contract in writing if:
- (a) in the opinion of MBLL, the Products provided by the Supplier are unsatisfactory, inadequate, or are improperly performed, or the Supplier has failed to comply with any term or condition of this Contract and such failure continues or such unsatisfactory Services remain unremedied for ten (10) days after the Supplier has been notified by MBLL of such failure; or
 - (b) the Supplier is dissolved or becomes bankrupt or insolvent.
- 14.03 Owner shall be under no obligation to the Supplier other than to pay, upon receipt of an invoice and supporting documentation satisfactory to MBLL, such compensation as the Supplier may be entitled to receive under this Contract for Products for which there has been Acceptance by MBLL up to the date of termination.
- 14.04 If, upon termination of this Contract, there is any equipment that needs to be removed from an Owner's property, the Supplier shall remove any and all such equipment within 15 days of the date of termination. If such equipment is not removed within that time period, MBLL shall be entitled to remove such equipment and the Supplier shall be responsible for all costs associated with such removal and transport. MBLL will not be liable for any damage or loss related to any removed or returned equipment.

SECTION 15.00 - SURVIVAL OF TERMS

15.01 Sections 6.00, 9.00, 11.00, 14.00, 16.00 shall survive the termination or expiration of this Contract.

SECTION 16.00 - INDEPENDENT SUPPLIER

16.01 Nothing herein creates a relationship of employee or employer, partnership or agency between the parties. The Supplier shall not incur any expenses or debts on behalf of, or make any commitments for, MBLL without first obtaining written permission from MBLL.

SECTION 17.00 - NO ASSIGNMENT OF CONTRACT

17.01 The Supplier shall not assign or transfer this Contract or any of the rights or obligations under this Contract without first obtaining written permission from MBLL. No assignment or transfer of this Contract or any portion thereof shall relieve the Supplier of any obligations under this Contract, except to the extent they are properly performed by the Supplier's permitted assigns.

17.02 Any sub-contracting by the Supplier of any part or portion of its obligations or Services to be provided under this Contract must be agreed to in writing by MBLL prior to such sub-contractor providing Services.

17.03 This Contract shall be binding upon the executors, administrators, heirs, successors and any permitted assigns of the Supplier.

SECTION 18.00 - TIME OF ESSENCE

18.01 Time shall be of the essence of this Contract.

SECTION 19.00 - SEVERABILITY

19.01 If any provision of this Contract is for any reason invalid, that provision shall be considered separate and severable from this Contract, and the other provisions of this Contract shall remain in force and continue to be binding upon the parties as though the invalid provision had never been included in this Contract.

SECTION 20.00 - APPLICABLE LAW/ RESPECT OF LEGISLATION & JURISDICTION

20.01 This Contract shall be governed by, interpreted, performed and enforced in accordance with the laws of the Province of Manitoba, and the federal laws of Canada applicable therein.

20.02 The Supplier will respect all legislation governing its sector of activity including municipal, provincial, federal, and international laws, governing regulations, and licensing requirements, as amended from time to time during the Term.

20.03 Any legal proceedings relating to the subject matter of this contract shall be submitted to the exclusive jurisdiction of the courts of the Province of Manitoba.

SECTION 21.00 - INTERPRETATION

21.01 Language in this Contract:

- (a) indicating the singular shall be understood to include the plural and vice versa;
- (b) indicating gender shall be understood to mean the masculine or feminine as the context requires.

21.02 The parties have agreed that this Contract and any notice given under this Contract shall be written in English.

SECTION 22.00 - NOTICES

22.01 Any notice or other communication to the Supplier under this Contract shall be in writing and shall be delivered personally to the Supplier or an officer or employee of the Supplier or sent by registered mail, postage prepaid, or by way of facsimile transmission or electronic mail, to:

[insert Supplier name,
address, and contact information
Telephone:
Fax :
[insert email, if applicable]
Attention:

22.02 Any notice or other communication to MBLL under this Contract shall be in writing and shall be delivered or sent by registered mail, postage prepaid, or by way of facsimile transmission or electronic mail, to:

Manitoba Liquor and Lotteries Corporation
Corporate Procurement
1555 Buffalo Place
Winnipeg, Manitoba R3C 2X1
Telephone (204)
Fax: (204) •
[insert email, if applicable]
Attention:

22.03 Any notice or communication sent by registered mail shall be deemed to have been received on the third business day following the date of mailing. Any notice or communication sent by facsimile or electronic mail shall be deemed to have been received on the business day following the confirmed transmission. If mail service is disrupted by labour controversy, notice shall be delivered personally.

22.04 This Contract has been executed on behalf of Manitoba Liquor and Lotteries Corporation and by the Supplier (by their respective duly authorized representatives) below.

IN WITNESS WHEREOF each of the Parties has executed the Agreement as of the date written above.

For:
MANITOBA LIQUOR AND LOTTERIES CORPORATION

For:
[INSERT NAME OF CONTRACTOR]

By: _____

By: _____

Name: [Insert Signatory Name]

Title: [Insert Signatory Title]

Date: _____

Name: [Insert Signatory Name]

Title: [Insert Signatory Title]

Date: _____

By: _____

Name: [Insert Signatory Name]

Title: [Insert Signatory Title]

Date: _____

Specimen

SCHEDULE "A"

[Describe Goods]

1) Goods to be Supplied (Section 3 of Goods Contract)

Detailed description of the services

2) Progress Reports and Administrative Review(Section 6 of Goods Contract)

MBLL shall conduct yearly administrative reviews of the services and deliverables being provided by the contractor. Reviews will focus on:

If applicable what the expectations are for the reporting or review

3) Prices of Goods (Section 7 .00 of Goods Contract)

Details of fees , payment schedules, travel guideline reference