

**Attachment 1**



**RFP: C202017 – New York Lottery Video Lottery Games**

**BIDDER ACKNOWLEDGEMENT OF ADDENDUM**

Amendment Number: Three

Date Issued: March 8, 2021

Summary:

**Questions and answers are attached.**

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

FIRM NAME: \_\_\_\_\_

REPRESENTATIVE SIGNATURE: \_\_\_\_\_

**REQUEST FOR PROPOSALS FOR  
NEW YORK LOTTERY VIDEO LOTTERY GAMES**

**C202017**

**Round 3 - Questions and Answers**

**General Questions**

Q.334: Several provisions of the RFP appear to provide summary or informational content only and therefore would not require a response thereto in the Bidder's Proposal. Will the Commission confirm that the following Sections are deemed to be informational content for the Bidders and requires a simple acknowledgement or are their sections listed where the Commission is requiring a more in-depth response?

<b>Section</b>	<b>Section Title</b>
1.1 A-B	GENERAL INFORMATION
1.2	BACKGROUND INFORMATION
1.3	OBJECTIVE
1.4 A-C	VIDEO LOTTERY GAMING
1.6	SCHEDULE
1.8	BIDDER/CONTRACTOR DIFFERENTIATION
1.9	HEADINGS
1.10	DESIGNATED CONTACTS
1.12	QUESTIONS AND INQUIRIES
1.15	DESIGNATION OF PROPRIETARY INFORMATION
1.16	CLARIFICATION PROCESS
1.17	SITE VISITS AND DEMONSTRATIONS
1.21	NEW YORK STATE PUBLIC OFFICERS LAW
1.22	ETHICS REQUIREMENTS
1.29	STATE'S RESERVED AUTHORITY
2.1	GOVERNING LAW
2.3	LICENSING
2.4	BACKGROUND INVESTIGATIONS
2.7	CONTRACT ELEMENTS
2.8	SEVERABILITY
2.9	TERM OF CONTRACT
2.10	ALL-INCLUSIVE
2.17 A-G	LIQUIDATED DAMAGES
2.23 A-D	SUBCONTRACTOR APPROVAL
2.25 A-F	SUCCESSFUL BIDDER CODE OF CONDUCT
2.33	TECHNOLOGY PROVISIONS
2.34	PATENTED DEVICES, MATERIALS AND PROCESS
2.35	USE OF COPYRIGHTED OR TRADEMARKED MATERIALS
3.0	INTRODUCTION
3.2 A-B	FLOOR ALLOCATION
4.3	GENERAL INFORMATION
5.2	METHOD OF AWARD
5.5	EVALUATION & SELECTION CRITERIA

**A.334. All identified sections only require Bidder acknowledgement.**

Q.335: Is it possible for a translator board to be used to connect ETG software to the Central System?

**A.335: Everi will supply a Smart Interface Board (SMIB) for connectivity from an ETG to the Central System.**

Q.336: Is a Bidder required to train the facility technicians on how to troubleshoot the Bidders product?

**A336: As outlined in Answer 91, a Bidder should be prepared to train attendants in such disciplines as replacing paper and ticket stock, clearing ticket and currency jams, and basic tilt resets. All other service is the responsibility of the game vendor.**

Q.337: What is the current unit breakdown of the non-ETG market by property and vendor, in the nature provided for ETGs in Answer 283?

**A.337: Please see chart below:**

Facility	Manufacturer				Total
	Bally	SciGames	IGT	Spielo	
Aqueduct	1,144	1,328	1,949	320	4,741
Batavia	261	227	294	87	869
Buffalo	237	270	345	77	929
Finger Lakes	313	355	380	127	1,175
Jake's 58	239	244	324	72	879
Saratoga	236	391	439	165	1,231
Vernon	131	132	209	40	512
Yonkers	1,084	1,308	1,593	275	4,260
Total	3,645	4,255	5,533	1,163	14,596

Q.338: Does a ticket number have to be visible to player during normal game play or just accessible in game rules?

**A.338: Neither.**

### **Part 1, General Information**

Q.339: Section 1.5: Can the Commission confirm that Answer 65 includes all jurisdictions with a regulatory body globally?

**A.339: The Bidder may use gaming jurisdictions outside the United States**

**to demonstrate that their terminals are in operation in at least five gaming jurisdictions. The Commission, however, reserves the right to exclude jurisdictions where the Commission does not recognize the regulatory body. In such case, the Commission will provide the Bidder an opportunity to demonstrate operation within another jurisdiction.**

Q.340: Section 1.14: In the Vendor Questionnaire, Bidders are asked to disclose any “formal unsatisfactory performance assessment(s) from any government entity or any contract”. It is very common for gaming manufacturers and suppliers to work with their customers to remedy any warranty claims or initial dissatisfaction with products.

a. Can you please define what is meant by an “unsatisfactory performance assessment”?

b. Can you provide guidance as to what is expected to answer Vendor Questionnaire Question 8.0?

**A.340:**

**a. As stated in Answer 328, a formal unsatisfactory performance assessment could include written notices such as agency complaints, reports of contractual deviation, poor contract performance, disputes concerning a Bidder’s failure to provide commodities or services, written evaluations or surveys (exit or otherwise) indicating poor performance, or other formal assessments.**

**b. See answer to Question 340 a.**

## **Part 2, Provisions**

Q.341: Section 2.11: Can the Commission confirm if a licensed supplier can sign a minimum term with each Gaming Facility for their products or whether it is the expectation of the Commission to have an open agreement where a VLT can be removed at any time?

**A.341: Gaming Facilities can remove a VLT at any time. This provision allows the Gaming Facility to continually manage their floor by removing under-performing games or to make adjustments based on patron demand. The fee outlined in RFP Section 3.2 serves as a substitute for a requirement that a machine must remain in operation on the gaming floor by compensating a Successful Bidder if such machine is removed prior to the minimum term.**

Q.342: Section 2.12: A Bidder that does not currently have a N.Y.S. Vendor Identification Number is directed by Section 2.12 to complete and submit a Substitute Form W-9 directly to the Commission upon notification of award; however, Appendix E: Vendor Responsibility Questionnaire, which is required to be submitted with a Bidder's proposal, requires that a Bidder provide its N.Y.S. Vendor Identification Number. Can the Commission provide direction as to how a Bidder can satisfy this requirement?

**A.342: If a Bidder does not currently have a N.Y.S. Vendor Identification Number, the Bidder may leave the number blank.**

Q.343: Section 2.14: Can the Commission please clarify if the Bidder's parent company (who owns more than 5 percent) needs to register with New York State of Secretary and apply for N.Y.S. Sales Tax Certificate of Authority TDF-17?

**A.343: N.Y.S. Department of Taxation and Finance Form ST-220-TD, Contractor Certification, and N.Y.S. Department of Taxation and Finance Form ST-220-CA, Contractor Certification to Covered Agency, should match the name of the Bidding entity. For assistance with the requirements of N.Y.S. Tax Law § 5-a, please contact the N.Y.S. Department of Taxation and Finance at:**

**<https://www.tax.ny.gov/help/contact/contactus-bus.thm>**

Q.344: Section 2.32: The RFP refers to hexadecimal dumps, among other information requested by the independent gaming laboratory. Can the Commission please confirm if the hexadecimal dumps refer to checksums?

**A.344: No. Hexadecimal dumps are dumps related to critical memory.**

Q.345: Section 2.33(A): Can the Commission clarify if there is a need to list the non-direct software related licenses such as Microsoft Windows Embedded Operating System, on which the software runs?

**A.345: The Commission requires a complete list of all software used to meet contract requirements.**

Q.346: Section 2.33(G): The Proposal states that Confidential Information accessed by or provided to a Successful Bidder during the course of performing services for the Commission must not be stored or accessed outside of the continental United States. Can the Commission clarify whether a Bidder were to have organizational data or performance data accessed by parent company located outside of the United States would be a violation? Presume that all Confidential Information provided to the Bidder would be stored in the United States.

**A.346: Data provided to the Successful Bidder on the performance of their own products would not be considered Confidential Information for the purposes of this section.**

Q.347: Section 2.33(J)(2): Can the Commission confirm if this section is directed to the system providers, as game vendors do not possess the data unless delivered on a weekly basis. Please note Answer 116.

**A.347: This provision only applies to the extent that the Successful Bidder generates Commission data through services offered. This section would not apply to data proved through weekly reports provided by the Central System.**

Q.348: Section 2.33(M)(1), (M)(5), and (M)(6): Can the Commission confirm that, outside of an independent testing laboratory, dedicated vulnerability scanning and periodic penetration testing once deployed is not applicable for an isolated ETG where TCP/IP communication is severely limited and/or non-existent?

**A.348: Confirmed.**

### **Part 3, Scope of Work**

Q.349: Section 3.1. Primary and Qualified Suppliers. Pursuant to the RFP, two licenses will be awarded as Lot 1 Primary Suppliers. We strongly believe the limiting of Primary Suppliers to two (2) will reduce future revenues. We had been informed that three specific potential Bidders would collectively make capital investments into VLT properties in an aggregate between \$50M and \$100M statewide if the three were awarded Lot 1 licenses at a minimum of 25 percent floor allocation and a maximum of 33.3 percent of each of the Gaming Floor, if necessary. Will the Commission increase the number of Primary Suppliers licenses in Lot 1 from two (2) to three (3)?

**A.349: The RFP was drafted to balance the Commission desire to obtain a guaranteed allotment of VLTs to fill each Gaming Floor (achieved through Lot 1) while introducing competition for allocation and placement to ensure Successful Bidders provide the highest quality games and innovations throughout the term of the contract in order to maximize their share of Net Machine Income. The structure also provides the flexibility for Gaming Facilities to manage the Gaming Floor operation and configuration to best serve their patrons.**

**Increasing the number of Lot 1 Primary Suppliers from two (2) to three (3) would decrease the available allocation to Qualified Vendors to just twenty-five (25) percent of the Gaming Floor, severely limiting competition. On Gaming Floors with high numbers of ETGs, Lot 2 Qualified Suppliers could be completely locked out of any allocation. The structure proposed in this question would result in a reduced number of vendors with limited incentive to maintain the highest level of product. This is the exact concern that has been repeatedly raised by video lottery gaming facility operators.**

**In addition, the RFP does not require any capital contribution to the Gaming Facilities. While Successful Bidders are encouraged to support the Gaming Facilities in any way that both parties see as mutually beneficial, arrangements outside of RFP requirements cannot be considered when structuring or scoring this RFP.**

Q.350: Section 3.1. Pursuant to the RFP, there is a potential unlimited number of Lot 3 Qualified Electronic Table Game Supplier licenses, but no individual Lot 3 Supplier may supply over 50 percent of a Gaming Floor. It is our understanding that there is one ETG Supplier with over 50 percent of the global market share. Will the Commission raise the 50 percent floor limitation to 75 percent?

**A.350: The RFP is designed and structured to encourage competition and provide opportunities to multiple vendors. Allowing a single Qualified Supplier to control 75 percent of a game category would run contrary to the RFP goals. Notwithstanding this, the Commission would consider an exception upon a demonstration that no other Supplier under contract either Lot 1 or Lot 3 is capable of supplying acceptable ETGs to meet the requirements of the Gaming Facility and the Video Lottery Program.**

Q.351: Section 3.1. Pursuant to the RFP, there is a potential unlimited number Lot 2 Qualified Suppliers, but no individual Supplier supply more than 10 percent of any Gaming Floor. Will the Commission raise the 10 percent floor limitation to 25 percent?

**A.351: No. Allowing a Lot 2 Qualified Supplier an allocation equal to the minimum guaranteed allocation of a Lot 1 Primary Supplier would remove the incentive for a Bidder to bid on Lot 1, thus eliminating the protections provided to the Commission through Lot 1 of this RFP that a sufficient supply of machines will be available to fill all Gaming Floors under all circumstances.**

Q.352: Section 3.2(c), Term of Placement. Will the Commission delete this section as it may reduce the incentive of a Supplier to provide high quality product on an ongoing basis?

**A.352: No. Given uncertainties regarding the time a product will remain in operation on a Gaming Floor, removal of this fee would drive the cost of this RFP beyond a reasonable amount. The alternative to this fee would be to mandate machines remain in operation for a set time once selected by the Gaming Facility. This would, however, eliminate the flexibility of a video lottery gaming facility to manage their Gaming Floor.**

**Incentive to provide high quality product on an ongoing basis is provided through increased competition afforded through the Qualified Supplier process, requiring all Successful Bidders to compete for their share of play on each Gaming Floor. Gaming Facilities will factor in this fee, pricing structures, an expected return when they make product selections.**

Q.353: Section 3: Why is Nassau Off Track Betting Corporation not listed as having VLTs in the RFP on page 53? Are those units included in Resorts World New York City numbers?

**A.353: State law permits Nassau Off Track Betting Corporation machines to be designated as ETGs, unless authorized by the Commission. Nassau machine numbers are included in Resorts World New York City figures. At present, the 1,000 Nassau-designated ETGs at RWNYC are comprised of the following manufacturers:**

<b>Manufacturer</b>	<b>Number</b>
Bally	861
IGT	103
Spielo	36
Total	1,000

Q.354: Section 3.1(A): The Commission has stated that allocation of the Gaming Floor will be at the discretion of each Gaming Facility, subject to the minimums and maximums outlined in the RFP. This statement suggests that each Gaming Facility has the discretion to determine floor allocation between the minimum 25 percent requirement and maximum 50 percent requirement. In contrast, RFP Section 3.1(A) provides that Primary Suppliers shall be required to supply terminals to fulfill shortage of terminals created by Gaming Facilities not selecting terminals from



Qualified Suppliers, up to a maximum of 50 percent of the overall number of required terminals, and that any shortage shall be allocated equally between the two (2) Primary Suppliers. This statement suggests something different. If Qualified Suppliers are able to provide 40 percent of a Facility's floor allocation, the second statement suggests that each Primary Supplier will be allocated 30 percent of such Facility's Gaming Floor. The first statement suggests that the Facility has the discretion to determine how much each Primary Supplier will supply in excess of 25 percent, i.e., one Primary Supplier can supply 25 percent and the other can supply 35 percent. Would the Commission please confirm which is correct?

**A.354: There is a distinction between a shortfall in Qualified terminals resulting in the Commission requiring Primary Suppliers to provide an excess of 25 percent allocation to all Gaming Floors and a Gaming Facility requesting and the Primary Supplier agreeing to provide additional machines.**

Q.355: Section 3.5(D): Can the Commission confirm if the Progressive System is part of Everi's Central System? Our assumption is that specifications in the Progressive System are available by terms described in last paragraph of Section 1.2 on the top of RFP page 9.

**A.355: Confirmed.**

Q.356: Section 3.5(E): Can the Commission confirm that in a game setup with multiple different paytables can have individual payable with payout percentages lower than 90 percent as long as the average aggregate payout percentage is higher than 90 percent?

**A.356: Yes, if the aggregate payout percentage is 90 percent or greater. Please note that all games with the same theme and configuration must draw from the same ticket pool.**

Q.357: Section 3.7: The VLT Maintenance Program states in paragraph 2:

When describing the proposed maintenance plan, a Bidder shall provide detail, including but not limited to, the parts return/service policy that will be provided, any applicable parts supply restrictions/turnaround time, etc., that can be reasonably anticipated, space needed at the Video Lottery Gaming Facility, statistical data with regard to serviceability, and a staffing plan for each Video Lottery Gaming Facility.

- a. Can the Commission please explain what is meant by “any applicable parts supply restrictions/turnaround time”?
- b. Can the Commission provide an example of such restrictions that Bidder should include in proposal.

**A.357:**

**a. A Bidder should disclose any current issues they are experiencing with supply chains, delivery or servicing delays, and any inability to meet servicing agreements.**

**b. See answer to Question 357 a.**

Q.358: Section 3.7: A Bidder is required to perform preventative maintenance. Can you clarify the frequency by which preventative maintenance is expected to be performed?

**A.358: As required to keep the machines in a high quality performance state, but in no instance should it be less than every 90 days.**

#### **Part 4, Proposal Response**

Q.359: Our email system cannot submit attachments with more than 50MB, and our proposal will be larger.

- a. Is it acceptable to submit the email requested by Answer 7 by way of a link to a secure download site? We would send a separate email with the password.
- b. If this is not acceptable, could the Commission provide an alternative method to emailing the proposal?

**A.359: The maximum size of an email that can be processed by the State’s email system is 20MB.**

**a. A Bidder may utilize such method as a backup to ensure timely submission of the Bidder’s response. However, the Bidder is still required to email the submission and provide the required USB Memory Sticks.**

**b. The Bidder may break-up documents into smaller files and send over multiple emails, or the Bidder may utilize compressed zip files.**

Q.360: When submitting the redacted version of our Bid proposal, does the Commission have any specific requirements outlining what information can or cannot be redacted? For instance, it would be preferred to us to if financial details of the company, personal information and pricing details is confidential when submitting our (redacted) proposal.

**A.360: As outlined in Section 1.15, the Freedom of Information Law provides 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. Requests for exemption of information from disclosure must be limited to *bona fide* trade secrets or specific information, the disclosure of which would cause a substantial injury to the competitive position of your business. A Bidder may also redact any information that is identified as personally identifiable information.**

Q.361:

a. With respect to Question 7, when a Bidder submits a proposal electronically, should the non-redacted Information, Technical, Pricing proposals be sent on three separate USB memory sticks, one for each of the volumes?

b. For the redacted version, may all three volumes be submitted on a single USB stick, or should three separate USB memory sticks be used as well?

**A.361:**

**a. All files may be placed on a single USB Memory Stick.**

**b. All files may be placed on a single USB Memory Stick.**

Q.362: Section 4.2(2)(c)(1), Section 4.3(A)(2)(c)(1), and Appendix Q: Section 4.2(2)(c)(1) and Section 4.3(A)(2)(c)(1) indicates that a Proposal shall remain valid at least 180 days from the due date of the Proposals. Appendix Q, Bond Requirements, however, indicates a Proposals must remain valid for a period of 18 months. Would the Commission confirm which validity period is correct?

**A. 2: 18 months. Accordingly, Sections 4.2(2)(c)(1) and 4.3(A)(2)(c)(1) of the RFP are hereby amended to read as follows:**

- (1) Transmittal Letter. The transmittal letter must be hand signed in ink and shall contain names, physical and electronic addresses, and telephone numbers of individuals authorized by the Bidder to address matters related to the Proposal. The transmittal letter shall contain a statement that the Proposal will remain valid at least eighteen (18) months from the due date of Proposals.**

Q.363: Section 4.3(A)(1)(A)(4): The RFP requests a list of Bidder's accounts lost or resigned from over the past two (2) years and explanation of why such loss occurred. Given Answer 248, we seek clarification as to whether the Commission can provide parameters as to the thresholds of removals. There are thousands of seats installed and removed across Gaming Facilities on an annual basis.

- a. Is there a specific size of deal or condition that would help narrow this request?
- b. Is the Commission seeking information relative to that lost within the State of New York alone?

**A.363:**

**a. The Commission seeks information regarding accounts lost or resigned as a whole, not particular games or seats in any given facility. Examples include early termination of contract by either party, non-renewal of agreement, etc.**

**b. The Commission seeks identification of accounts lost or resigned, regardless of location.**

Q.364: Section 4.3(A)(1)(A)(4). With respect to accounts lost, can the Commission confirm whether this applies to both VLT and ETG losses combined, or simply for the category for which the Bidder is applying? For example, a Lot 1 Bidder would be list both VLTs and ETGs, while a Lot 3 Bidder would be simply list ETGs.

**A.364: The Commission seeks identification of accounts lost or resigned regarding devices within the scope of this RFP.**

## **Part 5, Evaluation and Selection**

Q.365: Would a proposal be scored preferentially if it includes a significant number of new machines versus utilization of older or existing cabinets?

**A.365: The Commission does not have a preference to the use of new, used or refurbished cabinets provided all cabinets meet RFP requirements, do not have defects or damage, and maintain an appearance that is not detrimental to the Gaming Facility or detracts from play.**

Q.366:

a. Does the Commission consider that the growth rate of Net Machine Income could be increased with a more diverse and newer fleet of cabinets and titles?

b. Would the proposed ability to drive higher net machine income be scored preferentially?

**A.366:**

**a. A diverse selection of game titles, and the demonstration that titles are current and reflect patron demand in a manner that will grow Net Machine Income will be a consideration in scoring. See answer to Question 365 as to cabinets.**

**b. Yes.**

## **Attachment 2**

Q.367: For Lot 2 and 3 Bidders, will the Commission allow tiered pricing or only a single percentage allowed?

**A.367: A Bidder may not offer a price that is not available to every Gaming Facility or that is dependent upon the actions of another Gaming Facility. A Bidder may offer a discount to all Gaming Facilities once a threshold level has been reached Statewide, however, such discount must be offered to all facilities and may not be rescinded once offered.**

Q.368: Can Lot 2 or Lot 3 Bidder offer pricing based on unit quantities or floor share, where the quantities or share are per venue?

**A.368: See answer to Question 367.**

Q.369:

- a. If a Lot 2 Bidder wanted to lower its percentage of Net Machine Income fee at a date after the RFP closed, can the vendor unilaterally reduce the rate?
- b. If not permitted, could the vendor rebate a portion of the Gaming Facility's reimbursement to the Commission for exceeding the average base rate compensation?

**A.369:**

**a. A Successful Bidder may voluntarily reduce its pricing, uniformly across all Gaming Facilities.**

**b. No. Payments to a Gaming Facility based on compensation rates, game placement or performance are prohibited.**

Q.370: Are there any restrictions on changes to the price proposal (not the percentage of Net Machine Income)?

- a. For example, can new products that charge a to-be-determined premium be introduced in subsequent years at a per-unit order or must that be determined at launch?
- b. Would a future unreleased product have to be priced now, with a to-be-determined launch date?
- c. If applicable, could a minimum FPB for a Lot 2 vendor be adjusted?
- d. Is there a specific frequency at which any permissible changes can be made?
- e. What notification procedure would be required?
- f. Does the Commission have to be notified or would the notification only need to go to the affected Gaming Facilities?

**A.370: A Successful Bidder may not increase the price of any product offered in its pricing category.**

**a. A premium product may be priced by a Successful Bidder at the time the Successful Bidder makes such product available to the Gaming Facilities.**

**b. A Bidder must provide pricing for products offered as part of their initial bid at the time of submission regardless of launch date. Products offered subsequent to the initial catalog may be priced at the time they are made available to the Gaming Facilities.**

**c. The Commission does not understand the question or the meaning of FPB.**

**d. The Commission encourages product innovation and development of new product throughout the term of the contract. No specific frequency has been identified.**

**e. When offering new product to the Gaming Facilities, a Successful Bidder shall submit an amendment to their product catalog.**

**f. Notification and amendments are required to be submitted to the Commission.**

### **Appendix S, Video Lottery Gaming Application For Agent/Vendor**

**Q.371: Question 21:**

**a. Please clarify whether this requirement is applicable to Lot 2 Bidders?**

**b. Many of our agreements contain confidentiality provisions which would prohibit disclosure to a third parties. How should we respond in light of the above?**

**A.371:**

**a. Yes, this is a requirement for Lot 2 Bidders.**

**b. A Bidder may redact confidential provisions.**

**Q.372: Question 33: Could the Commission confirm whether this requirement is applicable to Lot 2 Bidders?**

**A.372: This is not required of Lot 2 Bidders.**

### **Amendment 1 (Round 1 Question and Answers)**

Q.373: Answer 7 provides that the electronic version submitted must include all Technical Proposal sections within a single file to facilitate searches for terms across the breadth of the Technical Proposal. Under the new Section 4.3(4) for Alternative Electronic Submissions, Bidders are now required to submit their Lot 2 and 3 responses via email. Please note that the single proposal file for Lots 2 and 3 could be over 100MB.

- a. Will the Commission confirm whether files of this size can be received via email?
- b. If not, would you please provide another option to send/transfer the files?

**A.373:**

**a. See answer to Question 359.**

**b. See answer to Question 359 a.**

Q.374: Answer 16 provides that “A Successful Bidder will be provided access to the Central System test system.” Can same access be provided to Quality Assurance partner laboratories of Successful Bidder?

**A.374: There will be no third party connectivity for direct access to the Central System. The Central System provider will work solely with successful bidders to access the test system.**

Q.375: Answer 251 provides that there is no contract provision that entitles a Contractor to receive any payments should the Commission exercise its right to terminate the contract for convenience. Contractors will expend significant capital to provide the goods and services contemplated by this RFP, and they will only realize a return on their investment over the life of the contract. To the extent that there is no guaranteed compensation should the Commission terminate for convenience, Bidders must take into account such risk in their pricing, which would not be in the best interest of the Commission or the beneficiaries of video lottery proceeds. Would the Commission revise Appendix B to provide for clear contractual rights to compensation in the event the Commission terminates a contract for convenience?

**A.375: No.**

**Amendment 2 (Round 2 Question and Answers)**



Q.376: Answer 294(D) indicates that based on how the average base compensation rate is calculated, it is theoretically possible that Gaming Facilities could end up reimbursing the State for a Lot 2 vendor's price add even though that price could be lower than one of the Lot 1 vendor's prices. If that situation is theoretically possible, would the Commission consider waiving reimbursement charges for a Lot 2 vendor, if that Lot 2 vendor's price is not higher than any Lot 1 vendor's price?

**A. 6: No.**

### **Appendix B – Contract Form**

**Contract # C202017, which is listed as Appendices B-1, B-2, and B-3, VIDEO LOTTERY TERMINALS, GAMES, SOFTWARE AND MAINTENANCE, is revised as noted below. For convenience, the new, amended Appendix B – Contract Form has been appended to the back of this document. The new Contract version must accompany the Proposal.**

**For convenience in understanding deletions and additions, the changed language has been replicated below with deleted and added material inline in red font.**

The second paragraph is amended to read as follows:

WHEREAS the Commission issued a Request for Proposals (“RFP”) on February 1, 2021 soliciting proposals from qualified firms to provide a Video Lottery Terminals, Games, Software and Maintenance, and clarified the requirements of the RFP with questions and answers dated February ~~12~~ **23**, 2021, **March 1, 2021**, and ~~February 19~~ **March 8**, 2021 (collectively, the "RFP"); and

§5(b)(ii) is hereby amended to read as follows:

- ii. The parties agree that the assessment will be made per occurrence for the liquidated damages described in Section 2.17 of the RFP ~~for any Contractor failures which do not result in lost revenue to the State of New York~~. The parties further agree that the failures described in Section 2.17 of the RFP may result in loss of revenues to the State of New York **far in excess of the amount contained in Paragraph A(4) of Section 2.17** and, therefore, liquidated damages claimed for such failures would not necessarily be limited to damages per occurrence. In that instance, the measure of liquidated damages for failures described in Section 2.17 of the RFP shall be the amount of lost revenue to the State of New York reasonably estimated from historical data. For the purposes of this Contract, lost revenue to the State of

New York shall be equal to the portion of net proceeds due to education aid, which shall be calculated as total credits played, less credits won, less promotional credits, less sales agent commissions and less administrative and operating expenses of the Commission applicable to the number of video lottery terminals for a comparable period in question. Damages are assessed when the liquidated damages bear a reasonable proportion to actual losses sustained as a result of Contractor's conduct.

§12 is hereby amended to read as follows:

12. Communication and Contracts. Contractor shall enter into and maintain only authorized communication **in regard to the goods and services provided pursuant to this contract** with other contractors supplying goods and services to the Commission in furtherance of video lottery gaming within New York State. Contractor agrees to forego entry into any contracts other than this Contract to perform services or supply goods in furtherance of video lottery gaming in New York State unless otherwise approved in writing by the Commission.

§16 is hereby amended to read as follows:

16. Ticket Purchase and Prize Payment Restrictions. No officer or employee of the Contractor or **employee** of any subcontractor **who is directly involved in game development, has access to game terminals, components that could impact game terminal performance or sensitive information regarding game terminals or software**, and no person residing in the same household of such officer or employee shall purchase a New York Lottery video lottery ticket or be paid a prize in any New York Lottery video lottery game. The Contractor shall ensure that this requirement is made known to each officer and employee of the Contractor and any subcontractor. "Subcontractor" is defined as those who play a major role in providing **the central system supporting the New York Lottery's** video lottery games **and game accounting** and who are employed by the Contractor during the life of the Contract.

§23 is hereby amended to read as follows:

23. Documents Incorporated. Appendix A, Standard Clauses for New York State Contracts, dated ~~January 2014~~ **October 2019**, the RFP, and the Proposal are hereby incorporated herein and made a part hereof.

## **Appendix P - INSURER QUALIFICATIONS AND INSURANCE REQUIREMENTS**

Paragraph A of the General Conditions of Appendix P is hereby amended by adding a new section 8 to read as follows. For convenience, the new, amended Appendix P – INSURER QUALIFICATIONS AND INSURANCE REQUIREMENTS has been appended to the back of this document.

8. ***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.

Paragraph B of the General Conditions of Appendix P is hereby amended by adding a new section 5 to read as follows.

5. ***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 \$5,000,000 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.

## **Appendix Q – BOND REQUIREMENTS**

Appendix Q is hereby amended to delete the Fidelity Bond requirement. For convenience, the new, amended Appendix Q – BOND REQUIREMENTS has been appended to the back of this document.

### 2.19 FIDELITY BOND

~~Upon notification of award and prior to Contract approval, the Successful Vendor must obtain a Fidelity Bond in the amount of five million dollars (\$5,000,000) covering any loss to the Commission due to any fraudulent or dishonest act on the part of the Successful Vendor's officers, employees, agents or subcontractors. Such an event, in the sole discretion of the Commission, could be grounds for termination of the Contract, whether or not the losses arising as a result thereof were paid under the Fidelity Bond.~~

###

**Appendices B-1, B-2, and B-3**

**VIDEO LOTTERY TERMINALS, GAMES, SOFTWARE AND MAINTENANCE**

**As amended March 8, 2021**

**VIDEO LOTTERY TERMINALS, GAMES, SOFTWARE AND MAINTENANCE**  
**C \_\_\_\_\_**

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").

WHEREAS the Commission issued a Request for Proposals ("RFP") on February 1, 2021 soliciting proposals from qualified firms to provide a Video Lottery Terminals, Games, Software and Maintenance, and clarified the requirements of the RFP with questions and answers dated February 23, 2021, March 1, 2021 and March 8, 2021 (collectively, the "RFP"); and

WHEREAS the Contractor submitted a Technical Proposal and a Pricing Proposal for Lot 1 (Primary Supplier) dated [\_\_\_\_\_, 2021] (collectively, the "Proposal"), which was deemed to be the Best Value, from among competing proposals by the Commission's evaluation team;

WHEREAS Lot 1 provides the Contractor an award to supply at least 25 percent of the Video Lottery Terminals ("VLTs") at licensed facilities in the state of New York (the "licensed Video Lottery Gaming facilities") in exchange for a guarantee that the Contractor will supply up to 50 percent of the VLTs required at the licensed Video Lottery Gaming facilities if required subject the restrictions and requirements contained 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 a VLTs, games, software and maintenance in connection with the operation of video lottery program at licensed Video Lottery Gaming facilities, 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 July 1, 2021 through December 31, 2029.
3. Regulations. Contractor agrees to familiarize itself with the regulations issued by the Commission concerning the operation of video lottery gaming within the State and to comply with same.
4. Licensing. Contractor agrees to submit to licensing procedures established by the Commission and recognizes that satisfactory licensing is a condition of successful performance of the Contract. Failure to maintain the required license shall be cause for termination of the Contract.
5. 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 therefore. Expenditures under this Contract shall not exceed [\$XXXXXXXX].
    - i. For purposes New York State Finance Law and Article 34 of the New York State Tax Law, the goods and services specified in the RFP and the Proposal

qualify the Contractor to be considered a “licensed lottery sales agent” a “licensed lottery retailer” or a “retailer” as that term is used in Article 34 of the New York State Tax Law, permitting the compensation for services through the retention of a portion of sales revenue.

- ii. The Commission shall each week utilize video lottery central system reports to calculate the amount of net win and the compensation due and owing to the Contractor consistent with the schedule provided by the Contractor in its Pricing Proposal. Upon verification of amounts, the Commission will direct payment to the Contractor either (a) by the Commission directly or (b) by the Video Lottery Facility from lottery receipts through ACH processing. The Commission understands and agrees that it shall be responsible for the Video Lottery Facility’s failure to make payment to Contractor as provided herein and that it shall pay Contractor directly in event of such failure.
- iii. Cost for Additional Options. The Contractor shall obtain written affirmation from a Video Lottery Gaming Facility accepting the financial responsibility to reimburse the Commission for all costs exceeding the “Average Base Compensation Rate” as defined within the RFP prior to delivery of any options selected by the licensed Video Lottery Gaming Facility. The Commission will not compensate the Contractor for the cost of any options without proof of such affirmation.
  - b. Liquidated Damages.
    - i. The Commission may, in its discretion, deduct liquidated damages from the compensation otherwise due to the Contractor when the circumstances which give rise to a claim for liquidated damages exist. There may be occurrences whereby, in its sole judgement, the Commission determines not to assert its right

to claim liquidated damages, and such determination shall not be precedential or prejudice the Commission's option to assert such right in the future.

- ii. The parties agree that the assessment will be made per occurrence for the liquidated damages described in Section 2.17 of the RFP. The parties further agree that the failures described in Section 2.17 of the RFP may result in loss of revenues to the State of New York far in excess of the amount contained in Paragraph A(4) of Section 2.17 and, therefore, liquidated damages claimed for such failures would not necessarily be limited to damages per occurrence. In that instance, the measure of liquidated damages for failures described in Section 2.17 of the RFP shall be the amount of lost revenue to the State of New York reasonably estimated from historical data. For the purposes of this Contract, lost revenue to the State of New York shall be equal to the portion of net proceeds due to education aid, which shall be calculated as total credits played, less credits won, less promotional credits, less sales agent commissions and less administrative and operating expenses of the Commission applicable to the number of video lottery terminals for a comparable period in question. Damages are assessed when the liquidated damages bear a reasonable proportion to actual losses sustained as a result of Contractor's conduct.
- iii. The Commission shall send written notice of such failure to the Contractor within 30 days of the occurrence. Failure to send such notice constitutes a waiver of any and all liquidated damages with regards to the occurrence.

6. Consent. The Commission agrees that its consent to the Contractor's assignment of its interest and obligations under the Contract shall not be withheld unreasonably.

7. 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 Attorney General and the State Comptroller. The Commission agrees to exercise its best efforts to obtain such approval.

8. Mutual Cooperation. The objectives of this Contract include maximizing the net proceeds to the State of New York from video lottery gaming at reasonable rates of compensation to Contractor through the installation and use of a video lottery terminals, games and software as more fully described in the RFP and the Proposal. The parties agree to cooperate fully and in good faith and to assist each other, to the extent reasonably practicable, in order to accomplish these objectives. Contractor 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 plan for filling vacancies.

9. Contractor's Proprietary Rights. The Commission acknowledges the Contractor's proprietary and intellectual property rights in and to Contractor's hardware, system specifications and details set forth in the Proposal and the software heretofore and hereafter created by Contractor for operation of the system on hardware of both the Contractor and the Commission. The Commission further acknowledges that such rights shall survive the expiration or termination of this Contract and agrees to maintain the confidentiality thereof to the extent allowed by law and to render such reasonable assistance as may be necessary to protect and preserve Contractor's interests therein.

11. Limitation of Contractor's Lobbying Activities. Contractor agrees to abide by all applicable rules, regulations and laws relating to its lobbying activities in New York. In addition, 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 on 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.

12. Communication and Contracts. Contractor shall enter into and maintain only authorized communication in regard to the goods and services provided pursuant to this contract with other contractors supplying goods and services to the Commission in furtherance of video lottery gaming within New York State. Contractor agrees to forego entry into any contracts other than this Contract to perform services or supply goods in furtherance of video lottery gaming in New York State unless otherwise approved in writing by the Commission.

13. 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 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

14, 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.

15. 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.

16. Ticket Purchase and Prize Payment Restrictions. No officer or employee of the Contractor or employee of any subcontractor who is directly involved in game development, has access to game terminals, components that could impact game terminal performance or sensitive information regarding game terminals or software, and no person residing in the same household of such officer or employee shall purchase a New York Lottery video lottery ticket or be paid a prize in any New York Lottery video lottery game. The Contractor shall ensure that this requirement is made known to each officer and employee of the Contractor and any subcontractor. “Subcontractor” is defined as those who play a major role in providing video lottery games and who are employed by the Contractor during the life of the Contract.

17. 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 confidentially 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.

18. 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.

19. 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  
Post Office Box 7500  
Schenectady NY 12301-7500

(b) As to the Contractor:

Contact:  
Company Name:  
Address:

20. 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 shall indemnify, defend, and save harmless the Commission and the State of New York, and their officers, employees, agents, assigns and retailers 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) a Subcontractor, its officers, employees, agents, successors and assigns.

21. 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.

22. 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 Commission 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.

23. 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.

24. 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 and appendices;
- (d) Request for Proposal and any clarifying responses by the Commission;
- (e) Vendor Proposal and any clarifying responses by the vendor.

25. 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 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 of the Commission or his or her designee, 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.

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

COMPTROLLER  
Thomas P. DiNapoli

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

|

## Acknowledgement

### ACKNOWLEDGEMENT BY INDIVIDUAL

STATE OF \_\_\_\_\_ )  
 ) ss.:  
 COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally came \_\_\_\_\_, to me known and known to me to be the person described in and who executed the foregoing instrument and he/she acknowledged to me that he/she executed the same.

\_\_\_\_\_  
 Notary Public

### ACKNOWLEDGEMENT BY UNINCORPORATED ASSOCIATION

STATE OF \_\_\_\_\_ )  
 ) ss.:  
 COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally came \_\_\_\_\_, to me known and known to me to be the person described in and who executed the above instrument, who, being duly sworn by me, did for himself/herself depose and say that he/she is a member of the firm of \_\_\_\_\_ and that he/she executed the foregoing instrument in the firm name of \_\_\_\_\_, and that he/she had authority to sign same, and he/she did duly acknowledge to me that he/she executed the same as the act and deed of said firm of \_\_\_\_\_, for the uses and purposes mentioned therein.

\_\_\_\_\_  
 Notary Public

### ACKNOWLEDGEMENT BY CORPORATION

STATE OF \_\_\_\_\_ )  
 ) ss.:  
 COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, in the year 20\_\_\_\_, before me personally came \_\_\_\_\_, to me known, who, being by me duly sworn did depose and say that he/she resides in \_\_\_\_\_; that he/she is the \_\_\_\_\_ of the \_\_\_\_\_, the corporation described in and which executed the above instrument; that he/she knows the seal of said corporation; that the seal affixed to said instrument is such a corporate seal, that it was so affixed by the order of the Board of Directors of said corporation, and that he he/she signed his/her name thereto by like order.

\_\_\_\_\_

Notary Public

**VIDEO LOTTERY TERMINALS, GAMES, SOFTWARE AND MAINTENANCE****C \_\_\_\_\_**

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").

WHEREAS the Commission issued a Request for Proposals ("RFP") on February 1, 2021 soliciting proposals from qualified firms to provide a Video Lottery Terminals, Games, Software and Maintenance, and clarified the requirements of the RFP with questions and answers dated February 23, 2021, March 1, 2021 and March 8, 2021 (collectively, the "RFP"); and

WHEREAS the Contractor submitted a Technical Proposal and a Pricing Proposal for Lot 2 (Qualified Standard Device Supplier) dated [\_\_\_\_\_, 2021] (collectively, the "Proposal"), which was deemed to have met the minimum qualifications by Commission's evaluation team;

WHEREAS Lot 2 allows the Contractor the ability to provide Standard Device Video Lottery Terminals ("VLTs") at licensed facilities in the state of New York (the "licensed Video Lottery Gaming facilities") upon selection by the licensed Video Lottery Gaming facility of a product offered by the Contractor subject the restrictions and requirements contained 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 a VLTs, games, software and maintenance in connection with the operation of the video lottery program at licensed Video Lottery Gaming facilities, 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. Nothing in this agreement shall be construed as a guarantee that the Contractor will be selected to provide a specified number or any VLTs.
2. Term. This Contract shall be effective July 1, 2021 through December 31, 2029.
3. Regulations. Contractor agrees to familiarize itself with the regulations issued by the Commission concerning the operation of video lottery gaming within the State and to comply with same.
4. Licensing. Contractor agrees to submit to licensing procedures established by the Commission and recognizes that satisfactory licensing is a condition of successful performance of the Contract. Failure to maintain the required license shall be cause for termination of the Contract.
5. 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 therefore. Expenditures under this Contract shall not exceed [XXXXXXXX].

- i. For purposes New York State Finance Law and Article 34 of the New York State Tax Law, the goods and services specified in the RFP and the Proposal qualify the Contractor to be considered a “licensed lottery sales agent” a “licensed lottery retailer” or a “retailer” as that term is used in Article 34 of the New York State Tax Law, permitting the compensation for services through the retention of a portion of sales revenue.
- ii. The Commission shall each week utilize video lottery central system reports to calculate the amount of net win and the compensation due and owing to the Contractor consistent with the schedule provided by the Contractor in its Pricing Proposal. Upon verification of amounts, the Commission will direct payment to the Contractor either (a) by the Commission directly or (b) by the Video Lottery Facility from lottery receipts through ACH processing. The Commission understands and agrees that it shall be responsible for the Video Lottery Facility’s failure to make payment to Contractor as provided herein and that it shall pay Contractor directly in event of such failure.
- iii. The Contractor shall obtain written affirmation from a Video Lottery Gaming Facility accepting the financial responsibility to reimburse the Commission for all costs exceeding the “Average Base Compensation Rate” as defined within the RFP prior to delivery of any games selected by the licensed Video Lottery Gaming Facility. The Commission will not compensate the Contractor any amount in excess of the Average Base Compensation Rate without proof of such affirmation.
  - b. Liquidated Damages.
    - i. The Commission may, in its discretion, deduct liquidated damages from the compensation otherwise due to the Contractor when the circumstances which



give rise to a claim for liquidated damages exist. There may be occurrences whereby, in its sole judgement, the Commission determines not to assert its right to claim liquidated damages, and such determination shall not be precedential or prejudice the Commission's option to assert such right in the future.

- ii. The parties agree that the assessment will be made per occurrence for the liquidated damages described in Section 2.17 of the RFP. The parties further agree that the failures described in Section 2.17 of the RFP may result in loss of revenues to the State of New York far in excess of the amount contained in Paragraph A(4) of Section 2.17 and, therefore, liquidated damages claimed for such failures would not necessarily be limited to damages per occurrence. In that instance, the measure of liquidated damages for failures described in Section 2.17 of the RFP shall be the amount of lost revenue to the State of New York reasonably estimated from historical data. For the purposes of this Contract, lost revenue to the State of New York shall be equal to the portion of net proceeds due to education aid, which shall be calculated as total credits played, less credits won, less promotional credits, less sales agent commissions and less administrative and operating expenses of the Commission applicable to the number of video lottery terminals for a comparable period in question. Damages are assessed when the liquidated damages bear a reasonable proportion to actual losses sustained as a result of Contractor's conduct.
- iii. The Commission shall send written notice of such failure to the Contractor within 30 days of the occurrence. Failure to send such notice constitutes a waiver of any and all liquidated damages with regards to the occurrence.

6. Consent. The Commission agrees that its consent to the Contractor's assignment of its interest and obligations under the Contract shall not be withheld unreasonably.

7. 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 Attorney General and the State Comptroller. The Commission agrees to exercise its best efforts to obtain such approval.

8. Mutual Cooperation. The objectives of this Contract include maximizing the net proceeds to the State of New York from video lottery gaming at reasonable rates of compensation to Contractor through the installation and use of a video lottery terminals, games and software as more fully described in the RFP and the Proposal. The parties agree to cooperate fully and in good faith and to assist each other, to the extent reasonably practicable, in order to accomplish these objectives. Contractor 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 plan for filling vacancies.

9. Contractor's Proprietary Rights. The Commission acknowledges the Contractor's proprietary and intellectual property rights in and to Contractor's hardware, system specifications and details set forth in the Proposal and the software heretofore and hereafter created by Contractor for operation of the system on hardware of both the Contractor and the Commission. The Commission further acknowledges that such rights shall survive the expiration or termination of this Contract and agrees to maintain the confidentiality thereof to the extent allowed by law and to render such reasonable assistance as may be necessary to protect and preserve Contractor's interests therein.

11. Limitation of Contractor's Lobbying Activities. Contractor agrees to abide by all applicable rules, regulations and laws relating to its lobbying activities in New York. In addition, 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 on 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.

12. Communication and Contracts. Contractor shall enter into and maintain only authorized communication in regard to the goods and services provided pursuant to this contract with other contractors supplying goods and services to the Commission in furtherance of video lottery gaming within New York State. Contractor agrees to forego entry into any contracts other than this Contract to perform services or supply goods in furtherance of video lottery gaming in New York State unless otherwise approved in writing by the Commission.

13. 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 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 14, 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.

15. 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.

16. Ticket Purchase and Prize Payment Restrictions. No officer or employee of the Contractor or employee of any subcontractor who is directly involved in game development, has access to game terminals, components that could impact game terminal performance or sensitive information regarding game terminals or software, and no person residing in the same household of such officer or employee shall purchase a New York Lottery video lottery ticket or be paid a prize in any New York Lottery video lottery game. The Contractor shall ensure that this requirement is made known to each officer and employee of the Contractor and any subcontractor. “Subcontractor” is defined as those who play a major role in providing video lottery games and who are employed by the Contractor during the life of the Contract.

17. 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 confidentially 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.

18. 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.

19. 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  
Post Office Box 7500  
Schenectady NY 12301-7500

(b) As to the Contractor:

Contact:  
Company Name:  
Address:

20. 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 shall indemnify, defend, and save harmless the Commission and the State of New York, and their officers, employees, agents, assigns and retailers 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) a Subcontractor, its officers, employees, agents, successors and assigns.

21. 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.

22. 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 Commission 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.

23. 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.

24. 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 and appendices;
- (d) Request for Proposal and any clarifying responses by the Commission;
- (e) Vendor Proposal and any clarifying responses by the vendor.

25. 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 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 of the Commission or his or her designee, 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.



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

COMPTROLLER  
Thomas P. DiNapoli

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

## Acknowledgement

### ACKNOWLEDGEMENT BY INDIVIDUAL

STATE OF \_\_\_\_\_ )  
 ) ss.:  
 COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally came \_\_\_\_\_, to me known and known to me to be the person described in and who executed the foregoing instrument and he/she acknowledged to me that he/she executed the same.

\_\_\_\_\_  
 Notary Public

### ACKNOWLEDGEMENT BY UNINCORPORATED ASSOCIATION

STATE OF \_\_\_\_\_ )  
 ) ss.:  
 COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally came \_\_\_\_\_, to me known and known to me to be the person described in and who executed the above instrument, who, being duly sworn by me, did for himself/herself depose and say that he/she is a member of the firm of \_\_\_\_\_ and that he/she executed the foregoing instrument in the firm name of \_\_\_\_\_, and that he/she had authority to sign same, and he/she did duly acknowledge to me that he/she executed the same as the act and deed of said firm of \_\_\_\_\_, for the uses and purposes mentioned therein.

\_\_\_\_\_  
 Notary Public

### ACKNOWLEDGEMENT BY CORPORATION

STATE OF \_\_\_\_\_ )  
 ) ss.:  
 COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, in the year 20\_\_\_\_, before me personally came \_\_\_\_\_, to me known, who, being by me duly sworn did depose and say that he/she resides in \_\_\_\_\_; that he/she is the \_\_\_\_\_ of the \_\_\_\_\_, the corporation described in and which executed the above instrument; that he/she knows the seal of said corporation; that the seal affixed to said instrument is such a corporate seal, that it was so affixed by the order of the Board of Directors of said corporation, and that he he/she signed his/her name thereto by like order.

\_\_\_\_\_  
 Notary Public

**VIDEO LOTTERY TERMINALS, GAMES, SOFTWARE AND MAINTENANCE  
C \_\_\_\_\_**

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").

WHEREAS the Commission issued a Request for Proposals ("RFP") on February 1, 2021 soliciting proposals from qualified firms to provide a Video Lottery Terminals, Games, Software and Maintenance, and clarified the requirements of the RFP with questions and answers dated February 23, 2021, March 1, 2021 and March 8, 2021 (collectively, the "RFP"); and

WHEREAS the Contractor submitted a Technical Proposal and a Pricing Proposal for Lot 3 (Qualified Electronic Table Games Supplier) dated [\_\_\_\_\_, 2021] (collectively, the "Proposal"), which was deemed to have met the minimum qualifications by Commission's evaluation team;

WHEREAS Lot 3 allows the Contractor the ability to provide Electronic Table Games Video Lottery Terminals ("ETGs") at licensed facilities in the state of New York (the "licensed Video Lottery Gaming facilities") upon selection by the licensed Video Lottery Gaming facility of a product offered by the Contractor subject the restrictions and requirements contained 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 a VLTs, games, software and maintenance in connection with the operation of the video lottery program at licensed Video Lottery Gaming facilities, 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. Nothing in this agreement shall be construed as a guarantee that the Contractor will be selected to provide a specified number or any VLTs.
2. Term. This Contract shall be effective July 1, 2021 through December 31, 2029.
3. Regulations. Contractor agrees to familiarize itself with the regulations issued by the Commission concerning the operation of video lottery gaming within the State and to comply with same.
4. Licensing. Contractor agrees to submit to licensing procedures established by the Commission and recognizes that satisfactory licensing is a condition of successful performance of the Contract. Failure to maintain the required license shall be cause for termination of the Contract.
5. 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 therefore. Expenditures under this Contract shall not exceed [XXXXXXXX].



- i. For purposes New York State Finance Law and Article 34 of the New York State Tax Law, the goods and services specified in the RFP and the Proposal qualify the Contractor to be considered a “licensed lottery sales agent” a “licensed lottery retailer” or a “retailer” as that term is used in Article 34 of the New York State Tax Law, permitting the compensation for services through the retention of a portion of sales revenue.
  - ii. The Commission shall each week utilize video lottery central system reports to calculate the amount of net win and the compensation due and owing to the Contractor consistent with the schedule provided by the Contractor in its Pricing Proposal. Upon verification of amounts, the Commission will direct payment to the Contractor either (a) by the Commission directly or (b) by the Video Lottery Facility from lottery receipts through ACH processing. The Commission understands and agrees that it shall be responsible for the Video Lottery Facility’s failure to make payment to Contractor as provided herein and that it shall pay Contractor directly in event of such failure.
  - iii. The Contractor shall obtain written affirmation from a Video Lottery Gaming Facility accepting the financial responsibility to reimburse the Commission for all costs exceeding the “Average Base Compensation Rate” as defined within the RFP prior to delivery of any games selected by the licensed Video Lottery Gaming Facility. The Commission will not compensate the Contractor any amount in excess of the Average Base Compensation Rate without proof of such affirmation.
- b. Liquidated Damages.
- i. The Commission may, in its discretion, deduct liquidated damages from the compensation otherwise due to the Contractor when the circumstances which

give rise to a claim for liquidated damages exist. There may be occurrences whereby, in its sole judgement, the Commission determines not to assert its right to claim liquidated damages, and such determination shall not be precedential or prejudice the Commission's option to assert such right in the future.

- ii. The parties agree that the assessment will be made per occurrence for the liquidated damages described in Section 2.17 of the RFP. The parties further agree that the failures described in Section 2.17 of the RFP may result in loss of revenues to the State of New York far in excess of the amount contained in Paragraph A(4) of Section 2.17 and, therefore, liquidated damages claimed for such failures would not necessarily be limited to damages per occurrence. In that instance, the measure of liquidated damages for failures described in Section 2.17 of the RFP shall be the amount of lost revenue to the State of New York reasonably estimated from historical data. For the purposes of this Contract, lost revenue to the State of New York shall be equal to the portion of net proceeds due to education aid, which shall be calculated as total credits played, less credits won, less promotional credits, less sales agent commissions and less administrative and operating expenses of the Commission applicable to the number of video lottery terminals for a comparable period in question. Damages are assessed when the liquidated damages bear a reasonable proportion to actual losses sustained as a result of Contractor's conduct.
- iii. The Commission shall send written notice of such failure to the Contractor within 30 days of the occurrence. Failure to send such notice constitutes a waiver of any and all liquidated damages with regards to the occurrence.

6. Consent. The Commission agrees that its consent to the Contractor's assignment of its interest and obligations under the Contract shall not be withheld unreasonably.

7. 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 Attorney General and the State Comptroller. The Commission agrees to exercise its best efforts to obtain such approval.

8. Mutual Cooperation. The objectives of this Contract include maximizing the net proceeds to the State of New York from video lottery gaming at reasonable rates of compensation to Contractor through the installation and use of a video lottery terminals, games and software as more fully described in the RFP and the Proposal. The parties agree to cooperate fully and in good faith and to assist each other, to the extent reasonably practicable, in order to accomplish these objectives. Contractor 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 plan for filling vacancies.

9. Contractor's Proprietary Rights. The Commission acknowledges the Contractor's proprietary and intellectual property rights in and to Contractor's hardware, system specifications and details set forth in the Proposal and the software heretofore and hereafter created by Contractor for operation of the system on hardware of both the Contractor and the Commission. The Commission further acknowledges that such rights shall survive the expiration or termination of this Contract and agrees to maintain the confidentiality thereof to the extent allowed by law and to render such reasonable assistance as may be necessary to protect and preserve Contractor's interests therein.

11. Limitation of Contractor's Lobbying Activities. Contractor agrees to abide by all applicable rules, regulations and laws relating to its lobbying activities in New York. In addition, 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 on 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.

12. Communication and Contracts. Contractor shall enter into and maintain only authorized communication in regard to the goods and services provided pursuant to this contract with other contractors supplying goods and services to the Commission in furtherance of video lottery gaming within New York State. Contractor agrees to forego entry into any contracts other than this Contract to perform services or supply goods in furtherance of video lottery gaming in New York State unless otherwise approved in writing by the Commission.

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(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 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 14, 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.

15. 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.

16. Ticket Purchase and Prize Payment Restrictions. No officer or employee of the Contractor or employee of any subcontractor who is directly involved in game development, has access to game terminals, components that could impact game terminal performance or sensitive information regarding game terminals or software, and no person residing in the same household of such officer or employee shall purchase a New York Lottery video lottery ticket or be paid a prize in any New York Lottery video lottery game. The Contractor shall ensure that this requirement is made known to each officer and employee of the Contractor and any subcontractor. “Subcontractor” is defined as those who play a major role in providing video lottery games and who are employed by the Contractor during the life of the Contract.

17. 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 confidentially 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.

18. 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.

19. 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  
Post Office Box 7500  
Schenectady NY 12301-7500

(b) As to the Contractor:

Contact:  
Company Name:  
Address:

20. 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 shall indemnify, defend, and save harmless the Commission and the State of New York, and their officers, employees, agents, assigns and retailers 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) a Subcontractor, its officers, employees, agents, successors and assigns.

21. 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.

22. 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 Commission 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.

23. 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.

24. 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 and appendices;
- (d) Request for Proposal and any clarifying responses by the Commission;
- (e) Vendor Proposal and any clarifying responses by the vendor.

25. 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 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 of the Commission or his or her designee, 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.



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

COMPTROLLER  
Thomas P. DiNapoli

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

## Acknowledgement

### ACKNOWLEDGEMENT BY INDIVIDUAL

STATE OF \_\_\_\_\_ )  
 ) ss.:  
 COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally came \_\_\_\_\_, to me known and known to me to be the person described in and who executed the foregoing instrument and he/she acknowledged to me that he/she executed the same.

\_\_\_\_\_  
 Notary Public

### ACKNOWLEDGEMENT BY UNINCORPORATED ASSOCIATION

STATE OF \_\_\_\_\_ )  
 ) ss.:  
 COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally came \_\_\_\_\_, to me known and known to me to be the person described in and who executed the above instrument, who, being duly sworn by me, did for himself/herself depose and say that he/she is a member of the firm of \_\_\_\_\_ and that he/she executed the foregoing instrument in the firm name of \_\_\_\_\_, and that he/she had authority to sign same, and he/she did duly acknowledge to me that he/she executed the same as the act and deed of said firm of \_\_\_\_\_, for the uses and purposes mentioned therein.

\_\_\_\_\_  
 Notary Public

### ACKNOWLEDGEMENT BY CORPORATION

STATE OF \_\_\_\_\_ )  
 ) ss.:  
 COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, in the year 20\_\_\_\_, before me personally came \_\_\_\_\_, to me known, who, being by me duly sworn did depose and say that he/she resides in \_\_\_\_\_; that he/she is the \_\_\_\_\_ of the \_\_\_\_\_, the corporation described in and which executed the above instrument; that he/she knows the seal of said corporation; that the seal affixed to said instrument is such a corporate seal, that it was so affixed by the order of the Board of Directors of said corporation, and that he he/she signed his/her name thereto by like order.

\_\_\_\_\_  
 Notary Public

**Appendix P**  
**INSURER QUALIFICATIONS AND INSURANCE REQUIREMENTS**

**As amended March 8, 2021**



## **INSURER QUALIFICATIONS AND INSURANCE REQUIREMENTS**

### **Insurer Qualifications**

All insurance required under this RFP must be written by an company with a current rating of "A-" or better as rated by A.M. Best & Co., have a record of successful continuous operation, are licensed, admitted, and authorized to do business in the State of New York, and are approved by the Commission. (. Non-admitted carriers will only be accepted when coverage cannot be secured from an admitted carrier, as evidenced by appropriate Excess Line Association of New York ("ELANY") documentation (see Certificate of Insurance Requirements).

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.

### **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). The Commission may, at its sole discretion, accept policies of insurance written by a non-authorized carrier or carriers when Certificates and/or other policy documentation is accompanied by a completed ELANY Affidavit; provided that nothing herein shall be construed to require the Commission to accept insurance placed with a non-authorized carrier under any circumstances.

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 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.** Contractor shall provide a Certificate or Certificates of Insurance, in a form satisfactory to the Commission, before commencing any work under this Contract. Certificates shall be mailed using the contact information provided in Part 1 of this RFP. Copies of the 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. When coverage is provided by a non-admitted carrier, be accompanied by a completed ELANY Affidavit,
- e. 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 the Commission's own policy of insurance.

5. **Policy Renewal/Expiration.** At least two weeks 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 this 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 proof of insurance is not provided 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 Surety, if any, to secure appropriate coverage and/or purchase insurance complying with the Contract and charge back such purchase to the Contractor.

6. **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.

7. **Subcontractors.** Should the Contractor engage a subcontractor, the Contractor shall endeavor to impose the insurance requirements of this document on the subcontractor, as applicable. Required insurance limits should be determined commensurate with the work of the subcontractor. Proof thereof shall be supplied to the Commission.

8. **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: \$2,000,000
- General Aggregate: \$5,000,000
- Products/Completed Operations should equal the General Aggregate limit
- Personal Advertising Injury \$1,000,000
- Property Damage \$2,000,000
- 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 policy:

- CG 00 01 01 96 or an equivalent – Commercial General Liability Coverage Form
- CG 20 10 11 85, or, an equivalent- Additional Insured-Owner, Lessees or Contractors (Form B)

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 polic(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. **Property Insurance.** The Contractor must maintain insurance on all buildings, furniture, fixtures, computer and communications equipment used in operating and supporting the central system in an amount equal to or greater than the actual replacement cost thereof. Coverage must include an All Risk Property Floater to insure personal property including contents, equipment, and mobile items, against fire, theft, collision flood, etc. The State of New York, the Commission and video lottery gaming facilities will not be responsible for insuring any equipment or facilities included in or associated with the central system.
3. **Crime Insurance.** The Contractor must maintain crime insurance with a limit of not less than \$5,000,000 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.
4. **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](http://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](http://www.wcb.ny.gov/content/main/forms/Forms_EMPLOYER.jsp)

A. Workers' Compensation and Employers Liability Coverage:

- **Form CE-200** - Certificate of Attestation for New York Entities with No Employees and Certain Out of State Entities, that New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is Not Required); or
- **Form C-105.2** - (September 2015, or most current version) – Certificate of Workers' Compensation Insurance, sent to the Commission by the Contractor's insurance carrier upon request; or
- **Form U-26.3** – Certificate of Workers' Compensation Insurance from the State Insurance Fund. Bidder must request that the State Insurance Fund send this form to the Commission; or
- **Form SI-12** – Certificate of Workers' Compensation Self Insurance, 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 Self-Insurance, available from the Bidder's Group Self-Insurance Administrator.

B. Disability Benefits:

- **Form CE-200** - Certificate of Attestation for New York Entities with No Employees and Certain Out of State Entities, That 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 Insurance Coverage under the NYS Disability Benefits Law. Bidder must request its business insurance carrier to send this form to the Commission.
- **Form DB-155**, Certificate of Disability Benefits Self-Insurance.

5. ***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 \$5,000,000 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.

**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).**

**Appendix Q**  
**BOND REQUIREMENTS**

**As amended March 8, 2021**

## **BOND REQUIREMENTS**

### **PROPOSAL VALIDITY AND PROPOSAL BOND**

Proposals must remain valid for a period of eighteen (18) months.

Lot 1 Only

Each Vendor must submit a Proposal Bond with its Proposal. The Proposal Bond must be acceptable to the New York State Gaming Commission (the "Commission") in form and substance, and issued by a qualified issuer as described below, in the amount of one hundred thousand dollars (\$100,000). This Proposal Bond will guarantee the availability of the goods and services at the price(s) quoted in the Proposal for a period of eighteen (18) months after submission of the Proposal. In lieu of the Proposal Bond, the Commission will accept a certified check from the Vendor in this amount. The check or Proposal Bond shall be made payable to the New York State Gaming Commission.

The check or Proposal Bond will be returned to an unsuccessful Vendor upon the award of the Contract. The check or Proposal Bond of the Vendor awarded the Contract (the "Successful Vendor") will be retained by the Commission until the Contract is signed and approved, and until the Commission is furnished with an acceptable Performance Bond. The check or Proposal Bond will be forfeited to the Commission if the Successful Vendor fails to timely submit the Performance Bond or other security, as required, or fails to sign the Contract when required to do so by the Commission.

Bonds shall be issued by a reliable surety company with a record of successful continuous operation and licensed to do business in the State of New York.

### **LITIGATION BOND**

Lot 1

Each Vendor must submit with the Proposal a Litigation Bond in the amount of one million dollars (\$1,000,000). A claim upon the Bond may be made by the Commission if the Vendor sues the New York Gaming Commission, the State of New York, or any of their officers, employees, representatives, other contractors, or sales agents with regard to any matter relating to this RFP, determination of responsiveness of Commission or the award of a contract pursuant to this RFP; and the Commission or other defendant is the prevailing party in such suit.

The purpose of the Bond is to permit the Commission or other defendants to recover damages, including the cost of appeal relative to the additional cost in compensation to the current vendor during implementation or conversion delay, and including reasonable attorneys' fees, expenses and court costs resulting from such litigation. The Litigation Bond shall remain in effect for a period of two (2) years from the date of submission of the Proposal.

Lot 2 and Lot 3

Each Vendor must submit with the Proposal a Litigation Bond in the amount of two-hundred fifty thousand (\$250,000). A claim upon the Bond may be made by the Commission if the Vendor sues



the New York Gaming Commission, the State of New York, or any of their officers, employees, representatives, other contractors, or sales agents with regard to any matter relating to this RFP, determination of responsiveness of Commission or the award of a contract pursuant to this RFP; and the Commission or other defendant is the prevailing party in such suit.

The purpose of the Bond is to permit the Commission or other defendants to recover damages, including the cost of appeal relative to the additional cost in compensation to the current vendor during implementation or conversion delay, and including reasonable attorneys' fees, expenses and court costs resulting from such litigation. The Litigation Bond shall remain in effect for a period of two (2) years from the date of submission of the Proposal.

Bidders submitted proposals for multiple Lots may submit one Bond in the amount for the Lot requiring the highest bonding

### PERFORMANCE BOND

#### Lot 1

Upon notification of the Contract award, the Successful Vendor will be required to obtain a Performance Bond or other acceptable form of security in the amount of twenty-five million dollars (\$25,000,000). The Performance Bond shall be maintained throughout the term of any resulting Contract or any extension thereof. The Performance Bond may be paid in full or in part to the Commission if the Successful Vendor defaults in the performance of the Contract or has occasioned uncompensated liquidated damages.

The Performance Bond may be assessed liquidated damages if these damages have not been received by the Commission within thirty (30) calendar days of written notice to the Successful Vendor that they have been incurred.

Other forms of security may be acceptable but are subject to the Commission's discretion. Failure to post a replacement security within seven (7) days after notice that the proposed security is inadequate shall be grounds for immediate termination of the Contract.

Along with its Proposal, each Vendor must include a letter from a qualified surety company or agent acting on behalf of such surety stating that the Vendor will be able to secure a Performance Bond in the amount required by the RFP, should the Vendor be the Successful Vendor.

#### Lot 2 and Lot 3

Upon notification of the Contract award, the Successful Vendor will be required to obtain a Performance Bond or other acceptable form of security in the amount of one million dollars (\$1,000,000). The Performance Bond shall be maintained throughout the term of any resulting Contract or any extension thereof. The Performance Bond may be paid in full or in part to the Commission if the Successful Vendor defaults in the performance of the Contract or has occasioned uncompensated liquidated damages.

The Performance Bond may be assessed liquidated damages if these damages have not been received by the Commission within thirty (30) calendar days of written notice to the Successful Vendor that they have been incurred.

Other forms of security may be acceptable but are subject to the Commission's discretion. Failure to post a replacement security within seven (7) days after notice that the proposed security is

inadequate shall be grounds for immediate termination of the Contract.

Along with its Proposal, each Vendor must include a letter from a qualified surety company or agent acting on behalf of such surety stating that the Vendor will be able to secure a Performance Bond in the amount required by the RFP, should the Vendor be the Successful Vendor.