



RFP: C190007 – Banking Services

BIDDER ACKNOWLEDGEMENT OF ADDENDUM

Amendment Number: Two

Date Issued: March 4, 2020

Summary:

1. Section 1.4 – Schedule is amended as follows:

Commission Responses to First Questions: March 4, 2020

2. Q&A Attached (Questions are continued from RFP Amendment One, issued February 18, 2020).

- Includes Confidentiality and Non-Disclosure Agreement to receive data referenced in response to Q.39.

3. Revised Appendix B – Contract, Section 15.

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

FIRM NAME	
REPRESENTATIVE SIGNATURE	

**RFP C190007 - Banking Services
Question and Answer Summary
Issued: March 4, 2020**

Q.2: Do the Cover letter and Document Submittal Checklist need to have original signatures?

A.2: Yes.

Q.3: P 3 - 6. WAGE AND HOURS PROVISIONS

We believe that the prevailing wage requirement does not apply as this is neither a public works nor a building service contract. Because [] is a financial services institution bidding on work to provide financial services to the NYS Gaming Commission, it respectfully submits that it is exempt from the Prevailing Wages portion of Article 8 of the New York State Labor Law. Although the Bank submits that the Prevailing Wage is not applicable, the Bank pays all of its employees competitively based on market rates in relevant locations and in all instances pays in accordance with the federal Fair Labor Standards Act and applicable state wage laws.

Would NYS Gaming strike this provision?

A.3: No, the New York State Appendix A – Standard Clauses for NYS Contracts, dated October 2019, applies to all State contracts. We cannot strike any of the clauses contained therein. However, the Wage and Hours provision only applies “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”. This procurement is not covered by those Articles, and therefore the Wage and Hours provision does not apply to the ensuing Contract.

Q.4: P 11, 1.14, p 23 2.17 Subcontractor Approval, & p 26 2.a.

We do not allow clients to conduct background or criminal investigations on our employees or vendors. We are highly regulated and our employees have all undergone background checks and our vendors are thoroughly vetted.

We perform extensive work for NYS and this position has been acceptable. In our proposal we can expand on the Bank’s employee and vendor vetting process to ensure Gaming Commission is comfortable with the Bank’s process. Is this acceptable?

A.4: If an applicant wants to submit its employee, vendor, and subcontractor vetting requirements as part of its response to the RFP, the Commission will

consider that information when determining whether additional investigation is appropriate, in the Commission's sole discretion.

Q.5: Part 4 – Proposal Response :4.2 B

In regards to resumes, please clarify if you are looking for individual' s actual resumes or relevant experience to managing the Commissions accounts?

A.5: The Commission is requesting resumes for the relevant personnel who would be assigned to the Commission's account. The resumes need only contain relevant banking experience.

Q.6: P 14, Section 1.22 EXECUTIVE ORDER NO. 177 CERTIFICATION

The Bank complies with this requirement with the exception of the "...prior arrest or conviction record" portion. - *As a financial institution, [] is regulated by the Federal Deposit Insurance Act (FDIC); and, therefore, must remain in compliance with the guidelines set forth in Section 19 of the Federal Deposit Insurance Act. In accordance with Section 19, the Bank does not hire any applicants with convictions for FDIC regulated offenses (which includes convictions for certain criminal offenses involving dishonesty and breach of trust). In addition, the Bank does not employ individuals with convictions for felony crimes of violence, sexual assault, felony convictions, any crimes against children, kidnapping and the illegal manufacture, sale, distribution of or trafficking in controlled substances, among other crimes.*

Is this acceptable?

A.6 The Anti-Discrimination EO 177 Certification in Appendix I requires an applicant's certification that the requirements of Executive Order No. 177 are being met. While the Certification provides for exceptions to strict compliance with Executive Order No. 177 in some circumstances, the Commission cannot opine in the Question & Answer stage of the RFP process as to whether a specific applicant's policies or practices are acceptable exceptions under Executive Order No. 177. To the extent that an applicant wants to explain how it believes that its specific employment policies or practices are acceptable exceptions, please include such explanation in the applicant's response to the RFP.

Q.7: Insurance

We never comply with all initial insurance requirements put for in RFPs. Not because we are poorly ensured but rather it is because we are a large complex financial organization. In past RFPs with NYS over the last several decades we have never had any difficulty negotiating an acceptable insurance approach and coverage. Typically, this is the sort of topic that we would put forth in our proposal in a section entitled: Contract Clarifications

and Caveats. Is that approach acceptable? As opposed to attempting to negotiate insurance through the Q&A process.

A.7 The Commission will consider alternative insurance approaches and coverage that bidder may wish to submit as a component of its proposal, provided that, in the Commission's opinion, the alternate provides the Commission with at least the same level of coverage as the requirements of the RFP.

Q.8: RFP Amendment 1

Volumes Question: Gaming notes that it requires both Current and Prior Day Detail reporting in its internet banking portal. We see from Addendum 1 that there is limited Current Day reporting as evidenced by the low volume of 372 vs previous day reporting at 14,342. This is normal in that most organization do not need all of their accounts to have current day reporting. So that we may price appropriately, would NYS Gaming identify which of its 12 accounts require current day reporting, and also confirm that future volumes will be similar to those provided in Amendment 1?

A.8: Summary information for all accounts is required for the current day (intraday). Detailed information for current day is required for the Video Gaming Revenue Account, Racing Account, and Commercial Gaming Revenue Account. There is no guarantee of future volumes.

Q.9: P 6 E. Size of checks that must be cashed in branches.

Would NYS Gaming please reduce the size of checks that must be cashed to 3,999.99 (for those that are not customers of the bank) so as to avoid limiting the number of banks able to bid?

A.9: The Commission declines to change this requirement.

Q.10: P 22_Section 2.15 Approval of Staffing

The client manager would be happy to address any concerns you may have with respect to an associate assigned to support your agreement. The bank generally must retain control over staffing decisions. Is this acceptable to the Commission?

A.10: The Commission will limit the approval to Account Managers and associates directly assigned to the account.

Q.11: P 23, 2.17 Subcontractors & Various other clauses and locations

We offer a wide array of services to our clients. Each service has many features and options. In the course of providing these services we may employ agents, employees or vendors to service all of our clients as opposed to a particular client. In general, we will disclose in a proposal response any agents or vendors retained by us exclusively for, and which are dedicated solely to, the provision of services to a specific client and/or contract. We are not retaining any vendors or subcontractors in exclusive support of this contract therefore we are not planning to make any vendor or subcontractor related disclosures or meet any vendor or subcontractor related reporting requirements.

Is this approach acceptable to NYS Gaming? Notably, we take full responsibility for any of our agents, vendors or subcontractors.

A.11: Subcontract approval requirements are outlined in section 2.17.

Q.12: P 24, 2.18 DELEGATION AND/OR ASSIGNMENT

The Bank generally reserves the right to assign to a bank affiliate upon prior written notice. Is this acceptable to the Commission?

A.12: No. As per section 2.18, assignments may be made only if the Commission provides express written consent and may require formal contract amendment to be approved by the New York State Offices of the Attorney General and State Comptroller.

Q.13: P 24, 2.20 LICENSED INTELLECTUAL PROPERTY

The bank will agree to use commercially reasonable efforts to ensure continued availability of its services to its customers, which may include the use of licensed intellectual property, if applicable. The bank reserves the right to update and revise its service offerings from time to time. Is this acceptable?

A.13: The Commission does not intend to negotiate any changes in the provisions of the Contract following the receipt of Proposals. If during the Term of the Contract, however, circumstances related to the use of licensed intellectual property change so that service offerings are revised, the Successful Bidder represents that it will continue to provide the contracted services at a level equivalent or greater than as offered in the Proposal, so long as any alternative option is pre-approved in writing by the Commission.

Q.14: P 25, 2.21 COMMISSION SECURITY REQUIREMENTS

It appears that this provision applies when services are provided on site at a Commission location. Please confirm that this would not apply if the contractor were not providing any services on-site nor accessing Commission systems in order to provide the services.

A.14: Confirmed that the Contractor is not responsible for security that is under the control and management of Commission, State, local or federal agencies, but is otherwise responsible for the safety and security of the project sites, facilities, and components under this Contract.

Q.15: NYS Laws Related to Data Security etc - bidders cannot typically agree to comply with state policies now and into the future as to track and comply with such would be untenable. As a financial institution, the bank is required to comply with the information security standards of numerous federal laws and is evaluated regularly for compliance with these obligations by its various regulators, including without limitation its principal regulator, the Office of the Comptroller of the Currency. In the past, we have performed a review of various NYS requirements and then provided details regarding how we address requirements at that time. This has historically been an acceptable approach to NYS. Is this acceptable to the Commission?

A few examples (not all inclusive) of impacted sections are:

P 25, 2.21 Contractor must comply with present and future security policies of NYS Gaming Commission.

P 25 & 26 Commission Security Requirements B.1. (if applicable)

P 28 D Federal or State Requirements

P 29 G. General Security Provisions 1, 2, 3

P 30 & 31 H Data Ownership, Transparency, ... Protection and Destructions – this will need to be negotiated

P 34 K. Vulnerability Management – this will need to be negotiated. We are regulation driven processes and protocols.

A.15: Yes, with the understanding that the Successful Bidder must comply with all state and federal laws regarding data security.

Q.16: P 26, Section 2.21 Security Requirements, 2.a

In accordance with [] ("Bank") job application and applicant acknowledgment form, employment with the Bank in the United States is contingent upon a satisfactory background check, including criminal background check. The purpose of the US-based background check program is to reduce the risk of hiring individual who could jeopardize the safety and security of [] customers, shareholders and employees. In accordance with the Bank's criminal background check process, applicants offered employment are generally fingerprinted and the prints are sent to the FBI to identify any criminal convictions. As a financial institution, [] is regulated by the Federal

Deposit Insurance Act (FDIC); and, therefore, must remain in compliance with the guidelines set forth in Section 19 of the Federal Deposit Insurance Act. In accordance with Section 19, the Bank does not hire any applicants with convictions for FDIC regulated offenses (which includes convictions for certain criminal offenses involving dishonesty and breach of trust). In addition, the Bank does not employ individuals with convictions for felony crimes of violence, sexual assault, felony convictions, any crimes against children, kidnapping and the illegal manufacture, sale, distribution of or trafficking in controlled substances, among other crimes.

The bank generally does not disclose the results of background checks to third parties, but if the state has specific concerns about the suitability of a Bank employee to work on the contract, it should direct those concerns to the Client Manager who will promptly investigate the issue.

A.16: No question was presented.

Q.17: P 27, 2.22 Most Favored Nation

We can confirm that when we bid we will be putting forth a very competitive and market based proposal. No two RFPs are alike therefore said pricing will be unique to this RFP. Is this acceptable?

A.17: Yes, as long as any pricing related to equipment, hardware, and software follows the requirements of Section 2.22 of the RFP.

Q.18: P 27, 2.23 OWNERSHIP OF MATERIALS

In this response, the bank is offering standard banking services that it offers generally to banking customers and no IP development is contemplated. While we can agree that documentation prepared by the bank and provided to the Commission will become the Commission's property, we would request that the contract clarify that all bank manuals, user guides, software, and existing IP rights will remain the property of the bank.

A.18: Section 2.23 specifies that the ownership rights that would transfer from the Successful Bidder to the Commission applies only to data, documentary material, and reports originated and prepared exclusively for the Commission.

Q.19: P 27, 2.24 TECHNOLOGY PROVISIONS

This section requires the Contractor to be compliant with all New York State security policies and standards which are quite specific. The Bank does not customize its practices on a per customer basis. Rather, the Bank maintains a written information security program that contains administrative, technical and physical safeguards designed to (i) protect against information security events, and (ii) conform to the requirements of

applicable state and federal privacy regulations. The program has information security policies and procedures, including appropriate mitigating controls, that are based on ISO 27002:2005 and National Institute of Standards and Technology (“NIST”) 800-53. We are confident that our information security policies and procedures are substantively consistent with those of the Commission referenced in the RFP document, although the methods and practices may vary. Will the Commission consider variance from the specific requirements, so long as equivalent protections are provided?

A.19: The Commission will consider equivalent protections.

Q.20: P 28 D. Federal or State Requirements

The bank complies with applicable federal and New York State (state) laws and Regulations. The bank can agree to provide Client prompt, but in no event later than (2) business days of Bank becoming aware thereof, notice of any information security event documented and verified by Bank as part of Bank’s standard incident response process that involves, or which the Bank reasonably believes involves, the unauthorized access, use or disclosure of personal information obtained from the Commission. Is this acceptable to the Commission?

A.20: No.

Q.21: P 32, J. Secure Development, Configuration and Lifecycle

The bank is not providing or developing technology per this response and we do not believe that these sections apply to the standard services that we are offering in our response so we respectfully request that these provisions be deleted. Upon award, we will be happy to provide details around the account security as noted in the Scope of Work and answer any questions related thereto.

A.21: This provision applies to applicable technology.

Q.22: Appendix B, 1. Scope of Services p. 1

The bank operates under various laws and regulations that are unique to the banking industry. Consequently, we have treasury service terms that contain specific contractual terms and disclosures for the protection of all parties, and important descriptions of how our services are provided. The bank generally requires that its Treasury Services terms be part of the foundational basis of the agreement between the parties. Will the Commission be willing to incorporate this document into the final contract albeit at a lower order of precedence than the Commission’s contract terms? We would also like to include our Deposit Agreement and Signature Cards. We did not include these document in the Q&A but assume they can be reviewed and negotiated post award.

A.22: The Commission cannot consider inclusion of documents that were not provided for review and does not intend to negotiate any changes in the

provisions of the Contract following the receipt of Proposals. Banking services schedules and other standard Bank-related documents (“Banking Services Schedules” or “Schedules”) should be submitted by a bidder with its proposal. Nothing contained in such Schedules will be effective to the extent that it constitutes a variance with the terms or requirements of the Contract, the RFP, or any of the other precedential documents, or to the extent that it has not been accepted by the Commission in the final Contract. All proposed modifications or exceptions taken by the Bank to the RFP will be withdrawn in the Contract, except only to the extent that such modifications or exceptions have been explicitly incorporated into Contract.

Q.23: Appendix B, p.3. 6. Termination

Item iv. The bank is a large and diversified institution and is routinely involved in litigation in various state and federal courts. The right to terminate a contract based on a conviction of any employee, officer or director bank-wide seems overly broad, and could lead to a right to terminate when there has been no impact to the agreement. Would the Commission consider limiting this right to terminate to situations based on convictions of officers related to the services provided under the agreement?

A.23: No. This section already provides for a limitation on the grounds for termination based on convictions that, in the sole reasonable opinion of the Executive Director of the Commission, would be prejudicial to public confidence in the New York Lottery or the Commission.

Q.24: Appendix B, p.3. 9. Record Retention

The bank must maintain its records in accordance with a retention policy that aligns with applicable laws and regulations. However, we note that records are generally maintained for a rolling period of seven years from the date of a transaction, which is consistent with the requirements of Appendix A.

A.24: No question was presented.

Q.25: Appendix B, p.8, 11. Liability and Indemnification

It is generally inconsistent with policy for a regulated financial institution to accept responsibility for indirect or consequential damages or unlimited liability in a contract. Would the Commission agree to revise the indemnity provision to limit the bank’s obligation to liability for direct damages to the Commission resulting from the bank’s negligence, subject to a dollar cap based on twice the annual fees paid by NYS Gaming to [], as we have seen in other NYS bids?

A.25: No.

Q.26: Appendix B, p.10, 14. and 15.

Per comment under scope of services, would the Commission modify these lists to include the Treasury Services product terms (generally referred to as Selected Treasury Services Terms and Conditions) for the services to be provided by the bank?

A.26: The Commission cannot consider inclusion of documents that were not provided for review and does not intend to negotiate any changes in the provisions of the Contract following the receipt of Proposals. Banking services schedules and other standard Bank-related documents (“Banking Services Schedules” or “Schedules”) should be submitted by a bidder with its proposal. Nothing contained in such Schedules will be effective to the extent that it constitutes a variance with the terms or requirements of the Contract, the RFP, or any of the other precedential documents, or to the extent that it has not been accepted by the Commission in the final Contract. All proposed modifications or exceptions taken by the Bank to the RFP will be withdrawn in the Contract, except only to the extent that such modifications or exceptions have been explicitly incorporated into Contract.

Q.27: P 39, C. Provide Controlled Disbursement Services

In order for us to provide bundled pricing we need to know how many Controlled Disbursement accounts are desired. Based on the Addendum provided it appears that NYS Gaming has one account currently set up as a Controlled Disbursement account. Is that correct?

A.27: The Commission currently has one account (Lottery Prize Payment) set up as a controlled disbursement account.

Q.28: P 39, E. provide same day availability of funds drawn off the 2nd Federal District banks that are deposited by a specified cut off.

We only provide same day credit for items drawn on us that meet deadlines.

- However, we can offer our very best branch deposit float chart which is in line with the Federal Reserve Schedule. 0 days on us, and heavily 1 day for other domestic checks, with rare remote checks taking 2 days. Foreign are always 4 days.
- For remote deposit we will put you on our best schedule which is 0 on us and 1 day for the rest (checks drawn on Canadian banks in US dollars can be deposited via RDSO as long as there is a 45 in the MICR line, otherwise foreign is N/A as you cannot use RDSO for foreign checks).

Is this acceptable? We would be unable to bid if your requirement stands in that there is no way for us to systemically implement and maintain a unique float schedule for NYS Gaming.

A.28: The Commission hereby replaces the language in the RFP’s Section 3.1.E “Paper Disbursement Services”, to now read: “Funds availability provided to the Commission is equivalent to the funds availability provided to a Bank by the Federal Reserve for checks processed through the Federal Reserve.”

Q.29:

P 6, H. Checks written against these accounts must clear within Federal Reserve District 2 (New York)

We are not able and do not believe any bank can comply with this requirement in this era of check images being used (as opposed to the actual paper checks) for clearing purposes.

If we have a direct relationship with the bank where the check is cashed or deposited, the item will clear between the two banks to/from their image locations. For us, that is our Richmond, VA and Richardson, TX sites. If clearing through the FED, technically all checks clear through the Federal Reserve 6th district (Atlanta FED) as the image clearing location nationwide.

No checks may be cleared through the payment system \geq \$100,000,000.00. Checks issued for greater than these amounts must be handled as collection items. For us collection items are handled via our location in Dallas, TX.

Would NYS Gaming consider striking this requirement?

A.29: The Commission agrees to remove subsection “H.” under the Minimum Qualifications requirement in Section 1.3.

Q.30: 1.15 Disclosure of Litigation and Other Information

1.17 Change in Financial Condition

1.18 Change in ownership

The bank is a large and diversified institution and is routinely involved in litigation in various state and federal courts. As a publicly-traded corporation, the bank makes all disclosures required by its regulators, including all required disclosures in its Annual Reports on Form 10-K and Quarterly Reports on Form 10-Q, which are updated in Reports on Form 8-K (the “Reports”), all of which are filed with the Securities and Exchange Commission. Those Reports include disclosures of investigations and other matters as required by federal law and are publicly available. These Reports can be provided upon request or can be accessed at the following website: []. With that understanding, any commitment to separately disclose such material information to any third party may conflict with or otherwise be prohibited by applicable securities laws and regulations.

Is this acceptable?

A.30: No. The Commission is not aware of any securities laws and regulations that would not allow the reporting required. To the extent that the reports already being prepared match the requirements of sections 1.15, 1.17, and 1.18, those reports may be provided to the Commission in lieu of a separate written statement.

Q.31: P 18, 2.2

We understand and appreciate that it is your goal to fully conduct contract negotiations through Q&A. We do see this approach attempted but have never seen the goal attained. It is very challenging to in a condensed period of time identify and work through all contract issues. Realistically all bidders end up submitting a section entitled: Clarification and Caveats where they capture contract issues. We will do our very best to identify issues through the Q&A but recommend NYS Gaming consider providing some flexibility on this topic in order to avoid a failed bid. Is this acceptable?

Related, we plan to submit our Standard Terms & Conditions related to the products contemplated by the RFP along with a sample Deposit Agreement and Signature Card. We look forward to negotiating these and agree they will fall last in order of precedence. Is this acceptable?

A.31: The Commission cannot consider inclusion of documents that were not provided for review and does not intend to negotiate any changes in the provisions of the Contract following the receipt of Proposals. Banking services schedules and other standard Bank-related documents (“Banking Services Schedules” or “Schedules”) should be submitted by a bidder with its proposal. Nothing contained in such Schedules will be effective to the extent that it constitutes a variance with the terms or requirements of the Contract, the RFP, or any of the other precedential documents, or to the extent that it has not been accepted by the Commission in the final Contract. All proposed modifications or exceptions taken by the Bank to the RFP will be withdrawn in the Contract, except only to the extent that such modifications or exceptions have been explicitly incorporated into Contract.

Q.32: Page 41, Electronic Bill Payment & Presentment

Below are questions that relate to NYS Gaming’s requirement for Electronic Bill Payment and Presentment so that we can better understand exactly what NYS is looking for. The answers will determine what solution best fits your needs.

Implementation:

1. Are you looking to integrate using a SSO or API solution or are you looking for the payment portal to be hosted?
2. Are you migrating from another application? Will you require a data migration? (Data migration file is required)
3. Do you have multiple divisions (Hierarchy is required)

4. Are you using a third party vendor for your AR system? If so, what type of integration is required?
5. Is your remittance information required to be in a format other than CSV or flat file?

Product Features:

6. Do you want your customers to have the ability to enroll in the application?
7. Do you need the ability to process recurring payments?
8. Are automatic payments required? (An account master file is required)
9. Do your customers need the ability to pay multiple invoices? (Invoice file may be required)
10. Will you need real time payment notifications (Scheduled, Edited Cancelled)
11. Can customers make payments over the phone? (Interactive Voice Response - IVR)
12. Would you want to provide customers the ability to manage payments via mobile device or pay by text?
13. Are you charging your payers a convenience fee?

A.32:

- 1. The Bidder will provide a portal with SSO support that allows the subscription system to pass Subscription Player ID, Subscription Acct Name, email address, and payment amount to the banking services portal.**
- 2. The Bidder is to integrate into the existing application, accessible at mynylottery.org. It is not contemplated that current banking data will require migration.**
- 3. We are not sure we understand the question but if it refers to divisions within the Gaming Commission, only the NYS Lottery uses this system.**
- 4. Subscriptions are all paid for at the time of purchase so there is no AR system.**
- 5. Remittance information should be available in report format viewable from a dashboard and exportable to CSV or PDF.**
- 6. No**
- 7. No**
- 8. No**
- 9. No**
- 10. The subscription system requires notification that the transaction was successfully completed or declined in real-time. The Lottery's customer also receives a notification from the Bidder's application to the same effect.**
- 11. No**
- 12. The Bidder should integrate payments within the existing subscriptions application, regardless of device or network type.**
- 13. No**

Q.33: P 43 B.

The numbers provided in RFP Amendment 1 lead us to believe currently there are no Zero Balance Accounts (ZBAs). Please confirm that at this time NYS Gaming does not

have any ZBA accounts. If this is not correct please let us know the number of accounts set up to be a ZBA account.

A.33: The Commission does not currently use any ZBA accounts.

Q.34: P 44, 4.2 f. Copies of Financial Statements

Would it be acceptable to provide a link to 2 years of financial statements as opposed to providing hard copies? The statements are voluminous and would make our submission very large.

A.34: Links to public websites are acceptable.

Q.35: Questions That will allow us to recommend possible alternate payment solutions:

a) Page 38, Paper Disbursements

What is the total annual number of Lottery and Video Lottery Game prize claim check payments to individual consumers, and what is the total dollar (\$\$) amount for that check volume?

b) Page 41, 3.2 Commission Account

Are any checks written to individual consumers for Racing prize claims? Other gaming? If so, what is the total annual number of checks and total dollars associated, by category?

c) Misc.

What personal information is obtained on all prize claim winners (i.e., name, address, email address, mobile number, SSN, etc.)?

A.35: The Commission has not solicited alternate payment solutions. In addition, we cannot accept any payment structure outside of Attachment 2 – Pricing Proposal.

Q.36: RFP Section 2.2, Pg. 18

Section 2.2 of the RFP indicates Bidders must accept and execute the contract attached as Appendix B and that the Commission does not plan to negotiate the terms of the Contract after award. However, the Contract does not include contractual terms that are required by regulators for banking services, so some amount of negotiation post award remains inevitable with any banking services provider. Because bidder will include the various service and account terms necessary to provide banking services with its proposal for the Commission to review and consider as part of its evaluation process, and bidder respectfully requests that the Commission modify the RFP requirements regarding submitting a signed copy of Appendix B and asking questions (or noting exceptions) to the proposed contractual terms solely during the Q&A period. Will the Commission revise section 2.2 of the RFP to require any proposed exceptions (and additions) to the contract be identified within the proposals themselves and allow the Commission to consider such

contract changes as part of the evaluation process (instead of deeming a proposal non-responsive for not being signed pending negotiation)?

A.36: The Commission cannot consider inclusion of documents that were not provided for review and does not intend to negotiate any changes in the provisions of the Contract following the receipt of Proposals.

Q.37: Upon award, will the Commission be willing to modify the requirements throughout the RFP that the Bidder contractually agree to future policy changes for numerous policies to allow for bids from regulated institutions that cannot agree to such requirements?

A.37: No.

Q.38: RFP Section 2.24, Pg. 30

Upon award, will the Commission be willing to modify the requirements in the RFP that data not be stored outside the United States provided it remains secure regardless of where located?

A.38: No.

Q.39: RFP Section 3.1, Pg. 38

Under Deposit Services, it indicates that the Commission will make cash deposits. Can you please provide a breakdown by location of the frequency of the cash deposits and the average dollar amount of the deposits? Do the locations also deposit coin? If so, can you please provide a breakdown by location of the frequency of the coin deposits and the average dollar amount?

A.39: For security reasons, information related to cash balances by location may only be made available to bidders who complete a confidentiality and non-disclosure agreement with the Commission, a copy of which is attached to these responses.

Q.40: RFP Section 3.1, Pg. 38

Does the Commission utilize an armored carrier for cash deposits? If so, which armored carrier(s) are used?

A.40: The Commission does not utilize an armored carrier.

Q.41: RFP Section 3.1, Pg. 39

Under Electronic Funds Transfers Services, it indicates the need for incoming and outgoing International Wires. What denomination (other than USD) does the Commission send and receive? How many incoming and outgoing International Wires does the Commission have annually?

A.41: The Commission processes less than 20 international wires annually. They are in USD.

Q.42: RFP Section 3.1, Pg. 41

Under Website Services, it states that the contractor shall provide integration with the Commission's website and subscription system. Are the customers redirected to a bank portal for payment or is that handled by the Commission's third-party vendor? If the third-party vendor is processing the payment request then how are the ACH details provided to the bank? If the customer is redirected to the bank portal how does this process occur and what data follows with the customer and does the Commission require the contractor to capture data from the customer other than the payment details?

A.42: See response to Question 32.

Q.43: RFP Section 4.3, Pg. 47

The Pricing Proposal section states that alternate forms will be considered non-responsive. How do we represent a cost for services that are enhancements or alternatives if they are in addition to the seven Service Line items provided in the Pricing Proposal?

A.43: The Commission has not solicited enhancements or alternatives.

Q.44: Appendix B

In paragraphs 8 and 9 of Appendix B to allow for retention of Commission information consistent with Bidder's record retention policies that meet regulatory requirements?

A.44: The Commission does not understand the question presented and cannot provide a substantive answer.

Q.45: Appendix B

Upon award, will the Commission be willing to modify the requirements in paragraphs 8 and 9 of Appendix B to allow for retention of Commission information consistent with Bidder's record retention policies that meet regulatory requirements?

A.45: No, but these requirements are the minimum required.

Q.46: Appendix B

Upon award, will the Commission consider modifying the requirements in paragraph 11 of Appendix B to allow for limiting liability to meet regulatory requirements?

A.46: No.

Q.47: Attachment 2

Would the Commission consider accepting detailed price schedule for fees outlined in the RFP as that would be more cost effective for the Commission versus bundled pricing?

A.47: No.

Q.48: Attachment 2

Are the 51,600 items under Manual Deposits check deposits? If so, why did those items not get deposited as Remote Deposits? If the Manual Deposits also include cash, can you provide a breakdown of cash and check deposit by location?

A.48: See Amendment 1, dated February 18, 2020

Q.49: Attachment 2

What is the breakdown of domestic versus international wires with the volume of 1,440 for Outgoing Fedwires?

A.49: Less than 10 International.

Q.50: Attachment 2

What is the breakdown of domestic versus international wires with the volume of 600 for Incoming Fedwires?

A.50: Less than 10 International.

Q.51: Attachment 2

What does the volume of 108,000 represent for Electronic Billing & Presentment represent?

A.51: See Amendment 1, dated February 18, 2020.

Q.52: Attachment 2

Would the Commission consider adding a Service Line for reporting? There is no Service Line to capture BAI2 and online reporting.

A.52: No. Pricing must conform to the provided pricing sheet.

###

GENERAL BANKING SERVICES
C190007

THIS CONTRACT 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").

WHEREAS the Commission issued a Request for Proposals ("RFP") on [_____] soliciting proposals from qualified firms to provide General Banking services, and clarified the requirements of the RFP with Amendment One dated [_____] and Amendment Two dated [_____] (collectively, the "RFP"); and

WHEREAS the Contractor submitted a Technical Proposal and a Pricing Proposal dated [_____, 2020] (collectively, the "Proposal"), which was deemed by the Commission's evaluation team to be the Best Value, from among competing proposals, as defined within the RFP;

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 General Banking 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 Agreement shall be effective August 1, 2020 through May 30, 2027, as follows:

The period of August 1, 2020 through November 30, 2020 will be used for transition.

The period of December 1, 2020 through November 30, 2025 will be used for general banking activities.

The period of December 1, 2025 through May 30, 2027 will be used as a carry-out period for transactions against checks issued through November 30, 2025.

3. 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. No minimum amount is guaranteed by this Agreement, 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 Offices of the New York State Attorney General and the New York State Comptroller. The Commission agrees to exercise its best efforts to obtain such approval.

5. Mutual Cooperation. The objective of this Contract is to provide General Banking Services to the Commission as set forth in this Contract. The parties agree to cooperate fully in good faith and to assist each other, to the extent reasonably practicable, in order to accomplish this objective.

6. Termination and Suspension.

(a) 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; or

(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 New York Lottery or the Commission.

(v) Grounds for Cancellation. Upon the refusal by a person, when called before a grand jury, head of a state department, temporary state commission or other state agency, or the organized crime task force in the department of law, which is empowered to compel the attendance of witnesses and examine them under oath, to testify in an investigation, concerning any 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, to sign a waiver of immunity against subsequent criminal prosecution or to answer any relevant question concerning such transaction or contract.

Such person, and any firm, partnership or corporation of which he 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 this law, by such person, and by any firm, partnership or corporation of which he 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) 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 specifically 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. If termination is sought because of a criminal conviction as described in subparagraph (iv) of Paragraph (a) of this section 6, 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) The Commission reserves the right to terminate this Contract in the event it is found 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 finding, the Commission may exercise its termination right by providing written notice to the Contractor in accordance with the written notice terms of this Contract.

(d) 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 Executive Director or his or her designee at the Contractor’s expense where the Contractor is determined by the Executive Director or his or her designee to be non-responsible or nonresponsible. In such event, the Executive Director or his or her designee may complete the contractual requirements

in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

(e) The Executive Director of the Commission, or his or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when he or she 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 at such time as the Executive Director of the Commission or his or her designee issues a written notice authorizing a resumption of performance under the Contract.

7. 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 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 completed Vendor

Assurance of No Conflict of Interest or Detrimental Effect form signed by an authorized executive or legal representative of each 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.

8. Confidentiality and Non-Disclosure.

(a) For the purposes of this section, “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, reports, product information; business and security processes and procedures; personnel and organizational data, and financial statements; information system IP addresses, 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.

9. Records Retention. Records required by this Contract to be retained by the Contractor shall be retained for the periods specified in Appendix A, 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.

10. 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 of the Commission
One Broadway Center
Post Office Box 7500
Schenectady NY 12301-7500

Cc: General Counsel
New York State Gaming Commission
One Broadway Center
Schenectady, NY 12305

(b) As to the Contractor:

Contact:
Company Name:
Address:

11. 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 its subcontractors (if any), agents or employees in connection with the performance of services under this Contract. The Contractor shall indemnify, defend, and save harmless the Commission and the State of New York, and their officers, employees, agents, assigns and licensees from and against any and all third-party claims, liabilities, losses, damages, costs, or expenses, including reasonable attorneys' fees, which may be incurred, suffered, or required in whole or in part by an actual or alleged act or omission of:

- (a) the Contractor, its officers, employees, agents, successors and assigns, and/or
- (b) any Subcontractor, its officers, employees, agents, successors and assigns.

12. 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 of New York, 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 of New York, 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 their work, the direction thereof, and their compensation. Nothing in this Contract shall impose any liability or duty on the Commission or the State of New York 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 of New York against any such liabilities.

13. Force Majeure. A Force Majeure occurrence is an event or effect that cannot be reasonably anticipated or controlled. As herein used, Force Majeure means fire, explosion, action of the elements, governmental interference, rationing 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.

Neither the Contractor nor the Commission shall be liable to the other for any delay in or failure of performance under the contract resulting from this RFP due to a Force Majeure occurrence. Any such delay in or failure of performance shall not constitute a default or give rise to any liability for damages. The existence of such causes of such delay or failure shall extend the period for performance to such extent as determined by the Contracting Officer to be necessary to enable complete performance by the Contractor if reasonable diligence is exercised after the cause of delay or failure has been removed.

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) Any amendments to the Contract;
- (c) Contract;
- (d) RFP, Appendices, Attachments, and Exhibits;
- (e) Clarifications to the Vendor Proposal; and
- (e) Vendor Proposal.
- (f) Banking services schedules and other standard Bank-related documents (“Banking Services Schedules” or “Schedules”) submitted by the Bank with its proposal. **Nothing**

contained in such Schedules will be effective to the extent that it constitutes a variance with the terms or requirements of the Contract, the RFP, or any of the above-referenced documents, or to the extent that it has not been accepted by Commission in the final Contract.

The parties understand and agree that any and all proposed modifications or exceptions taken by the Bank to the RFP are hereby withdrawn, except only to the extent that such modifications or exceptions have been explicitly incorporated into this Contract.

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 agreement between the Commission and the Contractor, and no modification thereof shall be binding unless the same is in writing and signed by the respective 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. If requested by the Executive Director of the Commission, or his or her designee, the Contractor agrees 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) The Executive Director of the Commission or his or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when he or she 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 at such time as the Executive Director of the Commission or his or her designee issues a written notice authorizing a resumption of performance under the Contract.

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: _____

ATTORNEY GENERAL
Letitia James

COMPTROLLER
Thomas P. DiNapoli

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

**NEW YORK STATE GAMING COMMISSION
CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT**

Bidder: _____

Bidder Representative: _____
(Name/Title)

Address: _____

Telephone Number: _____

Facsimile Number: _____

E-mail Address: _____

The New York State Gaming Commission, an executive agency of the State of New York with its principal place of business located at One Broadway Center, Post Office Box 7500, Schenectady, New York, 12301-7500 (the "Commission"), issued a Request for Proposals (the "RFP") for C190007 for General Banking Services. In the interest of receiving informed proposals, the Commission will provide relevant data (the "Data") to potential bidders ("Bidder") who desire to receive and consider such information in preparing a proposal in response to the RFP. Such Data includes certain confidential and proprietary information relative to the Commission's operations and it is critical and essential to the Commission that such information be secured and held confidential by the Bidder. Therefore, in order for the Bidder to receive the Data, the Bidder must first agree with and accept this Confidentiality and Non-Disclosure Agreement (the "Agreement"), entering into this Agreement with the Commission. By execution of this Agreement, the Bidder agrees to keep the Data secure and confidential and the Commission agrees to provide the Data requested, in accordance with the terms and conditions of this Agreement.

The parties agree as follows:

1. **Confidential Information.** "Confidential Information" means any information not generally known to the public, whether oral or written, to which access is provided to Bidder by the Commission for the business purposes set forth above and which is claimed confidential by the disclosing party, the Commission, at the time of disclosure.
2. **Exempt Information.** Information not subject to this Agreement is any Confidential Information, or any other information, whether oral or written, which at the time of disclosure: (a) is already in the public domain or becomes publicly known through no act of the Bidder, the receiving party; (b) is already known by the Bidder free of any confidentiality obligations; (c) is information that the Commission has approved in writing for disclosure; or (d) is required to be disclosed by the Bidder pursuant to law so long as the Bidder provides the Commission with notice of such requirement and opportunity to defend prior to any such disclosure.

- 3. Permitted Use.** Bidder may use Confidential Information solely for the purposes of participation in this RFP process or for Commission business if awarded a contract under this RFP process. Bidder shall not make copies of any written Confidential Information, except for the purpose of preparing quotations, without the express written permission of the Commission. The Commission's disclosure of Confidential Information to the Bidder shall not convey to the Bidder any right to or interest in such Confidential Information and the Commission shall retain all right and title to such Confidential Information at all times.

Bidder shall identify by name, title and location, individuals who will have access to such Confidential Information and the purpose for such access and attach such list to this Agreement. Bidder will need prior written approval from the Commission in the event that Bidder deems it necessary to provide access to other parties to Confidential Information. The Commission may deny such additional access.

- 4. Protections.** Bidder 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 Bidder uses to maintain its own confidential information.
- 5. Return of Confidential Information.** Upon written request by the Commission, the Bidder shall return all Confidential Information to the Commission or certify in writing that the Confidential Information in its possession has been destroyed.

Note: Information stored on routine back-up media for the purpose of disaster recovery will be subject to destruction in due course. Latent data such as deleted files and other non-logical data types, such as memory dumps, swap files, temporary files, printer spool files and metadata that can customarily only be retrieved by computer forensics experts and are generally considered inaccessible without the use of specialized tools and techniques will not be within the requirements set forth by this paragraph.

- 6. Limitations.** Neither party shall be liable to the other hereunder for amounts representing loss of profits, loss of business or indirect, consequential, or punitive damages of the other party in connection with the provision or use of Confidential Information to the other party. Nothing contained in this Agreement shall be construed as granting or conferring any rights by license or otherwise in the Confidential Information except as provided herein.
- 7. Media Releases.** All media releases and public announcements or disclosures by the Bidder relating to this Agreement shall be coordinated with and subject to the Commission's approval in writing, prior to the release thereof.
- 8. Miscellaneous.** Any notices required by this Agreement shall be given in hand, sent by first class mail, via facsimile or by e-mail to the applicable addresses set forth herein. The parties' obligations under this Agreement shall survive the completion of the RFP process, and shall bind the parties' employees, subcontractors, agents, heirs, successors and assigns. The parties agree that this Agreement is (a) the complete and exclusive statement between the parties with respect to the protection of the relevant Confidential Information; (b) may only be modified in writing by authorized representatives of the parties; and (c) shall be governed by the laws of the State of New York.

9. **Agreement Term.** The effective date of this Agreement shall be the later date of the signature dates written below, the date on which the Data will be released to the Bidder and shall continue unless the Data is returned or destroyed as provided in paragraph 5 of this Agreement.

IN WITNESS WHEREOF, the Commission and Bidder have each caused this Agreement to be signed and delivered by its duly authorized officer, all as of the date first set forth above.

Date: _____

Date: _____

BIDDER

NEW YORK STATE GAMING COMMISSION

By: _____

By: _____

Name:

Name:

Title:

Title:

Bidder Firm Name:

Federal Tax Identification #: