



NEW YORK STATE GAMING COMMISSION

REQUEST FOR PROPOSALS

FOR

**LOTTERY INTERNAL CONTROL SYSTEM CONVERSION
CONSULTING SERVICES**

CONTRACT # C202114

February 15, 2022

PROCUREMENT WEBSITE:

https://www.gaming.ny.gov/about/procurement_opp.current.php

DESIGNATED CONTACT FOR INQUIRIES AND SUBMISSIONS

Consistent with the public policy established by the New York State Procurement Lobbying Law, the Contract Management Specialists designated below are the only points of contact regarding matters relating to this RFP, unless additional points of contact are designated by them.

ALL BIDDERS RESPONDING TO THIS RFP AND ALL COMMUNICATIONS CONCERNING THIS PROCUREMENT MUST BE ADDRESSED IN WRITING TO EITHER OF THE CONTRACT MANAGEMENT SPECIALISTS NOTED BELOW:

Stacey Relation, Contract Management Specialist 3
Alysan Bowers, Contract Management Specialist 2

New York State Gaming Commission
Contracts Office, 4th Floor
One Broadway Center
Schenectady, NY 12305
officer.contracting@gaming.ny.gov

RFP-related questions must be submitted via electronic mail to the email address above by the date specified in the Schedule of Events.

NON-BID RESPONSE

Bidders choosing not to submit a proposal in response to this RFP are requested to submit the **Non-Bid Response** form, included in this RFP as **Attachment 4**, as the information is useful to the Commission in the planning and development of future solicitations and bidders' lists.

SCHEDULE OF EVENTS

The following dates are established for informational and planning purposes. The Commission reserves the right to adjust this schedule, in its sole discretion.

Event	Date
RFP Release Date	February 15, 2022
Round One Written Questions Due 3:00 pm EDT	February 23, 2022
Round One Commission Answers Issued in Amendment	March 1, 2022
Round Two Written Questions Due 3:00 pm EDT	March 9, 2022
Round Two Commission Answers Issued in Amendment	March 15, 2022
Proposal Due Date 2:00 pm EDT	March 24, 2022
Virtual Interviews	On or about - April 6 - 13, 2022
Contract Start Date	Upon OSC Approval

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PART ONE – GENERAL INTRODUCTION

1.1 Introduction

The New York State Gaming Commission (“Commission”), on behalf of the State of New York (“State”), and as operator of the New York Lottery program (the “Lottery”), is issuing this Request for Proposals (“RFP”) to invite interested Vendors to submit Proposals to provide industry-specific consulting and project management services to help the Commission transition from its legacy internal control system that operates on a mainframe (“Mainframe ICS”) to a third-party internal control system (“New ICS”). It is anticipated that one (1) contract will be awarded as a result of this RFP.

This RFP, and all activities leading toward the anticipated signing of a final written agreement (the “Contract”) pursuant to this RFP, are conducted under Commission policies as enabled by New York State statutes and regulations.

In the RFP, the Commission has defined a series of objectives, requirements, and a Proposal evaluation approach that will represent its best interests in conformance with Commission policies and with New York State statutes and regulations. A submitted Proposal shall include all information and documentation requested throughout this RFP.

The contents of this RFP, any modifications, and the Proposal will become contractual obligations if a contract ensues. Failure of the Successful Bidder to accept these obligations may result in cancellation of the award.

The Commission is the only office authorized to clarify, modify, amend, alter, or withdraw the provisions of this RFP.

The Successful Bidder is expected to enter into the Contract, in the form attached as Appendix B, Contract Form, of this RFP. The Contract will cover a one (1) year term.

1.2 Background Information

1.2.1 New York State Gaming Commission

The Commission was created by Chapter 60 of the Laws of 2012 as part of the 2012/2013 Enacted State Budget. The measure merged the New York State Division of Lottery with the New York State Racing and Wagering Board into a single state agency. The Commission became effective February 1, 2013. The Commission is headquartered in Schenectady, New York.

As relevant to this RFP, the Commission regulates or provides oversight for all aspects of lawful gaming activity in the State, including horse racing and pari-mutuel wagering, Indian Gaming, commercial casinos, the State lottery including video lottery terminals, and charitable gaming. Follow the links to review statutes and rules related to the Commission:

<https://www.gaming.ny.gov/statutes.php> and <https://www.gaming.ny.gov/rules.php>.

The Commission is committed to operating according to responsible gaming principles and to upholding the integrity of the Commission.

1.2.2 Division of Lottery

The Commission's Lottery, operated through the Commission's Division of Lottery, continues to be North America's largest and most profitable state lottery program, earning over \$75.07 billion in aid to education since its founding over 50 years ago. The Lottery was enacted into the New York State Constitution by voters as a result of a referendum in 1966. Under Commission jurisdiction, the Lottery is operated by the Commission in accordance with provisions of the New York State Lottery for Education Law (Tax Article 34: <http://public.leginfo.state.ny.us/lawssrch.cgi?NVLWO:>) and Article 1 of New York State Racing, Pari-Mutuel Wagering and Breeding Law (<http://public.leginfo.state.ny.us/lawssrch.cgi?NVLWO:>).

Current Lottery traditional products include nine (9) draw games (Powerball, Mega Millions, Quick Draw, Take 5, Win4, NUMBERS, Lotto, Cash4Life, and Pick 10), several game enhancements (Daily Games Instant Win, Money Dots and Extra), and up to 75 printed instant Scratch-off games available for sale and approximately 125 instant games in validation status at any given time. Lottery games are in various stages of their individual lifecycle, with new Scratch-off games launched every 4-6 weeks, relying on approximately 15,500 licensed lottery sales agents to manage and sell Lottery games to consumers. In addition to independently owned and corporate licensed sales agents, the Commission also offers a selection of Lottery draw games through an online subscription service.

By selling its traditional lottery games through an extensive statewide licensed sales agent network and subscriptions over the internet through its website (<https://nylottery.ny.gov>), the Lottery generates traditional lottery sales of approximately \$8 billion annually. In the fiscal year 2020-2021, Lottery traditional games contributed \$2.5 billion to help support education in New York State.

1.2.3 Division of Lottery ICS Overview

The Commission's audit of lottery transactions takes place on a COBOL-based IBM mainframe operated by the New York State Office of Information Technology Services ("ITS"). The Mainframe ICS process is an audit of all transactions completed on multiple vendor systems currently located in two different data centers in different states. Each day there is a transition where data processing of the previous day is closed, and the end of day records processing begins. When jobs are completed, reports are generated and available for Commission staff. Depending on jackpot levels, the number of transactions can average anywhere from 500,000 per hour to millions per hour.

Other business processes and programs such as annuities and prize payments, among others depend on Mainframe ICS jobs to attain and certify data. The Commission recently contracted with a New ICS vendor (Spectra Systems Corp.) to replace the Mainframe ICS. A Lottery Information Systems ("LIS") rules extraction project with a third-party vendor is currently underway to analyze the existing LIS source code to create documents, workflows, copybooks, programs and use cases to help the Commission and ITS verify the "Current State" of the Mainframe ICS which will be used as input into the New ICS conversion and a larger "Future State" program. Estimated launch of the New ICS is August/September 2022.

The Request For Proposals for the Lottery Internal Controls System – C202002V2 and Q&A documents are available on the Commission's website at:

https://www.gaming.ny.gov/about/procurement_contract.inc.php

1.3 Minimum Qualifications

Any Bidder submitting a Proposal in response to this RFP must meet the minimum qualifications listed below in order to have its Proposal reviewed. Information demonstrating the qualifications defined below shall be included in the Proposal response.

- A. The Bidder must have at least five (5) years of demonstrated independent system testing experience, with experience testing of financial system or lottery internal control systems preferred.
- B. The Bidder must have at least three (3) years of demonstrated lottery internal control systems or financial system conversion consulting experience.
- C. The Bidder must have at least two (2) years of systems conversion project management experience that was similar in scope to the work required under this RFP.

1.4 Bidder/Contractor Differentiation

Throughout this RFP the term "Bidder" is used to reference an entity during the preparation and submission of a Proposal and any requirements preceding the award of a final contract. In describing post-contract award requirements, the term "Successful Bidder" is used.

1.5 Headings

The headings used in this RFP are for convenience only and shall not affect the interpretation of any provisions of this RFP.

1.6 Questions and Inquiries

Questions from Bidders regarding this RFP shall be submitted via electronic mail to Stacey.Relation@gaming.ny.gov or Alysian.Bowers@gaming.ny.gov, no later than the date and time specified in the Schedule. Neither faxed nor telephoned questions are acceptable. If questions are provided via an attachment to electronic mail, the questions shall be provided in Microsoft Word format.

Bidders are cautioned that any question or inquiry regarding the RFP shall be written in generic terms and shall not contain pricing information. The inclusion of specific information about a Bidder's pricing in an inquiry may result in the Bidder's disqualification.

Responses to all questions, and any changes to the RFP resulting from such questions, will be communicated via published addenda, which will be posted on the Commission's website.

Attachment 1, Bidder Acknowledgement of Amendment, will be provided with each amendment. Bidders are required to include a signed Bidder Acknowledgement of Amendment for each amendment with their respective Proposals.

1.7 Non-Exclusive Rights

Nothing in this RFP or the Contract resulting from this RFP shall preclude the Commission from purchasing other products, services, or equipment from other sources throughout the duration of the resulting Contract.

1.8 Confidentiality & Non-Disclosure

The Successful Bidder shall maintain the security, non-disclosure, and confidentiality of all information in the performance of its activities under the resulting Contract, including, but not limited to ensuring compliance to prevent unauthorized use, access or disclosure of "Confidential Information" as defined in paragraph 9 of the Contract.

The Successful Bidder shall ensure that its officers, agents, employees, independent contractors, partners, and subcontractors, if any:

- A. are fully aware of the obligations arising under the Contract,
- B. shall take all commercially reasonable steps to ensure compliance to prevent unauthorized use, access or disclosure of "Confidential Information" as defined in the Contract, and
- C. shall execute the Confidentiality and Non-Disclosure Agreement attached as Attachment 5 and submit the same to the Commission before working on, or otherwise being involved in, the performance of activities under the resulting Contract.

Failure by the Successful Bidder or its officers, agents, employees, independent contractors, partners or subcontractors to fully comply with these requirements shall be deemed a failure to meet the Successful Bidder's obligations under the Contract and may result in the Commission suspending, canceling and/or terminating the Contract for cause, or pursuing any other legal or equitable remedies available.

The Confidentiality and Non-Disclosure Agreement is included as Attachment 5.

1.9 Prohibited Vendors

The Commission will only procure Lottery Internal Control System Conversion Consulting Services from a Bidder that is independent from and not an integral part of the Lottery Computer Gaming System provider and/or Instant Ticket System provider. Any Bidder not meeting such requirement shall be disqualified from an award under this RFP. In addition, any Successful Bidder will be prohibited from any procurement that would result in the Successful Bidder becoming (a) the Lottery Computer Gaming System provider, (b) the Instant Ticket System provider, and/or (c) integral to the operation of the Lottery Computer Gaming System and/or Instant Ticket System during the term of the Contract.

1.10 Specified Options

A Specified Option, as noted in this RFP, is identified as being of specific interest to the Commission. The Bidder is required to include all Specified Options in the Proposal. The Commission anticipates acquiring such Specified Options from the Successful Bidder; although the Commission may choose not to exercise such an Option.

PART TWO – SCOPE OF WORK

The Successful Bidder shall provide to the Commission consulting and project management services to assist the Commission and ITS with the transition from the ITS-operated Mainframe ICS to a third-party New ICS managed by the Commission. Consulting and project management services shall include:

- A. ICS Testing.** The Successful Bidder shall provide ICS testing support to ensure the New ICS operates properly, as expected by the Commission.
 - a. New ICS Testing Plan.** The Successful Bidder shall develop a comprehensive New ICS testing plan that shall be included in the conversion timeline. Prior to implementation and in collaboration with Commission staff, the Successful Bidder shall provide guidance for New ICS testing at Commission headquarters in Schenectady, New York.
 - b. Performance Testing.** The Successful Bidder shall conduct New ICS performance testing at Commission headquarters in Schenectady, New York. The conversion timeline must include adequate time for New ICS performance testing and any needed modifications prior to implementation.
- B. Project Management.** As a **Specified Option**, the Successful Bidder shall provide project management services in collaboration with the Commission, ITS, the New ICS vendor, and the Lottery Computer Gaming System vendor (“Stakeholders”).

The Successful Bidder shall provide one project manager who shall be dedicated to the conversion project and shall serve as the lead project manager working directly with Commission-designated staff. The project manager must have at least three (3) years of project management experience and have knowledge of system conversion procedures. Knowledge of lottery systems is preferred. The designated project manager shall be subject to the approval of the Commission. The project manager shall be responsible for:

- a. Planning.** The Successful Bidder shall collaborate with Stakeholders to create a Stakeholder Mainframe ICS/New ICS Conversion Plan (“Conversion Plan”) and ensure all Commission-approved milestones and deadlines are met. The Successful Bidder shall work with all Stakeholders to ensure conversion and mainframe transition are considered and included in the Conversion Plan. The Commission must approve in writing the final Conversion Plan and any proposed changes to the Conversion Plan. The Successful Bidder shall provide ongoing oversight and management of the Conversion Plan including risk management and proposed resolution if needed.
- b. Meeting Cadence and Meeting Documentation.** In collaboration with the Commission, the Successful Bidder shall develop and adhere to a meeting cadence that ensures Stakeholders are involved and informed throughout the conversion process. The Successful Bidder shall provide to Stakeholders or a subset of Stakeholders as required by the Commission meeting notes, project plans, timelines, and necessary documentation to meet conversion goals and objectives.

The Successful Bidder shall provide additional staff as needed to provide the required project management services.

- C.** ICS Guidance and Tools. As a **Specified Option**, the Commission may require hourly consulting services to provide guidance and tools to the Commission as it relates to Mainframe ICS and New ICS conversion. The Successful Bidder shall provide such consulting services subject to a work plan approved by the Commission. Consulting services that may be required pursuant to this Specified Option may include:
- a.** Roles and Responsibilities. The Successful Bidder shall assist the Commission in the development of Stakeholder roles and responsibilities for ICS conversion and New ICS management and oversight. The Successful Bidder shall lead the development of one (1) responsibility assignment matrix (“**RACI matrix**”) for management and oversight of the NEW ICS post implementation. The post-implementation RACI matrix shall consider separation of duties and include, but not be limited to, daily operations, relevant Multi-State Lottery Association (“**MUSL**”) Rule 2 ICS requirements, security requirements and general New ICS oversight.
 - b.** Business Rules. The Successful Bidder shall assist the Commission with development of business rules, requirements, and impact on remaining mainframe functionality, including, but not limited to, the Lottery prize payment system. The Successful Bidder shall document all Commission-approved ICS business rules, workflows and systems mapping in a structure and format that is comprehensible to non-technical readers.
 - c.** Best Practices. The Successful Bidder shall provide the Commission with ICS best practices guidance for business rules, requirements, information security, segregation of duties, change management, balancing, winner verification, lockdown alternatives and adherence to MUSL Rule 2. The Successful Bidder shall assist the Commission with the development of ICS procedures, checklists and standards and shall document all Commission-approved ICS procedures, checklists and standards in a format approved by the Commission.
 - d.** Communications Network. The Successful Bidder shall provide guidance related to the ICS communications network to ensure the New ICS and Lottery Computer Gaming Systems communications network and infrastructure optimize transaction speed while preventing security risks.
 - e.** Templates and Scripts. In collaboration with Stakeholders, the Successful Bidder shall develop a standard ICS requirements template and standardized test scripts.

PART THREE – THE PROPOSAL

3.1 Technical and Pricing Proposals

Part Three provides the requirements for development of the “Proposal”, consisting of Technical and Pricing Proposals, and explains the Proposal clarification process. In preparation of the Proposal, each Bidder should pay special attention to the requirements and information being requested to respond fully to the RFP. Any Proposal found to be incomplete or placing conditions in response to the requirements under this RFP may be deemed nonresponsive and removed from further consideration. **Attachment 3, Document Submittal Checklist**, is provided to assist the Bidder in including all required information and documentation.

Proposals shall address all goods and services described in the Scope of Work. In addition to the Bidder’s descriptions, certain information is requested in this Part that is of interest to the Commission and shall be included in the Proposal.

3.2 Business Organization and Financial Viability

- A.** The Bidder must state the full name and address of its organization and, if applicable, any branch office or other subordinate element that will perform or assist in the performance of the work hereunder. The Bidder shall advise whether it operates as an individual, partnership, corporation, joint venture, or other specified form of business organization. Each Bidder must state whether it is qualified and/or registered to do business in the State of New York.
- B.** The Bidder must provide the name, address (including e-mail) and telephone number of the individual from its organization who is authorized to enter into and bind the organization to the terms and conditions of the Bidder’s Proposal.
- C.** The Bidder must demonstrate in its Technical Proposal that its organization is of sufficient size and has the qualifications required to perform the requested services as defined in this RFP. The Proposal must:
 - a.** explain the organization’s hiring practices, including suitability standards, and
 - b.** provide a thorough description of the organization, including employee capacity to undertake and successfully carry out the proposed services.
- D.** The Bidder must submit information demonstrating the Bidder’s financial viability, integrity and stability (e.g., unaudited financial statements and/or annual reports). Further, to the extent not already provided in the New York State Vendor Responsibility Questionnaire, the Bidder shall describe key corporate personnel, ownership control, and facilities available to satisfy the requirements of the proposed Contract. This information will be used in conjunction with the New York State Vendor Responsibility Questionnaire in determining whether the Bidder is “responsible” and therefore subject to a potential award under this RFP.

3.3 Experience of the Bidder’s Organization

Organization:

The Bidder must demonstrate in its Proposal that its organization is of sufficient size and has the qualifications required to perform the requested services defined in the RFP. The Proposal must include the following:

- A. A description of the Bidder's organization that would be considered relevant to the successful accomplishment of the Scope of Work required herein. Include sufficient detail to demonstrate the relevance of such experience.
- B. A description of the credentials of the Bidder and examples of past projects that illustrate the application of such credentials.
- C. A description of the Bidder's quality control program and how it will be applied to the work under the proposed Contract.
- D. Identification of whether any of the experience described has been due to a subcontractor relationship and to what extent.

References:

The Proposal must name as references at least three clients of the Bidder relevant to the work to be performed under the Contract resulting from this RFP. References must include company name, contact person (name, title, telephone number, email address, and mailing address). Also, each reference must include a general statement of the type of work performed by the Bidder for the reference. References will be used to substantiate the Technical Proposal.

3.4 Bidder's Project Management and Staffing

- A. Identify the full-time dedicated staff project manager and other responsible individuals by name, title, and location who will work under a resulting Contract, including proposed subcontractor staff members.
- B. Provide resumes for proposed staff providing the relevant experience of each individual; each individual's role in the work under a resulting Contract; and anticipated percentage of time allocated for each individual in the proposed work effort.
- C. Provide resumes of the Bidder's proposed staff relating to the work outlined in the RFP describing relevant education, knowledge, training, and experience. The Commission expects that the same managers will have overall responsibility for all projects conducted pursuant to this RFP. Exceptions may be made only with the approval of the Commission.
- D. Provide evidence of any certifications or licenses (e.g., CPA, CFA) of the Bidder's proposed staff relating to the work outlined in the RFP.
- E. Describe the Bidder's process for training new employees.

If applicable, the Proposal must list all subcontractors, including each subcontractor's name and address, contact person, and a complete description of work to be subcontracted. Descriptive information relative to the subcontractor's organization and capabilities must be included. If the Bidder does not intend to utilize subcontractors, that intention should be specifically stated in the Technical Proposal.

3.5 Work Plan

The Proposal must include a detailed Work Plan that demonstrates the Bidder's understanding of the requirements of this RFP. The Proposal must describe the approach to each subject area in the Scope of Work in the format outlined below:

- A. ICS Testing
 - a. New ICS Testing Plan

- b. Performance Testing
 - B. Project Management
 - a. Planning
 - b. Meeting Cadence and Meeting Documentation
 - C. ICS Guidance and Tools
 - a. Roles and Responsibilities
 - b. Business Rules
 - c. Best Practices
 - d. Communications Network
 - e. Templates and Scripts

3.6 Virtual Interviews

The Commission requires that each Bidder be interviewed virtually following the Bidder's proposal submission. The interview will be an opportunity for the evaluation committee (the "Committee") to ask the Bidders a series of questions to gain a better understanding of the information provided in the Technical Proposal. It is anticipated that the virtual interview will last approximately 30 minutes. The Committee will score each interview with a maximum of 10 points awarded per interview. If as a result of the interview, the Commission determines that material differences exist in the proposed solution between what was submitted in the Technical Proposal and the subsequent interview, the Commission, at its sole discretion, may permit the Committee to adjust the Technical Proposal scores accordingly.

3.7 Pricing Proposal

Bidders must complete **Attachment 2, Pricing Proposal Form**, as directed on the form and based on the Scope of Work defined in the RFP. **Bidders must use Attachment 2 for their Pricing Proposal. Alternate forms will be considered non-responsive.**

Specified Options: Bidders are required to provide a cost for Specified Options. "To Be Determined" ("TBD") pricing is not allowed.

3.8 Proposal Clarification Process

The Commission may request clarification from a Bidder to resolve any ambiguity or question information presented in the Bidder's Proposal. Clarifications are an opportunity to explain, but not to enhance, a Proposal. Requests for clarification may occur throughout the Proposal submission review and/or the Proposal evaluation process. Clarification responses must be in writing and must address only the information requested. Responses must be submitted to the Commission within the response time stipulated at the time of the request for clarification. As applicable, clarifications will be treated as addenda to the Bidder's Proposal.

PART FOUR - EVALUATION AND SELECTION

4.1 Introduction

This Part describes the evaluation and award process that will be used to determine which Proposal provides the greatest overall benefits to the State. The ability of the Commission to evaluate a Bidder's Proposal is dependent upon the proper submission and completeness of the Proposal. The failure of a Bidder to provide information requested by this RFP, to submit the Proposal according to the required format, or to respond appropriately to a clarification request or demonstration request, may result in rejection of the Bidder's Proposal or reduction in scoring during the evaluation.

4.2 Method of Award

The method of award under this RFP will be "Best Value", the evaluation method for awarding a contract to the Bidder whose Proposal optimizes quality, cost, and efficiency among responsible offers. The determination of Best Value will be based on a scoring of Technical and Pricing Proposals in response to the RFP specifications.

4.3 Evaluation Methodology

The Commission will conduct a comprehensive, fair, and impartial evaluation of Proposals received in response to this RFP. The Committee evaluating the Proposals will be designated and comprised of Commission staff and may include other employees of the State of New York. The Commission reserves the right to make changes to the Committee's membership as it deems appropriate.

Scoring of the Technical Proposals will be by consensus of the Committee. Pricing Proposals will be scored following conclusion of the Technical Proposal scoring process. **The relative scoring weight of Technical to Price shall be: Technical 70%; Price 30%.**

The evaluation and award process will be comprised of the following:

- A.** Pass / Fail evaluation of the Bidder's minimum qualifying requirements as provided for in this RFP's Section 1.3;
- B.** Review of Proposals to assess compliance with Proposal submission requirements, including responsiveness to terms, conditions, and requirements;
- C.** Detailed review by the Committee of the Technical Proposals relative to proposed functions, features, services, and references;
- D.** Proposal clarifications, if applicable;
- E.** Scoring of virtual interviews by the Committee;
- F.** Scoring of Technical Proposals by the Committee using pre-defined evaluation criteria;
- G.** Assessment and scoring of Pricing Proposals after finalization of the Technical Proposal scoring process;
- H.** Compilation of the Technical and Pricing score of each Bidder into a summary score sheet by staff of the Commission's Contracts Administration Office;
- I.** Preparation of a Recommendation of Award Memorandum ("Memorandum"), on behalf of the Committee, by the Commission's Contract Management Specialist 3, or designee;
- J.** Submission of the final Memorandum to the Commission's Executive Director for review and acceptance of the Committee's recommendation and briefing of the Commission;

- K. Review and acceptance of the award by the Commissioners, if the Commissioners so elect;
- L. Signature of the Memorandum by the Commission's Executive Director, or the Executive Director's designee (collectively the "Executive Director"); and
- M. Notice of Award.

4.4 Information From Other Sources

The Commission reserves the right to obtain from sources other than the Bidder, information concerning a Bidder, the Bidder's offerings and capabilities, and the Bidder's performance, that the Commission deems pertinent to this RFP and it may consider such information obtained when evaluating the Bidder's Proposal. This additional pursuit of information may include, but is not limited to, the Commission's Contract Administration Office or the Chair of the Committee, if applicable, engaging experts from outside the Committee to better inform the Committee's findings.

4.5 Evaluation and Selection Criteria

Proposals determined to comply with the requirements set forth in this RFP will be evaluated based on the following criteria:

A. Technical Evaluation – 70%

- Bidder's Organization & Financial Viability (10 points)
- Experience of Organization (10 points)
- Bidder's Project Management & Staffing (10 points)
- Work Plan (30 points)
- Virtual Interview (10 points)

A. Pricing Proposal Evaluation - 30% (30 points)

The Bidder with the lowest price will be awarded the full points allocated to the pricing evaluation. The score for each of the remaining Bidders will be proportionate to the lowest-price Bidder.

Note: Points awarded will be rounded to the nearest hundredth.

4.5.1 Pricing Proposal

Utilizing the Pricing Proposal Form, **Attachment 2**, each Bidder is to propose pricing based on the Scope of Work set forth in **PART TWO** of this RFP. Each **Bidder must use Attachment 2 as directed. Alternative pricing structures will be deemed nonresponsive.**

4.6 Final Composite Score / Determination of Award Process

The Technical and Pricing scores will be combined to determine the final composite score for each Bidder. Award will be made to the responsive and responsible Bidder who achieves the highest composite score.

4.7 Notice of Award

A Contract award notification letter will be sent to the Successful Bidder and unsuccessful Bidders advising that an award was made and that the award is subject to approval by the New York State Office of the Attorney General ("OAG") and the Office of the New York State Comptroller ("OSC").

4.8 Debriefings

The Commission shall, upon request, provide a debriefing (the Commission will make good faith efforts to accommodate debriefings in-person or via telephone, as requested by the Bidder, to the extent that these methods of debriefing are available and practical) to any unsuccessful Bidder that responded to this RFP regarding the reasons that the Bidder's Proposal was not selected for an award. A debriefing shall be requested by an unsuccessful Bidder within 15 calendar days of release by the Commission of a notice in writing or electronically that the Bidder's Proposal is unsuccessful.

4.9 Protest or Appeal

If a Bidder decides to protest the award decision, the following protest procedures shall be followed:

- A. Any protest of the award decision must be filed with the Commission, no later than 10 business days following the date of the written notification of award provided to the unsuccessful Bidder;
- B. The protest must clearly state the basis for the protest and include all relevant documentation supporting such protest;
- C. The Commission shall conduct a review of the protest and issue a written determination to the protesting party within 15 business days of receipt of the protest. If additional time for issuance of the determination is necessary, the Commission will inform the Bidder of the delay and of the time frame within which a determination may be expected. The final written determination provided to the Bidder will constitute the Commission's final administrative determination of the protest;
- D. If an unsuccessful Bidder wants to appeal the Commission's final administrative determination of the Bidder's protest, the unsuccessful Bidder must submit such an appeal to OSC's Bureau of Contracts ("BOC"), within 10 business days of the Bidder's receipt of the Commission's final written determination. The protest appeal must be in writing and must contain specific factual and/or legal allegations setting forth the basis on which the protesting party challenges the Contract award by the Commission. A copy of the appeal must be served on the Commission, the Successful Bidder(s), and any other party that participated in the review of the protest conducted by the Commission. The unsuccessful Bidder's appeal must contain written affirmation that a copy of the appeal has been served as required by this paragraph;
- E. The appeal must be filed with: Director, Bureau of Contracts – 11th Floor, Office of the New York State Comptroller, 110 State Street, Albany, NY 12236;
- F. The Commission will submit an answer to the appeal to the BOC simultaneously with the delivery of the Contract to the BOC for its review, or within 7 business days of the submission of the appeal, whichever is later. The Commission's answer to the appeal must include written affirmation that, simultaneous with the submission to BOC, the answer was transmitted to the protestor and the Successful Bidder(s);
- G. A Successful Bidder may, but is not required to, submit an answer to the appeal with the BOC. Such answer must include written affirmation that the answer was simultaneously delivered to the Commission and the protester, and must meet the submission requirements as noted above for the Commission;
- H. The BOC will evaluate the merits of the protest, the Commission's determination, and any response submitted by an interested party. The BOC, in its review, may require the Commission, the protesting party, the Successful Bidder, or any other interested party to address additional issues raised; may obtain information from an outside source; or may determine whether it deems it necessary to conduct a fact-finding hearing, and the level of formality of any hearing conducted; and

- I. The BOC will issue a written determination addressing the issues raised by the appeal. All interested parties shall be provided with a copy of the determination. The determination shall be made part of the procurement record.

PART FIVE – GENERAL REQUIREMENTS FOR PROPOSALS

5.1 General

Bidders shall submit a complete Proposal in response to this RFP that satisfies the requirements set forth below. Failure to do so may render the Bidder's Proposal nonresponsive. A Document Submittal Checklist is included in this RFP as **Attachment 3, Document Submittal Checklist**.

All Proposals submitted in response to this RFP shall be written in English, with quantities expressed in Arabic numerals and United States Dollars (\$ USD).

5.2 Proposal Disclosure by Bidder

Disclosure by a Bidder, or agent of the Bidder, of a Bidder's Proposal contents, other than to comply with this RFP process, prior to the notice of the Contract award may result in rejection of the disclosed Proposal.

5.3 Material Requirements

Material requirements of the RFP are those requirements designated as mandatory, without which an adequate analysis and comparison of Proposals is impossible, or those requirements that affect the competitiveness of Proposals or the cost to the Commission.

Proposals that do not meet all material requirements of this RFP, or that fail to provide all required and mandatory information, documents, or supporting materials, or include language that is conditional or contrary to terms, conditions, and requirements, may be rejected as nonresponsive.

The Commission, in its sole discretion, reserves the right to determine whether a Proposal meets the requirements of the RFP.

5.4 Proposal Content and Submission

Bidders shall submit a complete Proposal as outlined below:

A. PROPOSAL DESCRIPTION

Each Bidder is expected to provide the Commission with information and evidence that will make possible a contract award that best serves the stated interests of the Commission and the State of New York. Bidders are given wide latitude in the degree of detail they offer or the extent to which they reveal plans, designs, systems, processes, and procedures.

There is no limit on the number of pages in each Proposal; however, Bidders should prepare their Proposals simply and economically, providing a straightforward and concise description of their abilities to satisfy the requirements of this RFP. Proposals containing a preponderance of boilerplate text are discouraged. Emphasis in each Proposal should be on completeness and clarity of content.

Failure by a Bidder to provide the appropriate information or materials in response to each stated requirement or request for information may result in lower scores during the evaluation or determination of a non-responsive Proposal. Responses to complex RFP requirements that are stated in a form semantically equivalent to "Bidder agrees to comply" may be rejected as nonresponsive at the discretion of the Commission.

B. PROPOSAL FORMAT

Each Bidder must submit a complete Proposal in the format described below.

Each Proposal must consist of two (2) volumes: Volume I - Technical Proposal and Volume II - Pricing Proposal. Each Volume must be sealed separately from the other when submitted to the Commission as defined in Item C of this section, "Proposal Submission".

Volume I – Technical Proposal:

The Technical Proposal shall include a transmittal letter, signed by the individual identified in Section 3.2(B.) who is authorized to bind the Bidder to its provisions, and shall include Information outlined below in Item 1.

The Technical Proposal shall include descriptive and technical matter only. No pricing information shall be contained in the Technical Proposal.

The contents of the Technical Proposal (Volume I) shall follow the outline below and include appropriate headings as represented in the RFP, and page numbers.

To assist Bidders in their Technical Proposal response and submittal of the required documents, a **Document Submittal Checklist, Attachment 3**, is incorporated into this RFP. This checklist shall be completed and included with the Bidder's Technical Proposal.

- a. Transmittal Letter: The transmittal letter must be signed and shall contain names, addresses (physical and email), and telephone numbers of individuals who are authorized by the Bidder to address matters related to the Proposal including, but not limited to, contractual, technical, site visit, and references. **The transmittal letter must also contain a statement that the Proposal will remain valid for at least 180 days from the Proposal Due Date;**
- b. Document Submittal Checklist – (Attachment 3);
- c. Bidder Acknowledgement of Amendment – (Attachment 1);
- d. Signed Contract Form (Appendix B) (Section 6.2);
- e. Designation of Proprietary Information (FOIL) in the form described in Section 5.11 of this RFP;
- f. Disclosure and Investigations During Proposal Evaluation as described in Section 5.12 of this RFP;
- g. Disclosure of Litigation and Other Information as described in Section 5.13 of this RFP;
- h. Vendor Assurance of No Conflict of Interest or Detrimental Effect, Appendix K as described in Section 7.11 of this RFP;
- i. Certifications and representations as required by this RFP and as listed in the Document Submittal Checklist;
- j. Response to Minimum Qualifications requirements in Section 1.3;

- k. References; and
- l. Response to specifications and in the order provided for in this **Part Five – General Requirements for Proposals**, including technical documentation as appendices.

Volume II – Pricing Proposal:

The Pricing Proposal must be prepared as directed using the **Pricing Proposal Form, Attachment 2**.

C. PROPOSAL SUBMISSION:

Both volumes of the Bidder's Proposal shall be submitted to the Commission as set forth below and shall be received by the date and time set forth in the Schedule of Events.

Volume I - Technical Proposal

The Technical Proposal shall be submitted separately from the Pricing Proposal, clearly marked "Technical Proposal", and be submitted as noted below:

- **Electronic (non-redacted): One (1) searchable PDF file of the complete non-redacted Technical Proposal.**
- **Electronic (redacted pursuant to Section 5.11 "Designation of Proprietary Information (FOIL)": One (1) searchable PDF file of the complete redacted Technical Proposal.**

The electronic files shall include all Technical Proposal sections within a single file to facilitate searches for terms across the breadth of the Technical Proposal.

Technical Proposals and redacted Technical Proposals **must** be sent by email to: Officer.Contracting@gaming.ny.gov. In the Subject line, please include "**RFP #C202114 – Technical Proposal**".

Do not include any pricing in the Technical Proposal. Technical Proposals that contain pricing will be deemed nonresponsive and removed from consideration.

Volume II - Pricing Proposal

The Pricing Proposal shall be submitted separately from the Technical Proposal.

- **Electronic (non-redacted): One (1) searchable PDF file of the complete non-redacted Pricing Proposal.**
- **Electronic (redacted pursuant to Section 5.11 "Designation of Proprietary Information (FOIL)": One (1) searchable PDF file of the complete redacted Pricing Proposal.**

Pricing Proposals **must** be sent by email to: Procurement@gaming.ny.gov. In the Subject line, please include "**RFP #C202114 – Pricing Proposal**".

The Commission is not responsible for technical, hardware, software, telephone, or other communication malfunctions, errors or failures of any kind, lost or unavailable network connections, website, Internet, or ISP availability, unauthorized human intervention, traffic congestion, incomplete or

inaccurate capture of entry information (regardless of cause) or failed, incomplete, garbled, jumbled or delayed computer transmissions which may limit one's ability to submit Proposals electronically, including any injury or damage to Bidder's or any other person's or entity's computer or computer system relating to or resulting from the Bidder's electronic submission of its Proposals.

Any late, illegible, incomplete, invalid, unintelligible, misdirected, or corrupted submissions shall be disqualified.

D. PROPOSAL RECEIPT

The Commission's Contract Administration Office will provide the sender of a Proposal with an email confirming the Office's receipt of the Proposal, once received.

Upon receipt of a Proposal, the Pricing Proposal (**Volume II**) will be secured by the Commission's Contract Administration Office and will not be opened until after the evaluation of the Technical Proposal is complete.

The Technical Proposal (**Volume I**) will remain with the Commission's Contract Administration Office for initial review of document submission as provided in this RFP and subsequently distributed to the Committee at the start of the evaluation process.

5.5 Late Proposal

A Proposal must be **received** by the Commission on or before the due date and time specified in the Schedule in **Part 1, General Information**, of this RFP. The Bidder is responsible for the Commission's timely receipt of the Bidder's Proposal and should plan for delivery accordingly. Failure of a Bidder to submit a Proposal for the Commission's confirmed receipt by the specified time may result in rejection or disqualification of the Proposal. Proposals rejected or disqualified for lateness may be returned unopened to the Bidder.

5.6 Joint Proposals

Two or more individuals or business operations may join to submit a Proposal in response to this RFP. If a joint Proposal is submitted, the Proposal must define the responsibilities that each entity is proposing to undertake. Of the entities submitting a joint Proposal, one must be designated as the primary Bidder. Any contract award issued resulting from such a submission will be made exclusively to the primary Bidder. A joint Proposal must designate a single authorized official from one of the entities participating in such joint Proposal to serve as the sole point of contact between the Commission and the entities that are responding together.

5.7 Multiple Proposals from One Bidder Prohibited

Multiple Proposals from one Bidder are not permitted under this RFP. A Bidder shall submit only a single Proposal, consisting of a Technical Proposal and a Pricing Proposal. However, a Bidder may, within the single Proposal, and separate from the response to the requirements of this RFP, identify options, including solicited and unsolicited products, services, and features, absent of price, which the Bidder believes may be appealing and useful to the Commission. The inclusion of options accommodates the purpose of defining alternatives through multiple Proposals.

5.8 Costs Associated with Preparation of Proposals

The Commission and State shall not be liable for any of the costs incurred by a Bidder in preparing or submitting a Proposal, and, therefore, the Commission and/or State will not assume any responsibility or liability for any costs incurred by a Bidder. The responsibilities and liabilities of the Commission and State shall be limited to those set forth in the Contract.

5.9 Accuracy of Proposals

Bidders are responsible for the accuracy of their Proposals. All Bidders are directed to take extreme care in developing their Proposals. Bidders are cautioned to review their Proposals carefully prior to submitting their Proposals, as request for Proposal withdrawals after the Proposal Due Date will not be granted. All exceptions and deviations shall be noted in Proposals, and no adjustments made after an award is issued. If a Bidder submits a Proposal ahead of the submission deadline, the Bidder may submit an amended Proposal any time prior to the Proposal Due Date identified in the Schedule of Events.

5.10 Extraneous Terms

Proposals shall conform to the terms set forth in the RFP. Material deviations may render the Proposal nonresponsive and may result in the rejection of the Proposal. Extraneous terms proposed by a Bidder for consideration shall be submitted using the format and process set forth in the RFP. Any Bidder submissions on standard, pre-printed forms, such as, but not limited to, product literature, order forms, license agreements, contracts, or other documents that are attached or referenced with submissions shall not be considered part of the Proposal or resulting Contract but shall be deemed included for informational or promotional purposes only. Only extraneous terms accepted by the Commission, in writing, shall be expressly incorporated into the Contract. Acknowledgement of receipt and/or processing of a Proposal shall not constitute acceptance of extraneous terms. The Commission will not entertain any exceptions to **Appendix A, Standard Clauses for New York State Contracts**.

5.11 Designation of Proprietary Information (FOIL)

During the evaluation process, the content of each Proposal will be held in confidence and details of any Proposal will not be revealed, except as may be required under the New York State Freedom of Information Law ("FOIL") as found in New York State's Public Officers Law Article 6. FOIL provides for an exemption from disclosure for trade secrets or information the disclosure of which would cause substantial injury to the competitive position of a commercial enterprise. This exemption applies both during and after the evaluation process.

If a Bidder believes its Proposal contains any such trade secrets or other confidential information, the Bidder must submit a request with its Proposal to exempt such information from disclosure. Such request must: (a) identify the specific information in the Proposal; (b) identify the location (section, page number) of such information; and (c) state the reasons why the Bidder believes that FOIL permits the exemption of such information from disclosure.

Requests for exemption of the entire contents of a Proposal from disclosure have generally not been found to be meritorious and are discouraged. Please limit any requests for exemption of information from disclosure to *bona fide* trade secrets or other specific information, the disclosure of which would cause a substantial injury to the Bidder's competitive position.

For requested exemptions, the Commission's legal staff, as directed by the Designated Contacts, will review each requested exemption and communicate with the Bidder regarding the Commission's determination of whether such requested exemption has been designated as an exemption. The designation shall not become final until accepted by the Commission via formal letter. Once a designation is final, the Bidder will be required to submit a redacted version of the Proposal consistent with the accepted designation. The redacted version will be the material that is released in response to a relevant FOIL request or posted on the Commission's website to provide the public with access to the same information that would be produced in response to a relevant FOIL request.

5.12 Disclosure and Investigations During Proposal Evaluation

Subsequent to Proposal submission, the Commission may initiate investigations into the backgrounds of the Bidder and individuals or entities related to any officers, directors, members, principals, investors, owners, subcontractors, employees, independent contractors, or any other individuals or entities related to the Bidder, as the Commission may deem appropriate, in the discretion of the Commission. Such background investigations may include fingerprint identification by the New York State Division of Criminal Justice Services (“DCJS”) and the Federal Bureau of Investigation (“FBI”), and such additional investigation as may be required.

The Commission may reject a Proposal based upon the results of any such background checks. Each Bidder is advised that any Bidder who knowingly provides false or intentionally misleading information in connection with any investigation by the Commission may cause the Proposal of such Bidder to be rejected, or a contract to be canceled by the Commission, in the sole discretion of the Commission.

If a Bidder or a subcontractor is a subsidiary of a parent entity, the Commission may, in its sole discretion, also require the above disclosures from the parent entity.

5.13 Disclosure of Litigation and Other Information

The Commission has a strong interest in the Successful Bidder’s continuing ability to provide secure, high quality products and services, and as such, the Commission requires that a Bidder list and summarize pending or threatened litigation, administrative or regulatory proceedings, or similar matters that could materially affect the Bidder. As part of its disclosure requirement, a Bidder must state whether the Bidder, or any of the owners, officers, directors, or partners of such Bidder, has ever been convicted of a felony. Failure to disclose any such matter may result in rejection of the Bidder’s Proposal or termination of a contract. Such disclosures must be included in the Bidder’s Proposal.

This disclosure obligation is a continuing requirement. Any such matter commencing after submission of a Proposal, and with respect to the Successful Bidder after the approval of the Contract, must be disclosed to the Commission in a written statement and in a timely manner.

5.14 Change in Financial Condition

If a Bidder who has submitted a Proposal in response to this RFP experiences a substantial change in financial condition prior to the award of a contract pursuant to this RFP, or if a Successful Bidder experiences a substantial change in financial condition during the term of the Contract with the Commission, the Bidder is required to notify in writing the Executive Director at the time the change occurs or is identified. Failure to notify the Executive Director of such a change may result in rejection of a Bidder’s Proposal or termination of the Contract, in the sole discretion of the Commission. The Commission reserves the right, based on its assessment of a change in financial condition, to reject a Bidder’s Proposal or terminate a contract. **This disclosure obligation is a continuing requirement.**

5.15 Change in Ownership

If a Bidder experiences a material change in ownership prior to the award of a contract or during the term of a contract with the Commission, the Bidder is required to notify the Executive Director of the Commission, in writing, at the time the change occurs or is identified. “Material change in ownership” is defined as any merger, acquisition, assignment, or change in parties who, in the aggregate, own greater than five percent (5%) of the Bidder or the parent company of the Bidder. Failure to notify the Executive Director of the Commission of such

a change may result in the rejection of a Bidder's Proposal or termination of the Contract, in the sole discretion of the Commission. The Commission reserves the right, based on its assessment of a material change in ownership, to reject a Bidder's Proposal or terminate a contract. **This disclosure obligation is a continuing requirement.**

5.16 New York State Public Officers Law

Contractors, consultants, vendors, and subcontractors may hire former Commission employees. However, as a general rule, and in accordance with New York State Public Officers Law section 73, former employees of the Commission may neither appear nor practice before the Commission, nor receive compensation for services rendered on a matter before the Commission, for a period of two years following their separation from Commission service. In addition, former Commission employees are subject to a "lifetime bar" from appearing before the Commission or receiving compensation for services regarding any transaction in which they personally participated, or which was under their active consideration during their tenure with the Commission.

5.17 Ethics Requirements

The Successful Bidder and its subcontractor(s) shall not engage any person who is, or has been at any time, in the employ of the State to perform services in violation of the provisions of the New York State Public Officers Law, other laws applicable to the service of State employees, and the rules, regulations, opinions, guidelines, or policies promulgated or issued by the New York State Joint Commission on Public Ethics, or its predecessors (collectively, the "Ethics Requirements"). The Successful Bidder certifies that its employees and those of its subcontractor(s) who are former employees of the State, and who are assigned to perform services pursuant to this Contract, shall be assigned in accordance with all Ethics Requirements. During the Contract's term, no person who is employed by the Successful Bidder or its subcontractor(s) and who is disqualified from providing services set forth in this Contract pursuant to any Ethics Requirements may share in any net revenues of the Successful Bidder or its subcontractor(s) derived from this Contract. The Successful Bidder shall identify and provide the State with notice of those employees of the Successful Bidder and its subcontractor(s) who are former employees of the State that will be assigned to perform services pursuant to this Contract, and make sure that such employees comply with all applicable laws and prohibitions. The State may request that the Successful Bidder provide the State with whatever information the State deems appropriate about each such person's engagement, work cooperatively with the State to solicit advice from the New York State Joint Commission on Public Ethics, and, if deemed appropriate by the State, instruct any such person to seek the opinion of the New York State Joint Commission on Public Ethics. The State shall have the right to withdraw or withhold approval of any subcontractor(s) if utilizing such subcontractor(s) for any work performed hereunder would be in conflict with any of the Ethics Requirements. The State shall have the right to terminate the Contract resultant from this RFP at any time if any work performed hereunder conflicts with any of the Ethics Requirements.

5.18 Hiring of Commission Personnel

At all times during the Proposal evaluation period and continuing for one year following either the award of a contract or the rejection of all Proposals, Bidders are prohibited from officially or unofficially making any employment offer, or proposing any business arrangement whatsoever, to any Commission employee

involved in the evaluation of Proposals, the contract award, or contract negotiations. A Bidder making such an offer or proposition may be disqualified from further consideration.

5.19 News Releases

A news release pertaining to this RFP, or the services, evaluation, or project to which this RFP relates, may not be made without prior written Commission approval, and then only in accordance with express written instructions from the Commission. No outcome of the award under this procurement may be released without prior approval by the Commission and then only to persons designated by the Commission.

5.20 Advertising

Each Bidder agrees to not use the Commission's name, logos, images, nor any data, or results arising from this RFP or the Contract as part of any commercial advertising without prior written approval by the Commission, and then only in consultation and cooperation with the Commission.

5.21 State's Reserved Authority

In addition to any authority set forth elsewhere in this RFP, the Commission reserves the authority to:

- A.** Award a Contract for all, part, or none of the services requested by this RFP;
- B.** Waive any informality or technical defect if, in the judgment of the Commission, the best interest of the Commission will be so served;
- C.** Eliminate any non-material mandatory specification(s) that cannot be complied with by any of the prospective Bidders;
- D.** Amend the RFP and direct Bidders to submit Proposal modifications accordingly;
- E.** Change any of the scheduled dates stated herein;
- F.** Reject any or all Proposals received in response to this RFP, and reissue a modified version of this RFP;
- G.** Withdraw the RFP at any time, at the sole discretion of the Commission;
- H.** Seek clarifications and revisions to Proposals;
- I.** Use information obtained through management interviews, and the State's investigation of a Bidder's qualifications, experience, ability, or financial standing, and any material or information submitted by the Bidder in response to the request by the Commission for clarifying information in evaluation and/or selection under this RFP;
- J.** Disqualify any Bidder whose conduct and/or Proposal fails to conform to the requirements of this RFP;
- K.** Negotiate with the Successful Bidder within the scope of the RFP in the best interests of the State;
- L.** Request Best and Final Offers;
- M.** Set aside the original Successful Bidder if the Commission determines that such Bidder is nonresponsive or not responsible. The Commission may then award the Contract to the Bidder with the next highest total combined score if such a Bidder is responsible and such Bidder's Proposal is responsive; and
- N.** Stop the work covered by the RFP, Proposal, and the Contract at any time that it is deemed the Successful Bidder is unable, unwilling, or incapable of performing the work to the Commission's

satisfaction. If the Commission issues a stop work order, providing the reason for the work stoppage, the Successful Bidder shall have 10 working days from the date of the Commission's stop work order to respond appropriately thereto in an effort to convince the Commission that the work stoppage should not take effect, before any such stop work order shall become effective. If after consideration of a response from the Successful Bidder (or no response), the Commission decides thereafter, in its discretion, that the stop work order should take effect, the Commission may then arrange for the completion of the work as it deems advisable. If the cost thereof exceeds the amount of the Successful Bidder's Proposal, the Successful Bidder and its surety shall be liable to the State for such cost.

5.22 Default

The Commission reserves the right to cancel the Contract and to pursue any and all legal remedies provided at law, in equity, in this RFP, or in the Contract, for breach or nonperformance of a contract or other infractions, whether or not such default results in the cancellation of the Contract executed pursuant to this RFP.

In addition to the remedy of Contract cancellation and all other remedies available to the Commission hereunder, in the Contract, at law or in equity, the Commission may in its sole discretion accept partial, incomplete, or otherwise non-complying performance, and may deduct from the price to be paid under the Contract a sum which in the Commission's determination reasonably reflects the difference in value between the Contract as it was to have been performed, and as it was actually performed.

The Commission shall be entitled to collect costs incurred as the result of a breach by the Successful Bidder and/or any of the Successful Bidder's subcontractors, including court costs and reasonable attorneys' fees.

5.23 Disputes Under the Contract

In the event that any dispute arises between the parties with respect to the performance required of the Successful Bidder under the Contract, the Commission's Executive Director shall issue a written determination to the Successful Bidder. That interpretation shall be final, conclusive, and not subject to review in all respects unless the Successful Bidder, within thirty (30) days of receipt of said writings, delivers a written appeal to the Executive Director. The decision of the Executive Director on any such appeal shall be made within thirty (30) days and shall be final and conclusive and the Successful Bidder shall thereafter in good faith and due diligence render such performance as the Executive Director has determined is required of it. The Successful Bidder's options with respect to any such decision on appeal shall be whether 1) to accept the determination of the Executive Director as a correct and binding interpretation of the Contract, or 2) to make such claims as it may desire before the appropriate court of competent jurisdiction in the State of New York.

Pending a final judicial resolution of any such claim, the Successful Bidder shall proceed diligently and in good faith with the performance of the Contract as interpreted by the Executive Director, and the Commission shall compensate the Successful Bidder pursuant to the terms of the Contract.

5.24 Delegation and/or Assignment

No delegation of any duties under this RFP by the Successful Bidder shall be binding upon the State until the Commission has given written consent to such delegation; nor shall assignments of rights to monies due or to become due under this RFP be permitted to any individual or business organization other than Successful

Bidder, except by express written consent of the Commission.

5.25 Right to Audit Successful Bidder's Operations

The Commission reserves the right to audit the Successful Bidder's records and operations as they relate to Lottery operations. Said audits may be conducted by the Commission's own auditors, by an independent firm, or a State agency specified by the Commission. The Successful Bidder shall agree to cooperate fully with any and all audits.

5.26 Indemnification

To the extent permitted by law, the Successful Bidder shall forever defend, indemnify, and hold harmless the State of New York, the Commission, and their respective commissioners, officers, agents, directors, employees, other contractors, and sales agents, and all agents, employees, officers and directors thereof, from and against any and all claims, liabilities, losses, damages, costs, injuries, debts, or expenses (including reasonable fees, court costs, and expenses of attorneys of the Commission's choice), which may be made, incurred, suffered, or required, in whole or in part, based on, arising out of, or being related to

- A.** the Successful Bidder's response to this RFP,
- B.** the Successful Bidder's obligations to the State of New York or other governmental or legal authority,
- C.** the Successful Bidder's contracts and subcontracts,
- D.** products and services provided by the Successful Bidder under the Contract,
- E.** claims that any or all of the products or services provided by the Successful Bidder under the Contract violate the Intellectual Property Rights of a third party, and/or
- F.** an actual or alleged act or omission of:
 - a.** the State of New York and the Commission;
 - b.** the Successful Bidder;
 - c.** a subcontractor of Successful Bidder; or,
 - d.** any person directly or indirectly employed by or in an agency relationship with the Successful Bidder or a subcontractor, or which may arise out of or be related to the Successful Bidder's response to this RFP or its or any of its subcontractor's performance or failure to perform under any Contract.

All obligations of indemnification shall survive the termination of the Contract.

5.27 Authority of the Commission

On all questions concerning the interpretation of specifications, the acceptability and quality of material furnished and/or work performed, the classification of material, the execution of the work, and the determination of payment due or to become due, the decision of the Commission shall be final and binding.

PART SIX – PROVISIONS

6.1 Governing Law

The Proposal submission process, the evaluation of Proposals, the award procedure, and the Contract resulting from this RFP, shall be governed by the laws of the State of New York and shall be interpreted according to New York State law. All disputes of claims arising under this RFP or any Contract resulting from this RFP, other than as specifically set forth in this RFP, shall be brought exclusively in the appropriate court of the State of New York. By submitting a Proposal, a Bidder waives access to any other court or forum that may have concurrent jurisdiction within or outside New York State to hear or resolve any such dispute or claim.

6.2 Form of Contractual Agreement

Every Bidder responding to this RFP must include in its Proposal a signed Contract in the form attached as **Appendix B**. Signing the Contract form and submitting it as part of the Technical Proposal serves as the Bidder's acknowledgment and agreement to the terms of the Contract if the Bidder is deemed to be the Successful Bidder under the RFP process. **Failure to comply with this submission requirement may deem the Bidder's Proposal nonresponsive.**

Any exception to the Contract must be raised in a Bidder question submitted to the Commission pursuant to the Schedule and in accordance with the Question and Answer process, both set forth in **Part 1, General Information**. **The Commission does not intend, but reserves the right, to negotiate any changes in the provisions of the Contract following the receipt of Proposals.**

Following notification of award, the Successful Bidder will be expected to sign a final Contract with the Commission. The final Contract will be in the form incorporated into the RFP as **Appendix B**, or as revised through the RFP amendment process. **Appendix A, Standard Clauses for New York State Contracts**, becomes part of all New York State contracts and is incorporated into the Contract. The Contract will become binding and effective after approval by the Commission, the OAG, and the OSC.

6.3 Term of Contract

The Contract shall be effective for a period of one year, with effective dates designated with and upon approval of the OSC.

6.4 Severability

If a court of competent jurisdiction determines any portion of this RFP and/or the Contract to be invalid, such portion shall be severed, and the remaining portions of the RFP and/or the Contract shall remain in effect.

6.5 Standard Clauses For All New York State Contracts

Appendix A, Standard Clauses for New York State Contracts, dated October 2019, is attached. Appendix A, Standard Clauses for New York State Contracts becomes part of all New York State contracts.

6.6 Compensation, Invoicing, and Payment

The Successful Bidder will be compensated for work performed, based on the hourly rates and deliverable fees quoted in the Pricing Proposal Form (**Attachment 2**). Pricing shall be all-inclusive. There will be no reimbursement for travel or other incidentals under the ensuing Contract. Sales tax must not be included on invoices as New York State agencies are tax exempt. A tax-exempt form will be provided by the Commission if needed by the Successful Bidder.

Payment under the Contract will be in accordance with New York State Prompt Payment Law (Article 11-A of New York State's State Finance Law). Payment for services will be made upon completion of the services, in accordance with the terms of this RFP, and upon receipt by the Commission of a proper invoice.

Invoices shall be submitted as a PDF email attachment and directed to the New York State Business Services Center at accountspayable@ogs.ny.gov and copied to the Commission's Finance Office at gaming.dl.Financial.Management.Invoices@gaming.ny.gov. The Commission shall promptly process all payments due to the Successful Bidder that conform to the provisions of this RFP and are approved by the Commission's Finance Officer, or designee.

6.7 Successful Bidder Responsibilities As Primary Vendor

The Successful Bidder is required to assume responsibility for all contractual activities offered in the Proposal, whether or not the Successful Bidder, itself, performs such activities. Further, the Commission will consider the Successful Bidder to be the sole point of contact regarding contractual matters, including payment of any and all charges resulting from the Contract.

The Successful Bidder may have subcontractors, but the Successful Bidder shall accept full responsibility for the performance of any such subcontractor. If any part of the work is to be subcontracted, responses to this RFP shall include a list of subcontractors proposed to be utilized by the Successful Bidder, identifying the proposed subcontractors' anticipated involvement in execution of the Successful Bidder's Proposal.

6.8 Approval of Staffing

Subsequent to award of the Contract, the Commission must be notified by the Successful Bidder of any personnel changes on the Commission's Lottery account at least five days prior to the departure of any given employee in the event of a resignation from the Successful Bidder. In the event of a termination by the Successful Bidder, or a departure that provides less than five days of notice to the Successful Bidder, the Commission must be notified within 24 hours after the termination or abrupt departure. The Successful Bidder's senior management must present the Commission with a transition plan within 48 hours of the Successful Bidder's announcement that a position will be vacated. The Successful Bidder will have 60 days to fill an open position with an individual with the same or greater qualifications than the individual who vacated the position. The Commission reserves the right to review and, if perceived necessary, disapprove of any employee of the Successful Bidder who is proposed to be assigned to the Commission's Lottery account, either at Contract inception or during the term or any extension thereof.

The Successful Bidder agrees to commit to the level and quality of staffing as specified in its Proposal, and to submit quarterly reports to the Commission specifying current staffing levels, personnel, vacancies, and plans for filling vacancies.

6.9 Subcontract Approval

Any subcontractors need the Commission's written approval before beginning work, which may require the Successful Bidder to replace subcontractors who are determined to be unacceptable, either at Contract

inception or during the Contract term, or any extension thereof. Subcontractors are subject to background checks of personnel and principals.

The Successful Bidder agrees not to subcontract any of its services, unless as identified in its Proposal, without the prior written approval of the Commission. Approval shall not be unreasonably withheld upon receipt of a written request to subcontract.

The Successful Bidder may arrange for a portion(s) of its responsibilities pursuant to the Contract to be subcontracted to qualified, responsible subcontractors, subject to approval by the Commission. If the Successful Bidder determines to subcontract a portion of the services, the subcontractor(s) must be clearly identified and the nature and extent of its involvement in and/or proposed performance under the Contract must be fully explained by the Successful Bidder to the Commission. As part of this explanation, the subcontractor (and any of its subcontractors) must submit to the Commission a completed **Appendix K, Vendor Assurance of No Conflict of Interest or Detrimental Effect**, as required of the Successful Bidder prior to execution of the Contract (See Section 7.11).

The Successful Bidder retains ultimate responsibility for all services performed under the Contract.

All subcontracts shall be in writing and shall contain provisions that are functionally identical to, and consistent with, the provisions of the Contract including, but not limited to, the body of the Contract, **Appendix A, Standard Clauses for NYS Contracts**, and the RFP. Unless waived in writing by the Commission, all subcontracts between the Successful Bidder and subcontractors shall expressly name the State, through the Commission, as the sole intended third-party beneficiary of such subcontract. The Commission reserves the right to review and approve or reject any subcontract, as well as any amendment to said subcontract(s). Such right shall not make the Commission or the State a party to any subcontract, or create any right, claim, or interest to the subcontractor or proposed subcontractor as against the Commission.

The Commission reserves the right, at any time during the term of the Contract, to verify that the written subcontract(s) between the Successful Bidder and subcontractor(s) complies with all the provisions of this section and any subcontract provisions contained in this Contract.

The Successful Bidder shall give the Commission immediate notice in writing of the initiation of any legal action or suit that relates in any way to a subcontract with a subcontractor, or that may affect the performance of the Successful Bidder's duties pursuant to the Contract. Any subcontract shall not relieve the Successful Bidder in any way of any responsibility, duty and/or obligation of the Contract.

If at any time during performance under the Contract, total compensation to a subcontractor exceeds or is expected to exceed \$100,000, that subcontractor shall be required to submit and certify a **New York State Vendor Responsibility Questionnaire**, as found in **Appendix E**.

6.10 Delegation and/or Assignment

No delegation of any duties under the Contract to another entity shall be binding upon the State until the Commission has given written consent to such delegation; nor shall rights to monies due, or to become due, under this Contract be permitted to any entity other than the Successful Bidder, except by express written consent of the Commission.

6.11 Vendor Code of Conduct

The Commission is an extremely sensitive enterprise because of the nature of its business and because it is government-operated. Therefore, it is essential that its operation, and the operation of other enterprises which

would be linked to it in the public mind, avoid not only impropriety but also the appearance of impropriety. Therefore, contractors and subcontractors associated with the Commission are expected to:

- A. Offer goods and services only of the highest standards;
- B. Use their best efforts to prevent themselves and their industry from becoming embroiled in unfavorable publicity;
- C. Make sales presentations in a responsible manner, and when it is necessary to point out the superiority of their goods or services over those of their competitors, to do so in such a manner as to avoid unfavorable publicity for the industry;
- D. Avoid promotional activities that could be interpreted as improper and result in embarrassment to the industry;
- E. Report security problems, or potential security problems, promptly to the Commission; and
- F. Not offer or give any gift, gratuity, favor, entertainment, loan, or any other thing of material monetary value to any Commission employee, or to any individual influencing the outcome of the RFP, or any project or service under the RFP.

6.12 Intellectual Property

To the extent that the Successful Bidder utilizes or relies upon the intellectual property rights of a third party in fulfilling its obligations under the Contract, the Successful Bidder will provide the Commission with whatever assurance the Commission deems necessary that the use of such third-party intellectual property rights is permissible. In addition, in the event of a failure to perform or a breach of the Contract the Successful Bidder shall ensure continued right of use of licensed intellectual property by the Commission.

The Commission will not pay a fee for rights already held by the Successful Bidder; however, if fees are incurred for the licensing of intellectual property owned by any third party relevant to the fulfillment of the services under this RFP, such as third-party products, logos, trademarks, brands, or labels, any fees to be paid by the Commission for use of a third party's intellectual property will be negotiated on a case by case basis, and require the Commission's approval before use and payment. Intellectual property fees for third-party products, logos, trademarks, brands, or labels that the Successful Bidder deploys under the Contract shall be applied as described in Section 6.6 of the RFP.

The Successful Bidder, as part of its Proposal, must provide a list of any third party's intellectual property relevant to this procurement that the Bidder is currently licensed to use.

6.13 Commission Security Requirements

The Successful Bidder, including its employees, independent contractors, officers, agents, and subcontractors, shall be required to comply with all present and future security policies of the Commission. In addition, the Successful Bidder, its subcontractors, project managers, their employees, independent contractors, officers and agents, and any and all persons involved in projects and work assignments under this Contract will be required, prior to access to any Commission site, to be given a security clearance by the Commission. Anyone seeking access to a Commission site must provide their name, address, date of birth, company affiliation, and a company point of contact for employment verification, at least one week prior to any site visit. Once preliminary access approval is granted by the Commission, all visitors to a site must provide two forms of valid identification, including one photo ID and written authorization that they are acting on behalf of the Successful Bidder and/or subcontractor. Only after site authorization is confirmed, will the Commission approve access to the Commission site.

A. PHYSICAL SECURITY DURING THE DELIVERY OF CONTRACTED SERVICES

- a. The Successful Bidder shall be solely responsible for the safety and security of the project sites, facilities, and components under the Contract, with the exception that the Successful Bidder is not responsible for overall building security at locations under the control and management of the Commission, State, or local or federal agencies. The Successful Bidder remains responsible, however, for security of project components or equipment within such buildings (e.g., secure equipment enclosures within the space provided by such agencies). The Successful Bidder shall be responsible for and shall correct its failure or theft of any components or portion of the project due to the Successful Bidder's inadequate physical and/or information security at its cost and expense.
- b. The physical security and the information security of project data shall be provided at a level commensurate with that normally established for a similar system in today's heightened security environment. All components of site security shall be of suitable strength and design and shall reasonably withstand attempts to gain unauthorized access.

B. ACCESS BY PERSONNEL

- a. The Successful Bidder, its officers, agents, subcontractors, and their employees and independent contractors, shall be required to comply with all applicable facility and information security policies and procedures of the Commission and the State in performing the scope of work under this RFP. Such policies and procedures shall be communicated to the Successful Bidder as a condition precedent to the Successful Bidder's obligations under this paragraph.
- b. The Successful Bidder warrants that individuals performing work under this RFP are legally eligible to work in the United States and that such eligibility shall be maintained during the engagement while the individual is accessing any Commission site, information systems, or data contained therein. In addition, prior to accessing any Commission site, project information systems, or data contained therein, the Successful Bidder, and its officers, agents, subcontractors, and their collective employees and independent contractors performing work under this RFP, shall be required to:
 1. obtain security clearance from the Commission, which may include, at the Commission's discretion, a criminal history and/or background investigation of individuals proposed to perform work under the Contract. Such background investigation may include fingerprint identification by DCJS and the FBI, and such additional investigation as may be required. Individuals assigned to the project by or through the Successful Bidder shall be required to submit identifying information to the Commission.
 2. obtain from the Commission and prominently display on their person, Commission-issued identification cards while physically present at any Commission site.
- c. When an emergency or other circumstance occurs that renders immediate compliance with the foregoing requirements impractical, the Commission may, in its sole judgment, defer an individual's compliance with the foregoing requirements and grant temporary access. Such deferment shall not be construed as a waiver of the Commission's right to subsequently require security clearance as to any individual previously granted such temporary access; provided however, that even in such circumstances, the Commission approves such individual's access prior to such individual accessing a site, system, or data, and the Commission may accompany such individual when on-site.

- d. The Commission reserves the right, in its sole discretion, and without liability to the Successful Bidder's officers, agents, subcontractors, and their collective employees and independent contractors assigned to work under the Contract, to accompany any such approved individual when on-site, and to withhold approval of and refuse to permit access prior to such an individual accessing a site, project information systems, or data. The Commission also reserves the right, in its sole discretion, and without liability to the Successful Bidder's officers, agents, subcontractors, and their collective employees and independent contractors assigned to work under the Contract, to withhold approval of and refuse to permit access to Commission facilities, information systems or data contained therein, to any individual proposed by or through the Successful Bidder (a) who refuses to comply with the security procedures outlined in this section, or (b) where the Commission determines that the individual(s) may present a risk to the Commission's security interests. The Commission shall not be liable for payments or damages of any kind if the Successful Bidder is delayed or unable to perform under the Contract resulting from the Commission's denial of access to any individual(s) pursuant to this section.

6.14 Ownership of Proposal Contents, Materials and Intellectual Property

A. Any and all content and materials submitted with a Proposal shall not be returned and will be maintained by the Commission as part of the procurement record. It is not the intent of the Commission to use materials submitted with a Proposal for anything other than supporting documentation. However, the Commission will not be held liable for the unintentional use of such materials.

B. Ownership of all data, documentary material and operating reports originated and prepared exclusively for the Lottery pursuant to the Contract resulting from this RFP shall belong to the Commission. The Bidder agrees that, except where noted, all content, materials, documents, products, reports, data and other information, whether finished, unfinished, or draft developed, gathered or compiled under this RFP by the Bidder are the sole exclusive property of the Commission and shall not be used by the Bidder or any other person, or destroyed without express written permission of the Commission. Any work product created pursuant to this RFP, the Contract, and any subcontract, shall be "works made for hire" and shall become the property of the Commission, which shall have all rights of ownership and authorship in such work product. Additionally, the Bidder hereby assigns to the Commission any and all intellectual property rights to any such work product.

6.15 Technology Provisions

The Successful Bidder shall be compliant with all ITS security policies and standards, which are located here: <https://its.ny.gov/eiso/policies/security>.

6.16 Force Majeure

A Force Majeure occurrence is an event, condition, or effect that is caused by facts and circumstances that are beyond the reasonable control of such party and leads to non-performance, but that cannot be reasonably anticipated or controlled and occurs without the fault or negligence of the non-performing party. As herein used, Force Majeure includes, but is not limited to, the enactment, imposition or modification of any law which occurs, takes effect or is applied after the date of the Contract and which prohibits or materially impedes the performance of the obligations of the Commission and/or the Vendor, whether caused by new or pre-existing conditions including, but not limited to, riot, sabotage, boycott, embargo, or civil or military disturbances; interruption of or delay in transportation; national emergency; acts of terrorism; inability to procure material; rationing; failure of electricity or other utilities; restrictive laws, regulations or orders, or any act or failure to act, or interference of any federal, state or local government or governmental agency or authority; confiscation

or seizure by any governmental authority; condemnations by any governmental authority; riots or insurrection; war or war-like actions; earthquake, flood, storm, wash-outs, fire, lightning or other severe inclement weather or action of the elements, or other acts of God; explosions or other accidents; nuclear reaction or radiation; epidemic, pandemic, or other public health crisis or emergency, whether national or local; interruption or loss of internet, computer, telephone, broadcast or other communications or service; strikes, lockouts or other labor stoppage, disturbance, or disruption; or any other cause which is beyond the control of the party affected, and which, by the exercise of reasonable diligence, said party is unable to prevent delays arising as a result thereof or to predict and through advance planning avoid such delays.

Except as otherwise provided in the Contract, neither the Successful Bidder nor the Commission shall be liable to the other for any delay in, or failure of performance of, any covenant contained herein, nor shall any such delay or failure of performance constitute default hereunder, to the extent that such delay or failure is caused by a Force Majeure occurrence. The existence of such causes of delay or failure shall extend the schedule for performance to such extent as may be necessary to complete performance in the exercise of reasonable diligence after the causes of delay or failure have been removed, if approval for such extension is given by the Commission. During any period of non-performance due to a Force Majeure occurrence, payments from the Commission to the Successful Bidder will be suspended.

While any such delay in or failure of performance shall not in and of itself give rise to any liability for damages, the Commission may elect to terminate the Contract for cause should the Commission's continuing operations, in its sole judgment, be materially threatened or harmed by reason of extended delay or failure of performance, even if the delay or failure of performance is due to a Force Majeure occurrence.

6.17 Successful Bidder Personal Background

The Commission may initiate investigations into the backgrounds of any officers, principals, investors, owners, subcontractors, employees, or any other associates of such Successful Bidder as the Commission deems appropriate during the term of the Contract. Background investigations may include fingerprint identification by the DCJS, the FBI, or other domestic or foreign law enforcement agencies. The Commission reserves the right to require the removal of any and all subcontractors, employees, or any other associates of such Successful Bidder from any responsibility in the performance of services as provided for under this RFP, based upon the results of background checks, or if the Commission finds that any such subcontractor, employee, or any other associates of such Successful Bidder is not performing in the best interest of the Commission.

Upon award and during the term of the Contract, the Successful Bidder shall comply with the following security requirements by providing to the Commission's Director of Lottery Security the following items:

- A.** A list of the names, addresses, dates of birth and Social Security numbers (or comparable identification number for foreign nationals) of all employees on the AMT and employees managing systems or data that house personally identifiable information as part of the Contract.
- B.** Authorizations signed by the Successful Bidder's employees, independent contractors, and subcontractors to allow law enforcement agencies to release relevant background information. This obligation may be extended to include officers, investors, owners, and associates.
- C.** Immediate notification in writing of all hires, terminations, and resignations of employees and staff assigned to this Contract.
- D.** Assurance to the Commission that, as changes are made throughout the Contract term and any extension thereof for the aforementioned personnel, any changes in the information and authorizations required in A through C, herein, shall be reported to the Commission within one (1) month of the relevant change(s).

6.18 Ticket Purchase and Prize Payment Restrictions

Restrictions apply to the purchase of tickets and payment of prizes regarding the Successful Bidder, and to individuals related to the directors, officers, employees, or independent contractors of the Successful Bidder or of the Successful Bidder's significant subcontractors. No Successful Bidder nor such individuals, nor any spouse, child, brother, sister, or parent of these individuals, residing as a member of the same household in the principal place of abode of any such individual, shall purchase a Lottery ticket or be paid a prize in any Lottery game or multi-jurisdictional game the Lottery participates in if (1) they conduct duties directly pursuant to the Contract; or (2) they have access to the Commission's data or systems. The Successful Bidder shall ensure that this requirement is made known to each affected individual and must define how the Successful Bidder will comply with this requirement, to the Commission's approval.

6.19 Compliance With Association Standards

All services, products, and procedures to be employed by the Successful Bidder shall comply with the security and operational standards current at the time of contract performance as issued by any multi-jurisdictional association with which the Commission is, or may become, affiliated.

PART SEVEN – RFP REQUIREMENTS AND CERTIFICATIONS

7.1 Procurement Lobbying Restrictions

As required by the New York State Procurement Lobbying Law (New York State's State Finance Law sections 139-j and 139-k), this RFP includes and imposes certain restrictions on communications between the Commission and a Bidder during the procurement process. From the earliest solicitation of offers through final award and approval of the resulting Contract by the Commission and OSC ("restricted period") a Bidder is restricted from making contact with Commission employees, other than designated staff members, unless the contact is permitted by the statutory exceptions set forth in New York State's State Finance Law section 139-j(3)(a). Designated staff members are identified on page 2 of this RFP.

Commission employees are permitted to communicate with Bidders concerning this RFP only under circumstances described in the New York State Procurement Lobbying Law. Any Bidder causing or attempting to cause a violation or circumvention of those requirements may be disqualified from further consideration for selection.

Commission employees are required to obtain certain information when contacted by a Bidder during the "restricted period" and to determine the responsibility of the Bidder pursuant to sections 139-j and 139-k of the State Finance Law. A violation can result in a determination of non-responsibility, which can result in disqualification for a contract award. In the event of two such determinations within a four-year period, a Bidder will be debarred for a period of four years from obtaining a governmental procurement contract award. Further information about these requirements can be found at: <http://www.ogs.ny.gov/acpl>.

The Commission reserves the right, in its sole discretion, to terminate the Contract in the event that the Commission determines that the certification filed by the Successful Bidder in accordance with State Finance Law section 139-k was intentionally false or intentionally incomplete. Upon such determination, the Commission may exercise its termination right by providing written notice to the Bidder in accordance with the written notice terms of the Contract.

The BIDDER / OFFERER DISCLOSURE / CERTIFICATION FORM, Appendix C, must be completed and submitted with the Bidder's Proposal.

7.2 Non-Collusive Bidding Requirement

In accordance with section 139-d of the State Finance Law, if the Contract is awarded based upon the submission of Proposals, the Bidder must warrant, under penalty of perjury, that its Proposal was arrived at independently and without collusion aimed at restricting competition. Each Bidder must further warrant that, at the time the Bidder submitted its Proposal, an authorized and responsible person executed and delivered to the Commission a Non-Collusive Bidding Certification on Bidder's behalf.

The Non-Collusive Bidding Certification form, Appendix D, must be completed and submitted with the Proposal.

7.3 New York State Vendor Responsibility Questionnaire

Each Bidder agrees to fully and accurately complete the New York State Vendor Responsibility Questionnaire (hereinafter the "Questionnaire"), which is available online at: <https://www.osc.state.ny.us/vendrep/>.

Bidders are encouraged to complete the online form, as it will expedite Contract approval, if awarded. If a Bidder does not have an online Questionnaire that is current and certified at the time the Bidder's Proposal is submitted, the Bidder must complete the hardcopy **New York State Vendor Responsibility Questionnaire, Appendix E** and include it as part of the Bidder's Proposal. The Bidder acknowledges that the State's

execution of the Contract will be contingent upon the Commission's determination that the Successful Bidder is responsible, and that the Commission will be relying upon the Successful Bidder's responses to the Questionnaire in making that determination. The Bidder agrees that if it is determined by the Commission that the Successful Bidder's responses to the Questionnaire were intentionally false or intentionally incomplete, on such determination, the Commission may terminate the Contract by providing 10 days written notification to the Successful Bidder. In no case shall such termination of the Contract by the Commission be deemed a breach thereof, nor shall the Commission be liable for any damages for lost profits or otherwise, which may be incurred by the Successful Bidder as a result of such termination.

Unless the New York State Vendor Responsibility Questionnaire has been filed on-line, the hardcopy Questionnaire, Appendix E, must be completed and submitted with the Proposal.

7.4 Vendor Identification Number

Substitute Form W-9 – Vendor Identification Number, Appendix F: To do business with the State of New York, each Bidder is required to obtain a New York State Vendor Identification Number for use in the Statewide Financial System ("SFS"). If the Bidder does not already have a Vendor ID Number, the Substitute Form W-9 must be completed and submitted directly to the Commission upon notification of award. The purpose of the Substitute Form W-9, which will capture the Successful Bidder's taxpayer identification number, business name, and business contact person, is to allow the State to establish a Vendor file in the SFS.

Note: IRS Form W-9 is not acceptable for this purpose.

7.5 Electronic Payments

If awarded the Contract pursuant to this RFP, the Successful Bidder may enroll in direct deposit through the SFS Vendor Portal at <https://esupplier.sfs.ny.gov>. Additional information and procedures for enrollment can be found at OSC's website: <https://www.osc.state.ny.us/state-vendors>.

7.6 Tax Law Section 5-A

The Bidder awarded a Contract pursuant to this RFP must comply with the requirements of New York State Tax Law section 5-a, which requires persons awarded contracts valued at more than \$100,000 with state agencies, public authorities, or public benefit corporations, to certify that they, their affiliates, their subcontractors, and the affiliates of their subcontractors, have a valid certificate of authority to collect New York State and local sales and compensating use taxes. Additionally, a contractor, affiliate, subcontractor, or affiliate of a subcontractor must be certified as having a valid certificate of authority if such person has made sales delivered within New York State of more than \$300,000 during the relevant period. The OSC or other responsible approver cannot approve the Contract unless the Successful Bidder is registered with the New York State Department of Taxation and Finance to collect sales and compensating use taxes.

The Contractor Certifications ST-220-TD and ST-220-CA, Appendix G, must be filed in compliance with Tax Law section 5-a. Any Bidder awarded under this RFP shall, within seven calendar days of notification of award, file ST-220-TD directly with the Department of Taxation and Finance at the address provided on the form and file ST-220-CA with the Commission.

7.7 New York State Subcontractors and Suppliers

Bidders are strongly encouraged and expected to consider New York State businesses in the fulfillment of the requirements of the Contract. Such partnering may be as subcontractors, suppliers, protégés, or in other partnering or supporting roles.

Subcontractor and supplier requirements are set forth in Encouraging Use of New York State Businesses in Contract Performance, Appendix H.

7.8 Requirements and Procedures for Equal Employment and Business Participation Opportunities for Minority Group Members and New York State-Certified Minority/Women-Owned Business Enterprises

By submission of a Proposal in response to this RFP, the Bidder agrees with all terms and conditions of Clause 12 of Appendix A – Equal Employment Opportunities for Minorities and Women.

In accordance with Article 15-A of the New York State Executive Law and in conformance with the regulations promulgated by the Minority and Women’s Business Development Division of the New York State Department of Economic Development set forth at 5 NYCRR Parts 140-144, the Successful Bidder agrees to be bound by provisions to promote equality of economic opportunity for minority group members and women, and the facilitation of minority- and women-owned business enterprise participation.

The requirements related to Equal Employment Opportunities (“EEO”) and Minority/Women-Owned Business Enterprises (“MWBE”) are set forth in Appendix I of this RFP.

The MWBE goal established under this solicitation is 0%.

7.9 New York State Service-Disabled Veteran-Owned Businesses

Article 17-B of the New York State Executive Law provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses (“SDVOB”), thereby further integrating such businesses into New York State’s economy. The Commission recognizes the need to promote the employment of service-disabled veterans and to ensure that certified SDVOBs have opportunities for maximum feasible participation in the performance of Commission contracts.

In recognition of the service and sacrifices made by service-disabled veterans and in recognition of their economic activity in doing business in New York State, Bidders are expected to consider SDVOBs in the fulfillment of the requirements of the Contract. Such participation may be as subcontractors or suppliers, as protégés, or in other partnering or supporting roles.

The Participation Opportunities for New York State Service-Disabled Veteran-Owned Businesses form is included with this RFP as Appendix I.

The SDVOB goal established under this RFP is 0%.

7.10 Consultant Disclosure

The Successful Bidder must comply with the requirements of New York State’s State Finance Law Section 163(4)(g), which imposes certain reporting requirements on contractors doing business as vendors with New York State. In furtherance of these reporting requirements, the Successful Bidder agrees to complete and submit the Consultant Disclosure Forms in Appendix J as follows: the Contractor’s Planned Employment Report (**Appendix J – Form A**) submitted within two (2) business days after receiving notice of a Contract award, and the Contractor’s Annual Employment Report (**Appendix J – Form B**) by May 15th for each fiscal year (April 1 – March 31) the Contract term is in effect. Page two of each form provides the necessary addresses for submitting the form.

While the Planned Employment report (Form A) is a one-time projection of the planned employment under the upcoming Contract term, the Annual Employment Report (Form B) is a reporting of the actual employment

history for the previous fiscal year.

Forms A and B should be completed as follows:

- **Employment Category:** The Successful Bidder must use specific occupation titles as listed in the O*net occupational classification system found through the U.S. Department of Labor’s Employment and Training Administration (<https://www.onetonline.org/>). The classification system provides a code for various occupational titles; the Successful Bidder should use the code that best defines the employment titles to be utilized under the Contract.
- **Number of Employees:** Enter the number of employees in the employment category employed to provide services (Form A), or who have performed services (Form B), during the reporting period, including part- time employees and employees of subcontractors.
- **Number of Hours Worked or to be Worked:** Enter the number of hours to be worked (Form A), or worked (Form B) under the employment category for the reporting period.
- **Amount payable or paid under the Contract:** Enter the estimated amount to be paid (Form A), or actually paid (Form B) for each employment category for the reporting period.
- **Scope of Contract (Form B only):** Choose the category that best describes the predominant nature of the services performed under the Contract.

7.11 Conflicts of Interest

Throughout the procurement process, Bidders must identify and bring to the attention of the Commission, actual or apparent conflicts of interest as knowledge of such conflicts arises, as follows:

- A.** Disclose any existing or contemplated relationship with any other person or entity, including relationships with any member, shareholders of five percent (5%) or more, or parent, subsidiary, or affiliated business organization or entity, that would constitute an actual or potential conflict of interest or appearance of impropriety, relating to other clients/customers of the Bidder, or former officers and employees of the Commission, in connection with the Bidder rendering services set forth in this RFP. If a conflict does or might exist, the Bidder must describe how the Bidder would eliminate or prevent such conflicts. The Bidder should also advise what procedures will be followed to detect, notify the Commission of, and resolve any such conflicts.
- B.** Disclose whether the Bidder, or any of its members, shareholders of five percent (5%) or more, or parent, subsidiary, or affiliated business organization or entity, has been the subject of any investigation or disciplinary action by the New York State Joint Commission on Public Ethics or its predecessors (collectively, “JCOPE”), and if so, a brief description must be included advising how any matter before JCOPE was resolved, or whether it remains unresolved.

In addition, the Bidder must complete and return with its Proposal, the Vendor Assurance of No Conflict of Interest or Detrimental Effect form, Appendix K.

This disclosure obligation is a continuing requirement. Any Bidder awarded the Contract under this RFP will have an ongoing obligation to inform the Commission of any actual or apparent conflicts of interest.

7.12 Certification of Compliance with State Finance Law § 139-I

By submission of this Proposal each Bidder and each person signing on behalf of any Bidder certifies, and in the case of a joint Proposal each party thereto certifies as to its own organization, under penalty of perjury, that the Bidder has, and has implemented, a written policy addressing sexual harassment prevention in the workplace and provides annual sexual harassment prevention training to all of its employees. Such policy shall, at a minimum, meet the requirements of New York State Labor Law § 201-g. The Successful Bidder's certification of such compliance, pursuant to New York State's State Finance Law § 139-I, is included with this RFP as **Appendix L, Statement on Sexual Harassment**.

7.13 Executive Order No. 177 Certification

The New York State Human Rights Law, Article 15 of the Executive Law, prohibits discrimination and harassment based on age, race, creed, color, national origin, sex, pregnancy or pregnancy-related conditions, sexual orientation, gender identity, disability, marital status, familial status, domestic violence victim status, prior arrest or conviction record, military status, or predisposing genetic characteristics.

The Human Rights Law may also require reasonable accommodation for persons with disabilities and pregnancy-related conditions. A reasonable accommodation is an adjustment to a job or work environment that enables a person with a disability to perform the essential functions of a job in a reasonable manner. The Human Rights Law may also require reasonable accommodation in employment on the basis of Sabbath observance or religious practices.

In accordance with Executive Order No. 177, the Bidder must certify that it does not have institutional policies or practices that fail to address the harassment and discrimination of individuals on the basis of their age, race, creed, color, national origin, sex, sexual orientation, gender identity, disability, marital status, military status, or other protected status under the Human Rights Law. The certification is included with this RFP as **Appendix M, Anti-Discrimination EO 177 Certification**.

Executive Order No. 177 and this certification do not affect institutional policies or practices that are protected by existing law, including, but not limited to the First Amendment of the United States Constitution, Article 1, Section 3 of the New York State Constitution, and section 296(11) of the New York State Human Rights Law.

7.14 Insurer Qualifications and Insurance Requirements

Insurer qualifications and insurance requirements are provided in **Appendix N**, of this RFP. The Successful Bidder must comply with these requirements to remain responsible under the terms of the Contract resulting from this solicitation.

In the Proposal, a Bidder must provide a statement agreeing that if awarded a Contract under this RFP, the Bidder will comply with the insurer qualifications and insurance qualifications.

PART EIGHT – APPENDICES AND ATTACHMENTS

8.1 Appendices

This section provides a description of the Appendices associated with this RFP.

Letter	Appendix Title
A	Standard Clauses for New York State Contracts
B	Contract Form
C	Bidder/Offerer Disclosure/Certification Form
D	Non-Collusive Bidding Certification
E	New York State Vendor Responsibility Questionnaire
F	Substitute Form W-9
G	ST-220 Certifications
H	Encouraging Use of New York State Businesses in Contract Performance
I	EEO, MWBE and SDVOB Programs
J	Consultant Disclosure Forms
K	Vendor Assurance of No Conflict of Interest or Detrimental Effect
L	Statement on Sexual Harassment
M	Anti-Discrimination EO 177 Certification
N	Insurer Qualifications and Insurance Requirements

8.2 Attachments

This section provides a description of the Attachments associated with this RFP.

Number	Attachment Title
1	Bidder Acknowledgement of Amendment
2	Pricing Proposal Form
3	Document Submittal Checklist
4	Non-Bid Response Form
5	Confidentiality and Non-Disclosure Agreement

LOTTERY INTERNAL CONTROL SYSTEM CONVERSION CONSULTING SERVICES**CONTRACT # C202114**

THIS AGREEMENT made this _____ day of _____, 20__ by and between the NEW YORK STATE GAMING COMMISSION, an executive agency of the State of New York having an office at One Broadway Center, Post Office Box 7500, Schenectady, New York 12301-7500 (the "Commission"), and [Contractor], having an office at [address] (the "Contractor"). The Commission is the operator of the New York Lottery program (the "Lottery"), on behalf of the State of New York (the "State").

WHEREAS the Commission issued a Request for Proposals ("RFP") on [_____] soliciting proposals from qualified firms to provide the Commission with Lottery Internal Control System Conversion Consulting Services, and clarified the requirements of the RFP with questions and answers dated [_____] and [_____] (collectively, the "RFP"); and

WHEREAS the Contractor submitted a Technical Proposal and a Pricing Proposal dated [_____, 20__] (collectively, the "Proposal"), which was deemed by the Commission's evaluation committee to be the Best Value from among competing proposals;

NOW, THEREFORE, in consideration of the foregoing and of the mutual promises hereinafter set forth, the parties hereto agree as follows:

1. Scope of Services. The Contractor agrees to provide the Commission with Lottery Internal Control System Conversion Consulting Services, as more fully set forth in the RFP and the Proposal. Both the RFP and the Proposal are hereby incorporated into this Contract with the same force and effect as if they were fully set forth herein.

2. **Term.** This Contract shall be effective for a period of one year, with effective dates designated with and upon approval of the OSC.

3. **Financial Arrangements.**

(a) Compensation. In full consideration for all goods and services specified in the RFP and the Proposal, the Commission agrees to pay, and the Contractor agrees to accept, compensation in accordance with the prices set forth in the Proposal, unless otherwise stated herein. No minimum amount is guaranteed by this Contract and the Contractor shall not have any right to make a claim therefor. Expenditures under this Contract shall not exceed [XXXXXXXX].

4. **Approvals Required.** This Contract, and any extension of the term of this Contract or any amendment of the provisions of this Contract, shall not be effective and binding upon the Commission, the State of New York, or the Contractor unless and until approved by the New York State Office of the Attorney General and the Office of the New York State Comptroller. The Commission agrees to exercise its best efforts to obtain such approval.

5. **Mutual Cooperation.** The parties agree to cooperate fully and in good faith and to assist each other, to the extent reasonably practicable, in order to accomplish the objectives outlined in the RFP and Proposal.

6. **Limitation of Contractor's Lobbying Activities.** The Contractor agrees to abide by all applicable laws relating to its lobbying activities in New York. In addition, the Contractor agrees to provide, during the term of this Contract or any extensions thereof, written notification, updated quarterly, to the Commission specifying the name, business address and telephone number of any lobbyist, as that term is defined in Section 1-C of the New York State Lobbying Act (New York State Legislative Law Article 1-A) employed or hired to represent the Contractor within the State of New York related to Commission issues. Failure to provide this information

to the Commission will constitute a material breach of the terms of this Contract and be cause for termination.

7. Termination and Suspension.

(a) In addition to the bases referenced in the RFP, the Commission shall have the right to terminate this Contract for convenience or for any of the following causes:

- (i) a material breach by the Contractor of any of the provisions of this Contract;
- (ii) a determination by a court of competent jurisdiction that the Contractor is bankrupt or insolvent;
- (iii) a good faith determination by the Commission that continuation of the Contract could place the integrity of the Commission in jeopardy;
- (iv) a conviction of the Contractor or any of its directors, officers, or employees of any criminal offense connected to the Contractor's business which, in the sole reasonable opinion of the Executive Director of the Commission, would be prejudicial to public confidence in the Lottery or the Commission;
- (v) in the judgment of the Commission, a real or potential conflict of interest cannot be cured;
- (vi) the refusal by the Contractor or any of its directors, officers, or employees to sign a waiver of immunity against subsequent criminal prosecution or to answer any relevant question concerning a transaction or contract, when called before a grand jury, head of a state department, the Commission, a temporary state commission or other state agency, or the organized crime task force in a department of law, which is empowered to compel the attendance of witnesses and examine them under oath, to testify in an investigation, concerning any such transaction or contract had with the State, any political subdivision thereof, a public authority or

with any public department, agency or official of the State or of any political subdivision thereof or of a public authority; or

(vii) upon the conviction of any person of a crime defined in article two hundred or four hundred ninety-six or section 195.20 of New York State's Penal Law.

If termination is sought because of a criminal conviction as described in 7.(a)(iv), the cause for termination shall be deemed to be cured if the Contractor causes or obtains the dismissal, resignation, retirement, or other removal of the person convicted of such offense during such thirty (30) day period.

If the Contract is cancelled or terminated based on the grounds listed in 7.(a)(vi) or (vii), above, such person, and any firm, partnership or corporation of which the person is a member, partner, director or officer shall be disqualified from thereafter selling to or submitting bids to or receiving awards from or entering into any contracts with the state or any public department, agency or official thereof, for goods, work or services, for a period of five (5) years after such refusal, and to provide also that any and all contracts made with the State or any public department, agency or official thereof, since the effective date of New York State's State Finance Law §139-a, by such person, and by any firm, partnership or corporation of which such person is a member, partner, director or officer may be cancelled or terminated by the State without incurring any penalty or damages on account of such cancellation or termination, but any monies owing by the State for goods delivered or work done prior to the cancellation or termination shall be paid.

(b) If termination is sought because of a criminal conviction as described in 7.(a)(iv), the cause for termination shall be deemed to be cured if the Contractor causes or obtains the dismissal, resignation, retirement, or other removal of the person convicted of such offense during such thirty (30) day period.

(c) If the Contract is cancelled or terminated based on the grounds listed in 7.(a)(vi) or (vii), above, such person, and any firm, partnership or corporation of which the person is a member, partner, director or officer shall be disqualified from thereafter selling to or submitting bids to or receiving awards from or entering into any contracts with the state or any public department, agency or official thereof, for goods, work or services, for a period of five (5) years after such refusal, and to provide also that any and all contracts made with the State or any public department, agency or official thereof, since the effective date of New York State's State Finance Law §139-a, by such person, and by any firm, partnership or corporation of which such person is a member, partner, director or officer may be cancelled or terminated by the State without incurring any penalty or damages on account of such cancellation or termination, but any monies owing by the State for goods delivered or work done prior to the cancellation or termination shall be paid.

(d) In the event that the Commission decides to exercise the right to terminate this Contract for cause, the Commission shall give the Contractor written Notice of Intention to Terminate for Cause ("Notice"). Such Notice shall state clearly and specify the cause for which termination is sought, and the Contractor shall be entitled to a period of thirty (30) days from receipt of such Notice to correct or cure the cause so described to the reasonable satisfaction of the Commission in which case such Notice shall be deemed withdrawn and a nullity.

(e) The Commission reserves the right to terminate this Contract in the event the Commission determines that the certification filed by the Contractor in accordance with New York State's State Finance Law § 139-k was intentionally false or intentionally incomplete. Upon such determination, the Commission may exercise its termination right by providing written notice to the Contractor in accordance with the written notice terms of this Contract.

(f) Upon written notice to the Contractor, and a reasonable opportunity to be heard with appropriate Commission officials or staff, the Contract may be terminated by the

Commission's Executive Director or the Executive Director's designee (collectively the "Executive Director") at the Contractor's expense where the Contractor is determined by the Executive Director to be non-responsible or nonresponsible. In such event, the Executive Director may complete the contractual requirements in any manner the Executive Director may deem advisable and pursue available legal or equitable remedies for breach.

(g) The Executive Director, in the Executive Director's sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when the Executive Director discovers information that calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor must comply with the terms of the suspension order. Contract activity may resume if, and at such time as, the Executive Director issues a written notice authorizing a resumption of performance under the Contract.

8. Conflict of Interest.

(a) The Contractor has provided a form (Vendor Assurance of No Conflict of Interest or Detrimental Effect), signed by an authorized executive or legal representative attesting that the Contractor's performance of the services does not and will not create a conflict of interest with, nor position the Contractor to breach any other contract currently in force with the State of New York, that the Contractor will not act in any manner that is detrimental to any State project on which the Contractor is rendering services.

(b) The Contractor hereby reaffirms the attestations made in its Proposal and covenants and represents that there is and shall be no actual or potential conflict of interest that could prevent the Contractor's satisfactory or ethical performance of duties required to be performed pursuant to the terms of this Contract. The Contractor shall have a duty to notify the Commission immediately of any actual or potential conflicts of interest.

(c) In conjunction with any subcontract under this Contract, the Contractor shall obtain and deliver to the Commission, prior to entering into a subcontract, a Vendor Assurance of No Conflict of Interest or Detrimental Effect form, signed by an authorized executive or legal representative of the subcontractor. The Contractor shall also require in any subcontracting agreement that the subcontractor, in conjunction with any further subcontracting agreement, obtain and deliver to the Commission a signed and completed Vendor Assurance of No Conflict of Interest or Detrimental Effect form for each of its subcontractors prior to entering into a subcontract.

(d) The Commission and the Contractor recognize that conflicts may occur in the future because the Contractor may have existing, or establish new, relationships. The Commission will review the nature of any relationships and reserves the right to terminate this Contract for any reason, or for cause, if, in the judgment of the Commission, a real or potential conflict of interest cannot be cured, pursuant to paragraph 7.(a)(v), above.

9. Confidentiality and Non-Disclosure.

(a) “Confidential Information” means any information not generally known to the public, whether oral or written, that the Commission identifies as confidential and discloses to the Contractor so that the Contractor can provide services to the Commission pursuant to this Contract. Confidential Information may include, but is not limited to, operational and infrastructure information relating to: bid documents, plans, drawings, specifications, business rules, reports, product information; business and security processes and procedures; personnel and organizational data, and financial statements; information system IP addresses, network configurations, passwords, security controls, architectures and designs; and such other data, information and images that the Commission deems confidential. The Commission will identify written Confidential Information by marking it with the word “Confidential” and will identify oral Confidential Information as confidential at the time of disclosure to the Contractor.

(b) Confidential Information does not include information that, at the time of Commission's disclosure to the Contractor:

(i) is already in the public domain or becomes publicly known through no act of the Contractor;

(ii) is already known by the Contractor free of any confidentiality obligations;

(iii) is information that the Commission has approved in writing for disclosure; or

(iv) is required to be disclosed by the Contractor pursuant to law or applicable professional standards, so long as the Contractor provides the Commission with notice of such disclosure requirement and an opportunity to defend prior to any such disclosure.

(c) The Contractor may use Confidential Information solely for the purposes of providing services to the Commission pursuant to this Contract. The Contractor shall not make copies of any written Confidential Information, except as necessary to perform the services required by this Contract, without the express written permission of the Commission. The Commission's disclosure of Confidential Information to the Contractor shall not convey to the Contractor any right or interest in such Confidential Information and the Commission shall retain all right and title to such Confidential Information at all times.

(d) The Contractor shall hold Confidential Information confidential to the maximum extent permitted by law. The Contractor shall safeguard Confidential Information with at least the same level of care and security, using all reasonable and necessary security measures, devices and procedures that the Contractor uses to maintain its own confidential information.

(e) Upon written request by the Commission, the Contractor shall return all written Confidential Information to the Commission.

10. Records Retention. Records required by this Contract to be retained by the Contractor shall be retained for the periods specified in Appendix A, Standard Clauses for New York State

Contracts, attached hereto. Such records may be retained in their original form or in any other reliable and readily retrievable format, at the option of the Contractor.

11. Notices. All notices required by this Contract shall be sufficient if in writing and sent by certified mail return receipt requested and all other communications shall be sufficient if communicated in writing to the following addresses or to such other addresses as may be designated from time to time by the parties in writing:

(a) As to the Commission:

Executive Director
New York State Gaming Commission
One Broadway Center
Schenectady NY 12305

(b) As to the Contractor:

Contact:
Company Name:
Address:

12. Liability and Indemnification. The Contractor shall be responsible for all damages to life and property due to the activities of the Contractor, as well as the activities of the subcontractors (if any), agents or employees of the Contractor in connection with the performance of services under this Contract. The Contractor's indemnification obligations are outlined in section 5.26 of the RFP, incorporated herein.

13. Relationship. The relationship of the Contractor to the Commission arising out of this Contract shall be that of an independent contractor. The Contractor, in accordance with its status as an independent contractor, agrees that it will conduct itself consistent with such status, that it will neither hold itself out as, nor claim to be, an officer or employee of the Commission or the State, and that it will not make any claim, demand or application for any right or privilege applicable to an officer or employee of the Commission or the State, including, but not limited to, workers' compensation coverage, unemployment insurance benefits, social security coverage,

or retirement membership or credit. All personnel of the Contractor shall be within the employ of the Contractor only or shall be duly contracted subcontractors of the Contractor, which alone shall be responsible for the work of its personnel and its subcontractors' personnel, the direction thereof, and their compensation. Nothing in this Contract shall impose any liability or duty on the Commission or the State on account of any acts, omissions, liabilities or obligations of the Contractor or any person, firm, company, agency, association, corporation, or organization engaged by the Contractor as expert, consultant, independent contractor, specialist, trainee, employee, servant or agent, for taxes of any nature, including, but not limited to, unemployment insurance and workers' compensation insurance, and the Contractor hereby agrees to indemnify and hold harmless the Commission and the State against any such liabilities, as well as to defend, indemnify, and hold harmless the Commission and the State as required under the RFP.

14. Documents Incorporated. Appendix A, Standard Clauses for New York State Contracts, dated October 2019, the RFP, and the Proposal are hereby incorporated herein and made a part hereof.

15. Order of Precedence. Any conflict between the provisions of this Contract and the documents incorporated herein shall be resolved according to the following order of precedence, from the highest to the lowest:

- (a) Appendix A – Standard Clauses for New York State Contracts;
- (b) Addenda or amendments to the Contract;
- (c) Contract;
- (d) Clarifications and Amendments to the RFP;
- (e) RFP; and
- (f) Contractor's Proposal.

16. Miscellaneous Provisions.

(a) A waiver of enforcement of any provision of this Contract shall not constitute a waiver of any other provision of this Contract nor shall it preclude the affected party from subsequently enforcing such provision.

(b) This instrument and the documents incorporated herein represent the entire Contract between the Commission and the Contractor, and no modification thereof shall be binding unless the same is in writing and signed by the parties.

(c) The headings contained in this Contract are intended for ease of reference only and shall not be interpreted to limit or modify any of the provisions of this Contract.

(d) The Contractor shall at all times during the Contract term remain responsible. The Contractor agrees, if requested by the Executive Director, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.

(e) This Contract may be executed in counterparts, each of which shall be deemed an original. Executed copies of this Contract may be sent by facsimile (fax) or as PDF copies sent by email, and any signatures thereon shall be considered for all purposes to be binding as originals.

(f) If any provision of this Contract is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Contract shall not be affected, but shall remain binding and effective as against all parties hereto.

(g) No delegation of any duties under this Contract shall be binding upon the State until the Commission has given written consent to such delegation; nor shall assignments of rights to monies due or to become due under the Contract be permitted to any individual or business organization other than the Contractor, except by express written consent of the Commission.

IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the day and year first above written.

CONTRACTOR

NEW YORK STATE
GAMING COMMISSION

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

NEW YORK STATE OFFICE OF THE
ATTORNEY GENERAL

OFFICE OF THE NEW YORK STATE
COMPTROLLER

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

Acknowledgement Required of the Contractor is on the following page:

APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

PLEASE RETAIN THIS DOCUMENT
FOR FUTURE REFERENCE.

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STANDARD CLAUSES FOR NYS CONTRACTS

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any party other than the State, whether a contractor, licenser, licensee, lessor, lessee or any other party):

1. EXECUTORY CLAUSE. In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.

2. NON-ASSIGNMENT CLAUSE. In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the State's previous written consent, and attempts to do so are null and void. Notwithstanding the foregoing, such prior written consent of an assignment of a contract let pursuant to Article XI of the State Finance Law may be waived at the discretion of the contracting agency and with the concurrence of the State Comptroller where the original contract was subject to the State Comptroller's approval, where the assignment is due to a reorganization, merger or consolidation of the Contractor's business entity or enterprise. The State retains its right to approve an assignment and to require that any Contractor demonstrate its responsibility to do business with the State. The Contractor may, however, assign its right to receive payments without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

3. COMPTROLLER'S APPROVAL. In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$25,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed \$85,000 (State Finance Law § 163.6-a). However, such pre-approval shall not be required for any contract established as a centralized contract through the Office of General Services or for a purchase order or other transaction issued under such centralized contract.

4. WORKERS' COMPENSATION BENEFITS. In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the

Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

5. NON-DISCRIMINATION REQUIREMENTS. To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment, nor subject any individual to harassment, because of age, race, creed, color, national origin, sexual orientation, gender identity or expression, military status, sex, disability, predisposing genetic characteristics, familial status, marital status, or domestic violence victim status or because the individual has opposed any practices forbidden under the Human Rights Law or has filed a complaint, testified, or assisted in any proceeding under the Human Rights Law. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

6. WAGE AND HOURS PROVISIONS. If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-

a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

7. NON-COLLUSIVE BIDDING CERTIFICATION. In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor affirms, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.

8. INTERNATIONAL BOYCOTT PROHIBITION. In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2 NYCRR § 105.4).

9. SET-OFF RIGHTS. The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Comptroller.

10. RECORDS. The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, the "Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the

agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION. (a) Identification Number(s). Every invoice or New York State Claim for Payment submitted to a New York State agency by a payee, for payment for the sale of goods or services or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. The number is any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Failure to include such number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or Claim for Payment, must give the reason or reasons why the payee does not have such number or numbers.

(b) Privacy Notification. (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN. In accordance with Section 312 of the Executive Law and 5 NYCRR Part 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of

\$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

(b) at the request of the contracting agency, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein; and

(c) the Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

Contractor will include the provisions of "a," "b," and "c" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this clause. The

contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

13. CONFLICTING TERMS. In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix A, the terms of this Appendix A shall control.

14. GOVERNING LAW. This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

15. LATE PAYMENT. Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article 11-A of the State Finance Law to the extent required by law.

16. NO ARBITRATION. Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized), but must, instead, be heard in a court of competent jurisdiction of the State of New York.

17. SERVICE OF PROCESS. In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

18. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS. The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law, (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State.

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by

any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in § 165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

19. MACBRIDE FAIR EMPLOYMENT PRINCIPLES. In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

20. OMNIBUS PROCUREMENT ACT OF 1992. It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority- and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

Information on the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic Development
Division for Small Business
Albany, New York 12245
Telephone: 518-292-5100
Fax: 518-292-5884
email: opa@esd.ny.gov

A directory of certified minority- and women-owned business enterprises is available from:

NYS Department of Economic Development
Division of Minority and Women's Business Development
633 Third Avenue
New York, NY 10017
212-803-2414
email: mwbecertification@esd.ny.gov
<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>

The Omnibus Procurement Act of 1992 (Chapter 844 of the Laws of 1992, codified in State Finance Law § 139-i and Public Authorities Law § 2879(3)(n)-(p)) requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million:

(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority- and

women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;

(b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;

(c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and

(d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

21. RECIPROCITY AND SANCTIONS PROVISIONS. Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively, codified in State Finance Law § 165(6) and Public Authorities Law § 2879(5)) require that they be denied contracts which they would otherwise obtain. NOTE: As of October 2019, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii.

22. COMPLIANCE WITH BREACH NOTIFICATION AND DATA SECURITY LAWS. Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law § 899-aa and State Technology Law § 208) and commencing March 21, 2020 shall also comply with General Business Law § 899-bb.

23. COMPLIANCE WITH CONSULTANT DISCLOSURE LAW. If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal or similar services, then, in accordance with Section 163 (4)(g) of the State Finance Law (as amended by Chapter 10 of the Laws of 2006), the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to the agency that awarded the contract, the Department of Civil Service and the State Comptroller.

24. PROCUREMENT LOBBYING. To the extent this agreement is a "procurement contract" as defined by State Finance Law §§ 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law §§ 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, the State may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

25. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS.

To the extent this agreement is a contract as defined by Tax Law § 5-a, if the contractor fails to make the certification required by Tax Law § 5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law § 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if the covered agency determines that such action is in the best interest of the State.

26. IRAN DIVESTMENT ACT. By entering into this Agreement, Contractor certifies in accordance with State Finance Law § 165-a that it is not on the "Entities Determined to be Non-Responsive Bidders/Offerers pursuant to the New York State Iran Divestment Act of 2012" ("Prohibited Entities List") posted at: <https://ogs.ny.gov/list-entities-determined-be-non-responsive-biddersofferers-pursuant-nys-iran-divestment-act-2012>

Contractor further certifies that it will not utilize on this Contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend this Contract, it must provide the same certification at the time the Contract is renewed or extended. Contractor also agrees that any proposed Assignee of this Contract will be required to certify that it is not on the Prohibited Entities List before the contract assignment will be approved by the State.

During the term of the Contract, should the state agency receive information that a person (as defined in State Finance Law § 165-a) is in violation of the above-referenced certifications, the state agency will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then the state agency shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

The state agency reserves the right to reject any bid, request for assignment, renewal or extension for an entity that appears on the Prohibited Entities List prior to the award, assignment, renewal or extension of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the Prohibited Entities list after contract award.

27. ADMISSIBILITY OF REPRODUCTION OF CONTRACT. Notwithstanding the best evidence rule or any other legal principle or rule of evidence to the contrary, the Contractor acknowledges and agrees that it waives any and all objections to the admissibility into evidence at any court proceeding or to the use at any examination before trial of an electronic reproduction of this contract, in the form approved by the State Comptroller, if such approval was required, regardless of whether the original of said contract is in existence.

BIDDER/OFFERER DISCLOSURE/CERTIFICATION FORM

CONTRACT/PROJECT DESCRIPTION: Lottery Internal Control System Conversion Consulting Services

CONTRACT/PROJECT NUMBER: #C202114

RESTRICTED PERIOD FOR THIS PROCUREMENT: February 15, 2022 through approval of the Office of the State Comptroller.

**PERMISSABLE CONTACTS: Technical or Procurement Inquiries: Stacey Relation and Alysyan M. Bowers
MWBE or SDVOB Inquiries: Christine Carpenter or Robert J. Williams**

1. CONTACTS - Contractor affirms that it understands and agrees to comply with the procedures on procurement lobbying restrictions regarding permissible contacts in the restricted period for a procurement contract in accordance with State Finance Law §§ 139-j and 139-k. I agree

2. BIDDER/OFFERER DISCLOSURE OF PRIOR NON-RESPONSIBILITY DETERMINATIONS Pursuant to Procurement Lobbying Law (SFL §139-j)

(a) Has any Governmental Entity made a finding of non-responsibility regarding the individual or entity seeking to enter into the Procurement Contract in the previous four years?

Yes No

If yes, please answer the following question:

(b) Was the basis for the finding of non-responsibility due to a violation of State Finance Law §139-j?

Yes No

(c) If “Yes” was the basis for the finding of non-responsibility due to the intentional provision of false or incomplete information to a governmental entity?

Yes No

If “Yes”, please provide details regarding the finding of non-responsibility:

Governmental Entity: _____

Date of Finding of Non-Responsibility: _____

Basis of Finding of Non-Responsibility (attach additional sheets if necessary): _____

3. Has any governmental agency terminated or withheld a procurement contract with the above-named individual or entity due to the intentional provision of false or incomplete information?

Yes No

If yes, provide details:

Governmental Entity: _____

Date of Termination or Withholding of Contract: _____

Basis of Termination or Withholding: (add additional pages if necessary) _____

4. TERMINATION CLAUSE:

Contractor certifies that all information provided to the Agency with respect to State Finance Law §§139 (j) and 139 (k) is complete true and accurate. If found to be in violation of State Finance Law §§139 (j) and 139 (k), the contract will result in termination.

I agree

Name of Contractor’s Firm/Company: _____

Contractor Address: _____

Contractor’s signature: _____
I understand that my signature represents that I am signing and responding to both certifications listed above

Print Name: _____

Occupation of Person signing this form: _____

Email Address: _____

**Non-Collusive Bidding Certification
Required By Section 139-D of the State Finance Law**

By submission of this bid, bidder and each person signing on behalf of bidder certifies, under penalty of perjury, that to the best of his/her knowledge and belief:

[1] The prices of this bid have been arrived at independently, without collusion, consultation, communication, or agreement, for the purposes of restricting competition, as to any matter relating to such prices with any other Bidder or with any competitor;

[2] Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the Bidder and will not knowingly be disclosed by the Bidder prior to opening, directly or indirectly, to any other Bidder or to any competitor; and

[3] No attempt has been made or will be made by the Bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

A BID SHALL NOT BE CONSIDERED FOR AWARD NOR SHALL ANY AWARD BE MADE WHERE [1], [2], [3] ABOVE HAVE NOT BEEN COMPLIED WITH; PROVIDED HOWEVER, THAT IF IN ANY CASE THE BIDDER(S) CANNOT MAKE THE FORGOING CERTIFICATION, THE BIDDER SHALL SO STATE AND SHALL FURNISH BELOW A SIGNED STATEMENT WHICH SETS FORTH IN DETAIL THE REASONS THEREFORE:

[AFFIX ADDEDUM TO THIS PAGE IF SPACE IS REQUIRED FOR STATEMENT.]

Subscribed to under penalty of perjury under the laws of the State of New York, this _____ day _____, 20__ as the act and deed of said corporation.

Title

Signature



The submission of the attached Vendor Responsibility Questionnaire, also found online at <https://www.osc.state.ny.us/vendrep/>, is required with your bid.

You must include your ten-digit Vendor ID identifier number issued by New York State. Please insert the Vendor ID number on the top right corner of pages 2-10 of the questionnaire.

If you have previously submitted a New York State Vendor Questionnaire that was signed less than one year ago in connection with another State solicitation or contract, and there are no material changes to that questionnaire, you may submit an Affidavit of No Change along with a copy of the previously completed Vendor Questionnaire.

You are encouraged to complete the questionnaire online. By doing so, you will not be required to complete the questionnaire for future contracts with New York State agencies, so long as you certify the information every six months.

If you are interested in completing the online questionnaire, please visit the following website for additional information:

<https://www.osc.state.ny.us/vendrep/>

If you have filed your questionnaire online, please sign below and return only this page with your bid.

Complete the below only if you have filed your questionnaire online, otherwise, please complete the attached questionnaire.

Contractor Name (print)

Signature

Company Name

Date

**NEW YORK STATE
VENDOR RESPONSIBILITY QUESTIONNAIRE
FOR-PROFIT BUSINESS ENTITY**

You have selected the For-Profit Non-Construction questionnaire which may be printed and completed in this format or, for your convenience, may be completed online using the New York State VendRep System.

COMPLETION & CERTIFICATION

The person(s) completing the questionnaire must be knowledgeable about the vendor's business and operations. An owner or officer must certify the questionnaire and the signature must be notarized.

NEW YORK STATE VENDOR IDENTIFICATION NUMBER (VENDOR ID)

The Vendor ID is a ten-digit identifier issued by New York State when the vendor is registered on the Statewide Vendor File. This number must now be included on the questionnaire. If the business entity has not obtained a Vendor ID, contact the OSC Help Desk at ciohelpdesk@osc.state.ny.us or call 866-370-4672.

DEFINITIONS

All underlined terms are defined in the "New York State Vendor Responsibility Definitions List," found at www.osc.state.ny.us/vendrep/documents/definitions.pdf. These terms may not have their ordinary, common or traditional meanings. Each vendor is strongly encouraged to read the respective definitions for any and all underlined terms. By submitting this questionnaire, the vendor agrees to be bound by the terms as defined in the "New York State Vendor Responsibility Definitions List" existing at the time of certification.

RESPONSES

Every question must be answered. Each response must provide all relevant information which can be obtained within the limits of the law. However, information regarding a determination or finding made in error which was subsequently corrected is not required. Individuals and Sole Proprietors may use a Social Security Number but are encouraged to obtain and use a federal Employer Identification Number (EIN).

REPORTING ENTITY

Each vendor must indicate if the questionnaire is filed on behalf of the entire Legal Business Entity or an Organizational Unit within or operating under the authority of the Legal Business Entity and having the same EIN. Generally, the Organizational Unit option may be appropriate for a vendor that meets the definition of "Reporting Entity" but due to the size and complexity of the Legal Business Entity, is best able to provide the required information for the Organizational Unit, while providing more limited information for other parts of the Legal Business Entity and Associated Entities.

ASSOCIATED ENTITY

An Associated Entity is one that owns or controls the Reporting Entity or any entity owned or controlled by the Reporting Entity. However, the term Associated Entity does **not** include "sibling organizations" (i.e., entities owned or controlled by a parent company that owns or controls the Reporting Entity), unless such sibling entity has a direct relationship with or impact on the Reporting Entity.

STRUCTURE OF THE QUESTIONNAIRE

The questionnaire is organized into eleven sections. Section I is to be completed for the Legal Business Entity. Section II requires the vendor to specify the Reporting Entity for the questionnaire. Section III refers to the individuals of the Reporting Entity, while Sections IV-VIII require information about the Reporting Entity. Section IX pertains to any Associated Entities, with one question about their Officials/Owners. Section X relates to disclosure under the Freedom of Information Law (FOIL). Section XI requires an authorized contact for the questionnaire information.

**NEW YORK STATE
VENDOR RESPONSIBILITY QUESTIONNAIRE
FOR-PROFIT BUSINESS ENTITY**

I. LEGAL BUSINESS ENTITY INFORMATION			
<u>Legal Business Entity Name</u> *		<u>EIN</u> (Enter 9 digits, without hyphen)	
Address of the <u>Principal Place of Business</u> (street, city, state, zip code)		<u>New York State Vendor Identification Number</u>	
		Telephone ext.	Fax
Email		Website	
Additional <u>Legal Business Entity</u> Identities: If applicable, list any other <u>DBA</u> , <u>Trade Name</u> , <u>Former Name</u> , Other Identity, or <u>EIN</u> used in the last five (5) years and the status (active or inactive).			
Type	Name	EIN	Status
1.0 <u>Legal Business Entity</u> Type – Check appropriate box and provide additional information:			
<input type="checkbox"/> <u>Corporation</u> (including <u>PC</u>)		Date of Incorporation	
<input type="checkbox"/> <u>Limited Liability Company (LLC or PLLC)</u>		Date of Organization	
<input type="checkbox"/> <u>Partnership</u> (including <u>LLP</u> , <u>LP</u> or <u>General</u>)		Date of Registration or Establishment	
<input type="checkbox"/> <u>Sole Proprietor</u>		How many years in business?	
<input type="checkbox"/> Other		Date Established	
If Other, explain:			
1.1 Was the <u>Legal Business Entity</u> formed or incorporated in New York State?			<input type="checkbox"/> Yes <input type="checkbox"/> No
If ‘No,’ indicate jurisdiction where <u>Legal Business Entity</u> was formed or incorporated and attach a <u>Certificate of Good Standing</u> from the applicable jurisdiction or provide an explanation if a <u>Certificate of Good Standing</u> is not available.			
<input type="checkbox"/> United States State _____			
<input type="checkbox"/> Other Country _____			
Explain, if not available:			
1.2 Is the <u>Legal Business Entity</u> publicly traded?			<input type="checkbox"/> Yes <input type="checkbox"/> No
If “Yes,” provide <u>CIK Code</u> or Ticker Symbol			
1.3 Does the <u>Legal Business Entity</u> have a <u>DUNS</u> Number?			<input type="checkbox"/> Yes <input type="checkbox"/> No
If “Yes,” Enter <u>DUNS</u> Number			

*All underlined terms are defined in the “New York State Vendor Responsibility Definitions List,” which can be found at www.osc.state.ny.us/vendrep/documents/definitions.pdf.

**NEW YORK STATE
VENDOR RESPONSIBILITY QUESTIONNAIRE
FOR-PROFIT BUSINESS ENTITY**

I. LEGAL BUSINESS ENTITY INFORMATION

1.4 If the <u>Legal Business Entity's Principal Place of Business</u> is not in New York State, does the <u>Legal Business Entity</u> maintain an office in New York State? (Select "N/A," if <u>Principal Place of Business</u> is in New York State.)	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
--	--

If "Yes," provide the address and telephone number for one office located in New York State.

1.5 Is the <u>Legal Business Entity</u> a New York State certified <u>Minority-Owned Business Enterprise (MBE)</u> , <u>Women-Owned Business Enterprise (WBE)</u> , <u>New York State Small Business (SB)</u> or a federally certified <u>Disadvantaged Business Enterprise (DBE)</u> ? If "Yes," check all that apply: <input type="checkbox"/> New York State certified <u>Minority-Owned Business Enterprise (MBE)</u> <input type="checkbox"/> New York State certified <u>Women-Owned Business Enterprise (WBE)</u> <input type="checkbox"/> <u>New York State Small Business (SB)</u> <input type="checkbox"/> Federally certified <u>Disadvantaged Business Enterprise (DBE)</u>	<input type="checkbox"/> Yes <input type="checkbox"/> No
--	--

1.6 Identify Officials and Principal Owners, if applicable. For each person, include name, title and percentage of ownership. Attach additional pages if necessary. If applicable, reference to relevant SEC filing(s) containing the required information is optional.

Name	Title	Percentage Ownership <i>(Enter 0% if not applicable)</i>

**NEW YORK STATE
VENDOR RESPONSIBILITY QUESTIONNAIRE
FOR-PROFIT BUSINESS ENTITY**

II. REPORTING ENTITY INFORMATION

2.0 The Reporting Entity for this questionnaire is:

Note: Select only one.

Legal Business Entity

Note: If selecting this option, “Reporting Entity” refers to the entire Legal Business Entity for the remainder of the questionnaire. (SKIP THE REMAINDER OF SECTION II AND PROCEED WITH SECTION III.)

Organizational Unit within and operating under the authority of the Legal Business Entity

SEE DEFINITIONS OF “REPORTING ENTITY” AND “ORGANIZATIONAL UNIT” FOR ADDITIONAL INFORMATION ON CRITERIA TO QUALIFY FOR THIS SELECTION.

Note: If selecting this option, “Reporting Entity” refers to the Organizational Unit within the Legal Business Entity for the remainder of the questionnaire. (COMPLETE THE REMAINDER OF SECTION II AND ALL REMAINING SECTIONS OF THIS QUESTIONNAIRE.)

IDENTIFYING INFORMATION

a) Reporting Entity Name

Address of the Primary Place of Business (street, city, state, zip code)

Telephone

ext.

b) Describe the relationship of the Reporting Entity to the Legal Business Entity

c) Attach an organizational chart

d) Does the Reporting Entity have a DUNS Number?

Yes No

If “Yes,” enter DUNS Number

e) Identify the designated manager(s) responsible for the business of the Reporting Entity.

For each person, include name and title. Attach additional pages if necessary.

Name

Title

**NEW YORK STATE
VENDOR RESPONSIBILITY QUESTIONNAIRE
FOR-PROFIT BUSINESS ENTITY**

INSTRUCTIONS FOR SECTIONS III THROUGH VII

For each “Yes,” provide an explanation of the issue(s), relevant dates, the government entity involved, any remedial or corrective action(s) taken and the current status of the issue(s). For each “Other,” provide an explanation which provides the basis for not definitively responding “Yes” or “No.” Provide the explanation at the end of the section or attach additional sheets with numbered responses, including the Reporting Entity name at the top of any attached pages.

III. LEADERSHIP INTEGRITY

Within the past five (5) years, has any current or former reporting entity official or any individual currently or formerly having the authority to sign, execute or approve bids, proposals, contracts or supporting documentation on behalf of the reporting entity with any government entity been:

3.0 <u>Sanctioned</u> relative to any business or professional permit and/or license?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Other
3.1 <u>Suspended, debarred, or disqualified</u> from any <u>government contracting process</u> ?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Other
3.2 The subject of an <u>investigation</u> , whether open or closed, by any <u>government entity</u> for a civil or criminal violation for any business-related conduct?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Other
3.3 Charged with a misdemeanor or felony, indicted, granted immunity, convicted of a crime or subject to a <u>judgment</u> for: a) Any business-related activity; or b) Any crime, whether or not business-related, the underlying conduct of which was related to truthfulness?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Other

For each “Yes” or “Other” explain:

IV. INTEGRITY – CONTRACT BIDDING

Within the past five (5) years, has the reporting entity:

4.0 Been <u>suspended or debarred</u> from any <u>government contracting process</u> or been <u>disqualified</u> on any government procurement, permit, license, concession, franchise or lease, including, but not limited to, <u>debarment</u> for a violation of New York State Workers’ Compensation or Prevailing Wage laws or New York State Procurement Lobbying Law?	<input type="checkbox"/> Yes <input type="checkbox"/> No
4.1 Been subject to a denial or revocation of a government prequalification?	<input type="checkbox"/> Yes <input type="checkbox"/> No
4.2 Been denied a contract award or had a bid rejected based upon a <u>non-responsibility finding</u> by a <u>government entity</u> ?	<input type="checkbox"/> Yes <input type="checkbox"/> No
4.3 Had a low bid rejected on a <u>government contract</u> for failure to <u>make good faith efforts</u> on any <u>Minority-Owned Business Enterprise, Women-Owned Business Enterprise or Disadvantaged Business Enterprise</u> goal or <u>statutory affirmative action requirements</u> on a previously held contract?	<input type="checkbox"/> Yes <input type="checkbox"/> No
4.4 Agreed to a voluntary exclusion from bidding/contracting with a <u>government entity</u> ?	<input type="checkbox"/> Yes <input type="checkbox"/> No
4.5 Initiated a request to withdraw a bid submitted to a <u>government entity</u> in lieu of responding to an information request or subsequent to a formal request to appear before the <u>government entity</u> ?	<input type="checkbox"/> Yes <input type="checkbox"/> No

For each “Yes,” explain:

**NEW YORK STATE
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V. INTEGRITY – CONTRACT AWARD

Within the past five (5) years, has the reporting entity:

- | | |
|---|--|
| 5.0 Been <u>suspended</u> , cancelled or <u>terminated for cause</u> on any <u>government contract</u> including, but not limited to, a <u>non-responsibility finding</u> ? | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 5.1 Been subject to an <u>administrative proceeding</u> or civil action seeking specific performance or restitution in connection with any <u>government contract</u> ? | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 5.2 Entered into a formal monitoring agreement as a condition of a contract award from a <u>government entity</u> ? | <input type="checkbox"/> Yes <input type="checkbox"/> No |

For each “Yes,” explain:

VI. CERTIFICATIONS/LICENSES

Within the past five (5) years, has the reporting entity:

- | | |
|---|--|
| 6.0 Had a revocation, <u>suspension</u> or <u>disbarment</u> of any business or professional permit and/or license? | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 6.1 Had a denial, decertification, revocation or forfeiture of New York State certification of <u>Minority-Owned Business Enterprise</u> , <u>Women-Owned Business Enterprise</u> or federal certification of <u>Disadvantaged Business Enterprise</u> status for other than a change of ownership? | <input type="checkbox"/> Yes <input type="checkbox"/> No |

For each “Yes,” explain:

VII. LEGAL PROCEEDINGS

Within the past five (5) years, has the reporting entity:

- | | |
|--|--|
| 7.0 Been the subject of an <u>investigation</u> , whether open or closed, by any <u>government entity</u> for a civil or criminal violation? | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 7.1 Been the subject of an indictment, grant of immunity, <u>judgment</u> or conviction (including entering into a plea bargain) for conduct constituting a crime? | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 7.2 Received any OSHA citation and Notification of Penalty containing a violation classified as <u>serious or willful</u> ? | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 7.3 Had a <u>government entity</u> find a willful prevailing wage or supplemental payment violation or any other willful violation of New York State Labor Law? | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 7.4 Entered into a consent order with the New York State Department of Environmental Conservation, or received an enforcement determination by any <u>government entity</u> involving a violation of federal, state or local environmental laws? | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 7.5 Other than previously disclosed:
a) Been subject to fines or penalties imposed by <u>government entities</u> which in the aggregate total \$25,000 or more; or
b) Been convicted of a criminal offense pursuant to any administrative and/or regulatory action taken by any <u>government entity</u> ? | <input type="checkbox"/> Yes <input type="checkbox"/> No |

For each “Yes,” explain:

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VIII. FINANCIAL AND ORGANIZATIONAL CAPACITY	
8.0 Within the past five (5) years, has the <u>Reporting Entity</u> received any <u>formal unsatisfactory performance assessment(s)</u> from any <u>government entity</u> on any contract?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If “Yes,” provide an explanation of the issue(s), relevant dates, the <u>government entity</u> involved, any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.	
8.1 Within the past five (5) years, has the <u>Reporting Entity</u> had any <u>liquidated damages</u> assessed over \$25,000?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If “Yes,” provide an explanation of the issue(s), relevant dates, contracting party involved, the amount assessed and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.	
8.2 Within the past five (5) years, have any <u>liens</u> or <u>judgments</u> (not including UCC filings) over \$25,000 been filed against the <u>Reporting Entity</u> which remain undischarged?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If “Yes,” provide an explanation of the issue(s), relevant dates, the Lien holder or Claimant’s name(s), the amount of the <u>lien(s)</u> and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.	
8.3 In the last seven (7) years, has the <u>Reporting Entity</u> initiated or been the subject of any bankruptcy proceedings, whether or not closed, or is any bankruptcy proceeding pending?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If “Yes,” provide the bankruptcy chapter number, the court name and the docket number. Indicate the current status of the proceedings as “Initiated,” “Pending” or “Closed.” Provide answer below or attach additional sheets with numbered responses.	
8.4 During the past three (3) years, has the <u>Reporting Entity</u> failed to file or pay any tax returns required by <u>federal, state or local tax laws</u> ?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If “Yes,” provide the taxing jurisdiction, the type of tax, the liability year(s), the tax liability amount the <u>Reporting Entity</u> failed to file/pay and the current status of the tax liability. Provide answer below or attach additional sheets with numbered responses.	
8.5 During the past three (3) years, has the <u>Reporting Entity</u> failed to file or pay any New York State unemployment insurance returns?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If “Yes,” provide the years the <u>Reporting Entity</u> failed to file/pay the insurance, explain the situation and any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.	
8.6 During the past three (3) years, has the <u>Reporting Entity</u> had any <u>government audit(s)</u> completed?	<input type="checkbox"/> Yes <input type="checkbox"/> No
a) If “Yes,” did any audit of the <u>Reporting Entity</u> identify any reported significant deficiencies in internal control, fraud, illegal acts, significant violations of provisions of contract or grant agreements, significant abuse or any <u>material disallowance</u> ?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If “Yes” to 8.6 a), provide an explanation of the issue(s), relevant dates, the <u>government entity</u> involved, any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.	

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IX. ASSOCIATED ENTITIES

This section pertains to any entity(ies) that either controls or is controlled by the reporting entity. (See definition of “associated entity” for additional information to complete this section.)

<p>9.0 Does the <u>Reporting Entity</u> have any <u>Associated Entities</u>?</p> <p>Note: All questions in this section must be answered if the <u>Reporting Entity</u> is either:</p> <ul style="list-style-type: none"> - An <u>Organizational Unit</u>; or - The entire <u>Legal Business Entity</u> which controls, or is controlled by, any other entity(ies). <p>If “No,” SKIP THE REMAINDER OF SECTION IX AND PROCEED WITH SECTION X.</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
--	--

<p>9.1 Within the past five (5) years, has any <u>Associated Entity Official</u> or <u>Principal Owner</u> been charged with a misdemeanor or felony, indicted, granted immunity, convicted of a crime or subject to a <u>judgment</u> for:</p> <ul style="list-style-type: none"> a) Any business-related activity; or b) Any crime, whether or not business-related, the underlying conduct of which was related to truthfulness? 	<input type="checkbox"/> Yes <input type="checkbox"/> No
---	--

If “Yes,” provide an explanation of the issue(s), the individual involved, his/her title and role in the Associated Entity, his/her relationship to the Reporting Entity, relevant dates, the government entity involved, any remedial or corrective action(s) taken and the current status of the issue(s).

<p>9.2 Does any <u>Associated Entity</u> have any currently undischarged federal, New York State, New York City or New York local government <u>liens</u> or <u>judgments</u> (not including UCC filings) over \$50,000?</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
--	--

If “Yes,” provide an explanation of the issue(s), identify the Associated Entity’s name(s), EIN(s), primary business activity, relationship to the Reporting Entity, relevant dates, the Lien holder or Claimant’s name(s), the amount of the lien(s) and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.

<p>9.3 Within the past five (5) years, has any <u>Associated Entity</u>:</p>	
<p>a) Been <u>disqualified</u>, <u>suspended</u> or <u>debarred</u> from any federal, New York State, New York City or other New York local <u>government contracting process</u>?</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p>b) Been denied a contract award or had a bid rejected based upon a <u>non-responsibility finding</u> by any federal, New York State, New York City, or New York local <u>government entity</u>?</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p>c) Been <u>suspended</u>, <u>cancelled</u> or <u>terminated for cause</u> (including for <u>non-responsibility</u>) on any federal, New York State, New York City or New York local <u>government contract</u>?</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p>d) Been the subject of an <u>investigation</u>, whether open or closed, by any federal, New York State, New York City, or New York local <u>government entity</u> for a civil or criminal violation with a penalty in excess of \$500,000?</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p>e) Been the subject of an indictment, grant of immunity, <u>judgment</u>, or conviction (including entering into a plea bargain) for conduct constituting a crime?</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p>f) Been convicted of a criminal offense pursuant to any administrative and/or regulatory action taken by any federal, New York State, New York City, or New York local <u>government entity</u>?</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p>g) Initiated or been the subject of any bankruptcy proceedings, whether or not closed, or is any bankruptcy proceeding pending?</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No

For each “Yes,” provide an explanation of the issue(s), identify the Associated Entity’s name(s), EIN(s), primary business activity, relationship to the Reporting Entity, relevant dates, the government entity involved, any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.

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X. FREEDOM OF INFORMATION LAW (FOIL)

10. Indicate whether any information supplied herein is believed to be exempt from disclosure under the Freedom of Information Law (FOIL). Note: A determination of whether such information is exempt from FOIL will be made at the time of any request for disclosure under FOIL.	<input type="checkbox"/> Yes <input type="checkbox"/> No
--	--

If "Yes," indicate the question number(s) and explain the basis for the claim.

XI. AUTHORIZED CONTACT FOR THIS QUESTIONNAIRE

Name	Telephone	Fax
	ext.	
Title	Email	

**NEW YORK STATE
VENDOR RESPONSIBILITY QUESTIONNAIRE
FOR-PROFIT BUSINESS ENTITY**

Certification

The undersigned: (1) recognizes that this questionnaire is submitted for the express purpose of assisting New York State contracting entities in making responsibility determinations regarding an award of a contract or approval of a subcontract; (2) recognizes that the Office of the State Comptroller (OSC) will rely on information disclosed in the questionnaire in making responsibility determinations and in approving a contract or subcontract; (3) acknowledges that the New York State contracting entities and OSC may, in their discretion, by means which they may choose, verify the truth and accuracy of all statements made herein; and (4) acknowledges that intentional submission of false or misleading information may constitute a misdemeanor or felony under New York State Penal Law, may be punishable by a fine and/or imprisonment under Federal Law, and may result in a finding of non-responsibility, contract suspension or contract termination.

The undersigned certifies that he/she:

- is knowledgeable about the Reporting Entity's business and operations;
- has read and understands all of the questions contained in the questionnaire;
- has not altered the content of the questionnaire in any manner;
- has reviewed and/or supplied full and complete responses to each question;
- to the best of his/her knowledge, information and belief, confirms that the Reporting Entity's responses are true, accurate and complete, including all attachments, if applicable;
- understands that New York State will rely on the information disclosed in the questionnaire when entering into a contract with the Reporting Entity; and
- is under obligation to update the information provided herein to include any material changes to the Reporting Entity's responses at the time of bid/proposal submission through the contract award notification, and may be required to update the information at the request of the New York State contracting entities or OSC prior to the award and/or approval of a contract, or during the term of the contract.

Signature of Owner/Officer _____

Printed Name of Signatory _____

Title _____

Reporting Entity Name _____

Address _____

City, State, Zip _____

Sworn to before me this _____ day of _____ 20 _____ ;

_____ Notary Public



**NEW YORK STATE OFFICE OF THE STATE COMPTROLLER
SUBSTITUTE FORM W-9:
REQUEST FOR TAXPAYER IDENTIFICATION NUMBER & CERTIFICATION**

TYPE OR PRINT INFORMATION NEATLY. PLEASE REFER TO INSTRUCTIONS FOR MORE INFORMATION.

Part I: Vendor Information

1. Legal Business Name:	2. Business name/disregarded entity name, if different from Legal Business Name:
-------------------------	--

3. Entity Type (Check one only): <input type="checkbox"/> Individual Sole Proprietor <input type="checkbox"/> Partnership <input type="checkbox"/> Limited Liability Co. <input type="checkbox"/> Corporation <input type="checkbox"/> Not For Profit <input type="checkbox"/> Trusts/Estates <input type="checkbox"/> Federal, State or Local Government <input type="checkbox"/> Public Authority <input type="checkbox"/> Disregarded Entity <input type="checkbox"/> Other _____	<input type="checkbox"/> Exempt Payee
---	--

Part II: Taxpayer Identification Number (TIN) & Taxpayer Identification Type

1. Enter your TIN here: (<i>DO NOT USE DASHES</i>) See instructions.	<table border="1" style="width:100%; height: 20px;"> <tr> <td style="width:12.5%;"></td><td style="width:12.5%;"></td><td style="width:12.5%;"></td><td style="width:12.5%;"></td><td style="width:12.5%;"></td><td style="width:12.5%;"></td><td style="width:12.5%;"></td><td style="width:12.5%;"></td><td style="width:12.5%;"></td><td style="width:12.5%;"></td> </tr> </table>										
2. Taxpayer Identification Type (check appropriate box):											
<input type="checkbox"/> Employer ID No. (EIN) <input type="checkbox"/> Social Security No. (SSN) <input type="checkbox"/> Individual Taxpayer ID No. (ITIN) <input type="checkbox"/> N/A (Non-United States Business Entity)											

Part III: Address

1. Physical Address:	2. Remittance Address:
Number, Street, and Apartment or Suite Number	Number, Street, and Apartment or Suite Number
City, State, and Nine Digit Zip Code or Country	City, State, and Nine Digit Zip Code or Country

Part IV: Certification and Exemption from Backup Withholding

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (TIN), and
- I am a U.S. citizen or other U.S. person, and
- (Check one only):
 - I am not subject to backup withholding.** I am (a) exempt from back up withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding), or
 - I am subject to backup withholding.** I have been notified by the IRS that I am subject to backup withholding as a result of a failure to report all interest or dividends, and I have not been notified by the IRS that I am no longer subject to back withholding.

Sign Here:

_____	_____	_____
Signature	Title	Date
_____	_____	_____
Print Preparer's Name	Phone Number	Email Address

Part V: Vendor Primary Contact Information – Executive Authorized to Represent the Vendor

Primary Contact Name: _____	Title: _____
Email Address: _____	Phone Number: _____

DO NOT SUBMIT FORM TO IRS — SUBMIT FORM TO NYS ONLY AS DIRECTED

NYS Office of the State Comptroller Instructions for Completing Substitute Form W-9

New York State (NYS) must obtain your correct Taxpayer Identification Number (TIN) to report income paid to you or your organization. NYS Office of the State Comptroller uses the Substitute Form W-9 to obtain certification of your TIN in order to ensure accuracy of information contained in its payee/vendor database and to avoid backup withholding.¹ We ask for the information on the Substitute Form W-9 to carry out the Internal Revenue laws of the United States. You are required to give us the information.

Any payee/vendor who wishes to do business with New York State must complete the Substitute Form W-9. Substitute Form W-9 is the only acceptable documentation. We will not accept IRS Form W-9.

Part I: Vendor Information

1. **Legal Business Name:** For individuals, enter the name of the person who will do business with NYS as it appears on the Social Security card or other required Federal tax documents. An organization should enter the name shown on its charter or other legal documents that created the organization. Do not abbreviate names.
2. **Business name/disregarded entity name, if different from Legal Business Name:** Enter your DBA name or another name your entity is known by.
3. **Entity Type:** Check the Entity Type doing business with New York State.

Part II: Taxpayer Identification Number (TIN) and Taxpayer Identification Type

The TIN provided must match the name in the "Legal Business Name" box to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, refers to IRS W-9 instructions for additional information. For other entities, it is your employer identification number (EIN). If you do not have a number or if the account is in more than one name, refer to IRS W-9 instructions for additional information.

1. **Taxpayer Identification Number:** Enter your nine-digit Social Security Number, Individual Taxpayer Identification Number (ITIN) or Employer Identification Number (EIN).
2. **Taxpayer Identification Type:** Check the type of identification number provided.

Part III: Address

1. **Physical Address:** Enter the location of where your business is physically located.
2. **Remittance Address:** Enter the address where payments should be mailed.

Part IV: Certification and Exemption from Backup Withholding

Check the appropriate box indicating your exemption status from backup withholding. Individuals and sole proprietors are not exempt from backup withholding. Corporations are exempt from backup withholding for certain types of payments. Refer to IRS Form W-9 instructions for additional information. The signature should be provided by the individual, owner, officer, legal representative, or other authorized person of the entity listed on the form. Certain exceptions to the signature requirement are listed in the IRS instructions for form W-9.

Part V: Vendor Primary Contact Information

Please provide the contact information for an executive at your organization. This individual should be the person who makes legal and financial decisions for your organization.

¹ According to IRS Regulations, OSC must withhold 28% of all payments if a payee/vendor fails to provide OSC its certified TIN. The Substitute Form W-9 certifies a payee/vendor's TIN.



Department of Taxation and Finance

Contractor Certification

(Pursuant to Tax Law Section 5-a, as amended,
effective April 26, 2006)

ST-220-TD

(4/15)

For information, consult Publication 223, *Questions and Answers Concerning Tax Law Section 5-a* (see *Need help?* below).

Contractor name			
Contractor's principal place of business		City	State ZIP code
Contractor's mailing address (if different than above)		City	State ZIP code
Contractor's federal employer identification number (EIN)	Contractor's sales tax ID number (if different from contractor's EIN)	Contractor's telephone number ()	
Covered agency or state agency	Contract number or description	Covered agency telephone number ()	
Covered agency address	City	State	ZIP code
Is the estimated contract value over the full term of the contract (but not including renewals) more than \$100,000?			
Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown at this time <input type="checkbox"/>			

General information

Tax Law section 5-a, as amended, effective April 26, 2006, requires certain contractors awarded certain state contracts valued at more than \$100,000 to certify to the Tax Department that they are registered to collect New York State and local sales and compensating use taxes, if they made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000, measured over a specified period. In addition, contractors must certify to the Tax Department that each affiliate and subcontractor exceeding such sales threshold during a specified period is registered to collect New York State and local sales and compensating use taxes. Contractors must also file Form ST-220-CA, *Contractor Certification to Covered Agency*, certifying to the procuring state entity that they filed Form ST-220-TD with the Tax Department and that the information contained on Form ST-220-TD is correct and complete as of the date they file Form ST-220-CA.

All sections must be completed including all fields on the top of this page, all sections on page 2, Schedule A on page 3, if applicable, and *Individual, Corporation, Partnership, or LLC Acknowledgement* on page 4. If you do not complete these areas, the form will be returned to you for completion.

For more detailed information regarding this form and Tax Law section 5-a, see Publication 223, *Questions and Answers Concerning Tax Law Section 5-a, (as amended, effective April 26, 2006)*. See *Need help?* for more information on how to obtain this publication.

Note: Form ST-220-TD must be signed by a person authorized to make the certification on behalf of the contractor, and the acknowledgement on page 4 of this form must be completed before a notary public.

Mail completed form to:

**NYS TAX DEPARTMENT
DATA ENTRY SECTION
W A HARRIMAN CAMPUS
ALBANY NY 12227-0826**

Privacy notification

New York State Law requires all government agencies that maintain a system of records to provide notification of the legal authority for any request, the principal purpose(s) for which the information is to be collected, and where it will be maintained. To view this information, visit our Web site, or, if you do not have Internet access, call and request Publication 54, *Privacy Notification*. See *Need help?* for the Web address and telephone number.

Need help?



Visit our Web site at www.tax.ny.gov

- get information and manage your taxes online
- check for new online services and features



Telephone assistance

Sales Tax Information Center: (518) 485-2889

To order forms and publications: (518) 457-5431

Text Telephone (TTY) Hotline (for persons with hearing and speech disabilities using a TTY): (518) 485-5082



Persons with disabilities: In compliance with the Americans with Disabilities Act, we will ensure that our lobbies, offices, meeting rooms, and other facilities are accessible to persons with disabilities. If you have questions about special accommodations for persons with disabilities, call the information center.

I, _____, hereby affirm, under penalty of perjury, that I am _____
(name) (title)
of the above-named contractor, and that I am authorized to make this certification on behalf of such contractor.

Complete Sections 1, 2, and 3 below. Make only one entry in each section.

Section 1 – Contractor registration status

- The contractor has made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made. The contractor is registered to collect New York State and local sales and compensating use taxes with the Commissioner of Taxation and Finance pursuant to Tax Law sections 1134 and 1253, and is listed on Schedule A of this certification.
- The contractor has not made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made.

Section 2 – Affiliate registration status

- The contractor does not have any affiliates.
- To the best of the contractor's knowledge, the contractor has one or more affiliates having made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made, and each affiliate exceeding the \$300,000 cumulative sales threshold during such quarters is registered to collect New York State and local sales and compensating use taxes with the Commissioner of Taxation and Finance pursuant to Tax Law sections 1134 and 1253. The contractor has listed each affiliate exceeding the \$300,000 cumulative sales threshold during such quarters on Schedule A of this certification.
- To the best of the contractor's knowledge, the contractor has one or more affiliates, and each affiliate has not made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made.

Section 3 – Subcontractor registration status

- The contractor does not have any subcontractors.
- To the best of the contractor's knowledge, the contractor has one or more subcontractors having made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made, and each subcontractor exceeding the \$300,000 cumulative sales threshold during such quarters is registered to collect New York State and local sales and compensating use taxes with the Commissioner of Taxation and Finance pursuant to Tax Law sections 1134 and 1253. The contractor has listed each subcontractor exceeding the \$300,000 cumulative sales threshold during such quarters on Schedule A of this certification.
- To the best of the contractor's knowledge, the contractor has one or more subcontractors, and each subcontractor has not made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made.

Sworn to this ____ day of _____, 20 ____

(sign before a notary public)

(title)

Individual, Corporation, Partnership, or LLC Acknowledgment

STATE OF }
: SS.:
COUNTY OF }

On the ___ day of _____ in the year 20___, before me personally appeared _____,
known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that
_he resides at _____,
Town of _____,
County of _____,
State of _____; and further that:

(Mark an X in the appropriate box and complete the accompanying statement.)

- (If an individual): _he executed the foregoing instrument in his/her name and on his/her own behalf.
(If a corporation): _he is the _____ of _____, the corporation described in said instrument; that, by authority of the Board of Directors of said corporation, _he is authorized to execute the foregoing instrument on behalf of the corporation for purposes set forth therein; and that, pursuant to that authority, _he executed the foregoing instrument in the name of and on behalf of said corporation as the act and deed of said corporation.
(If a partnership): _he is a _____ of _____, the partnership described in said instrument; that, by the terms of said partnership, _he is authorized to execute the foregoing instrument on behalf of the partnership for purposes set forth therein; and that, pursuant to that authority, _he executed the foregoing instrument in the name of and on behalf of said partnership as the act and deed of said partnership.
(If a limited liability company): _he is a duly authorized member of _____ LLC, the limited liability company described in said instrument; that _he is authorized to execute the foregoing instrument on behalf of the limited liability company for purposes set forth therein; and that, pursuant to that authority, _he executed the foregoing instrument in the name of and on behalf of said limited liability company as the act and deed of said limited liability company.

Notary Public
Registration No. _____



Contractor Certification to Covered Agency

(Pursuant to Section 5-a of the Tax Law, as amended, effective April 26, 2006)

For information, consult Publication 223, *Questions and Answers Concerning Tax Law Section 5-a* (see *Need Help?* on back).

Contractor name		For covered agency use only Contract number or description	
Contractor's principal place of business	City	State	ZIP code
Contractor's mailing address (if different than above)		Estimated contract value over the full term of contract (but not including renewals)	
Contractor's federal employer identification number (EIN)	Contractor's sales tax ID number (if different from contractor's EIN)		\$
Contractor's telephone number	Covered agency name		
Covered agency address		Covered agency telephone number	

I, _____, hereby affirm, under penalty of perjury, that I am _____

(name)

(title)

of the above-named contractor, that I am authorized to make this certification on behalf of such contractor, and I further certify that:

(Mark an X in only one box)

The contractor has filed Form ST-220-TD with the Department of Taxation and Finance in connection with this contract and, to the best of contractor's knowledge, the information provided on the Form ST-220-TD, is correct and complete.

The contractor has previously filed Form ST-220-TD with the Tax Department in connection with _____
(insert contract number or description)

and, to the best of the contractor's knowledge, the information provided on that previously filed Form ST-220-TD, is correct and complete as of the current date, and thus the contractor is not required to file a new Form ST-220-TD at this time.

Sworn to this ____ day of _____, 20 ____

(sign before a notary public)

(title)

Instructions

General information

Tax Law section 5-a was amended, effective April 26, 2006. On or after that date, in all cases where a contract is subject to Tax Law section 5-a, a contractor must file (1) Form ST-220-CA, *Contractor Certification to Covered Agency*, with a covered agency, and (2) Form ST-220-TD with the Tax Department before a contract may take effect. The circumstances when a contract is subject to section 5-a are listed in Publication 223, Q&A 3. See *Need help?* for more information on how to obtain this publication. In addition, a contractor must file a new Form ST-220-CA with a covered agency before an existing contract with such agency may be renewed.

Note: Form ST-220-CA must be signed by a person authorized to make the certification on behalf of the contractor, and the acknowledgement on page 2 of this form must be completed before a notary public.

When to complete this form

As set forth in Publication 223, a contract is subject to section 5-a, and you must make the required certification(s), if:

- i. The procuring entity is a *covered agency* within the meaning of the statute (see Publication 223, Q&A 5);
- ii. The contractor is a *contractor* within the meaning of the statute (see Publication 223, Q&A 6); and
- iii. The contract is a *contract* within the meaning of the statute. This is the case when it (a) has a value in excess of \$100,000 and (b) is a contract for *commodities* or *services*, as such terms are defined for purposes of the statute (see Publication 223, Q&A 8 and 9).

Furthermore, the procuring entity must have begun the solicitation to purchase on or after January 1, 2005, and the resulting contract must have been awarded, amended, extended, renewed, or assigned *on or after April 26, 2006* (the effective date of the section 5-a amendments).

Individual, Corporation, Partnership, or LLC Acknowledgment

STATE OF }
: SS.:
COUNTY OF }

On the ___ day of _____ in the year 20___, before me personally appeared _____,
known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that
_he resides at _____,
Town of _____,
County of _____,
State of _____; and further that:

[Mark an X in the appropriate box and complete the accompanying statement.]

- (If an individual): _he executed the foregoing instrument in his/her name and on his/her own behalf.
(If a corporation): _he is the _____ of _____, the corporation described in said instrument; that, by authority of the Board of Directors of said corporation, _he is authorized to execute the foregoing instrument on behalf of the corporation for purposes set forth therein; and that, pursuant to that authority, _he executed the foregoing instrument in the name of and on behalf of said corporation as the act and deed of said corporation.
(If a partnership): _he is a _____ of _____, the partnership described in said instrument; that, by the terms of said partnership, _he is authorized to execute the foregoing instrument on behalf of the partnership for purposes set forth therein; and that, pursuant to that authority, _he executed the foregoing instrument in the name of and on behalf of said partnership as the act and deed of said partnership.
(If a limited liability company): _he is a duly authorized member of _____, LLC, the limited liability company described in said instrument; that _he is authorized to execute the foregoing instrument on behalf of the limited liability company for purposes set forth therein; and that, pursuant to that authority, _he executed the foregoing instrument in the name of and on behalf of said limited liability company as the act and deed of said limited liability company.

Notary Public

Registration No.

Privacy notification

The Commissioner of Taxation and Finance may collect and maintain personal information pursuant to the New York State Tax Law, including but not limited to, sections 5-a, 171, 171-a, 287, 308, 429, 475, 505, 697, 1096, 1142, and 1415 of that Law; and may require disclosure of social security numbers pursuant to 42 USC 405(c)(2)(C)(i).

This information will be used to determine and administer tax liabilities and, when authorized by law, for certain tax offset and exchange of tax information programs as well as for any other lawful purpose.

Information concerning quarterly wages paid to employees is provided to certain state agencies for purposes of fraud prevention, support enforcement, evaluation of the effectiveness of certain employment and training programs and other purposes authorized by law.

Failure to provide the required information may subject you to civil or criminal penalties, or both, under the Tax Law.

This information is maintained by the Manager of Document Management, NYS Tax Department, W A Harriman Campus, Albany NY 12227; telephone (518) 457-5181.

Need help?



- Visit our Web site at www.tax.ny.gov
• get information and manage your taxes online
• check for new online services and features



Telephone assistance

Sales Tax Information Center: (518) 485-2889
To order forms and publications: (518) 457-5431

Text Telephone (TTY) Hotline (for persons with hearing and speech disabilities using a TTY): (518) 485-5082



Persons with disabilities: In compliance with the Americans with Disabilities Act, we will ensure that our lobbies, offices, meeting rooms, and other facilities are accessible to persons with disabilities. If you have questions about special accommodations for persons with disabilities, call the information center.

**ENCOURAGING USE OF NEW YORK STATE BUSINESSES
IN CONTRACT PERFORMANCE**

New York State businesses have a substantial presence in State contracts and strongly contribute to the economies of the state and the nation. In recognition of their economic activity and leadership in doing business in New York State, bidders/proposers for this contract for commodities, services or technology are strongly encouraged and expected to consider New York State businesses in the fulfillment of the requirements of the contract. Such partnering may be as subcontractors, suppliers, protégés or other supporting roles.

Bidders/proposers need to be aware that all authorized users of this contract will be strongly encouraged, to the maximum extent practical and consistent with legal requirements, to use responsible and responsive New York State businesses in purchasing commodities that are of equal quality and functionality and in utilizing services and technology. Furthermore, bidders/proposers are reminded that they must continue to utilize small, minority and women-owned businesses, consistent with current State law.

Utilizing New York State businesses in State contracts will help create more private sector jobs, rebuild New York’s infrastructure, and maximize economic activity to the mutual benefit of the contractor and its New York State business partners. New York State businesses will promote the contractor’s optimal performance under the contract, thereby fully benefiting the public sector programs that are supported by associated procurements.

Public procurements can drive and improve the State’s economic engine through promotion of the use of New York businesses by its contractors. The State therefore expects bidders/proposers to provide maximum assistance to New York businesses in their use of the contract. The potential participation by all kinds of New York businesses will deliver great value to the State and its taxpayers.

Bidders/proposers can demonstrate their commitment to the use of New York State businesses by responding to the question below:

Will New York State Businesses be used in the performance of this contract?
Yes No

If yes, identify New York State businesses that will be used and attach identifying information.

Firm Name: _____

Signature _____ Date: _____

EEO, MWBE AND SDVOB PROGRAMS

Forms:

- I-1: EEO Policy Statement
- I-2: MWBE Staffing Plan
- I-3: MWBE and SDVOB Utilization Plan
- I-4: MWBE and SDVOB Waiver
- I-5: Monthly SDVOB Compliance Report

PARTICIPATION BY MINORITY GROUP MEMBERS AND WOMEN WITH RESPECT TO STATE CONTRACTS: REQUIREMENTS AND PROCEDURES

I. General Provisions

- A. The New York State Gaming Commission (the “Commission”) is required to implement the provisions of New York State Executive Law Article 15-A and Parts 140-145 of Title 5 of the New York Codes, Rules and Regulations (“NYCRR”) for all State contracts, as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.
- B. The contractor to the subject contract (the “Contractor” and the “Contract,” respectively) agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to the Commission, to fully comply and cooperate with the Commission in the implementation of New York State Executive Law Article 15-A. These requirements include equal employment opportunities for minority group members and women (“EEO”) and contracting opportunities for New York State-certified minority and women-owned business enterprises (“MWBEs”). The Contractor’s demonstration of “good faith efforts” pursuant to 5 NYCRR § 142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the “Human Rights Law”) and other applicable federal, state, and local laws.
- C. Failure to comply with all the requirements herein may result in a finding of non-responsiveness, non-responsibility and/or a breach of contract, leading to the assessment of liquidated damages pursuant to Section VII of this Appendix and such other remedies are available to the Commission pursuant to the Contract and applicable law.

II. MWBE Contract Goals

- A. For purposes of this solicitation, the Commission hereby establishes an overall goal of **0%** for MWBE participation, **0%** for New York State certified Minority-owned Business Enterprises (“MBE”) participation and **0%** for New York State certified Women-owned Business Enterprises (“WBE”) and participation (collectively, “MWBE Contract Goals”) based on the current availability of qualified MBEs and WBEs.
- B. For purposes of providing meaningful participation by MWBEs on the Contract and achieving the MWBE Contract Goals established in Section II-A hereof, the Contractor should reference the directory of MWBEs at the following internet address: <https://ny.newnycontracts.com>. Additionally, the Contractor is encouraged to contact the Division of Minority and Women’s Business Development at (212) 803-2414 or mwbebusinessdev@esd.ny.gov to discuss additional methods of maximizing participation by MWBEs on the Contract.
- C. The Contractor understands that only sums paid to MWBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1, may be applied towards the achievement of the applicable MWBE participation goal. The portion of a contract with an MWBE serving as a supplier that shall be 60% of the total value of the contract. The portion of a contract with an MWBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be the monetary value for fees, or the markup percentage, charged by the MWBE.
- D. The Contractor must document “good faith efforts,” pursuant to 5 NYCRR § 142.8, to provide meaningful participation by MWBEs as subcontractors and suppliers in the performance of the Contract. Such documentation shall include, but not necessarily be limited to:
1. Evidence of outreach to MWBEs;
 2. Any responses by MWBEs to the Contractor’s outreach;
 3. Copies of advertisements for participation by MWBEs in appropriate general circulation, trade, and minority or women-oriented publications;
 4. The dates of attendance at any pre-bid, pre-award, or other meetings, if any, scheduled by the Commission with MWBEs; and,
 5. Information describing specific steps undertaken by the Contractor to reasonably structure the Contract scope of work to maximize opportunities for MWBE participation.

III. Equal Employment Opportunity (“EEO”)

- A. The provisions of Article 15-A of the Executive Law and the rules and regulations promulgated thereunder pertaining to equal employment opportunities for minority group members and women shall apply to the Contract.

B. In performing the Contract, the Contractor shall:

1. Ensure that each contractor and subcontractor performing work on the Contract shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability, or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination, and rates of pay or other forms of compensation.
2. The Contractor shall submit an EEO policy statement to the Commission within seventy-two (72) hours after the date of the notice by the Commission to award the Contract to the Contractor.
3. If the Contractor, or Subcontractors, does not have an existing EEO policy statement, the Commission may provide the Contractor or Subcontractor a model statement (see Form I-1 Minority and Women-Owned Business Enterprises --Equal Employment Opportunity Policy Statement).
4. The Contractor's EEO policy statement shall include the following language:
 - a. The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability, or marital status, will undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force.
 - b. The Contractor shall state in all solicitations or advertisements for employees that, in the performance of the contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.
 - c. The Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate on the basis of race, creed, color, national origin, sex age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein.
 - d. The Contractor will include the provisions of Subdivisions (a) through (c) of this Subsection 4 and Paragraph "E" of this Section III, which provides for relevant provisions of the Human Rights Law, in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the Contract.

C. Staffing Plan—Form I-2

To ensure compliance with this Section, the Contractor shall submit a staffing plan to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and Federal occupational categories. The Contractor shall complete the staffing plan form and submit it as part of their bid or proposal.

D. Workforce Audit Report

1. The Contractor shall submit a quarterly Workforce Audit Report, and shall require each of its subcontractors to submit a Workforce Audit Report, by the 10th day following the end of each quarter during the term of the contract. The form shall be submitted through the New York State Contract System (“NYSCS”) at <https://ny.newnycontracts.com>.
2. Separate forms shall be entered by the Contractor and any Subcontractors.
3. Pursuant to Executive Order #162, Contractors and Subcontractors are also required to report the gross wages paid to each of their employees for the work performed by such employees on the contract on a quarterly basis.

E. The Contractor shall comply with the provisions of the Human Rights Law, and all other State and Federal statutory and constitutional non-discrimination provisions. The Contractor and its subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status, or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

IV. MWBE Utilization Plan – Form I-3

- A. The Contractor shall complete a **proposed** MWBE Utilization Plan on Form I-3 and submit it as part of their bid or proposal. Upon execution of the contract, the Contractor shall submit a MWBE Utilization Plan through the NYSCS at <https://ny.newnycontracts.com>.
- B. The Contractor agrees to adhere to such MWBE Utilization Plan in the performance of the Contract.
- C. The Contractor further agrees that failure to submit and/or adhere to such MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, the Commission shall be entitled to any remedy provided herein, including but not limited to, a finding that the Contractor is non-responsive.

V. Waivers—Form I-4

- A. If the Contractor, after making good faith efforts, is unable to achieve the MWBE Contract Goals stated herein, the Contractor may submit a request for a waiver on Form I-4. Such waiver request must be supported by evidence of the Contractor's good faith efforts to achieve the maximum feasible MWBE participation towards the applicable Contract Goals. The Commission shall evaluate the request and issue a written notice of approval or denial.
- B. If the Commission, upon review of the MWBE Utilization Plan, quarterly MWBE Contractor Compliance Reports described in Section VI, or any other relevant information, determines that the Contractor is failing or refusing to comply with the MWBE Contract Goals, and no waiver has been issued regarding such non-compliance, the Commission may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE Contract Goals.

VI. Quarterly MWBE Contractor Compliance Report

The Contractor will be required to submit a quarterly MWBE Contractor Compliance Report through the NYSCS at <https://ny.newnycontracts.com> by the 10th day following the end of each quarter during the term of the Contract.

VII. Liquidated Damages - MWBE Participation

- A. Where the Commission determines that the Contractor is not in compliance with the requirements of this Appendix and the Contractor refuses to comply with such requirements, or if the Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals, the Contractor shall be obligated to pay to the Commission liquidated damages.
- B. Such liquidated damages shall be calculated as an amount equaling the difference between:
 - 1. All sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and
 - 2. All sums actually paid to MWBEs for work performed or materials supplied under the Contract.
- C. In the event a determination has been made which requires the payment of liquidated damages and such identified sums have not been withheld by the Commission, the Contractor shall pay such liquidated damages to the Commission within sixty (60) days after they are assessed. Provided, however, that the Contractor has filed a complaint with the Director of the Division of Minority and Women's Business Development pursuant to 5 NYCRR § 142.12, liquidated damages shall be payable only in the event of a determination adverse to the Contractor following the complaint process.

PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED SERVICE-DISABLED VETERAN OWNED BUSINESSES

Article 17-B of the New York State Executive Law provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses (“SDVOB”), thereby further integrating such businesses into New York State’s economy. The New York State Gaming Commission (the “Commission”) recognizes the need to promote the employment of service-disabled veterans and to ensure that certified service-disabled veteran-owned businesses have opportunities for maximum feasible participation in the performance of the Commission’s contracts.

In recognition of the service and sacrifices made by service-disabled veterans and in recognition of their economic activity in doing business in New York State, Bidders are expected to consider SDVOBs in the fulfillment of the requirements of the Contract. Such participation may be as subcontractors or suppliers, as protégés, or in other partnering or supporting roles.

I. SBVOB Contract Goals

- A. The Commission hereby establishes an overall goal of 0% for SDVOB participation, based on the current availability of qualified SDVOBs. For purposes of providing meaningful participation by SDVOBs, the Bidder/Contractor should reference the directory of New York State Certified SDVOBs found at: <https://ogs.ny.gov/veterans/>. Questions regarding compliance with SDVOB participation goals should be directed to the Commission’s Designated Contacts. Additionally, following Contract execution, Contractor is encouraged to contact the Office of General Services’ Division of Service-Disabled Veterans’ Business Development at 518-474-2015 or VeteransDevelopment@ogs.ny.gov to discuss additional methods of maximizing participation by SDVOBs on the Contract.
- B. Contractor must document “good faith efforts” to provide meaningful participation by SDVOBs as subcontractors or suppliers in the performance of the Contract (see clause IV below).
 1. Evidence of outreach to SDVOBs;
 2. Any responses by SDVOBs to the Contractor’s outreach;
 3. Copies of advertisements for participation by SDVOBs in appropriate general circulation,
 4. The dates of attendance at any pre-bid, pre-award, or other meetings, if any, scheduled by the Commission with SDVOBs; and,
 5. Information describing specific steps undertaken by the Contractor to reasonably structure the Contract scope of work to maximize opportunities for SDVOB participation.

II. SDVOB Utilization Plan – Form I-3

- A. In accordance with 9 NYCRR § 252.2(i), Bidders are required to submit a completed **proposed** SDVOB Utilization Plan on Form I-3 with their bid or proposal.
- B. The Contractor agrees to adhere to such SDVOB Utilization Plan in the performance of the Contract.
- C. The SDVOB Utilization Plan shall list the SDVOBs that the Bidder intends to use to perform the Contract, a description of the work that the Bidder intends the SDVOB to perform to meet the goals on the Contract, the estimated dollar amounts to be paid to an SDVOB, or, if not known, an estimate of the percentage of Contract work the SDVOB will perform. By signing the SDVOB Utilization Plan, the Bidder acknowledges that making false representations or providing information that shows a lack of good faith as part of, or in conjunction with, the submission of an SDVOB Utilization Plan is prohibited by law and may result in penalties including, but not limited to, termination of a contract for cause, loss of eligibility to submit future bids, and/or withholding of payments. Any modifications or changes to the agreed participation by SDVOBs after the Contract award and during the term of the Contract must be reported on a revised SDVOB Utilization Plan and submitted to the Commission.
- D. The Commission will review the submitted SDVOB Utilization Plan and advise the Bidder/Contractor of the Commission's acceptance or issue a notice of deficiency.
- E. If a notice of deficiency is issued, Bidder/Contractor agrees that it shall respond to the notice of deficiency, within seven business days of receipt, by submitting to the Commission a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by the Commission to be inadequate, the Commission shall notify the Bidder/Contractor and direct the Bidder/Contractor to submit, within five business days of notification by the Commission, a request for a partial or total waiver of SDVOB participation goals on Form I-4. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.
- F. The Commission may disqualify a Bidder's bid or proposal as being non-responsive under the following circumstances:
1. If a Bidder fails to submit an SDVOB Utilization Plan;
 2. If a Bidder fails to submit a written remedy to a notice of deficiency;
 3. If a Bidder fails to submit a request for waiver; or
 4. If the Commission determines that the Bidder has failed to document good faith efforts.
- G. If awarded a Contract, Contractor certifies that it will follow the submitted SDVOB Utilization Plan for the performance of SDVOBs on the Contract pursuant to the prescribed SDVOB contract goals set forth above.

- H. Contractor further agrees that a failure to use SDVOBs as agreed in the SDVOB Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, the Commission shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsibility.

III. Request for Waiver—Form I-4

- A. Prior to submission of a request for a partial or total waiver, Bidder/Contractor shall speak to the Designated Contacts at the Commission for guidance at gam.sm.gamingcompliance@gaming.ny.gov.
- B. In accordance with 9 NYCRR § 252.2(m), a Bidder/Contractor that is able to document good faith efforts to meet the goal requirements, as set forth in clause IV below, may submit a request for a partial or total waiver on Form I-4, accompanied by supporting documentation. A Bidder may submit the request for waiver at the same time it submits its SDVOB Utilization Plan. If a request for waiver is submitted with the SDVOB Utilization Plan and is not accepted by the Commission at that time, the provisions of clauses II (C), (D) & (E) will apply. If the documentation included with the Bidder's/Contractor's waiver request is complete, the Commission shall evaluate the request and issue a written notice of acceptance or denial.
- C. Contractor shall attempt to utilize, in good faith, the SDVOBs identified within its SDVOB Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract award may be made at any time during the term of the Contract to the Commission, but must be made no later than prior to the submission of a request for final payment on the Contract.
- D. If the Commission, upon review of the SDVOB Utilization Plan and Monthly SDVOB Compliance Report (Form I-5) determines that Contractor is failing or refusing to comply with the contract goals and no waiver has been issued in regards to such non-compliance, the Commission may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven business days of receipt. Such response may include a request for partial or total waiver of SDVOB contract goals.

Waiver requests should be sent to the Commission at:

gam.sm.gamingcompliance@gaming.ny.gov.

IV. Required Good Faith Efforts

In accordance with 9 NYCRR § 252.2(n), Contractors must document their good faith efforts toward utilizing SDVOBs on the Contract. Evidence of required good faith efforts shall include, but not be limited to, the following:

1. Copies of solicitations to SDVOBs and any responses thereto.
2. Explanation of the specific reasons each SDVOB that responded to Bidders/Contractors' solicitation was not selected.

3. Dates of any pre-bid, pre-award or other meetings attended by Contractor, if any, scheduled by the Commission with certified SDVOBs whom the Commission determined were capable of fulfilling the SDVOB goals set in the Contract.
4. Information describing the specific steps undertaken to reasonably structure the Contract scope of work for the purpose of subcontracting with, or obtaining supplies from, certified SDVOBs.
5. Other information deemed relevant to the waiver request.

V. Monthly SDVOB Contractor Compliance Report- Form I-5

In accordance with 9 NYCRR § 252.2(q), Contractor is required to report Monthly SDVOB Contractor Compliance to the Commission during the term of the Contract for the preceding month's activity, documenting progress made towards achieving the Contract SDVOB goals. This information must be submitted using Form I-5 and should be completed by the Contractor and submitted to the Commission, by the 10th day following the end of each month during the term of the Contract, for the preceding month's activity to: gam.sm.gamingcompliance@gaming.ny.gov.

VI. Breach of Contract and Damages

In accordance with 9 NYCRR § 252.2(s), any Contractor found to have willfully and intentionally failed to comply with the SDVOB participation goals set forth in the Contract, shall be found to have breached the contract and Contractor shall pay damages as set forth therein.

MWBE and SDVOB Participation / Equal Employment Opportunity Policy Statement

I, _____ (CONTRACTOR OR GRANT REPRESENTATIVE),
the _____ (GRANTEE/COMPANY NAME)
agree to adopt the following policies with respect to the project being developed or services rendered at
_____.

NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY POLICY

- (a) This organization will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing programs of affirmative action to ensure that minority group members are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on state contracts.
- (b) This organization shall state in all solicitation or advertisements for employees that in the performance of the State contract all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of this organization's obligations herein.
- (c) At the request of the Commission, this organization shall request each employment agency, labor union, or authorized representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of this organization's obligations herein.
- (d) Organization shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. The organization and its sub-vendors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.
- (e) The organization will include the provisions of sections (a) through (d) of this agreement in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with this contract.

MWBE PARTICIPATION (MWBE)

This organization will and will cause its contractors and subcontractors to take good faith actions to achieve the MWBE contract participation goals set by the State for that area in which the State-funded project is located, by taking the following steps:

- (1) Actively and affirmatively solicit bids for contracts and subcontracts from qualified State certified MBEs or WBEs, including solicitations to MWBE contractor associations.

- (2) **Request a list of State-certified MWBEs from** the Commission or search the directory in the NYS Contract System (newnycontracts.com) and solicit bids from the listed vendors directly.
- (3) **Ensure that plans, specifications, request for proposals and other documents used to secure bids will be made available in sufficient time for review by prospective MWBEs.**
- (4) **Where feasible, divide the work into smaller portions to enhanced participations by MWBEs and encourage the formation of joint venture and other partnerships among MWBE contractors to enhance their participation.**
- (5) **Document and maintain records of bid solicitation, including those to MWBEs and the results thereof. Contractor will also maintain records of actions that its subcontractors have taken toward meeting MWBE contract participation goals.**
- (6) **Ensure that progress payments to MWBEs are made on a timely basis so that undue financial hardship is avoided, and that bonding and other credit requirements are waived or appropriate alternatives developed to encourage MWBE participation.**

SDVOB PARTICIPATION (SDVOB)

This organization will and will cause its contractors and subcontractors to take good faith actions to achieve the SDVOB contract participation goals set by the State for that area in which the State-funded project is located, by taking the following steps:

- (1) **Actively and affirmatively solicit bids for contracts and subcontracts from qualified State certified SDVOBs, including solicitations to contractor associations.**
- (2) **Request a list of State-certified SDVOBs from** the Commission or search the directory (Office of General Services ny.gov) and solicit bids from the listed vendors directly.
- (3) **Ensure that plans, specifications, request for proposals and other documents used to secure bids will be made available in sufficient time for review by prospective SDVOBs.**
- (4) **Where feasible, divide the work into smaller portions to enhanced participations by SDVOBs and encourage the formation of joint venture and other partnerships among SDVOB contractors to enhance their participation.**
- (5) **Document and maintain records of bid solicitation, including those to SDVOBs and the results thereof. Contractor will also maintain records of actions that its subcontractors have taken toward meeting SDVOB contract participation goals.**
- (6) **Ensure that progress payments to SDVOBs are made on a timely basis so that undue financial hardship is avoided, and that bonding and other credit requirements are waived or appropriate alternatives developed to encourage SDVOB participation.**

Agreed on this _____ day of _____ 20_____.

By: _____
(SIGNATURE)

Print Name: _____

Title: _____



Minority & Women-owned Business Enterprise-Equal Employment Opportunity Liaison

_____ (name of designated contractor/grantee liaison) is designated as the Minority and Women-owned Business Enterprise Liaison responsible for administering the Minority and Women-owned Business Enterprises-Equal Employment Opportunity (MWBE-EEO) program.

MWBE Contract Goals

_____ % Minority Business Enterprise Participation
_____ % Women’s Business Enterprise Participation
_____ % **TOTAL/OVERALL MWBE Participation Goal**

EEO Contract Goals

NOT APPLICABLE % Minority Labor Force Participation
NOT APPLICABLE % Female Labor Force Participation

SDVOB Contract Goals

_____ % Service Disabled Veteran Business Participation

(Signature of Contractor’s Authorized Representative)

***Name:** _____
***Company:** _____
***Title:** _____
***Phone:** _____
***Fax:** _____
***Address:** _____



Staffing Plan

(REQUIRED ONLY OF CONTRACTS VALUED AT \$250,000 OR MORE)

Submit with Bid or Proposal – Instructions on page 2

Contract No.:	Project Location:	Report includes Prime Contractor/Subcontractors: <input type="checkbox"/> Work force to be utilized on this contract <input type="checkbox"/> Total work force <input type="checkbox"/> Prime Contractor <input type="checkbox"/> Subcontractor Subcontractor Name(s):
Contract Name / Details:		
Company Name: Company Address and Contract Details:		

Enter the total number of employees for each classification in each of the EEO-Job Categories identified

EEO-Job Category	Total Work force	Work force by Gender		Work force by Race/Ethnic Identification								Disabled		Veteran		
		Total Male (M)	Total Female (F)	White (M) (F)		Black (M) (F)		Hispanic (M) (F)		Asian (M) (F)		(M)	(F)	(M)	(F)	
Officials/Administrators																
Professionals																
Technicians																
Sales Workers																
Office/Clerical																
Craft Workers																
Laborers																
Service Workers																
Temporary /Apprentices																
Totals																

PREPARED BY (Signature):	NAME:	ALTERNATE TEL:
DATE:	TITLE:	EMAIL:
	TELEPHONE:	OTHER:

Staffing Plan Instructions

(REQUIRED ONLY OF CONTRACTS VALUED AT \$250,000 OR MORE)

General Instructions: All Contractors and each subcontractor identified in the bid or proposal must complete an EEO Staffing Plan (Form J-2) and submit it as part of the bid or proposal package. Where the work force to be utilized in the performance of the State contract can be separated out from the contractor's and/or Subcontractor's total work force, the Contractor shall complete this form only for the anticipated work force to be utilized on the State contract. Where the work force to be utilized in the performance of the State contract cannot be separated out from the contractor's and/or Subcontractor's total work force, the Contractor shall complete this form for the contractor's and/or Subcontractor's total work force.

Instructions:

1. Enter the Contract or Solicitation number that this report applies to along with the name and address of your company or organization.
2. Check off the appropriate box to indicate if the Contractor completing the report is the contractor or a subcontractor.
3. Check off the appropriate box to indicate work force to be utilized on the contract or the Contractor's total work force.
4. Enter the total work force by EEO job category.
5. Break down the anticipated total work force by gender and enter under the heading 'Work force by Gender'
6. Break down the anticipated total work force by race/ethnic identification and enter under the heading 'Work force by Race/Ethnic Identification'. Contact the MWBE Permissible contact(s) for the solicitation if you have any questions.
7. Enter information on disabled or veterans included in the anticipated work force under the appropriate headings.
8. Enter the name and contact details of the person completing the form. Sign and date the form in the designated boxes.

RACE/ETHNIC IDENTIFICATION:

Race/ethnic designations as used by the Equal Employment Opportunity Commission do not denote scientific definitions of anthropological origins. For the purposes of this report, an employee may be included in the group to which he or she appears to belong, identifies with, or is regarded in the community as belonging. However, no person should be counted in more than one race/ethnic group. The race/ethnic categories for this survey are:

- **WHITE** (Not of Hispanic origin) All persons having origins in any of the original peoples of Europe, North Africa, or the Middle East.
- **BLACK** a person, not of Hispanic origin, who has origins in any of the black racial groups of the original peoples of Africa.
- **HISPANIC** a person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race.
- **ASIAN & PACIFIC ISLANDER** a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands.
- **NATIVE INDIAN (NATIVE AMERICAN/ALASKAN NATIVE)** a person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliation or community recognition.

OTHER CATEGORIES:

- **DISABLED INDIVIDUAL** any person who:
 - has a physical or mental impairment that substantially limits one or more major life activity(ies)
 - has a record of such an impairment; or
 - is regarded as having such an impairment.
- **VIETNAM ERA VETERAN** a veteran who served at any time between and including January 1, 1963 and May 7, 1975.
- **GENDER** Male or Female



MWBE and SDVOB Utilization Plan

INSTRUCTIONS: This form must be submitted with any bid, proposal, or proposed negotiated contract or within a reasonable time thereafter, but prior to contract award. This MWBE and SDVOB Utilization Plan must contain a detailed description of the supplies and/or services to be provided by each certified Minority and Women-owned Business Enterprise (MWBE) and/or Service Disabled Veteran Owned Business (SDVOB) under the contract. Attach additional sheets if necessary.

* indicates mandatory fields

* Contractor Name: _____

Address: _____

* Representative Name: _____

Town, State & Zip: _____

* Phone: _____

* Contract/Project Number: _____

* Fax: _____

RFP/RFQ/Solicitation Number: _____

* Email: _____

* MWBE Goal: MBE _____% + WBE _____% = MWBE GOAL _____%

* Total Dollar Value of Contract/Grant: \$ _____

* SDVOB Goal: _____%

1. * Certified MWBE or SDVOB Firm Name, Contact Person's Name, Address, Phone and Email.	2. * Check All That Apply	3. * Federal ID No.	4. * Detailed Description of Work (Attach additional sheets, if necessary, Attach Contract if available)	5. * Check Firm Type That Applies for Work Completed on this Project	6. * Dollar Value of Contract (if unavailable or yet undetermined, indicate \$1)
A.	<u>NYS CERTIFIED</u> <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> SDVOB			<input type="checkbox"/> Subcontractor <input type="checkbox"/> Subconsultant <input type="checkbox"/> Materials Supplier <input type="checkbox"/> Trade Agents/Brokers	
B.	<u>NYS CERTIFIED</u> <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> SDVOB			<input type="checkbox"/> Subcontractor <input type="checkbox"/> Subconsultant <input type="checkbox"/> Materials Supplier <input type="checkbox"/> Trade Agents/Brokers	



MWBE and SDVOB Utilization Plan

<p>7. If unable to fully meet the MWBE and/or SDVOB goals set forth in the contract, the Contractor must submit a Waiver Request form.</p>											
<p>PREPARED BY (Signature): _____ DATE: _____</p> <p>Preparer's Name (Print or Type): _____</p> <p>Preparer's Title: _____</p> <p>Date: _____</p> <p>SUBMISSION OF THIS FORM CONSTITUTES THE CONTRACTOR'S ACKNOWLEDGEMENT AND AGREEMENT TO COMPLY WITH THE MWBE AND SDVOB REQUIREMENTS SET FORTH UNDER NYS EXECUTIVE LAW ARTICLES 15-A AND 17-B, 5 NYCRR PART 143, 9 NYCRR PART 252, AND THE ABOVE-REFERENCED SOLICITATION. FAILURE TO SUBMIT COMPLETE AND ACCURATE INFORMATION MAY RESULT IN A FINDING OF NONCOMPLIANCE AND POSSIBLE TERMINATION OF YOUR CONTRACT.</p> <p>The MWBE Certification status of the firms listed on this form MUST be verified using the New York State Contract System's Directory of Certified Minority and Women-owned Business Enterprises. This directory is available at https://ny.newnycontracts.com.</p> <p>The SDVOB Certification status of the firms listed on this form MUST be verified using the Directory of New York State Certified Service-Disabled Veteran-Owned Businesses. This directory is available at https://online.ogs.ny.gov/SDVOB/search.</p>	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; padding: 5px;">TELEPHONE NO.:</td> <td style="width: 50%; padding: 5px;">EMAIL ADDRESS:</td> </tr> <tr> <td colspan="2" style="padding: 5px;"> <p><u>Policy Regarding Use of MWBE Suppliers and Brokers</u></p> <p>Only sums paid to MWBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1, may be applied towards the achievement of the applicable MWBE participation goal.</p> <p>FOR CONSTRUCTION/CAPITAL PROJECTS – The portion of a contract with an MWBE serving as a supplier that shall be deemed to represent the commercially useful function performed by the MWBE shall be 60% of the total value of the contract. The portion of a contract with an MWBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be the monetary value for fees, or the markup percentage, charged by the MWBE.</p> <p>FOR ALL OTHER PROJECTS - The portion of a contract with an MWBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be 25% of the total value of the contract.</p> </td> </tr> <tr> <td colspan="2" style="text-align: center; padding: 5px;"> <p>** FOR COMMISSION USE ONLY **</p> </td> </tr> <tr> <td style="padding: 5px;">REVIEWED BY:</td> <td style="padding: 5px;">DATE:</td> </tr> <tr> <td colspan="2" style="padding: 5px;"> <p>UTILIZATION PLAN APPROVED?</p> <p><input type="checkbox"/> YES <input type="checkbox"/> PARTIAL <input type="checkbox"/> NO Date: _____</p> </td> </tr> </table>	TELEPHONE NO.:	EMAIL ADDRESS:	<p><u>Policy Regarding Use of MWBE Suppliers and Brokers</u></p> <p>Only sums paid to MWBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1, may be applied towards the achievement of the applicable MWBE participation goal.</p> <p>FOR CONSTRUCTION/CAPITAL PROJECTS – The portion of a contract with an MWBE serving as a supplier that shall be deemed to represent the commercially useful function performed by the MWBE shall be 60% of the total value of the contract. The portion of a contract with an MWBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be the monetary value for fees, or the markup percentage, charged by the MWBE.</p> <p>FOR ALL OTHER PROJECTS - The portion of a contract with an MWBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be 25% of the total value of the contract.</p>		<p>** FOR COMMISSION USE ONLY **</p>		REVIEWED BY:	DATE:	<p>UTILIZATION PLAN APPROVED?</p> <p><input type="checkbox"/> YES <input type="checkbox"/> PARTIAL <input type="checkbox"/> NO Date: _____</p>	
TELEPHONE NO.:	EMAIL ADDRESS:										
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<p>** FOR COMMISSION USE ONLY **</p>											
REVIEWED BY:	DATE:										
<p>UTILIZATION PLAN APPROVED?</p> <p><input type="checkbox"/> YES <input type="checkbox"/> PARTIAL <input type="checkbox"/> NO Date: _____</p>											

Waiver Request Form

Request for Waiver		
Contractor Name:	Fed ID No.:	
Full Address:	Contract / Project Number:	
Project Details (Project Name, Project Location):	Have you Previously submitted a Waiver Request? (YES/NO)	
Current Contract Value:	MWBE Goal: MBE % + WBE % Overall MWBE Goal: % SDVOB Goal: %	
<p>By submitting this form and the required information, the Contractor certifies that every “Good Faith Effort” has been taken to promote MWBE and SDVOB participation pursuant to the MWBE and SDVOB requirements set forth under the contract. Review 5 NYCRR § 142.8 and 9 NYCRR § 252, Contractor’s Good Faith Efforts, for the precise definition of “Good Faith Effort.” Failure to adequately demonstrate Good Faith Efforts will result in a denial of your Waiver Request. It is the Contractor’s responsibility to ensure that adequate, clear and complete information is presented to the Commission.</p>		
<p>*UTILIZATION VALUE MET:</p> <p style="text-align: center;">MBE: \$ _____ WBE: \$ _____ SDVOB: \$ _____</p>		
<p>*CONTRACTOR IS REQUESTING :</p> <ol style="list-style-type: none"> 1. <input type="checkbox"/> MBE Waiver – A waiver of the MBE Goal for this procurement is requested. REQUESTED MBE GOAL: _____% 2. <input type="checkbox"/> WBE Waiver – A waiver of the WBE Goal for this procurement is requested. REQUESTED WBE GOAL: _____% 3. <input type="checkbox"/> OVERALL MWBE Waiver – A waiver of the MWBE Goal for this procurement is requested. REQUESTED MWBE GOAL: _____% 4. <input type="checkbox"/> SDVOB Waiver – A waiver of SDVOB Participation Goal for this procurement is requested. REQUESTED SDVOB GOAL: _____% 		
<p>PREPARED BY (Signature): _____ Date: _____</p> <p>SUBMISSION OF THIS FORM CONSTITUTES THE CONTRACTOR’S ACKNOWLEDGEMENT AND AGREEMENT THAT IT HAS MADE GOOD FAITH EFFORTS, PURSUANT TO 5 NYCRR §142.8 AND/OR 9 NYCRR §252, TO INCLUDE THE PARTICIPATION OF NEW YORK STATE CERTIFIED MINORITY AND WOMEN OWNED BUSINESSES AND SERVICE DISABLED VETERAN OWNED BUSINESSES IN THE ABOVE PROJECT OR CONTRACT. CONTRACTOR HEREBY AGREES TO PROVIDE ANY AND ALL RELEVANT DOCUMENTATION IN SUPPORT OF THE DEMONSTRATION OF ITS GOOD FAITH EFFORTS AND ACKNOWLEDGES THAT IT HAS PROVIDED WITH THIS WAIVER REQUEST ALL AVAILABLE DOCUMENTATION SUPPORTING ITS GOOD FAITH EFFORTS.</p>		
*Name and Title of Preparer:	*Telephone Number:	*Email:

Waiver Request Form

Contractor's Good Faith Efforts

- (a) Contractors must document their good faith efforts toward utilizing certified firms, including but not limited to, those identified within a utilization plan. Such documented efforts, shall include, at a minimum:
- (1) Copies of its solicitations of certified firms enterprises and any responses thereto;
 - (2) If responses to the contractor's solicitations were received, but a certified firm was not selected, the specific reasons that such firm was not selected;
 - (3) Copies of any advertisements for participation by certified firms timely published in appropriate general circulation, trade, MWBE and SDVOB oriented publications, together with the listing(s) and date(s) of the publication of such advertisements;
 - (4) The dates of attendance at any pre-bid, pre-award, or other meetings, if any, scheduled by the State agency awarding the State contract, with certified firms enterprises which the State agency determined were capable of performing the State contract scope of work for the purpose of fulfilling the contract participation goals;
 - (5) Information describing the specific steps undertaken to reasonably structure the contract scope of work for the purpose of subcontracting with, or obtaining supplies from, certified firms.
- (b) In addition to the information provided by the contractor in subdivision (a) above, the State agency may also consider the following to determine whether the contractor has demonstrated good faith efforts:
- (1) where applicable, whether the contractor submitted an amended utilization plan consistent with the subcontract or supplier opportunities in the contract;
 - (2) the number of certified firms in the region listed in the directory of certified businesses that could, in the judgment of the State agency, perform work required by the State contract scope of work;
 - (3) the actions taken by the contractor to contact and assess the ability of certified firms located outside of the region in which the State contract scope of work is to be performed to participate on the State contract;
 - (4) whether the contractor provided relevant plans, specifications or terms and conditions to certified firms sufficiently in advance to enable them to prepare an informed response to a contractor request for participation as a subcontractor or supplier;
 - (5) the terms and conditions of any subcontract or provision of suppliers offered to certified firms and a comparison of such terms and conditions with those offered in the ordinary course of the contractor's business and to other subcontractors or suppliers of the contractor;
 - (6) whether the contractor offered to make up any inability to comply with the certified firms goals in the subject State contract in other State contracts being performed or awarded to the contractor;
 - (7) the extent to which contractor's own actions, including but not limited to, any failure by contractor to discharge contractor's duties pursuant to this Part, Articles 15-A or 17-B of the Executive Law, contributed to contractor's inability to meet the maximum feasible portion of the contract goals;
 - (8) whether the contractor knowingly utilized one or more certified firms, in the performance of the subject State contract, that contractor knew or reasonably should have known could not perform a commercially useful function.

Waiver Request Form

- (9) whether the contractor submitted compliance reports, which identified certified firms that contractor knew or reasonably should have known did not perform a commercially useful function on a State contract on which goals were assigned. and
- (10) any other information that is relevant or appropriate to determining whether the contractor has demonstrated a good faith effort.

<p>Submit with the Bid or Proposal.</p>	***** FOR COMMISSION USE ONLY *****	
	REVIEWED BY:	DATE:
	<p> Waiver Granted: <input type="checkbox"/> YES MBE: <input type="checkbox"/> WBE: <input type="checkbox"/> SDVOB: <input type="checkbox"/> <input type="checkbox"/> Total Waiver <input type="checkbox"/> Partial Waiver <input type="checkbox"/> *Conditional <input type="checkbox"/> Notice of Deficiency Issued _____ <u>* Comments:</u> <hr/><hr/><hr/><hr/><hr/><hr/> </p>	



CONTRACTOR'S MONTHLY SDVOB COMPLIANCE REPORT (DUE ON THE 10TH DAY OF EACH MONTH FOR THE PRECEDING MONTH'S ACTIVITY AS EVIDENCE TOWARDS ACHIEVEMENT OF THE SDVOB GOALS ON THE CONTRACT

Contract No.: _____

Contractor/Vendor Name, Address and Phone No.:	Contractor/Vendor Federal ID No.:	SDVOB Goals	Reporting Period		
			%	Month	Year
SDVOB Firm Name, Address and Phone Number (List All Firms)	Description of Work or Supplies Provided	SDVOB Payment	Total Monthly Payments from NYS		
Federal ID No.:		<input type="checkbox"/> No Payment This Month			
Federal ID No.:		<input type="checkbox"/> No Payment This Month			
Federal ID No.:		<input type="checkbox"/> No Payment This Month			
Federal ID No.:		<input type="checkbox"/> No Payment This Month			

_____ Signature	_____ Print Name and Title	_____ Date
Submission of this form constitutes the Contractor's acknowledgement as to the accuracy of the information contained herein. Failure to submit complete and accurate information may result in a finding of noncompliance, non-responsibility, suspension and/or termination of the Contract.		For Commission's Use Only
		<table border="1" style="width: 100%;"> <tr> <td style="width: 50%;">Reviewed By:</td> <td style="width: 50%;">Date:</td> </tr> </table>
Reviewed By:	Date:	

FORM A

**New York State Consultant Services
Contractor's Planned Employment**
From Contract Start Date Through the End of the Contract Term

State Agency Name: NYS Gaming Commission
 State Agency Department ID: 20050 Agency Business Unit:
 Contractor Name: Contract Number:
 Contract Start Date: / / Contract End Date: / /

Employment Category	Number of Employees	Number of Hours to be Worked	Amount Payable Under the Contract
Total this Page	0.00	0.00	\$ 0.00
Grand Total			

Name of person who prepared this report:

Title:

Phone #:

Preparer's Signature: _____

Date Prepared: / /

(Use additional pages, if necessary)

Page of

Form A--Consultant Disclosure Instructions

The State Consulting Services Contractor's Planned Employment Report (this Form A) is due within two (2) business days after receiving notice of a contract award. The completed Report must be submitted to the Gaming Commission at officer.contracting@gaming.ny.gov.

Complete Form A for contracts for consulting services in accordance with the following:

Employment category: the specific occupation(s), as listed in the O*NET occupational classification system, which best describe the employees anticipated to be providing services under the contract. (Note: Access the O*NET database, which is available through the US Department of Labor's Employment and Training Administration website at www.online.onetcenter.org.)

Number of employees: the total number of employees in the employment category employed anticipated to provide services under the contract, including part time employees and employees of subcontractors.

Number of hours to be worked: the total number of hours anticipated be worked by the employees in the employment category.

Amount payable under the contract: the total amount payable by the State to the State contractor under the contract, for work by the employees in the employment category, for services to be provided during the Report Period.

If you have any questions regarding this requirement under the Consultant Disclosure Law, please contact the Contract Unit at officer.contracting@gaming.ny.gov or at (518) 388-0924.

The completed Report must be submitted to OSC, DCS, and the Gaming Commission:
CDMOST@osc.ny.gov; SubmitformB@cs.ny.gov; officer.contracting@gaming.ny.gov.

OSC: CDMOST@osc.ny.gov
or
NYS Office of the State Comptroller Bureau of Contracts
110 State Street, 11th Floor Albany, NY 12236
Attn: Consultant Reporting

DCS: SubmitformB@cs.ny.gov
or
NYS Department of Civil Service
Empire State Plaza
Albany, NY 12239

NYS Gaming Commission: officer.contracting@gaming.ny.gov
or
NYS Gaming Commission
1 Broadway Center
Schenectady, NY 12305

Submit the completed Form B by May 15 for the period April 1 through March 31, and annually by May 15th thereafter for each State fiscal year (or portion thereof) the contract is in effect, in accordance with the following:

Scope of Contract: a general classification of the single category that best fits the predominate nature of the services provided under the contract.

Employment Category: the specific occupation(s), as listed in the O*NET occupational classification system, which best describe the employees providing services under the contract. (Note: Access the O*NET database, through the US Department of Labor's Employment and Training Administration website at www.online.onetcenter.org.)

Number of Employees: the total number of employees in the employment category employed that provided services under the contract during the Report Period, including part time employees and employees of subcontractors.

Number of hours worked: the total number of hours worked during the Report Period by the employees in the employment category.

Amount Payable under the Contract: the total amount paid or payable by the State to the State contractor under the contract, for work by the employees in the employment category, for services provided during the Report Period.

If you have any questions regarding this requirement under the Consultant Disclosure Law, please contact the Contract Unit at officer.contracting@gaming.ny.gov or at (518) 388-0924.

Vendor Assurance of No Conflict of Interest or Detrimental Effect

The Firm offering to provide services pursuant to this [RFP/Contract], as a contractor, joint venture contractor, subcontractor, or consultant, attests that its performance of the services outlined in this [RFP/Contract] does not and will not create a conflict of interest with nor position the Firm to breach any other contract currently in force with the State of New York.

Furthermore, the Firm attests that it will not act in any manner that is detrimental to any State project on which the Firm is rendering services. Specifically, the Firm attests that:

1. The fulfillment of obligations by the Firm, as proposed in the response, does not violate any existing contracts or agreements between the Firm and the State;
2. The fulfillment of obligations by the Firm, as proposed in the response, does not and will not create any conflict of interest, or perception thereof, with any current role or responsibility that the Firm has with regard to any existing contracts or agreements between the Firm and the State;
3. The fulfillment of obligations by the Firm, as proposed in the response, does not and will not compromise the Firm's ability to carry out its obligations under any existing contracts between the Firm and the State;
4. The fulfillment of any other contractual obligations that the Firm has with the State will not affect or influence its ability to perform under any contract with the State resulting from this RFP;
5. During the negotiation and execution of any contract resulting from this RFP, the Firm will not knowingly take any action or make any decision which creates a potential for conflict of interest or might cause a detrimental impact to the State as a whole including, but not limited to, any action or decision to divert resources from one State project to another;
6. In fulfilling obligations under each of its State contracts, including any contract which results from this RFP, the Firm will act in accordance with the terms of each of its State contracts and will not knowingly take any action or make any decision which might cause a detrimental impact to the State as a whole including, but not limited to, any action or decision to divert resources from one State project to another;
7. No former officer or employee of the State who is now employed by the Firm, nor any former officer or employee of the Firm who is now employed by the State, has played a role with regard to the administration of this contract procurement in a manner that may violate section 73(8)(a) of the State Ethics Law; and
8. The Firm has not and shall not offer to any employee, member or director of the State any gift, whether in the form of money, service, loan, travel, entertainment,

hospitality, thing or promise, or in any other form, under circumstances in which it could reasonably be inferred that the gift was intended to influence said employee, member or director, or could reasonably be expected to influence said employee, member or director, in the performance of the official duty of said employee, member or director or was intended as a reward for any official action on the part of said employee, member or director.

Firms responding to this [RFP/Contract] should note that the State recognizes that conflicts may occur in the future because a Firm may have existing or new relationships. The State will review the nature of any such new relationship and reserves the right to terminate the contract for cause if, in its judgment, a real or potential conflict of interest cannot be cured.

Name, Title:

Signature:

Date:

This form must be signed by an authorized executive or legal representative.

Statement on Sexual Harassment

By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that the bidder has and has implemented a written policy addressing sexual harassment prevention in the workplace and provides annual sexual harassment prevention training to all of its employees. Such policy shall, at a minimum, meet the requirements of section two hundred one-g of the labor law.

Contractor certifies that this statement provided to the Agency with respect to State Finance Law §139 (l) is complete, true and accurate.

Authorized Signatory

Signature

Title

Company Name

Anti-Discrimination EO 177 Certification

The New York State Human Rights Law, Article 15 of the Executive Law, prohibits discrimination and harassment based on age, race, creed, color, national origin, sex, pregnancy or pregnancy-related conditions, sexual orientation, gender identity, disability, marital status, familial status, domestic violence victim status, prior arrest or conviction record, military status or predisposing genetic characteristics.

The Human Rights Law may also require reasonable accommodation for persons with disabilities and pregnancy-related conditions. A reasonable accommodation is an adjustment to a job or work environment that enables a person with a disability to perform the essential functions of a job in a reasonable manner. The Human Rights Law may also require reasonable accommodation in employment on the basis of Sabbath observance or religious practices.

Generally, the Human Rights Law applies to:

- all employers of four or more people, employment agencies, labor organizations and apprenticeship training programs in all instances of discrimination or harassment;
- employers with fewer than four employees in all cases involving sexual harassment; and,
- any employer of domestic workers in cases involving sexual harassment or harassment based on gender, race, religion or national origin.

In accordance with Executive Order No. 177, the Bidder hereby certifies that it does not have institutional policies or practices that fail to address the harassment and discrimination of individuals on the basis of their age, race, creed, color, national origin, sex, sexual orientation, gender identity, disability, marital status, military status, or other protected status under the Human Rights Law. 3

Executive Order No. 177 and this certification do not affect institutional policies or practices that are protected by existing law, including but not limited to the First Amendment of the United States Constitution, Article 1, Section 3 of the New York State Constitution, and Section 296(11) of the New York State Human Rights Law.

Contractor:

By: _____

Name: _____

Title: _____

Date: _____, 20__

INSURER QUALIFICATIONS AND INSURANCE REQUIREMENTS

Insurer Qualifications

All insurance required under this RFP must be written by a company with a current rating of “A-” or better as rated by A.M. Best & Co., that has a record of successful continuous operation, that is licensed, admitted, and authorized to do business in the State of New York, and that is approved by the New York State Gaming Commission (the “Commission”).

Required coverage and limits must be put into effect as of the effective date of the Contract and must remain in effect throughout the term of the Contract, as determined by the Commission.

To the extent that lesser, incomplete, or improper insurance coverage is offered and/or procured by the Contractor, the Contractor acknowledges and agrees that it is financially responsible for any shortages, discrepancies, and liabilities remaining if coverage is denied or not available for a claim made that would otherwise have been covered by the insurance requirements herein.

To the extent that the Contractor is self-insured for any portion of the required insurance program, the Contractor must provide a letter explaining the substantive coverage provided through self-insurance and the limits of such self-insurance, as signed by the Contractor’s authorized representative with direct knowledge of and responsibility for that insurance/risk management program.

Insurance Requirements

Prior to the start of work the Contractor shall procure at its sole cost and expense and shall maintain in force at all times during the term of the Contract, policies of insurance as herein below set forth, written by companies authorized by the New York State Department of Financial Services to issue insurance in the State of New York (“Admitted Carriers”).

Upon award, the Contractor shall deliver to the Commission evidence of such insurance coverage as defined below. In the event there is a claim asserted that is covered by insurance, the Contractor shall make available for inspection to the Commission upon the Commission’s request, at Commission headquarters, during reasonable business hours, any applicable policy required by this Contract.

Throughout the Contract period, the Contractor shall notify the Commission of any material changes to the policy coverages, or any cancellations prior to the expiration date. The carrier shall also send notification of cancellation, termination, or failure to renew any policy in accordance with the policy provisions when practicable.

General Conditions

A. ***Conditions Applicable to Insurance.*** All policies of insurance required by the RFP and the Contract must meet the following requirements:

1. Coverage Types and Policy Limits. The types of insurance coverage and policy limits required from the Contractor are specified in Paragraph B below – Specific Coverages and Limits.

2. Policy Forms. Policies must be written on an **occurrence** basis, except as may be otherwise specifically provided herein, or agreed to in writing by the Commission. Under certain circumstances, the Commission may elect to accept policies written on a claims-made basis provided that, at a minimum, the policy remains in force throughout the performance of the services and for three (3) years after completion of the Contract. If the policy is cancelled or not renewed during that time, the Contractor must purchase at its sole expense Discovery Clause coverage sufficient to complete the 3-year period after completion of the Contract. Written proof of this extended reporting period must be provided to the Commission prior to the expiration or cancellation of the policy.

3. Certificates of Insurance/Notices. The Contractor shall provide a Certificate or Certificates of Insurance, in a form satisfactory to the Commission, before commencing any work under the Contract. Certificates shall be mailed using the contact information provided in Part 1 of this RFP. Copies of each full policy shall be provided to the Commission by the Contractor upon request.

Unless otherwise agreed, insurance policies shall be written so as to include a provision that the policy will not be canceled, materially changed, or not renewed without at least thirty (30) days' prior written notice to the Commission.

Certificates of Insurance shall:

- a. be in the form approved by the Commission.
- b. disclose any deductible, self-insured retention, aggregate limit or any exclusion to the policy that materially changes the coverage required by the RFP and the Contract.
- c. specify the Additional Insureds and Named Insureds as required herein.
- d. be signed by an authorized representative of the insurance carrier or producer.

4. Primary Coverage. All insurance policies shall provide that the required coverage shall apply on a primary, and not on an excess or contributing, basis as

to any other insurance that may be available to the Commission for any claim arising from the Contractor's work under this Contract, or as a result of the Contractor's activities. Any other insurance maintained by the Commission shall be excess of and shall not contribute with the Contractor's insurance regardless of the "other insurance" clause contained in either party's policy of insurance.

5. Policy Renewal/Expiration. At least 14 days prior to the expiration of any insurance policy required by this Contract, evidence of renewal or replacement policies of insurance with terms no less favorable to the Commission than the expiring policies shall be delivered to the Commission in the manner required for service of notice in Paragraph A.3 above. If, at any time during the term of the Contract, the coverage provisions and limits of the insurance policies required herein do not meet the provisions and limits set forth in the Contract or proof thereof is not provided to the Commission, the Contractor shall immediately cease work on the project. The Contractor shall not resume work on the project outlined within the RFP and the Contract until authorized to do so by the Commission. Any delay, time lost, or additional cost incurred as a result of the Contractor not having the insurance required by the Contract, or not providing proof of same in a form acceptable to the Commission, shall not give rise to a delay claim or any other claim against the Commission. Should the Contractor fail to provide or maintain any insurance required by this Contract, or fail to provide valid proof of insurance to the Commission, the Commission may withhold further Contract payments, treat such failure as a breach or default of the Contract, and/or, after providing written notice to the Contractor, require the Contractor's Surety, if any, to secure appropriate coverage and/or purchase insurance complying with the Contract and charge back such purchase to the Contractor.

6. Deadlines for Providing Insurance Documents after Renewal or Upon Request. As set forth herein, certain insurance documents must be provided to the Commission contact identified in the Contract Award Notice after renewal or upon request by the Commission. This requirement means that the Contractor shall provide any applicable insurance documents to the Commission as soon as possible, but in no event later than the following time periods:

- a. For certificates of insurance: five business days from request or renewal, whichever is later;
- b. For information on self-insurance or self-retention programs: 15 calendar days from request or renewal, whichever is later;
- c. For other requested documentation evidencing coverage: 15 calendar days from request or renewal, whichever is later;
- d. For additional insured and waiver of subrogation endorsements: 30 calendar days from request or renewal, whichever is later; and

- e. For notice of cancellation or non-renewal and proof of replacement coverage that complies with the requirements of this section: five business days from request or renewal, whichever is later.

Notwithstanding the foregoing, if the Contractor has promptly requested the insurance documents from its broker or insurer and has thereafter diligently taken all steps necessary to obtain such documents from its insurer and submit them to the Commission, but fails to provide the documents within the timeframes above, the Commission may extend the time period for a reasonable period under the circumstances, but in no event shall the extension exceed 30 calendar days from the Commission's original request.

7. Self-Insured Retention/Deductibles. Additional surety/security may be required in certain circumstances. The Contractor shall be solely responsible for all claim expenses and loss payments within any self-insured retention or deductible.

8. Subcontractors. Should the Contractor engage a subcontractor, the Contractor shall endeavor to impose the same insurance requirements of this document on the subcontractor, as applicable. Required insurance limits should be determined commensurate with the work of the subcontractor. An Additional Insured endorsement evidencing such coverage shall be provided to the Contractor prior to the commencement of any work by a subcontractor and shall be provided to the Commission upon request. For subcontractors that are self-insured, the subcontractor shall be obligated to defend and indemnify the below-named Additional Insureds with respect to Commercial General Liability and Business Automobile Liability, in the same manner that the subcontractor would have been required pursuant to this section had the subcontractor obtained insurance policies to provide such defense and indemnity. Proof of insurance or self-insured status shall be supplied to the Commission. To the extent that a subcontractor does not obtain the insurance requirements outlined above, the Contractor, through insurance or self-insurance, shall supplement the subcontractor's insufficient or incomplete insurance coverage to ensure that the Commission and the State are made whole.

9. Additional Insured. In each of the liability policies required below, the Contractor shall cause coverage to be included for ongoing and completed operations, including, but not limited to, during any products and completed operations phases, naming as Additional Insureds the following:

the State of New York, the New York State Gaming Commission, and their respective commissioners, officers, agents, and employees.

An Additional Insured endorsement evidencing such coverage shall be provided to the Commission by or on behalf of the Contractor within 30 days of renewal and upon request. If the evidence is in the form of a specific Additional Insured

endorsement, the endorsement must specify that coverage is available to the State of New York, the Commission, and their respective commissioners, officers, agents, and employees as “Additional Insureds”, without limiting the scope of coverage available based on the source of negligent conduct otherwise covered under the pertinent insurance policy. In other words, the “Additional Insured” coverage conferred should be the same as if the Additional Insureds were included as Named Insureds on the insurance policy. For Contractors who are self-insured, the Contractor shall be obligated to defend and indemnify the above-named Additional Insureds with respect to Commercial General Liability and Business Automobile Liability, in the same manner that the Contractor would have been required to defend and indemnify pursuant to this Attachment had the Contractor obtained such insurance policies.

10. Excess/Umbrella Liability Policies. Required insurance coverage limits may be provided through a combination of primary and excess/umbrella liability policies. If coverage limits are provided through excess/umbrella liability policies, then a Schedule of underlying insurance listing policy information for all underlying insurance policies (insurer, policy number, policy term, coverage and limits of insurance), including proof that the excess/umbrella insurance follows form must be provided upon request.

B. Specific Coverages and Limits. The types of insurance and minimum policy limits shall be as provided below.

1. General Liability. Commercial General Liability Insurance (CGL), covering the liability of the Contractor for bodily injury, property damage, and personal/advertising injury arising from all work and operations under this Contract. The limits under such policy shall not be less than the following:

- Each Occurrence limit: \$1,000,000
- General Aggregate: \$2,000,000
- Products/Completed Operations
- should equal the General Aggregate limit
- Personal and Advertising Injury \$1,000,000
- Property Damage \$50,000
- Medical Expense \$5,000

Coverage shall include, but not be limited to, the following: premises liability; independent contractors; blanket contractual liability, including tort liability of another assumed in a Contract; defense and/or indemnification obligations, including obligations assumed under this Contract; cross-liability for additional insureds; products/completed operations for a term of no less than three years, commencing upon acceptance of the Contractor’s and any subcontractor’s work, as required by the Contract; explosion, collapse, and underground hazards; contractor means and methods; liability resulting from Section 240 or Section 241 of the New York State Labor Law.

The following ISO forms must be endorsed to the CGL policy:

- CG 20 37 12 19 or the equivalent
- CG 20 10 12 19 or the equivalent
- CG 20 38 12 19 or the equivalent

Limits may be provided through a combination of primary and umbrella/excess liability policies.

Each insurance policy shall name the Commission as an Additional Insured, and such coverage shall be extended to afford Additional Insured status to those entities during the Products/Completed Operations term. No endorsement or exclusions shall be included within each insurance policy to reduce, limit, or exclude the Commission's full position as an Additional Insured.

The CGL policy, and any umbrella/excess policies used to meet the "Each Occurrence" limits specified above, must be endorsed to be primary with respects to the coverage afforded the Additional Insureds, and such policy(ies) shall be primary to, and non-contributing with, any other insurance maintained by the Commission. Any other insurance maintained by the Commission shall be in excess of and shall not contribute with the Contractor's or any subcontractor's insurance, regardless of the "other insurance" clause contained in either party's policy of insurance.

2. Professional Errors and Omissions. The Contractor shall procure and maintain during, and for a period of one year after completion of, this Contract, Professional Errors and Omissions Insurance in the amount of \$1,000,000 issued to and covering damage for liability imposed on the Contractor by this Contract or law arising out of any negligent act, error, or omission in the rendering of or failure to render services required by this Contract.

Said insurance shall provide coverage for damages arising from computer-related services including but not limited to the following:

- Consulting;
- Data processing;
- Programming;
- System integration;
- Hardware or software development;
- Installation;
- Distribution or maintenance;
- Systems analysis or design;
- Training, staffing or other support services;
- Manufactured, distributed, licensed, marketed or sold cloud computing services; and

- Any electronic equipment, computer software developed, manufactured, distributed, licensed, marketed or sold.

The insurance policy shall include coverage for third-party fidelity including cyber theft, if such coverage is not provided for in a separate Data Breach and Privacy/Cyber Liability policy.

3. Property. The Contractor must maintain insurance on all buildings, furniture, fixtures, computer and communications equipment used in operating and supporting New ICS performance testing, as defined in the Contract, in an amount equal to or greater than the actual replacement cost thereof. Coverage must include a Property Floater to insure personal property including, but not limited to, contents, equipment, and mobile items, against fire, theft, collision flood, etc. The State of New York, the Commission, and sales agents licensed by the Commission will not be responsible for insuring any equipment included in or associated with the New ICS.

4. Business Automobile Liability. The Contractor shall maintain liability insurance arising out of the use of automobiles in connection with performance under this Contract for owned, leased, non-owned, and/or hired vehicles with limits of not less than \$1,000,000 for each occurrence.

5. Crime. The Contractor must maintain crime insurance with a limit of not less than \$1,000,000 protecting the State of New York and the Commission against losses resulting from fraudulent or dishonest acts by the Contractor, any subcontractors, or any officer, employee or agent of the Contractor or any subcontractors.

6. Data Breach and Privacy/Cyber Liability. The Contractor must maintain insurance covering the failure to protect confidential information and failure of the security of the Contractor's computer systems due to the actions of the Contractor, any subcontractors, or any officer, employee or agent of the Contractor or any subcontractors, which results in unauthorized access to confidential data. Said insurance shall be maintained with a limit of not less than \$5,000,000.

Said insurance shall provide coverage for damages arising from, but not limited to, the following:

- Breach of duty to protect the security and confidentiality of nonpublic proprietary corporate information;
- Disclosure or use of personally identifiable nonpublic information (e.g., medical, financial, or personal in nature in electronic or non-electronic form);
- Privacy notification costs;

- Regulatory defense and penalties;
- Computer network systems attacks;
- Introduction, implementation, or spread of malicious software code;
- Unauthorized access and use of computer systems;
- Website media liability; and
- Cyber theft of customers' property, including, but not limited to, money and securities.

In lieu of separate policies in "5" and "6", one policy could be provided to cover Crime, Data Breach, and Privacy/Cyber Liability for \$5,000,000

7. Workers' Compensation and Disability. For work to be performed in New York State, the Contractor shall provide and maintain insurance coverage during the life of this Contract for the benefit of such employees as are required to be covered by the New York State Workers' Compensation Law (www.wcb.ny.gov).

Evidence of New York State Workers' Compensation and Employers Liability coverage and New York State Disability Benefits coverage, or exemption from coverage, must be provided on **one** of the following forms specified by the Commissioner of the New York State Workers' Compensation Board. For forms and guidance, the Board's website is:

http://www.wcb.ny.gov/content/main/forms/Forms_EMPLOYER.jsp

A. Workers' Compensation and Employers Liability Coverage:

- **Form CE-200** - Certificate of Attestation of Exemption from NYS Workers' Compensation and/or Disability Benefits Coverage; or
- **Form C-105.2** - (September 2015, or most current version) – Certificate of NYS Workers' Compensation Insurance Coverage, sent to the Commission by the Contractor's insurance carrier upon request; or
- **Form U-26.3** – NY State Insurance Fund Certificate of Workers' Compensation Coverage from the State Insurance Fund. Bidder must request that the State Insurance Fund send this form to the Commission; or
- **Form SI-12** – Affidavit Certifying That Compensation Has Been available from the New York State Workers' Compensation Board's Self-Insurance Office; or
- **Form GSI-105.2** – Certificate of Participation in Workers' Compensation Group Board-approved self-insurance, available from the Bidder's Group Self-Insurance Administrator.

B. Disability Benefits:

- **Form CE-200** - Certificate of Attestation of Exemption (New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is Not Required); or
- **Form DB-120.1** (September 2015 or most current version), Certificate of NYS Disability Benefits Insurance . Bidder must request its business insurance carrier to send this form to the Commission.
- **Form DB-155**, Compliance with Disability Benefits Law.

All forms must name THE NEW YORK STATE GAMING COMMISSION as the Entity Requesting Proof of Coverage (*i.e.*, the entity being listed as the Certificate Holder).

All forms are valid for one year from the date the form is signed/stamped, or until policy expiration, whichever is earlier. (ACORD forms are NOT acceptable proof of Workers' Compensation insurance coverage).

ATTACHMENTS

- Attachment 1: Bidder Acknowledgement of Addendum**
- Attachment 2: Pricing Proposal Form**
- Attachment 3: Document Proposal Submittal Checklist**
- Attachment 4: Non-Bid Response Form**
- Attachment 5: Confidentiality & Non-Disclosure Agreement**



RFP: C202114 – Lottery Internal Control System Conversion Consulting Services

BIDDER ACKNOWLEDGEMENT OF AMENDMENT

Amendment Number: _____

Date Issued: _____

Summary:

By signing below, the bidder attests to receiving and responding to the amendment number indicated above.

FIRM NAME: _____

REPRESENTATIVE SIGNATURE: _____

PRICING PROPOSAL FORM
(Based on Scope in PART TWO – SCOPE OF WORK)

A. ICS Testing: Deliverable Fee: \$ _____(A)

Note: Deliverable pricing is a flat rate that includes all work required in RFP PART TWO, section A. Hourly rates will not be paid in addition to these fixed fees.

B. Project Management Hourly Consultation (Specified Option): Hourly rates must be provided for each position below. No alternative pricing structure is permitted. Any alternative pricing structure will be deemed non-responsive.

Project Manager Hourly Rate: \$ _____ x estimated 1040 hours = \$ _____

Senior Consultant Hourly Rate: \$ _____ x estimated 260 hours = \$ _____

Mid-Level Consultant Hourly Rate: \$ _____ x estimated 260 hours = \$ _____

Total Estimated Project Management Hourly Consultation: \$ _____(B)

C. ICS Guidance and Tools (Specified Option): Hourly rates must be provided for each position below. No alternative pricing structure is permitted. Any alternative pricing structure will be deemed non-responsive.

Senior Consultant Hourly Rate: \$ _____ x estimated 260 hours = \$ _____

Mid-Level Consultant Hourly Rate: \$ _____ x estimated 520 hours = \$ _____

Low-Level Consultant Hourly Rate: \$ _____ x estimated 520 hours = \$ _____

Total ICS Guidance and Tools Hourly Consultation: \$ _____(C)

Total Estimated Cost (A + B + C) \$ _____

Note: Estimated Hours are for calculation purposes only. Payment will be based on actual Commission approved hours utilized for RFP PART TWO, sections B and C, respectively.

BIDDER NAME: _____

REPRESENTATIVE SIGNATURE: _____



Gaming Commission

One Broadway Center, Schenectady, NY 12305
www.gaming.ny.gov

RFP – Lottery Internal Control System Conversion Consulting Services

DOCUMENT SUBMITTAL CHECKLIST

Submissions Required with Proposal:

Description of Document	RFP	Submittal Requirements	Checklist
Transmittal Letter	§5.4	Must contain a statement that the proposal will remain valid for 180 days from the Proposal Due Date.	
Bidder Acknowledgement of Amendment (Attachment 1)	§1.6	With Proposal, if applicable	
Document Submittal Checklist (Attachment 3)	§5.4	With Proposal	
Contract Form (Appendix B) (incorporates Appendix A)	§6.2	Must be signed—With Proposal	
Bidder/Offerer Disclosure/Certification Form (Appendix C)	§7.1	With Proposal	
Non-Collusive Bidding Certification (Appendix D)	§7.2	With Proposal	
NYS Vendor Responsibility Questionnaire (Appendix E)	§7.3	Complete the form online or submit with the Proposal	
Encouraging Use of New York State Businesses in Contract Performance (Appendix H)	§7.7	With Proposal	
Work Force Employment Staffing Plan (Appendix I-2)	§7.8	With Proposal	
MWBE/SDVOB Utilization Plan Form (Appendix I-3) <ul style="list-style-type: none"> • Proposed Plan 	§7.8	Proposed plan, including estimated percentage—With Proposal	
Vendor Assurance of No Conflict of Interest or Detrimental Effect (Appendix K)	§7.11	With Proposal	
Statement on Sexual Harassment (Appendix L)	§7.12	With Proposal	
Anti-Discrimination EO 177 Certification (Appendix M)	§7.13	With Proposal	
Insurer Qualifications and Insurance Requirements (Appendix N) <ul style="list-style-type: none"> • Compliance Statement 	§7.14	Include a statement of compliance with the insurer qualifications and insurance requirement—With Proposal	

Designation of Proprietary Information (FOIL)	§5.11	With Proposal	
Disclosure and Investigations During Proposal Evaluations	§5.12	With Proposal	
Disclosure of Litigation	§5.13	With Proposal	
References	§3.3	Include three with Proposal	
Technical & Pricing Proposals	§5.4	Submit Technical and Pricing Proposals Separately as Defined in the RFP	

Submissions Required Subsequent to Award:

Description of Document	RFP	Submittal Requirements	Checklist
Substitute Form W-9 (Appendix F)	§7.4	Upon notification of award	
ST-220 Contractor Certification forms (Appendix G) <ul style="list-style-type: none"> • ST220-TD (submit to DTF) • ST220-CA (submit to Commission) 	§7.6	Within seven calendar days of notification of award	
Equal Employment Opportunity Policy Statement (Appendix I-1)	§7.8	Within 72 hours of notification of award	
Consultant Disclosure Form A (Appendix J)	§7.10	Within 2 business days of notification of award	
Consultant Disclosure Form B (Appendix J)	§7.10	By May 15 th for each fiscal year (April 1-March 31)	
Insurer Qualifications and Insurance Requirements (Appendix N)	§7.14	Provide insurance certificates upon notification of award	

FIRM NAME: _____

REPRESENTATIVE SIGNATURE: _____



Gaming Commission

One Broadway Center, Schenectady, NY 12305
www.gaming.ny.gov

NON-BID RESPONSE

RFP: Lottery Internal Control System Conversion Consulting Services

Company Name: _____

If your company will not be submitting a response to the RFP, it would be helpful in the preparation of future bidding opportunities to understand why your company is not submitting a Proposal. Please help us by selecting your reason from the choices below or selecting "Other" with a brief explanation.

_____ Although the bid is within the scope of our business, and we are interested in principle, at present, we are unable to respond, due to other commitments.

_____ The services / products described in the subject RFP are not within our area of expertise.

_____ We do not have the staffing / resources available at this time to provide the services requested.

_____ There were certain requirements or restrictions stated in the RFP that preclude our company from bidding. Those requirements are:

_____ Other: _____

This form may be emailed to: officer.contracting@gaming.ny.gov, or mailed to:

New York State Gaming Commission
Contract Unit, 4th Floor
One Broadway Center
Schenectady, NY 12305

Please be advised that **no response** may result in removal of your company from our bidders' list.

CONFIDENTIALITY & NON-DISCLOSURE AGREEMENT

THIS CONFIDENTIALITY & NON-DISCLOSURE AGREEMENT is between the State of New York (“State”), acting by and through the New York State Gaming Commission (the “Commission”) having its principal place of business at One Broadway Center, Schenectady, New York 12305, and _____ (“Associate”), an officer, agent, employee, independent contractor, partner, or subcontractor of _____ (“Consultant”) with its principal place of business at _____ (“this Agreement”). This Agreement is signed in relation to the provision by the Consultant and Associate of services to the Commission under Contract Number **C202114** (hereinafter “the Engagement”).

1. Definitions. For the purposes of this Agreement, the following terms shall be defined as follows:

I. Confidential Information

(a) “Confidential Information” means any information not generally known to the public, whether oral or written, that the Commission identifies as confidential and discloses to the Consultant and/or Associate so that the Consultant can provide services to the Commission pursuant to this Contract. Confidential Information may include, but is not limited to, operational and infrastructure information relating to: bid documents, plans, drawings, specifications, business rules, reports, product information; business and security processes and procedures; personnel and organizational data, and financial statements; information system IP addresses, network configurations, passwords, security controls, architectures and designs; and such other data, information and images that the Commission deems confidential. The Commission will identify written Confidential Information by marking it with the word “Confidential” and will identify oral Confidential Information as confidential at the time of disclosure to the Consultant and/or Associate.

(b) Confidential Information does not include information that, at the time of Commission’s disclosure to the Consultant and/or Associate:

- (i) is already in the public domain or becomes publicly known through no act of the Consultant and/or Associate;
- (ii) is already known by the Consultant and/or Associate free of any confidentially obligations;
- (iii) is information that the Commission has approved in writing for disclosure; or
- (iv) is required to be disclosed by the Consultant and/or Associate pursuant to law or applicable professional standards, so long as the Consultant and/or Associate provides the Commission with notice of such disclosure requirement and an opportunity to defend prior to any such disclosure.

(c) The Consultant and/or Associate may use Confidential Information solely for the purposes of providing services to the Commission pursuant to Contract Number **C202114** between the Consultant and the Commission. The Consultant and/or Associate shall not make copies of any written Confidential Information, except as necessary to perform the services required by Contract Number **C202114**, without the express written permission of the Commission. The Commission’s disclosure of Confidential Information to the Consultant and/or Associate shall not convey to the Consultant and/or Associate any right or interest in such Confidential Information and the Commission shall retain all right and title to such Confidential Information at all times.

II. Authorized Person

“Authorized Person” shall be defined as a person authorized by the Commission as having a need to receive, possess, store, access, view and/or use Confidential Information for an Authorized Use.

III. Authorized Use

“Authorized Use” shall be defined as the use of Confidential Information by Consultant or Authorized Persons, solely for the purpose of performing the Engagement.

2. Term

Consultant’s obligations under this Agreement shall commence upon the execution of this Agreement or the start of the Engagement, whichever occurs first, and shall survive in perpetuity.

3. Duty to Protect Confidential Information

Associate agrees not to disclose Confidential Information to anyone, except as provided in this Agreement. In addition, Consultant shall safeguard all Confidential Information from unauthorized access, loss, theft, destruction, and the like. Associate shall notify the Commission immediately upon becoming aware that confidential information is in the possession of or has been disclosed to an unauthorized person or entity.

4. Press Releases

Associate shall not issue any press releases, give or make any presentations, or give to any print, electronic or other news media information regarding his/her Engagement - nor shall Associate authorize or permit any other person or entity to do so - without the Commission’s prior written approval. Associate shall immediately refer any media requests or other requests for information to the Commission.

5. Use Restriction

Associate shall not receive, possess, store, access, view and/or use Confidential Information for any purpose other than an Authorized Use. Associate shall not permit unauthorized persons or entities to gain access to Confidential Information and shall not divulge methods of accessing Confidential Information to unauthorized persons.

6. Security Obligations Regarding Confidential Information

Associate agrees to comply with the following security obligations as well as any other such obligations conveyed to him/her during the course of the Engagement in accordance with the Engagement’s scope of work:

- a. Unless otherwise authorized by the Commission, Confidential Information may not be stored on personal (non-Commission) computing or other electronic or mobile storage devices, or taken or removed in any form from the Commission.
- b. Associate shall comply with all federal and state laws.
- c. Associate shall comply with all Commission policies and procedures including but not limited to those that provide for accessing, protecting, and preserving State assets.
- d. Associate shall take no action to intrude upon, disrupt, or deny services to the Commission.
- e. Associate shall use only those access rights granted by the Commission.

7. Certification by Consultant of Return of Confidential Information

Upon termination of the Engagement, Associate shall return Confidential Information stored in a tangible format to the Commission, or destroy such Confidential Information that Associate possesses in a format that cannot be returned, and further agrees to submit to the Commission, on Consultant's letterhead, a Certification of Return or Destruction of Confidential Information certifying that all copies of Confidential Information have been returned or destroyed.

8. Termination

Associate's Authorized Use of Confidential Information shall terminate automatically upon the first to occur of any of the following: (a) breach of this Agreement; (b) completion or termination of Associate's participation in the Engagement; or, (c) termination of Contract Number **C202114** between the Consultant and the Commission.

9. Compliance

Should Associate breach this Agreement, the State shall have all equitable and legal rights to pursue criminal prosecution and to seek civil redress directly from Associate as an individual, for such breach, to prevent further breaches, and to be fully compensated (including litigation costs and reasonable attorney fees) for losses or damages resulting from such breach, whether the compensation sought is for damages or for injunctive relief, within the Commission's discretion. In the event of a breach by Associate, Associate agrees to be held jointly and severally liable for any monetary or equitable damages incurred by the Commission, regardless of the number of third parties involved in such breach or the resulting damages, unless and until another source of reimbursement has paid or otherwise acted to cure the damages incurred, with the complete curing of damages being determined by the Commission. Curing of monetary damages does not negate the Commission's rights to pursue criminal prosecution related to a breach and its effects, when applicable.

10. Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of New York. If any provision of Agreement is declared by a court of competent jurisdiction to be invalid, illegal, or unenforceable, the other provisions shall remain in full force and effect.

11. Miscellaneous

- a. The parties acknowledge that each has had an opportunity to retain an attorney to review the terms and conditions of this Agreement. No provision hereof shall be interpreted against the interests of one party solely because such provision was drafted by such party or by the attorney for such party.
- b. A waiver of enforcement of any provision of this Agreement shall not constitute a waiver of any other provision of this Agreement nor shall it preclude the affected party from subsequently enforcing such provision.
- c. This Agreement may be executed in counterparts, each of which shall be deemed an original. Executed copies of this Agreement may be sent by facsimile (fax) or as PDF copies sent by email, and any signatures thereon shall be considered for all purposes to be binding as originals.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the date indicated below their respective signatures herein:

ASSOCIATE	NEW YORK STATE GAMING COMMISSION
By: _____	By: _____
Signature	Signature
_____	_____
Printed Name	Printed Name
_____	_____
Title	Title
_____	_____
Date	Date

The required Acknowledgment for Confidentiality & Non-Disclosure Agreement (for Associate) is found on the following page:

