

**NEW YORK STATE GAMING COMMISSION
REQUEST FOR PROPOSALS
FOR
NEW YORK LOTTERY STRATEGIC MARKETING SERVICES PARTNER**

CONTRACT # C202110

February 24, 2022

PROCUREMENT WEBSITE:

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

DESIGNATED CONTACT FOR INQUIRIES AND SUBMISSIONS

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

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

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

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

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

NON-BID RESPONSE

Bidders choosing not to submit a proposal in response to this RFP are requested to submit the **Non-Bid Response** form, included in this RFP as **Attachment 5**, as the information is useful to the Commission in the planning and development of future solicitations and bidders' lists.

SCHEDULE OF EVENTS

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

Event	Date
RFP Release Date	February 24, 2022
Round One Written Questions Due 3:00 PM EDT	March 8, 2022
Round One Commission Answers Issued in Addendum	March 16, 2022
Round Two Written Questions Due 3:00 PM EDT	March 23, 2022
Round Two Commission Answers Issued in Addendum	March 29, 2022
Proposal Due Date 2:00 PM EDT	April 8, 2022
Oral Presentations	Approximately May 16 – 27, 2022
Contract Start Date	Upon OSC Approval

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PART ONE – GENERAL INFORMATION

1.1 INTRODUCTION

The New York State Gaming Commission (the “Commission”), operator of the New York Lottery program (the “Lottery”), on behalf of the State of New York (the “State”), is issuing this Request for Proposals (“RFP”) to invite interested Contractors to submit Proposals for the award of a New York Lottery Strategic Marketing Partner contract to support the Commission’s vision, goals and objectives for the Lottery. One (1) five-year contract will be awarded as a result of this RFP.

The business organization awarded the Contract through this RFP process will provide a full range of strategic marketing services to the Commission to promote the New York Lottery brand and the sale of Lottery products throughout New York state. The Successful Bidder will serve as a strategic business partner working collaboratively with Lottery staff to develop and integrated marketing programs that will achieve Lottery’s goals and objectives. The Successful Bidder will be required to provide a full range of strategic marketing services for the Commission to reach New York adult consumers, Lottery’s licensed sales agents (referred to herein as “sales agents” or “retailers”), internal Commission staff and other audiences. Scope of Work is defined in Part Two.

The Commission’s annual budget for strategic marketing services during the term of the Contract is estimated to be approximately \$72,500,000 in each of the 5 years of the contract, inclusive of all fees outlined in this RFP. Total maximum 5-year contract value at the time of award is approximately \$362.5 million. The Commission provides no guarantee that all of the estimated budget will be expended during the term of the contract. The Commission reserves the right to change the budget and maximum contract value at any time during the contract term. Compensation is described in Part Four of this RFP.

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

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

The contents of this RFP, any modifications thereto, and the Proposal as submitted (consisting of a Technical Proposal and a Pricing Proposal) will become binding contractual obligations on both parties if a Contract ensues. Failure of the Successful Bidder to accept these obligations may result in cancellation of the award.

This RFP encompasses strategic marketing services for the New York Lottery brand, responsible gaming, and existing and future Lottery products (“Traditional Games”). Marketing services pertaining to Video Lottery Gaming (VLG) are not part of the services covered under this RFP.

1.2 BACKGROUND INFORMATION

The Lottery was established in 1967 as a result of constitutional amendment and is administered by the New York State Gaming Commission. The Lottery is operated in accordance with provisions of the New York State Lottery for Education Law (Tax Article 34) and Article 1 of New York State Pari-Mutuel Wagering and Breeding Law. The Commission’s mission for the Lottery is to raise revenue for education in the State of New York through the administration of lottery games. On February 1, 2013, the New York State Division of the Lottery merged with the New York State Racing and Wagering Board into a single oversight entity named the New York State Gaming Commission. The Commission has overall responsibility for regulation and enforcement

of all legal gaming activity in New York State including horse racing and pari-mutuel wagering, Class III Indian Gaming, commercial gaming, the Lottery, video lottery gaming, and charitable gaming.

Fundamentally, the Lottery is run as an entertainment business. A dedicated team of Commission employees work with business partners and approximately 15,000 licensed sales agents statewide to provide innovative, fun, and entertaining games for Lottery customers. Traditional games offered by the Lottery include six New York draw games (*New York Lotto*, *NUMBERS*, *WIN4*, *TAKE5*, *Quick Draw* and *Pick 10*), 3 multi-state games (*Powerball*, *Mega Millions* and *Cash4Life*), and approximately 35-50 instant scratch-off ticket games at any given time.

By selling its traditional Lottery games through an extensive state-wide sales agent network and by subscriptions over the internet through its website (nylottery.ny.gov), the Commission generated traditional Lottery sales in excess of \$7.7 billion in fiscal year 2019-2020. The Lottery continues to be North America's largest and most profitable lottery program, earning more than \$71.48 billion in education support statewide since its founding over 50 years ago. In the fiscal year 2019-2020, the Lottery's traditional games contributed \$2.32 billion to support education in New York State.

The Lottery has expansive digital offerings which are managed under a separate contract. Currently the digital landscape is comprised of two different websites (nylottery.ny.gov; nycollectnwin.com) and several different mobile applications ("apps"). The Lottery's native website averages 5 million page views per week and over one million visitors per week. Traffic does increase on the websites and apps during events, such as a high jackpot. During these events the websites and apps can see a volume of over one million people at a given time.

The Lottery is also a complex, retail-driven program. The Lottery's sales agent network is diverse requiring solutions that are tailored rather than "one-size-fits-all." There are locations with different business operations, trade styles, environments, and footprints. Retailers and their employees are Lottery's front line to players. Effective marketing and sales communications are needed to inform and motivate retailers and their employees, as well as players. The Commission's Lottery field marketing staff communicate upcoming efforts, optimize sales via industry best practices and improve adherence to Lottery-related policies with instructional and effective sales tools. With new product launches monthly, Lottery is an active account requiring constant attention to timelines, detail and support. Consumer and retailer communications are frequent and time-sensitive.

Research projects to gain consumer and retailer insights and to track marketing program performance is ongoing throughout the year. Additionally, reactive and dynamic efforts to market products require priority attention from the Commission's Lottery Strategic Marketing and Digital Account Management Teams.

The Successful Bidder awarded a contract through this RFP process will become a strategic partner with the Commission to help develop and implement impactful, innovative, and effective marketing programs that will drive business and achieve the Commission's Lottery objectives. Due to the far-reaching effects of marketing communications, the Successful Bidder awarded this contract will have a vital role in establishing the future of the Lottery's business efforts. As such, the Commission's selection and management of the strategic marketing partner and the strategic marketing partner's performance are critical in helping to deliver solutions to help achieve the Lottery's business and marketing goals.

The Lottery's business and marketing goals are as follows:

- Responsibly maximize Lottery contributions to aid to education within New York State
- Develop innovative and relevant lottery games
- Expand the player base; attract new customers (age 18+)

- Refresh Lottery brand and sustain relevance among New York's diverse demographics (age 18+)
- Cultivate relationships with Lottery players and retailers
- Optimize Lottery distribution channel performance
- Adhere to responsible gaming standards
- Uphold the Lottery's position as North America's largest and most profitable lottery program

1.3 MINIMUM QUALIFICATIONS

Any Bidder submitting a Proposal in response to this RFP must meet the minimum qualifications listed below. Information demonstrating the qualifications defined below must be incorporated into a Bidder's response to **Part Four - Evaluation and Selection**.

- A. The Bidder must meet the staffing requirements as described in Section 2.3(C), 2.3(D), and Section 6.9. Staff members of the dedicated full-time account management team identified in Section 2.3(C) must be available to meet with the Commission on-site at the Commission's headquarters in Schenectady, New York within four (4) hours of a request by the Commission for such on-site meeting.
- B. The Bidder, at the time of its submission of a Proposal in response to this RFP, shall have at least ten (10) years of demonstrable strategic marketing experience, and have had at least one account in the past five years involving brick and mortar retail.
- C. The Bidder must have annual United States-only revenues of at least \$30 million for combined services offered in the calendar year 2020 or the company's most recent fiscal year within the past 24 months for which their latest audited financial statement is available.
- D. The Bidder must be able to demonstrate a diversified account/client list with a minimum of ten (10) active accounts, with at least two (2) accounts having annual billings exceeding \$10 million.

1.4 BIDDER/VENDOR/SUCCESSFUL BIDDER/CONTRACTOR DIFFERENTIATION

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

1.5 HEADINGS

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

1.6 QUESTIONS

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

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

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

The **Bidder Acknowledgement of Amendment, Attachment 1**, will be provided with each Amendment to the RFP Bidders are required to include a signed **Bidder Acknowledgement of Amendment** form with their respective bids.

1.7 BIDDER VIRTUAL PRESENTATIONS

Bidders are required to conduct a virtual presentation at a date and time to be determined by the Commission. Presentations will be scheduled following the initial scoring of responses. Virtual presentations will be scheduled for a maximum of 30 minutes in length and will be used to substantiate each Bidder's Technical Proposal. Bidders shall introduce the proposed Account Director, Group Account Director, Project Manager and Research and Analytics Manager and present the Bidder's qualifications and capabilities to provide services described in the RFP. The Bidder's proposed Account Director must lead the virtual presentation.

1.8 NON-EXCLUSIVE RIGHTS

Nothing in this RFP, or the Contract resulting from this RFP, shall preclude the Commission from soliciting or acquiring marketing services or solutions from other contractors.

PART TWO – SCOPE OF WORK

2.1 Introduction

The section below provides an overview of the responsibilities of the Successful Bidder, as well as the expectations the Commission has for a successful partnership¹ throughout the term of the Contract. The expectation is that the Successful Bidder shall work collaboratively with Commission staff as a dedicated, strategic business partner to develop and implement marketing programs that further the Commission's mission to raise revenue for education in the state of New York through the administration and sale of Lottery games.

The Commission plans to enter into an agreement with an individual or business organization that has the expertise to provide all aspects of marketing services for the Lottery outlined herein, in collaboration with the Commission, including, but not limited to, services related to short and long-term strategic marketing planning, project management, advertising, social media, innovation, analytics, content management, research, media services, brand management, retail optimization, field and retail training, and responsible gaming.

2.2 Overall Successful Bidder Requirements

- A. MEETING LOTTERY OBJECTIVES** - The Successful Bidder shall work with the Commission to uphold the Lottery's position as North America's industry leader by expanding relevance of the New York Lottery brand, growing revenues, expanding the player base, and continuing to meet the evolving gaming and entertainment needs of New Yorkers 18 years of age and older. The Successful Bidder shall collaborate with the Commission to develop strategic marketing plans and innovative marketing solutions that align with the Lottery fiscal year and long-term business objectives. The Successful Bidder shall obtain and maintain a deep understanding of the Lottery's New York consumer segments, lottery games and retail base to align strategic marketing programs with objectives.
- B. RESPONSIBLE GAMING COMMITMENT** - As shown by its achievement of a Level 4 certification from the World Lottery Association (Learn about WLA Responsible Gaming Certifications: <https://www.world-lotteries.org/services/industry-standards/responsible-gaming-framework/principles>) in 2018, the Commission is committed to operating according to responsible gaming principles and upholding the integrity of the Commission. The Successful Bidder shall develop and implement marketing solutions and programs that are not targeted to appeal to people under 18 years old and shall promote Lottery play in a responsible manner that does not encourage individuals to purchase or participate in Lottery games beyond their means or control. The Commission's guidelines regarding responsible gaming must be followed. The Successful Bidder shall develop and implement age-gating controls as required by the Commission.
- C. NATURE OF ACCOUNT** - The Commission's Lottery is a high volume, production and content-heavy account with multiple projects running concurrently. Lottery marketing efforts cross multiple touchpoints and must be relevant to each touchpoint while maintaining continuity of messaging. The Successful Bidder shall have project management resources and tools to manage multiple projects

¹ The term "partnership" used herein refers to the general concept of two entities working together and in cooperation, and not a formal, corporate or legal structure, such as outlined in New York State's Partnership Law.

simultaneously, meet established deadlines, clearly identify deliverables, identify risks, and lead communications among all stakeholders (e.g., Commission's Lottery staff, Commission vendors to the Lottery). Some projects may require an agile framework for development and to support unexpected shifts in consumer demands. The Successful Bidder's Lottery account shall be structured and staffed to operate under these conditions.

D. INTEGRITY - The Commission operates the Lottery with the highest integrity, credibility, and quality to maintain the public trust. The Successful Bidder shall be held to the same standards. The Successful Bidder shall develop an in-depth knowledge of New York State laws and regulations that govern the Commission, the Lottery, operations, management of contracts, and the Successful Bidder's subcontractors. The Successful Bidder shall accept the significant responsibility and complex nature of managing a government account.

- Commission Regulations: <https://www.gaming.ny.gov/rules.php>
- New York State's Racing, Pari-Mutuel Wagering and Breeding Law, Article 1: <https://www.gaming.ny.gov/statutes.php>
- New York State's Tax Law, Article 34: <https://www.gaming.ny.gov/statutes.php>
- New York State's State Finance Law, Article 11: <http://public.leginfo.state.ny.us/lawssrch.cgi?NVLWO>

E. DEDICATED ACCOUNT MANAGEMENT TEAM - The Successful Bidder shall commit necessary resources to serve as a strategic business partner with the Commission. The Successful Bidder shall provide a dedicated team of skilled, experienced staff from various disciplines to work closely with the Commission as an integral part of the Lottery team, and as provided in Section 2.3(C) and 2.3(D). Members of the Successful Bidder's account management team shall be required to attend regular meetings at Commission headquarters in Schenectady, New York, participate in structured meetings, strategic discussions, project coordination and updates, and cooperative work sessions related to Lottery programs, in person or virtually, at the discretion of the Commission. Meetings may include the Commission's Lottery marketing, sales, product, security, and operations staff and third-party vendors to collaborate and share knowledge that will enrich the Successful Bidder's output. The Commission's goal is to foster an environment of shared vision, goals and objectives, collaboration, and integration. Due to the Lottery's fluctuating business needs, the Successful Bidder must be structured to quickly adapt to change, such as unexpected shifts in the market and rapidly changing consumer behaviors. The Successful Bidder must proactively and consistently bring forward new ideas that support the Lottery business objectives and further the Commission's mission to raise revenues for the sole purpose of supporting public education in New York State.

F. RETAIL FOCUS - Lottery games are sold through a diverse retail network of approximately 15,000 licensed sales agents, ranging from small, independent stores and newsstands, to large-scale corporate chain stores. Lottery games are sold at grocery stores, supermarkets, bowling alleys, liquor stores, convenience stores, and more. The Successful Bidder shall maintain a thorough understanding of the Lottery's retail presence across the spectrum of sizes and retail types. The Successful Bidder's knowledge of Lottery retail structures must be applied to the work performed to ensure marketing programs achieve established goals and objectives. The Successful Bidder shall create programs and recommend marketing solutions to optimize Lottery's presence at licensed

sales agents' retail locations to drive awareness and purchase of Lottery games in relevant, cost-effective, and innovative ways.

G. LOTTERY KNOWLEDGE - Lottery games are not a typical mass-market product brought to consumers like traditional packaged goods brands. The Lottery has games in various stages of life cycles, launches new products every four to six weeks, and relies on New York's diverse licensed sales agent base to manage and sell Lottery games directly to consumers. The Successful Bidder shall develop and maintain a strong understanding of the lottery industry, Lottery games, Lottery consumer segments, responsible gaming, players, and the Lottery's diverse sales agent base. The Commission shall provide training to onboard the Successful Bidder and the Successful Bidder shall have an established process to continue to acquire New York gaming industry and Lottery account-specific knowledge. The Successful Bidder shall ensure new staff is trained to make certain vital account information is not lost with staff turnover.

2.3 Scope

A. STRATEGIC BUSINESS PARTNERSHIP – The Successful Bidder shall be a proactive strategic partner to the Commission in the development, evolution and execution of Lottery marketing programs, focusing on maximizing sales, innovative solutions, player engagement, responsible gaming, retail optimization and drive to retail efforts. The Successful Bidder shall be committed to the same goals and objectives as the Lottery and shall create and execute programs that deliver on those goals and objectives.

1. **Strategic Planning** – The Successful Bidder shall develop objective-driven marketing strategies, breakthrough experiences and solutions, and produce and implement each project or effort with high-quality production standards and in a cost-efficient manner. At the start of the Contract, the Commission shall conduct a series of no less than six 4-hour strategy sessions with the Successful Bidder to outline Lottery mission, vision, business objectives, marketing and sales vision, consumer segments, segment objectives, sales goals, product overview, and overall gaming landscape. These strategy sessions shall set the foundation for the Successful Bidder to develop sound strategic marketing plans.

With input from the Commission about the Lottery, the Successful Bidder shall develop and present written, measurable, and detailed short and long-term strategic marketing plans to the Commission no later than six (6) months after Contract start date. If approved by the Commission in writing, these strategic marketing plans will be accepted by the Commission as the Formal Strategic Marketing Plan. The term of the Formal Strategic Marketing Plan shall be determined by the Commission and shall be no longer than the term of the Contract.

The Formal Strategic Marketing Plan shall be updated by the Successful Bidder on a quarterly basis, and as Commission-approved projects are added or completed. Updates to the plan shall be agreed to in writing by the Commission before they are implemented. The Commission may require changes to the Formal Strategic Marketing Plan at any time to align with shifts in market or consumer behaviors and expectations, new technologies, unexpected innovations, or other communication influences.

2. **Fiscal Year Marketing Plan** – Each year, the Successful Bidder shall provide to the Commission, no less than 6 months prior to the start of the Commission's next fiscal year

(April 1 – March 31), a Fiscal Year Marketing Plan that aligns with the Commission's fiscal year business plans for the Lottery. (**Exhibit A, Year One - Fiscal Year Marketing Plan**)

A Fiscal Year Marketing Plan shall include:

- a. Innovative approaches and measurable Key Performance Indicators ("KPIs") for the Commission's planned business initiatives for the Lottery, including how approaches will achieve established goals and objectives for the Lottery.
- b. A general breakdown of projected expenses for the fiscal year to include proposed efforts in the Fiscal Year Marketing Plan and any proposed projects in the Formal Strategic Marketing Plan that will be billed during the Lottery's upcoming fiscal year.
- c. Opportunities for marketing activities that align with the Commission's business objectives for the Lottery, and any other marketing topics specified by the Commission that are not included in Formal Strategic Marketing Plan.
- d. Plans for the life cycle of lottery games, research and marketing solutions, if applicable. Example: Some engagement programs require continuous planning, research and addition of new content to stay relevant and interesting to consumers.

B. ACCOUNT MANAGEMENT – The Successful Bidder shall proactively manage its Lottery account by means of a dedicated full-time account management team that shall be responsible for oversight and execution of all elements set forth in this RFP and resulting Contract. The Commission shall conduct strategy and fiscal year planning sessions with the Successful Bidder as set forth in Sections 2.3(A) "Strategic Business Partnership" and 2.3(A)(2) "Fiscal Year Marketing Plan". The Successful Bidder shall participate in on-site and/or virtual meetings, at the determination of the Commission, at the Commission's offices in Schenectady, New York, at a minimum of once weekly, on-site, to discuss the state of the business, discuss fiscal year and long-term strategic plans, requirements and implementation plans for upcoming initiatives. The Successful Bidder shall not be compensated for direct unbillable expenses, such as travel and other out-of-pocket expenses that are required as a regular course of business.

C. DEDICATED, FULL-TIME ACCOUNT MANAGEMENT TEAM ("AMT") –The Successful Bidder shall provide a dedicated, full-time AMT that shall work collaboratively with the Commission to develop and manage marketing plans and ensure execution of activities for the Lottery account. The AMT shall be assigned exclusively to the Lottery account. A significant role of the AMT is to become thoroughly involved with the Lottery's marketing operations and structure and to stay apprised of lottery sales, consumer and retail trends, consumer behaviors, and innovative marketing developments. The AMT shall provide relevant consumer insights and recommendations for research to support short and long-term marketing planning. The AMT shall build and maintain a New York consumer segment, retail and lottery industry knowledge base that will inform Lottery business decisions and recommendations. The AMT shall develop project proposals and oversee development and implementation of Commission-approved marketing projects for the Lottery.

The AMT shall collaborate with the Commission, assigned project teams, and third-party vendors at the direction of the Commission to achieve defined outcomes for the Lottery. The AMT shall be

responsible for establishing regular communications across the Commission, assigned project teams, and third-party vendors to ensure shared understanding and seamless integration of marketing initiatives. AMT communication tools shall include, but not be limited to, a web-based collaborative platform provided by the Successful Bidder at no cost to the Commission, with a minimum of fifty (50) Commission and Commission-designated third-party users. Such AMT communication tools need the written approval of the Commission and New York State Office of Information Technology Services ("ITS"), prior to implementation.

AMT roles and preferred experience include the following job titles:

1. **Account Director** – Minimum of 15 years of marketing strategic planning, including 10 years of experience as an Account Director and 3 years of experience in retail marketing.
2. **Group Account Director** – Minimum of 7 years of experience as a Group Account Director
3. **Project Manager** – Minimum of 5 years of project management experience.
4. **Research and Analytics Manager** – Minimum of 7 years of experience in research, analytics, and reporting.
5. **Communications Manager** – Minimum of 3 years of experience in marketing or communications. This position shall be onsite at Commission headquarters in Schenectady and shall physically and functionally report to the Commission's Project Management Office for the Lottery and administratively report to the Successful Bidder. The Successful Bidder will collaborate with the Commission on this hire. This position is not expected to be filled at the time of proposal submission.

D. ACCOUNT STAFFING - The Successful Bidder shall provide to the Commission a Lottery account team of dedicated, experienced professionals who shall be fully committed to the Lottery's success and continually strive to produce exceptional work while understanding and adhering to the constraints and requirements that exist in a government contract. The Successful Bidder shall ensure assigned account staff develop and maintain a deep understanding of the Lottery's brand, products, and distribution channels. The Successful Bidder shall develop and follow staff transition plans to ensure vital account history and information are retained during the term of the Contract.

While the Successful Bidder may determine the optimal staffing plan to deliver the scope of work, the Commission requires primary resources for the Lottery account consisting of the AMT and functional area leads to include, but not be limited to, job titles for jobs involving strategy, creative, media, finance and accounting, human resources, research and development, and production. The Successful Bidder shall provide functional area leads and appropriate staffing to support the Lottery's goals and objectives. Lottery account support shall include, but is not limited to:

1. Strategic services
2. Account management
3. Account planning
4. Creative services
5. Production services
6. Media services
7. Project management and traffic management

8. Financial management and administration

E. BUDGET / BILLING MANAGEMENT – The Successful Bidder shall support the Commission's Lottery with account-related budgeting, billing, and competitive bidding. The Successful Bidder shall designate at least one dedicated position to be responsible for Lottery-related financial management support and shall work directly with the Commission on budget and billing matters.

1. **Contractor Staffing Reports** – On the 15th of each month, the Successful Bidder shall provide to the Commission a summary report of all hours worked on the Lottery account for the previous calendar month by job title, job title hours worked, projects or initiatives, and the total hours worked toward hours budgeted by job title for the contract year.
2. **Annual Staffing Report** - The Successful Bidder shall provide a final staffing report to the Commission by title and total hours worked for each month and cumulative hours worked for the contract year no later than 30 days after each contract year. Any staffing hours billed in excess of hours worked by the Successful Bidder in a contract year shall be credited to the next contract year. The final contract invoice shall be adjusted for any staffing billed in excess of hours worked by the Successful Bidder.
3. **Approved Expenditure Reports** – On the 15th of each month, the Successful Bidder shall provide to the Commission a summary report of all approved expenditures on the Lottery account through the previous calendar month for the fiscal year. The summary shall include the total amount committed and the total amount remaining in the marketing budget.
4. **Budget Management and Accounting** – The Successful Bidder shall provide estimates and bid packages in accordance with Commission policies, procedures and guidelines.
5. **Billing/Financial Reconciliations** – The Successful Bidder shall:
 - a. ensure purchase order requests, purchase orders, authorizations, and estimates are released as scheduled;
 - b. handle any billing discrepancies and provide supporting documentation; and
 - c. reconcile the budget on an ongoing basis with Successful Bidder's accounting and media departments.
6. **Invoicing and Payment** – For production and media services, the Successful Bidder shall ultimately pay invoices of third-party providers of such services, as approved by the Commission. The Successful Bidder shall present estimates (which must include a breakout of any proposed pre-billing up to fifty percent (50%) of the total estimate) and invoices from third-party providers to the Commission, for review and potential approval. Upon the Commission's written approval of an applicable estimate, up to fifty percent (50%) of the total estimated costs for services may be invoiced to the Commission by the Successful Bidder. Thereafter, Successful Bidder shall issue invoices to the Commission for the remaining costs at least thirty (30) days before payment is due to third-party providers for services rendered, to ensure that the Successful Bidder receives payment from the Commission prior to the Successful Bidder's deadlines for payment to third-party providers for such services. All such invoices are subject to adjustment (up or down) prior to final billing. Final billing for actual costs incurred shall not exceed 100% of the original estimated project cost unless approved by the Commission in advance of the Successful Bidder incurring such costs.

The Commission may require the Successful Bidder to pre-bill the Commission for production and media services up to one hundred percent (100%) of the estimated costs for production and media services. The Successful Bidder shall invoice the Commission upon Commission's written approval of the applicable estimate. The Successful Bidder shall reconcile third-party vendor invoicing for services rendered to the Commission-approved estimate and provide to the Commission monthly reconciliation reports until all services have been rendered and paid by the Successful Bidder to third-party vendors for such services. The Successful Bidder shall provide to the Commission a final reconciliation report upon completion of invoicing and services rendered for each Commission-approved estimate. Final billing for actual costs shall not exceed 100% of the estimated project cost unless approved by the Commission in advance of the Successful Bidder incurring such costs.

The Commission shall promptly process all payments due to the Successful Bidder that conform to the provisions of this RFP and are approved by the Commission's Contract Administrator and Finance Office. Such payments will be made within 30 calendar days after the Commission's receipt of an invoice, subject to the Commission's approval.

For multi-jurisdictional marketing services and multi-jurisdictional lottery memberships, the Successful Bidder shall ultimately pay invoices approved by the Commission for third-party providers of such services. The Successful Bidder shall process multi-jurisdictional marketing service and multi-jurisdictional lottery membership invoices and bill the Commission timely as a pass-through at net rate with no mark-up.

All third-party invoices shall be billed by the Successful Bidder to the Commission as a pass-through at net rate without markup and shall pass along to the Commission any discounts earned in conjunction with such purchases. If any non-cash incentives or rewards are offered for the purchase of goods or services, the Successful Bidder shall attempt to negotiate a reduction in cost to be passed on to the Commission in lieu of the non-cash incentives or rewards. The Successful Bidder shall not accept non-cash incentives or rewards for its own use or on behalf of the Commission unless so directed by the Commission. The Successful Bidder shall pay for and submit for reimbursement reasonable costs, approved in advance by the Commission that are mutually agreed to by the Successful Bidder and the Commission, such as industry award submissions, vendor proofs, and support items. (Note: travel is not a reimbursable cost.)

The monthly Agency Fee shall be billed by the Successful Bidder to the Commission on the first day of each month (see 3.3, Pricing Proposal).

- a. **General** - The Successful Bidder shall submit invoices timely to the Commission for Commission-approved goods or services. Original invoices from subcontractors and third-party vendors shall be available to the Commission within 48 hours of the Commission's request. Invoices shall contain the following information:
 - i. Successful Bidder name and address;
 - ii. Successful Bidder federal tax identification number as designated in the Contract;
 - iii. Successful Bidder purchase order number;
 - iv. A reference or description to the services being/to be provided, such as the name of the project, campaign, or game;

- v. The form of advertising (e.g., radio, television, newspaper, digital);
- vi. Supporting and standard back-up documentation;
- vii. Summary recap of all invoices and charges by media, game, and/or category of expenses;
- viii. Itemized billing;
- ix. Services provided;
- x. Dates of services;
- xi. Address where payment should be remitted; and
- xii. Successful Bidder's signature and date.

b. Media – In addition to the requirements in 2.3(E)(5)(a) above, the Successful Bidder shall provide the following to the Commission related to media services:

- i. Invoices of media purchases, billed by the Successful Bidder to the Commission as a pass-through at net rate with no markup. All invoices shall include information such as flight dates, run times, media type, frequency and category;
- ii. Backup and tear sheets for all media invoices;
- iii. At no additional cost to the Commission, an annual third-party audit of all media placements and invoices paid for those placements to ensure proper reconciliation of billing and media placements. The Successful Bidder's selection of a third-party audit vendor requires Commission approval prior to vendor selection. The Commission will establish timeframe expectations for the annual audit;
- iv. Media post-buy analysis, no more than 90 days after a media flight ends. Post-buy analysis shall include media analysis including expected reach and actual reach by medium; any credits to be applied to placement; any amount received in rebate by media owners or other third-party vendors resulting from rate reductions; lineage shrinkage; short circulation; non-appearance of advertisement; faulty reproduction; or other similar cause; and
- v. Cash discounts from media owners for media invoices paid on or before the due dates thereof.

F. COMPETITIVE BIDDING PURCHASING REQUIREMENT – The Successful Bidder shall bid any services, technologies, and/or commodities not directly provided by the Successful Bidder that are required to fulfill the requirements in each Fiscal Year Marketing Plan.

- 1. Competitive Bids** - For all procurements of services or goods valued at \$50,000 or greater, the Successful Bidder shall obtain at least three (3) competitive written bids from qualified vendors.
- 2. Competitive Bidding Process** - The Successful Bidder shall follow the process below for all competitive procurements:

- a. Define the process by which the procurement is being conducted.
 - b. Disclose the general process to potential bidders in an Invitation for Bids (“IFB”) for Best Price awards or a Request for Proposals for Best Value awards.
 - i. IFBs and Requests for Proposals need the Commission’s written approval before being issued.
 - ii. IFBs and Requests for Proposals must include specifications for the services or goods being solicited in as much detail as possible.
- 3. **Process** - The Successful Bidder must adhere to the process while conducting the procurement and evaluating the bid responses.
 - a. Procurements must state the methodology used, and evaluation criteria must be developed to align with the methodology.
 - b. The Successful Bidder must document the process, including information gathering and decisions made.
- 4. **Types of Awards** – There are four types of awards the Successful Bidder may utilize:
 - a. **Best Price** - Procurements shall be awarded to achieve the lowest cost on goods and/or services where there is parity among offerings from available and qualified bidders.
 - b. **Best Value** - Bids may be evaluated based on Best Value if the goods and/or services solicited are such that the technical or professional capabilities of vendors varies, and the Lottery would benefit from a Best Value evaluation. The Commission reserves the right to determine method of award, as well as evaluation criteria.
 - c. **Sole Source Award** - A sole source procurement is one in which only one vendor can supply the commodities or services required. The Successful Bidder must document why the proposed vendor is the only viable source for the commodities and/or services needed by the Successful Bidder.
 - d. **Single Source** - A single source procurement is one in which, although there are two or more potential vendors, the Successful Bidder has determined that it is in the best interest of the Lottery to procure from a particular vendor. The Successful Bidder shall provide the Commission with detailed rationale for a single source award, which shall include an assessment of qualifications of the vendor and assuring vendor’s cost aligns with fair market value of the type of goods or services being procured.
- 5. **Procurements Below \$50,000** - For all procurements below \$50,000, the Successful Bidder may award the subcontract to an available and qualified vendor. The Successful Bidder shall provide documentation validating the cost-effectiveness of the selected vendor to the Commission with rationale for the selection.
- 6. **Authorization to Award** - Once the Successful Bidder makes a determination of award for any subcontract, Successful Bidder shall provide the Commission with an award summary that includes the Successful Bidder recommendation, details of the bid process including price and service comparison, confirmation of bid process compliance, and request for the

Commission's approval. The Successful Bidder shall maintain electronic files of recommendation, proposals and any other documentation associated with bid process for all goods and services provided under the Contract. Any such documentation shall be provided to the Commission upon request.

The Successful Bidder shall be permitted to make an award only upon receipt of the Commission's written approval. The Commission is not liable for any costs incurred without specific written approval by the Commission prior to costs being incurred.

7. Open Competition & Fair Practices - All procurements subcontracted by the Successful Bidder as part of this scope of work, regardless of dollar value, shall do the following:

- a. Ensure fair and open competition allowing qualified vendors an opportunity to obtain State business as a subcontractor of the Successful Bidder;
- b. The Successful Bidder shall consider qualified MWBE, SDVOB, and New York State-based companies in procurements whenever possible (See Sections 7.7, 7.8 and 7.10);
- c. Guard against favoritism, improvidence, extravagance, fraud, and corruption;
- d. Ensure that the subcontract results meet the needs of the Commission and the Lottery;
- e. Ensure transparency by providing the Commission with checks and balances with which to oversee the Successful Bidder's procurement activities;
- f. Protect the interests of the State and its taxpayers.

G. SCOPING & REQUIREMENTS – The Formal Strategic Marketing Plan and Fiscal Year Marketing Plan shall identify projects and programs to be completed to implement such Plans. For each project or program, the Commission shall provide the Successful Bidder with an overview document that includes, but is not limited to, business opportunity, situation, goals, objectives, insights, important dates and milestones, and desired outcome. The Successful Bidder shall develop a proposal that includes, but is not limited to, strategic direction, no less than three concepts for creative direction, intended audience, consumer insights, expected reach, opportunities, tentative calendar, and budget. During the proposal phase, the Successful Bidder shall ensure Commission staff review timelines and Successful Bidder edits are established to ensure important dates and milestones are met. The Commission-approved proposal shall serve as the source document for the development of the project or program. A project or program proposal needs the Commission's written approval prior to the Successful Bidder beginning development of the project or program.

H. PROJECT MANAGEMENT - The Successful Bidder shall provide a full-time, dedicated project manager to work through the process of planning, organizing, communicating, and delineating responsibility for the completion of Commission-approved projects and programs and ongoing maintenance efforts. The Successful Bidder shall establish project plans for each Commission-approved project or program. The Successful Bidder shall utilize the project management

methodology best suited to achieve the goals and objectives for each project or program. Project or program timelines shall allow sufficient time for completion of all elements set forth in the Plan.

Each stage of a project or program that requires Commission review shall include a minimum of five business days for review, unless otherwise approved in advance by the Commission. The Successful Bidder shall provide detailed production schedules with task milestones for each project or program. All relevant reference materials must be delivered to the Commission no later than one hour prior to conference calls between the Successful Bidder and the Commission, unless otherwise approved by the Commission. The Commission's approval is required to move forward with any proposed stage of a project or program.

Smaller projects may not require a comprehensive project plan. In such circumstances, the Commission has the sole authority to determine if a project plan is not required. The Successful Bidder and the Commission shall mutually agree to the process to be used for development of smaller projects on a per-project basis. Projects, regardless of whether they require project plans, must be authorized in writing by the Commission before they are implemented or acted upon. The Commission shall not be responsible for any additional costs incurred as a result of the Successful Bidder not adhering to approved timelines or for the Successful Bidder's work that was performed without proper approval from the Commission.

The Successful Bidder shall provide a reasonable solution to upload, view, and share large files with the Commission. The Commission may request files from the Successful Bidder at any time. The Successful Bidder shall provide requested files to the Commission within 24 hours of the Commission's request.

- I. **RESEARCH** – In collaboration with the Commission, the Successful Bidder shall propose, outsource to a third-party, and analyze research as needed, to inform marketing strategic direction, measure results, or support other marketing needs as required by the Commission. Any research conducted to support the Lottery needs the Commission's written approval prior to execution and complete results shall be provided to the Commission. The Successful Bidder shall adhere to **2.3(F) Competitive Bidding Purchasing Requirement** to obtain research services.
- J. **REPORTING & ANALYSIS** – The Successful Bidder shall provide reporting and conduct analysis as defined in this RFP and as required by the Commission. The Successful Bidder shall provide a reporting dashboard that shall be accessible to the Commission. The Successful Bidder and the Commission shall mutually agree to the dashboard format and content. Dashboard data shall be updated by the Successful Bidder as required by the Commission. Required reporting and analysis includes, but is not limited to, the following:
 - 1. **Projects** – The Successful Bidder shall provide up-to-date project status reporting to provide at-a-glance data and metrics for each active project, program, or initiative. The dashboard shall include, but is not limited to, task status, project progress, resource workload, risks and challenges, critical actions, and budget.

2. **Sales Reporting** – The Successful Bidder shall provide weekly sales reporting by Lottery game and price point. Reporting shall include advertising impact, insights, and recommendations to achieve goals and objectives based on findings.
3. **Retailer and Corporate Reporting** – The Successful Bidder shall provide reporting on retailer status by trade style on a monthly basis. Reporting shall include insights and recommendations to achieve goals and objectives based on findings.
4. **Tracking Study Reporting** – The Successful Bidder shall present quarterly tracking study observations to include insights, achievement toward goals and objectives, and recommendations.
5. **Community Management Daily Reporting** – The Successful Bidder shall provide reporting on social media activity daily. Reports shall include: trends, comments, sentiment, and paid assets in market.

K. CREATIVE SERVICES – The Successful Bidder shall provide creative services across all channels and consumer touchpoints to support Lottery marketing plans and programs. Creative services shall include, but are not limited to:

1. Strategic creative direction
2. Art direction
3. Copywriting
4. Content development
5. Proofreading
6. Editorial support

Creative content shall be developed to align with the Commission's Lottery goals, objectives, and strategic direction, as well as responsible gaming standards, and shall be executable within budget. Specific creative content shall align with the purpose of each marketing element and desired audience. Lottery marketing elements that require creative services include, but are not limited to:

1. Consumer advertising
2. Retailer point-of-sale, displays and in-store marketing materials
3. Digital advertising
4. Digital assets (*i.e.*, websites, digital signs, mobile applications, digital newsletters, social media)
5. Permanent advertising (*i.e.*, signs, billboards)
6. Retailer communications
7. Lottery player communications
8. Lottery staff communications and training materials
9. Virtual sets and broadcast graphics for drawings, shows or winner events (the Lottery studio is located in Schenectady, New York)
10. Lottery events

Creative assets and content shall be approved, in writing, by the Commission prior to execution. The Successful Bidder shall develop a storyboard for television/video commercials to showcase how the concept and approved script will appear in production. The storyboard needs the Commission's written approval prior to the Successful Bidder submitting the storyboard to potential directors to bid. Any substantive changes to the storyboard following the bid award need the Commission's written approval prior to the pre-production meeting.

L. CUSTOM CONTENT CREATION AND OVERSIGHT –The Successful Bidder shall create custom marketing content to align with programs and initiatives. Content shall include, but not be limited to, product launches, promotions, contests, winner awareness, live events, brand awareness, responsible gaming, and other communications to support Commission efforts. Content shall be proofread by the Successful Bidder, consistent with objectives and medium and may include, but not be limited to, communications to consumers, retailers, Commission staff, and external stakeholders. The Commission shall establish, review, and authorize processes for Successful Bidder-generated content. A Lottery Content Calendar shall be created and continuously updated by the Successful Bidder and must always be accessible to designated Commission staff.

M. LOTTERY BRAND - The Successful Bidder shall evaluate perceptions of the Lottery brand and develop and implement strategic plans to ensure the Lottery brand resonates with existing, loyal players and attracts new players. The Successful Bidder shall:

1. Analyze existing research and recommend additional research, as needed, to identify insights and barriers to evolve the Lottery brand across primary consumer segments, loyal players, and non-players;
2. Develop Lottery brand position and brand goals and objectives;
3. Develop strategic approach, creative direction and implementation plans to achieve Commission-approved goals and objectives;
4. Establish measures to achieve Lottery brand goals and objectives;
5. Report on results of Lottery brand efforts, no less than quarterly;
6. Recommend shifts in strategy and tactics, as needed, to maintain Lottery brand relevancy across desired segments; and
7. Develop and update Lottery brand guidelines and standards.

N. CUSTOMER JOURNEY – The Successful Bidder shall assess and develop a plan to optimize the customer experience across all touch points including, but not limited to, digital, retail, customer service and prize payments at retail locations and Commission Customer Service Centers or Prize Claim Centers. The Successful Bidder shall:

1. Oversee research to develop customer journey maps for the Lottery's primary consumer segments.
2. Identify insights and barriers throughout each customer journey and recommend solutions that align with the Lottery brand and New York's diverse population, and comply with laws and Commission standards.

3. In collaboration with the Commission, create and implement strategies and tactics that build equity for the Lottery brand and improve the customer experience along the entire customer journey, including path to purchase, game play, and winner/non-winner experience.
4. Establish mechanisms to measure achievement toward established goals and objectives and frequently report to the Commission, no less than quarterly on progress.

O. PUBLIC SERVICE ANNOUNCEMENTS – The Successful Bidder shall provide strategic and creative direction, develop, produce, and secure placements for public service announcements as directed by the Commission. Public service announcements shall be placed at no cost to the Commission. The Successful Bidder shall provide estimated impressions and media value for placement to the Commission, for its consideration and, if approved, actual impressions and estimated media value after conclusion of effort. Commission approval is required prior to implementation of the public service announcement.

P. TRANSLATION SERVICES – The Successful Bidder shall provide translation services in multiple languages to include design, editing, proofreading and cultural review. Translation services shall be required in the languages established by the most current Statewide Language Access Policy (<https://www.ny.gov/language-access-policy>).

Q. PRODUCTION SERVICES – The Successful Bidder shall provide production services for all marketing efforts required by the Commission to support the Commission's plans and Lottery programs. Production services shall include, but are not limited to:

1. Print production
2. Art, music, and creative asset buying
3. Broadcast production
4. Video production
5. Digital creative production
6. Editing
7. Proofreading
8. Content management
9. Studio services
10. Production storage

The Successful Bidder shall fulfill, implement, and execute production services to support marketing programs including, but not limited to, production supervision and expertise, delivery of audio, video, print and digital assets across selected media platforms.

The Successful Bidder shall store past and current Lottery broadcast and digital video consistent with industry standards. The Successful Bidder shall aid in any transition of broadcast and digital video as required by the Commission.

For any production work to be conducted outside the State of New York, the Successful Bidder must provide written documentation prior to conducting such work that demonstrates locations, facilities, or resources within the State of New York are not adequate for the required production.

R. MEDIA PLANNING, PLACEMENT AND ANALYSIS – The Successful Bidder shall provide media strategy, media planning, media negotiation and placement, media tracking, media audits, negotiation of make-goods and post-buy analysis to support the Commission’s established goals and objectives. The Successful Bidder shall maintain accurate media flowcharts documenting media plans, executed programs, and return on investment.

No less than once per quarter, the Successful Bidder shall present to the Commission media usage trends, insights and opportunities, and emerging media trends which shall influence media strategy and planning, as appropriate, to achieve established goals and objectives. The Successful Bidder shall review competitive media trends among other lotteries within the U.S. and among other related industries, such as gambling, gaming and other forms of entertainment, or other categories as requested by the Commission.

1. Media Planning - Media plans shall be designed to reach defined audience(s) and shall determine appropriate geographic distribution of media investments based on available data and expertise with all media markets in New York. The Successful Bidder shall leverage the most relevant and effective media research, tools and analytics for established and emerging formats, cross-channel measurement, and media-mix modeling to inform and evaluate media plans and performance. The Successful Bidder shall use some or all of the following insights and data to develop strategic media plans:

- a. Lottery sales data
- b. Primary research
- c. Syndicated research
- d. Proprietary sources
- e. Econometric modeling
- f. Insights from past Lottery campaigns
- g. Lottery consumer segment insights and data
- h. Digital analytics

The Successful Bidder shall present media plan recommendations to the Commission including, but not limited to, audience, overall rationale, estimated cost, added value and efficient placements for each initiative that requires media support. Media recommendations shall align with initiative goals and objectives. Media plans and media buys need the Commission’s written approval prior to implementation.

The Successful Bidder shall meet with media representatives to keep abreast of opportunities, new trends, offerings, and to assess the capabilities of media partners and to ensure the Lottery is reaching New York State’s diverse population. To support marketing programs, the Successful Bidder shall alert the Commission of special media offers, sponsorships, or placement opportunities that meet the Lottery’s business or marketing objectives.

2. Negotiation and Placement – The Successful Bidder shall negotiate and purchase all media for Commission-approved media plans and last-minute jackpot buys. The Successful Bidder shall:

- a. Verify and audit media placements;
- b. Ensure all media was broadcast or published according to contracts or placement instructions;
- c. Provide tear sheets or any other placement verification requested by the Commission; placement verification documents shall indicate run dates and/or times of circulations or ratings received;
- d. Negotiate agreements with media to broadcast and live-stream Lottery draw shows and digital shows to maximize opportunities for exposure; and
- e. Coordinate public service announcements to support problem gambling awareness as directed by the Commission.

3. Analysis – The Successful Bidder shall put in place appropriate tools and processes to measure and report media effectiveness. The Successful Bidder shall utilize econometric modeling to analyze effectiveness of media plans and to inform future media recommendations. The econometric modeling shall be kept up to date with the latest sales data and the outputs presented to the Commission no less than annually. The Successful Bidder shall optimize media plans on an ongoing basis to maximize the budget. No more than 90 days after a media flight ends, the Successful Bidder shall provide to the Commission a complete post-buy analysis to include KPIs, insights, effectiveness, return on investment, and requirements set forth in Section 2.3(E)(5)(b)(iv).

S. SEARCH ENGINE OPTIMIZATION (SEO) & SEARCH ENGINE MARKETING (SEM) – The Successful Bidder shall perform ongoing SEO and SEM to aid web users in finding the Lottery and associated programs through relevant search engines. The Successful Bidder shall:

1. Perform keyword research to develop and maintain an ongoing list of prioritized search terms to support SEO;
2. Review the Lottery website content and metadata to improve conversion rate;
3. Develop paid search advertising programs that include, but are not limited to, keyword recommendation, bidding strategy, advertising copy, advertising group, and landing pages;
4. Provide measurements and tracking to drive improved click-through rate and quality score.

T. SOCIAL MEDIA – The Successful Bidder shall develop and manage the Lottery's social media plans, content, and responses on social media platforms, if pre-authorized by the Commission. The Successful Bidder shall:

1. Develop data-driven social media plans that grow the brand, engage users, and improve conversion rates. Plans shall be developed in a manner that supports the real-time nature of social media and emerging trends.
2. Provide social media measurement and reporting including audience, engagement, impressions, paid campaigns, and influencer marketing.
3. Produce social media content and update the Lottery Content Calendar (see Section 2.3(L) Custom Content Creation and Oversight).
4. Weekly social media plan support including content, imagery, and date of content release by platform.

5. Provide social media community management including oversight and development of content and responses. Commission-approved responses to social media inquiries shall not exceed 12 hours from inquiry. Community management shall be inclusive of holidays, evenings and weekends.
6. Manage the social media marketing platform for monitoring and filtering of social media platforms. The Commission currently utilizes Social Bakers for social media monitoring and filtering. If the Successful Bidder assumes the existing contract or any future contracts for these services, they shall be billed by the Successful Bidder to the Commission as a pass-through with no mark-up. The Successful Bidder shall adhere to **2.3(F) Competitive Bidding Purchasing Requirement** to obtain these services.
7. Conduct weekly sweeps of Facebook, Instagram, Twitter, and any future social media accounts for fake New York Lottery accounts. Fake accounts must be reported to the associated platform immediately and removed quickly.

The Successful Bidder shall adhere to **2.3(F) Competitive Bidding Purchasing Requirement** to obtain any elements of social media management not directly provided by the Successful Bidder.

U. PAID SOCIAL MEDIA – The Successful Bidder shall support paid social media in the form of display advertisements, sponsored marketing messages, pay-per-click advertising, and brand or influencer-generated content to reach desired audiences as defined in media plans. The Successful Bidder shall propose new and innovative paid social media tactics as platforms evolve.

V. SPONSORSHIP AND EXPERIENTIAL MARKETING PROGRAMS – The Successful Bidder shall assist in selecting, developing, negotiating, and contracting for promotional events, sponsorships, sports marketing, and other state and local experiential marketing programs to achieve the Commission’s business and marketing goals and objectives. This may include contracted services with third-party vendors, equipment, supplies, or other required components. The Successful Bidder shall solicit and encourage joint advertising and promotional opportunities with potential co-sponsors. Ninety days prior to the start of each fiscal year, the Successful Bidder shall present to the Commission a sponsorship and experiential marketing plan for Commission consideration. Recommendations shall include, but not be limited to:

1. Program objectives and benefits
2. Budget and cost per sponsorship or experiential marketing program
3. Performance measurement recommendations
4. KPIs, including awareness, engagement, Lottery brand association, and return on investment
5. Lessons learned and insights from previous sponsorship or experiential marketing efforts

Sponsorship and experiential marketing plans shall not be implemented by the Successful Bidder unless and until approved by the Commission in writing. Individual sponsorships and experiential marketing program contracts or agreements need the Commission’s written approval and the Successful Bidder’s full execution as a party to the sponsorship, contract, or agreement, prior to initiation of such sponsorships and programs. The Successful Bidder shall present to the Commission quarterly sponsorship and experiential marketing program summaries and a fiscal year performance report. Summaries and fiscal year performance reports shall include an analysis of each sponsorship or program and shall include, but are not limited to, return on investment, insights, measurements, KPIs, lessons learned, and future recommendations.

Free Tickets & Other Benefits – Sponsorships often carry with them an offer for free tickets to events, premium items, and other special benefits. The Commission reserves the right to accept or reject the offer of any such items or benefits offered in association with a sponsorship or media buy. Any such benefits accepted by the Commission and provided in relation to a sponsorship agreement shall only be used as promotional prizes as authorized, in writing, by the Commission. No such item shall be provided to an employee or vendor of the Commission. The Successful Bidder shall not utilize any such items for its own benefit or for the benefit of other clients. The Successful Bidder shall document and provide to the Commission's Director of the Division of Lottery and the Commission's Ethics Officer any and all approved items or benefits associated with a sponsorship or media buy and the market value of each item. If the Commission rejects the offer of items or benefits, the Successful Bidder shall attempt to negotiate a reduction in rates or additional advertising or promotion opportunities.

W. PROMOTION MANAGEMENT – The Successful Bidder shall develop and manage ongoing promotions, including media-driven promotions, contests, and on-site local events. The Successful Bidder shall provide promotions support to include, but not be limited to, strategic direction, overall concept, design and production of creative assets, winner selection, audit of winner selection, winner notification, prize fulfillment, brand ambassadors, development and management of promotion requirements, measures, reporting, analysis, and return on investment. The Successful Bidder shall adhere to **2.3(F) Competitive Bidding Purchasing Requirement** to obtain any elements of promotions management not directly provided by the Successful Bidder.

X. RETAIL STRATEGY, MANAGEMENT, AND EXECUTION – The Successful Bidder shall design, develop, produce, and implement retail marketing programs to optimize the Lottery's presence at retail and to provide support, tools, and information to Lottery marketing and sales field staff and to retailers and their employees. The Successful Bidder shall:

1. Design, develop and execute retailer-directed communications and retail-based marketing programs that drive sales of Lottery products and communicate necessary messaging such as responsible gaming or regulatory requirements.
2. Optimize the Lottery's presence at retail in relevant, cost-effective, and innovative ways.
3. Design, develop, execute, and measure the results of corporate account programs for pertinent retailers.
 - a. Assess opportunities with existing and new retailer corporate accounts.
 - b. Recommend business development opportunities based on consumer data.
 - c. Develop corporate recruitment materials.
 - d. Develop and present annual corporate plan to achieve the Commission's corporate goals and objectives for the Lottery.
 - e. Develop corporate account marketing plans that align with Lottery and corporate account objectives.
 - f. Present quarterly results of corporate account initiatives and programs.
4. Create effective sales and recruitment tools, training materials, and communications for retailers and Lottery marketing and sales field staff.
5. Develop standardized marketing and sales plans for Commission-designated tradestyles as a tool for Lottery marketing and sales field staff to assist retailers with Lottery sales

growth.

6. Distribute marketing materials to retailers (corporate and non-corporate accounts) and Lottery regional offices.

Y. INNOVATION – The Successful Bidder shall keep up-to-date with the most current marketing technologies, medias, and trends to help the Lottery remain an industry leader and to ensure the Commission is kept abreast of emerging trends and innovations. The Successful Bidder shall continually reassess the Formal Strategic Marketing Plan to ensure marketing efforts are fresh, current, and highly innovative. The Successful Bidder shall provide an innovation opportunity presentation quarterly to the Commission.

Z. ANNUAL CONTRACTOR REVIEW – Once a year the Successful Bidder shall participate in an Annual Contractor Review of overall account performance to inform account decisions in the next fiscal year, including determination of any AMT staffing changes that may be required. The Annual Contractor Review will provide the Commission with an opportunity to review the Successful Bidder's activity, quality of work, and performance over the prior year. The Annual Contractor Review will consist of two components:

1. **Performance Evaluation** – The Successful Bidder's performance shall be evaluated across all areas as defined in this RFP. Performance shall be evaluated based on the Successful Bidder's ability to meet the Commission's expectations.
2. **Contractor Metrics** – The Successful Bidder shall be evaluated on their ability to meet or exceed goals and objectives set forth by the Commission for the review year.

AA. TRADEMARK AND COPYRIGHT SERVICES – As part of production costs, the Successful Bidder shall provide services related to trademarks and copyrights held or used by the Commission, the Lottery, or the predecessor Division of Lottery. The services provided are as follows:

1. Conduct searches and verify clearance to use trademarks and copyrights associated with goods and services, including, but not limited to, those goods and services provided to the Commission by the Contractor, prior to proposed use, on both the state and federal levels;
2. Prepare and file trademark and copyright registration applications on the Commission's behalf, and provide assistance in the preparation and filing of such applications if the Commission so chooses to file such applications independently;
3. Obtain registration on behalf of the Commission for new trademarks or copyrights on behalf of the Commission;
4. Renew trademarks or copyrights in a timely manner, assigning renewals to the Commission where applicable, to avoid expiration of the same;
5. Monitor third-party applications filed with the U.S. Patent and Trademark Office that potentially infringe on the trademarks or copyrights held by the Commission, the Lottery, or the predecessor Division of Lottery;
6. Frequently search the U.S. Patent and Trademark Office for potentially infringing trademarks held by the Commission, no less frequently than quarterly;
7. Ensure that appropriate symbols or superscript are utilized in all material produced

pursuant to this RFP and the resulting Contract, to identify words, images, or products that are registered trademarks, trademarks, service marks, or that are copyrighted by the Commission, the Lottery, the predecessor Division of Lottery, or any multi-jurisdictional association with which the Commission is, or may become, affiliated; and

8. For trademark, service mark, and copyright enforcement, protection, and defense services, the Successful Bidder shall research, obtain estimates from, procure, contract with, and ultimately pay invoices of, third-party providers of such enforcement, protection, and defense services on the Commission's behalf, and assume such obligations for services that were commenced by or on behalf of the Commission prior to issuance of the Contract, including, but not limited to, outside legal services, contingent on the Commission's pre-approval. In consultation with the Successful Bidder, the Commission shall decide the extent of enforcement, protection, and defense services needed to represent the Commission in related processes and proceedings, including, but not limited to, negotiations, administrative proceedings, and litigation. Services, fees, and expenses must be pre-approved by the Commission, and may be invoiced to the Commission by the Successful Bidder at least thirty (30) days before payment is due to third-party providers for services rendered, to ensure that the Successful Bidder receives payment from the Commission prior to the Successful Bidder's deadlines for payment to third-party providers for such services. All such invoices are subject to adjustment (up or down) prior to final billing. Final billing for actual costs incurred shall not exceed 100% of the estimated cost unless approved by the Commission in advance of the Successful Bidder incurring such costs.

BB. ENVIRONMENTAL CONSCIOUSNESS, SUSTAINABILITY AND ENERGY CONSERVATION—

The Successful Bidder shall commit to preventing waste, maximizing resources, reducing energy consumption, increasing efficiency, complying with the green procurement and agency sustainability standards established pursuant to Governor David A. Paterson's New York State Executive Order No. 4 (<https://ogs.ny.gov/greenyny/executive-order-4>) and complying with the emissions reduction and energy efficiency standards established in Governor Andrew M. Cuomo's New York State Executive Order No. 166 (<https://www.governor.ny.gov/sites/default/files/atoms/files/EO%20%23166.pdf>). The Successful Bidder shall provide to the Commission annually, and in alignment with the Fiscal Year Strategic Marketing Plan, a Lottery Sustainability Plan for the Commission's consideration.

CC. RESPONSIBLE GAMING – The Successful Bidder shall develop, produce, and implement comprehensive consumer, retailer, and trade communication programs and plans that will encourage responsible purchase and play and discourage the sale of Lottery games to underage consumers. The Successful Bidder shall:

1. Create and produce up to four (4) responsible gaming Public Service Announcement campaigns per year including, television/video, radio, print, point-of-sale, Lottery field staff and retailer training materials, and content for digital assets.
2. Create responsible gaming standards and guidelines for Lottery marketing materials and incorporate into marketing materials as defined in the guidelines.
3. Establish responsible gaming success measures and report progress and insights quarterly.

DD. LOTTERY INDUSTRY TRADE SHOWS, CONVENTIONS AND SPECIAL EVENTS – The Successful Bidder shall stay current on industry trends which may include attending lottery industry trade shows, conventions, and special events. When the Successful Bidder's attendance at such an event could be beneficial to the Commission, the Successful Bidder needs prior written approval from the Commission for the Commission to thereafter provide any reimbursement to the Successful Bidder for any authorized travel expenses associated with such event.

Reimbursement for pre-approved travel expenses will be based on proper, supported receipts and in accordance with the prevailing allowances established by the State of New York for Management/Confidential Employees. For more information please refer to the New York State Travel Manual at: <http://www.osc.state.ny.us/agencies/travel/manual.pdf>. For current mileage reimbursement rates please visit: <https://www.gsa.gov/travel/plan-book/transportation-airfare-rates-pov-rates-etc>. The hourly rate to be paid for the Successful Bidder while in travel status will be 50% of the hourly rate provided in the Pricing Proposal.

PART THREE – PROPOSAL

3.1 Introduction

In preparation of the Proposal, each Bidder should pay special attention to the requirements and information being requested to respond fully to the RFP. Any proposal found to be incomplete or imposing conditions in response to the requirements under this RFP may be deemed non-responsive and removed from further consideration.

3.2 Technical Proposal

A. BUSINESS ORGANIZATION, FINANCIAL VIABILITY, EXPERIENCE, AND REFERENCES

The Proposal must include the information listed below:

1. Business Organization

To satisfy the following requirements, a Bidder must:

- a. State the full name and address of the Bidder and, if applicable, any branch office, or other subordinate element that will perform or assist in the performance of the work hereunder ;
- b. Identify whether the Bidder operates as an individual, partnership, corporation, joint venture, or other specified form of business organization;
- c. State whether the Bidder is qualified, authorized, and/or registered to do business in the State of New York;
- d. State the name, address (including email), and telephone number(s) of the individual from the Bidder who is authorized to bind the organization to the terms and conditions of the Proposal;
- e. State the name, address, telephone number, and email address of Bidder's representative to contact regarding all contractual matters concerning this Proposal;
- f. State the name, address, and function of any and all known subcontractors, associated companies, or consultants to be involved in any phase of work under this RFP;
- g. Provide the Bidder's Federal Employer Identification Number;
- h. Provide a company organizational chart by staff title for the Bidder;
- i. Provide a summary of the Bidder's mission, culture, and guiding philosophy;
- j. Explain the Bidder's hiring practices, including suitability standards;
- k. Provide a list of the Bidder's strengths in relation to the work defined in this RFP, including employee capacity to undertake and successfully carry out the proposed services;
- l. Provide a list of accounts lost or resigned from over the past two years and explanation of why such loss(es) occurred; and
- m. To the extent not already provided in the Vendor Responsibility Questionnaire, the Bidder shall describe key corporate personnel, ownership control, and facilities available to satisfy the requirements of the RFP. This information will be used in conjunction with the Vendor Responsibility Questionnaire.

2. Financial Viability

In order to determine the Bidder's financial ability to perform under the RFP, including, but not limited to, the resulting Contract, the Commission requires the following financial information:

- a.** Audited financial statements prepared by an independent certified public accountant (or equivalent for non-U.S. companies) for the Bidder for the last three years (the most recent and the two prior fiscal years). If the Bidder is a subsidiary of another corporation, the financial statements of the Bidder, as well as the consolidated financial statements of the parent company, shall be submitted. If the Bidder is a parent corporation, parent-only financial statements, if available, and statements for the operating division that will perform these services, shall be submitted.

If audited parent-only or Bidder/subsidiary statements are not available, the Commission will accept unaudited statements, provided the Bidder's chief financial officer certifies that the statements are current, accurate, and complete;

- b.** If the Bidder is a subsidiary and will rely on the financial resources of the parent to perform under the RFP, the parent must certify, in writing, the availability of its resources to the Bidder;
- c.** The Bidder must provide a letter of commitment from a creditor, if borrowing will provide any or all of the capital necessary for the Bidder to perform any work under the RFP; and
- d.** The Commission reserves the right to require any additional information necessary to determine the financial integrity and responsibility of the Bidder.

3. Experience

The Bidder must demonstrate in its Proposal that its organization is of sufficient size and has the qualifications and experience required to perform the requested services defined in the RFP. The Bidder should include sufficient detail to demonstrate the relevance of such qualifications and experience to this RFP, by providing the following:

- a.** Up to twenty-minute mp4 or mov format video file that showcases the Bidder's style, culture, storytelling approach, key stakeholders, in-house capabilities, and overall production range.
- b.** A description of the experience of the Bidder that would be considered relevant to the successful accomplishment of the scope of work required herein and whether any of that experience included the Bidder as a prime contractor or subcontractor. The Bidder must also provide the name of the entity(ies) in the counterpart prime and subcontractor roles, if applicable. The description must include how the Bidder meets the Minimum Qualifications as outlined in Section 1.3, including experience with integrated digital projects; development, oversight and maintenance of technical solutions to support digital efforts; digital project management and managing multiple vendor partners; and experience implementing real-time apps.
- c.** Three actual case studies, with a minimum of one case study that involves brick and mortar retail, describing Bidder's previous experience and expertise with other full-time accounts' projects similar in size, scope, nature, and complexity in the previous five years. The Commission may be included as one of the three projects if Bidder is a current or previous contractor. Case studies must include brief overview of program, dates and duration of work represented, program objectives, performance measurements, tools and tactics used to develop and implement program, sample

work and results. Each case study must include names, titles, addresses and telephone numbers that may be contacted to verify qualifying experience. If the experience is provided by a teaming partner or a subcontractor that will provide a major part of the products and services, then experience and contact information for that entity must be included.

- d. A creative reel and samples of creative work representative of the work required under the RFP's scope of work and two creative executions of omni-channel marketing and advertising campaigns.

4. References

Provide references relevant to any of the requested services, as outlined below. References must include company name, contact person (name, title, phone number, email address and mailing address) and include a general statement of the type of engagement performed for this reference.

- a. If a single Bidder only, submit three references.
- b. If submitting a joint proposal, provide two references for each business organization submitting the joint proposal.
- c. If utilizing a subcontractor for any significant portion of the work, provide two references for the primary Bidder and two for each subcontractor.

The Commission reserves the right to contact references as many times as is necessary and to contact as many references as is necessary to obtain a complete understanding of the Bidder's performance and experience. The Committee (in Section 4.3, below) also reserves the right to request additional or alternative references to those provided in the Proposal, as needed. References will be used to substantiate the Technical Proposal.

B. PROJECT MANAGEMENT AND STAFFING

The Proposal must include the information listed below:

1. Identify all staff (name and job title) and other personnel to be used under the Contract pursuant to this RFP and graphically depict the account structure to support each of the functional areas required to provide scope of work. Identify which, if any, responsibilities will be handled by an outside partner, and clearly define the oversight and management responsibilities in relation to any proposed outside partner. Note: If staff is "To Be Determined", the Bidder must indicate the job title, qualifications, and attributes required for the position.
2. List specific roles that will be part of the staff plan for the Lottery account. For each role, include the following information:
 - a. Functional area represented
 - b. Description of responsibilities
3. Provide complete résumés (not biographies) for all members of the Dedicated Full-Time AMT and functional area leads indicating the relevant experience of each. See Section 2.3(C)(1-5) for preferred Dedicated Full-Time AMT experience. Biographies do not provide sufficient information to allow for adequate evaluation of the individual's capabilities.

4. Explain the role, if any, that proposed staff had in previous projects with the organization, as presented in the submitted case studies.
5. Complete Appendix P – Year One Estimated Level of Effort as part of a Bidder's Technical Proposal. Bidders must identify the FTE percentage for each title and the staff assigned to that role for any position that will be utilized during the first year of the Contract.

The Commission reserves the right to meet and approve or disapprove of Bidder's recommendations for AMT members.

C. WORK PLAN

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

1. Lottery Objectives and Knowledge

Describe the approach the Bidder will employ to meet lottery objectives and obtain and maintain Lottery knowledge as outlined in Section 2.2(A).

2. Nature of Account

Explain how Bidder will manage multiple projects concurrently while maintaining continuity of messaging as outlined in Section 2.2(C).

3. Integrity

Describe the approach and understanding of managing a government account. See Section 2.2(D).

4. Strategic Planning

Explain how the Bidder will develop objective-driven marketing strategies, breakthrough experiences, and solutions and produce and implement each project or effort with high-quality standards and in a cost-efficient manner, in collaboration with the Commission. See Section 2.3(A)(1).

5. Fiscal Year Marketing Plan

Describe how the Bidder will develop and provide a Fiscal Year Marketing Plan to meet expectations outlined in Section 2.3(2)(a-d).

6. Account Management & Dedicated Full-Time Account Management Team

Explain how the Dedicated Full-Time AMT will manage the business partnership and ensure oversight and execution of all elements set forth in this RFP. See Section 2.3(B-C).

7. Account Staffing

Provide the Bidder's optimal staffing plan to support all elements set forth in this RFP. See Section 2.3(D).

8. Budget / Billing Management & Competitive Bidding Purchasing Requirement

Explain how the Bidder will support account-related budgeting, billing and competitive bidding as outlined in Section 2.3(E-F). Provide name, title, and resume of the designated individual responsible for Lottery-related finance management support.

9. Scoping & Requirements

Describe the process to develop proposals to support projects and programs identified by the Lottery. (See Section 2.3(G)).

10. Project Management

Explain how the Bidder will manage projects as outlined in 2.3(H). the full-time dedicated project manager in this section is the same position referenced in Section 2.3(C)(3).

11. Market Research

Describe how the Bidder will support market research requirements set forth in Section 2.3(I). Include any in-house resources available to support the partnership.

12. Reporting & Analysis

Describe how Bidder will support reporting and analytics outlined in Section 2.3(J) and provide any recommended solutions to support Dashboard reporting.

13. Creative Services

Describe the Bidder's resources and proposed methods to support creative requirements in Section 2.3(K). Explain how the Bidder will ensure strategic creative direction and creative content are developed to align with Lottery goals, objectives, strategic direction, responsible gaming standards, and within budget. Provide proposed creative review process. Provide structure and resumes of creative team assigned to support the Lottery account.

14. Custom Content Creation and Oversight

Describe how the Bidder will create, update, and manage the Lottery Content Calendar and make certain all content aligns with Lottery programs and initiatives as described in Section 2.3(L).

15. Lottery Brand

Explain how the Bidder will evaluate the Lottery brand and develop, implement and measure strategic plans as described in Section 2.3(M). Provide the Bidder's experience and the Bidder's staff experience (if different or additional) with branding efforts.

16. Customer Journey

Explain how the Bidder will assess and develop a plan to optimize the customer experience from inception to implementation and measurement toward goals as detailed in Section 2.3(N). Provide the Bidder's experience and the Bidder's staff experience (if different or additional) with customer journey efforts.

17. Public Service Announcements

Explain the Bidder's experience with Public Service Announcements and approach to development of strategy, messaging, and obtaining placement as described in Section 2.3(O).

18. Translation Services

Describe the Bidder's experience with translation services and ability to provide and support translation services for marketing and instructional purposes as outlined in Section 2.3(P).

19. Production Services

Describe the Bidder's production capabilities to support production services outlined in Section 2.3(Q). Provide structure and resumes of the Bidder's production team that would be assigned to support the Lottery account.

20. Media Planning, Placement and Analysis

Explain how the Bidder will provide media strategic planning, placement and analysis to support Lottery as detailed in Section 2.3(R). Provide resources and staffing structure to support these functions. Explain how Bidder will ensure cost efficient optimization of reach and how Bidder will audit and reconcile media buys to ensure accuracy of placements and billing.

21. Search Engine Optimization (SEO)

Describe how the Bidder will perform SEO as described in Section 2.3(S).

22. Social Media

Identify the Bidder's resources and staffing structure to support social media functions and explain how the Bidder will manage social media requirements set forth in Section 2.3(T).

23. Paid Social Media

Explain how the Bidder will manage paid social media programs in Section 2.3(U), including how the Bidder will evolve plans and programs to meet continuously changing user expectations.

24. Sponsorship and Experiential Marketing Programs

Describe how the Bidder will lead sponsorship and experiential marketing programs to support the Commission's business goals and objectives. See Section 2.3(V). Identify the Bidder's resources and staffing structure to support these functions. Describe timelines and workflow to efficiently and effectively manage sponsorship and experiential marketing programs.

25. Promotion Management

Explain the Bidder's capabilities to support promotion management as outlined in Section 2.3(W). Provide the Bidder experience with promotion management.

26. Retail Strategy, Management and Execution

Describe how the Bidder will develop and implement retail marketing programs as detailed in Section 2.3(X). Provide resources and staffing structure to support these functions. Describe the Bidder's experience and the Bidder's staff's experience(s) developing and implementing retail marketing programs.

27. Innovation

Illustrate how the Bidder will keep up-to-date with the most current marketing technologies, medias and trends as requested in Section 2.3(Y). Explain how the Bidder uses innovation to achieve goals and objectives.

28. Trademark and Copyright Services

Explain how the Bidder will provide services related to trademarks and copyrights.

29. Environmental Consciousness, Sustainability and Energy Conservation

Provide the Bidder's vision and tactics to prevent waste, maximize resources, reduce energy consumption, and increase efficiency to comply with the requirements of Section 2.3(BB).

30. Responsible Gaming

Explain how the Bidder envisions integrating responsible gaming into marketing programs as described in Section 2.3(AA). Describe any experience with "responsible" messaging. Explain how the Bidder will commit to Responsible Gaming as described in Section 2.2(CC).

31. Lottery Industry Trade Shows, Conventions and Special Events

Describe how the Bidder would leverage lottery industry trade shows, conventions and special events to expand industry knowledge and inform Commission staff of learnings (See section 2.3 (DD)).

D. MWBE PLAN

In addition to requirements specified in Section 7.8 of this RFP, each Bidder must provide, in writing, their Diversity Practices Questionnaire form, provided in this RFP as **Appendix J, Diversity Practices Questionnaire**.

Pursuant to § 310(22) of Article 15A of New York State Executive Law, "Diversity practices" shall mean the Successful Bidder's practices and policies with respect to:

1. utilizing or mentoring certified minority and women-owned business enterprises in contracts awarded by a state agency or other public corporation, as subcontractors and suppliers; and
2. entering into partnerships, joint ventures or other similar arrangements with certified minority and women-owned business enterprises as defined in this article or other applicable statute or regulation governing an entity's utilization of minority or women-owned business enterprises.

Note: Bidders will be scored on this section pursuant to Part Four - Evaluation and Selection. All available points will be awarded based on the answers provided on the Diversity Practices Questionnaire, Appendix J.

3.3 Pricing Proposal

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

The compensation structure shall be based on the following elements:

- A. Agency Fee** – The Commission shall compensate the Successful Bidder for direct and indirect labor costs in the form of an "Agency Fee" (wherein "Agency" refers to the Successful Bidder as an agency) to be paid upon proper invoicing in equal monthly installments for each contract year. The Successful Bidder's first contract year Agency Fee shall be determined by applying the labor rates provided in Attachment 2 – Pricing Proposal, to the final version of Appendix P – Year One Estimated Level of Effort, as approved by the Commission following award, and then applying the

Indirect Cost percentage as provided on Attachment 2 – Pricing Proposal. Standard hourly labor rates by job title and the indirect cost percentage rate are to remain unchanged throughout the term of the Contract.

1. Direct Labor Costs – The Successful Bidder's direct labor costs shall be calculated on an annual basis and invoiced monthly based on the staffing plan proposed by the Successful Bidder and approved by the Commission to effectively and efficiently deliver against the Scope of Work specified in the RFP for each contract year. Each staffing plan shall be evaluated by the Successful Bidder and the Commission two months prior to the end of each contract year to determine if the staffing structure needs to be adjusted for the next contract year based on business needs and marketing plan. The Commission shall have the final approval on the Successful Bidder's staffing plans during the contract term. Direct labor costs shall be determined by the fiscal year staffing plan and associated standard hourly labor rates and the percentage of each FTE that will be assigned to the account.

a. Staffing Plan – Each staffing plan must include all job titles that will be assigned to the Strategic Marketing Services Account, including the percentage of each full-time employee (FTE) that will be dedicated to the account each fiscal year. Percentage of each FTE must be calculated based upon one FTE equaling 1,800 annual hours. **Note:** Each job title assigned to the AMT must be 100% FTE, and at least one job title must be 100% FTE for Lottery-related financial management support to work directly with the Commission on budget and billing matters.

b. Standard Rates – Bidders must provide a complete list of titles and standard hourly labor rates for each job title that may be assigned to the account during the contract term as required in the Pricing Proposal (Attachment 2).

2. Indirect Costs – The indirect labor costs shall be a percentage of direct labor costs for the Successful Bidder for ongoing business such as overhead, administration, office supplies, communications, travel, out-of-pocket expenses, billing, procurement, and subcontractor oversight. Indirect Labor Costs shall be factored into the annual Agency Fee. This percentage will remain fixed for the length of the Contract.

B. Third-Party Expenses – Any third-party expenses incurred by authorized subcontractors, such as pre-approved research and production expenses, shall be paid based upon prior approval by the Commission. Such expenses shall be billed as a pass-through with no mark-up at the third party's best available rate for work performed by the third party, including, without limitation, any discounted rates.

3.4 Proposal Clarification Process

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

PART FOUR - EVALUATION AND SELECTION

4.1 Introduction

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

4.2 Method of Award

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

4.3 Evaluation Methodology

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

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

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

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

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

4.4 Information from Other Sources

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

4.5 Evaluation and Selection Criteria

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

A. Technical Evaluation – 70%

- Bidder's Organization & Financial Viability (10 points)
- Experience (10 points)
- Project Management & Staffing (10 points)
- Work Plan (25 points)
- Oral Presentation (10 points)
- MWBE Diversity Practices (5 points)

B. Pricing Evaluation – 30%

The Bidder with the lowest price (Estimated Grand Total from the Pricing Proposal – Attachment 2) will be awarded the full points allocated to the Pricing evaluation. The score for each of the remaining Bidders will be proportionate to the lowest Bidder.

There are two components to the Pricing Proposal that will be scored separately, as follows:

- **Average Labor Rates:** a maximum of 20 points will be awarded to the lowest Sum of Average Labor Rates, as identified in Attachment 2 – Pricing Proposal Form.
- **Indirect Cost Percentage:** a maximum of 10 points will be awarded to the lowest percentage of markup for Indirect Costs, as identified in Attachment 2 – Pricing Proposal Form.

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

4.6 Final Composite Score / Determination of Award Process

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

4.7 Notice of Award

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

Public discussion or news releases relating to an award, this RFP, or the resulting Contract are governed by Section 5.20.

4.8 Debriefings

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

4.9 Protest or Appeal

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

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

Commission and the protester, and must meet the submission requirements as noted above for the Commission;

- H. The BOC will evaluate the merits of the protest, the Commission's determination and any response submitted by an interested party. The BOC, in its review, may require the Commission, the protesting party, the Successful Bidder, or any other interested party to address additional issues raised; may obtain information from an outside source; or may determine whether it deems it necessary to conduct a fact-finding hearing, and the level of formality of any hearing conducted; and
- I. The BOC will issue a written determination addressing the issues raised by the appeal. All interested parties shall be provided with a copy of the determination. The determination shall be made part of the procurement record.

PART FIVE – GENERAL REQUIREMENTS FOR PROPOSALS

5.1 General

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

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

5.2 Proposal Disclosure by Bidder

Disclosure by a Bidder, or agent of the Bidder, of a Bidder's Proposal contents prior to the notice of the Contract award may result in rejection of the disclosed Proposal.

5.3 Material Requirements

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

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

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

5.4 Proposal Content and Submission

Bidders shall submit a complete Proposal as outlined below:

A. PROPOSAL DESCRIPTION

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

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

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

B. PROPOSAL FORMAT

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

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

Volume I – Technical Proposal:

The Technical Proposal shall include a transmittal letter, signed by an official authorized to bind the Bidder to its provisions, and shall include Information outlined below in Item 1.

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

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

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

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

11. References; and

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

Volume II – Pricing Proposal:

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

C. PROPOSAL SUBMISSION:

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

Technical Proposal

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

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

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

Technical Proposals and Redacted Technical Proposals **must** be sent to: Officer.Contracting@gaming.ny.gov. In the Subject line, please include "**RFP #C202110 – Technical Proposal**".

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

Pricing Proposal

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

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

Pricing Proposals **must** be sent to: Procurement@gaming.ny.gov. In the Subject line, please include "**RFP #C202110 – Pricing Proposal**".

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

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

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

D. PROPOSAL RECEIPT

The Commission's Contract Administration Office will provide the sender of a Proposal with an email confirmation indicating receipt of the Proposal.

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

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

5.5 Late Proposal

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

5.6 Joint Proposals

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

5.7 Multiple Proposals from One Bidder Prohibited

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

5.8 Costs Associated with Preparation of Proposals

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

5.9 Accuracy of Proposals

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

5.10 Extraneous Terms

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

5.11 Designation of Proprietary Information (FOIL)

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

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

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

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

5.12 Disclosure and Investigations During Proposal Evaluation

Subsequent to Proposal submission, the Commission may initiate investigations into the backgrounds of the Bidder and individuals or entities related to any officers, directors, members, principals, investors, owners, subcontractors, employees, or any other individuals or entities related to the Bidder, as the Commission may

deem appropriate, in the discretion of the Commission. Such background investigations may include fingerprint identification by the New York State Division of Criminal Justice Services ("DCJS") and the Federal Bureau of Investigation ("FBI"), and such additional investigation as may be required.

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

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

5.13 Disclosure of Litigation and Other Information

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

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

5.14 Change in Financial Condition

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

5.15 Change in Ownership

If a Bidder experiences a material change in ownership prior to the award of a contract or during the term of a contract with the Commission, the Bidder is required to notify in writing the Executive Director of the Commission, or his or her designee, at the time the change occurs or is identified. "Material change in ownership" is defined as any merger, acquisition, assignment, or change in parties who, in the aggregate, own greater than five percent (5%) of the Bidder or the parent company of the Bidder. Failure to notify Executive Director of the Commission, or Commission designee, of such a change may result in the rejection of a Bidder's Proposal or termination of the Contract, in the sole discretion of the Commission. The Commission reserves the right, based on its assessment of a material change in ownership, to reject a Bidder's Proposal or terminate a contract. **This disclosure obligation is a continuing requirement.**

5.16 Partisan Political Activity

Funds provided pursuant to this Contract shall not be used for any partisan political activity, or for activities that may influence legislation or the election or defeat of any candidate for public office.

5.17 New York State Public Officers Law

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

5.18 Ethics Requirements

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

5.19 Hiring of Commission Personnel

At all times during the Proposal evaluation period and continuing for one year following either the award of a contract, or the rejection of all Proposals, Bidders are prohibited from officially or unofficially making any employment offer, or proposing any business arrangement whatsoever, to any Commission employee involved in the evaluation of Proposals, the contract award, or contract negotiations. A Bidder making such an offer or proposition may be disqualified from further consideration.

5.20 Public Discussion or News Releases

No public discussion or news releases relating to an award, this RFP, the services, evaluation, or project to which this RFP relates, or the resulting Contract shall be made by any Bidder without the prior approval of the Commission, and then only in accordance with express written instructions from the Commission.

5.21 Advertising

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

5.22 State's Reserved Authority

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

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

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

5.23 Default

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

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

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

5.24 Disputes Under the Contract

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

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

5.25 Delegation and/or Assignment

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

written consent of the Commission.

5.26 Right to Audit Successful Bidder's Operations

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

5.27 Indemnification

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

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

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

5.28 Authority of the Commission

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

PART SIX – PROVISIONS

6.1 Governing Law

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

6.2 Form of Contractual Agreement

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

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

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

6.3 Term of Contract

The Contract shall be effective for a period of five years, commencing on the date of OSC's approval of the Contract.

6.4 Transition

Upon expiration or termination of the Contract, the Successful Bidder shall, upon the appointment of a successor vendor, provide such successor vendor access to all necessary records in the Successful Bidder's possession relating to the services provided under the Contract. At the Commission's request, the Successful Bidder shall, at no cost to the Commission, make appropriate staff available to the Commission and to the successor vendor during normal business hours to answer questions regarding such records and the services which have been provided by the Successful Bidder under the Contract. The Successful Bidder shall cooperate to the fullest extent with the successor vendor in order to accomplish an efficient and orderly transition, including, but not limited to, debrief on existing marketing and advertising plans and efforts, so that the services required are uninterrupted and are not adversely impacted by the change in service providers.

It is contemplated that the Commission, approximately six (6) months prior to the expiration of the Contract, will award a new contract for strategic marketing services. The parties understand and agree that the Commission may utilize part of the last year of the Contract resulting from this RFP or any renewal or extension thereof for transition to another service provider. The Successful Bidder agrees to cooperate fully and in good faith in such transition. Any transition shall not interfere with the Successful Bidder's ability to fulfill the Contract. In the event of a gap between the Contract and any successor vendor contract for strategic marketing services, the Successful Bidder shall be responsible for stewardship of Commission-approved pre-paid media commitments including, but limited to, permanent out-of-home, sponsorships, partnerships, and media placements that were placed or subcontracted and paid prior to termination of the Contract, so that, in the discretion of the Commission, the Successful Bidder must continue such pre-paid media commitments during the gap. Successful Bidder stewardship ends upon transition of services to a successor vendor or at the conclusion of Commission-approved pre-paid media placement or subcontract, whichever is first, with such end to be determined by the Commission.

6.5 Severability

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

6.6 Standard Clauses For All New York State Contracts

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

6.7 Compensation, Invoicing, and Payment

The Successful Bidder will be compensated for services provided in accordance with the Scope of Work at the monthly fixed fees set forth in the Pricing Proposal. The fixed fees will be paid upon proper invoicing in equal monthly installments.

The Successful Bidder will not be compensated for direct unbillable expenses, such as travel and other out-of-pocket expenses that are required as a regular course of business.

6.8 Successful Bidder Responsibilities As Primary Vendor

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

The Successful Bidder may have subcontractors, but the Successful Bidder shall accept full responsibility for the performance of any such subcontractor. If any part of the work is to be subcontracted, responses to this RFP shall include a list of subcontractors.

6.9 Approval of Staffing

Subsequent to award of the Contract, the Commission must be notified of any personnel changes on the account at least five days prior to the departure of any given employee in the event of a resignation. In the event of a termination by the Successful Bidder, or a departure that provides less than five days of notice to the Successful Bidder, the Commission must be notified within 24 hours after the termination or abrupt

departure. The Successful Bidder's senior management must present the Commission with a transition plan within 48 hours of the Successful Bidder's announcement that a position will be vacated. The Successful Bidder will have 60 days to fill an open position with an individual with the same or greater qualifications than the individual who vacated the position. The Commission reserves the right to review and, if perceived necessary, disapprove of any employee of the Successful Bidder who is proposed to be assigned to the Commission's Lottery account, either at Contract inception or during the term or any extension thereof.

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

6.10 Subcontract Approval

Any subcontractors need the Commission's written approval before beginning work, which may require the Successful Bidder to replace subcontractors who are determined to be unacceptable, either at Contract inception or during the contract term, or any extension thereof. Subcontractors are subject to background checks of personnel and principals.

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

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

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

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

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

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

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

6.11 Delegation and/or Assignment

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

6.12 Vendor Code of Conduct

The Commission is an extremely sensitive enterprise because of the nature of its business and because it is government-operated. Therefore, it is essential that its operation, and the operation of other enterprises which would be linked to it in the public mind, avoid not only impropriety but also the appearance of impropriety. Therefore, contractors and subcontractors associated with the Commission are expected to:

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

6.13 Intellectual Property

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

The Commission will not pay a fee for rights already held by the Successful Bidder; however, if fees are incurred for the licensing of intellectual property owned by any third party relevant to the fulfillment of the services under this RFP, such as third-party products, logos, trademarks, brands, or labels, any fees to be paid by the Commission for use of a third party's intellectual property will be negotiated on a case by case basis, and require the Commission's approval before use and payment. Intellectual property fees for third-party products, logos, trademarks, brands, or labels that the Successful Bidder deploys under the Contract shall be applied as described in Section 6.7 of the RFP.

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

6.14 Commission Security Requirements

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

A. PHYSICAL SECURITY DURING THE DELIVERY OF CONTRACTED SERVICES

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

B. ACCESS BY PERSONNEL

1. The Successful Bidder, its officers, agents, subcontractors, and their employees and independent contractors, shall be required to comply with all applicable facility and information security policies and procedures of the Commission and the State in performing the scope of work under this RFP. Such policies and procedures shall be communicated to the Successful Bidder as a condition precedent to the Successful Bidder's obligations under this paragraph.
2. The Successful Bidder warrants that individuals performing work under this RFP are legally eligible to work in the United States and that such eligibility shall be maintained during the engagement while the individual is accessing any Commission site, information systems, or data contained therein. In addition, prior to accessing any Commission site, project information systems, or data contained therein, the Successful Bidder, and its officers, agents, subcontractors, and their collective employees and independent contractors performing work under this RFP, shall be required to:
 - a. obtain security clearance from the Commission, which may include, at the Commission's discretion, a criminal history and/or background investigation of individuals proposed to perform work under the Contract. Individuals assigned to the project by or through the Successful Bidder shall be required to submit identifying information to the Commission.

- b. obtain from the Commission and prominently display on their person, Commission-issued identification cards while physically present at any Commission site.
- 3. When an emergency or other circumstance occurs that renders immediate compliance with the foregoing requirements impractical, the Commission may, in its sole judgment, defer an individual's compliance with the foregoing requirements and grant temporary access. Such deferment shall not be construed as a waiver of the Commission's right to subsequently require security clearance as to any individual previously granted such temporary access; provided however, that even in such circumstances, the Commission approves such individual's access prior to such individual accessing a site, system, or data, and the Commission may accompany such individual when on-site.
- 4. The Commission reserves the right, in its sole discretion, and without liability to the Successful Bidder's officers, agents, subcontractors, and their collective employees and independent contractors assigned to work under the Contract, to accompany any such approved individual when on-site, and to withhold approval of and refuse to permit access prior to such an individual accessing a site, project information systems, or data. The Commission also reserves the right, in its sole discretion, and without liability to the Successful Bidder's officers, agents, subcontractors, and their collective employees and independent contractors assigned to work under the Contract, to withhold approval of and refuse to permit access to Commission facilities, information systems or data contained therein, to any individual proposed by or through the Successful Bidder (a) who refuses to comply with the security procedures outlined in this section, or (b) where the Commission determines that the individual(s) may present a risk to the Commission's security interests. The Commission shall not be liable for payments or damages of any kind if the Successful Bidder is delayed or unable to perform under the Contract resulting from the Commission's denial of access to any individual(s) pursuant to this section.

6.15 Ownership of Proposal Contents, Materials and Intellectual Property; Use of Talent

- A. Any and all materials submitted with a Proposal shall not be returned and will be maintained by the Commission as part of the procurement record. It is not the intent of the Commission to use materials submitted with a Proposal for anything other than supporting documentation. However, the Commission will not be held liable for the unintentional use of such materials, including any payment for such materials.
- B. Ownership of all data, documentary material and operating reports originated and prepared exclusively for the Lottery pursuant to the Contract resulting from this RFP shall belong to the Commission. The Contractor agrees that, except where noted, all materials, documents, products, reports, data and other information, whether finished, unfinished, or draft developed, gathered or compiled under this RFP by the Bidder are the sole exclusive property of the Commission and shall not be used by the Bidder or any other person, or destroyed without express written permission of the Commission. Any work product created pursuant to this RFP, the Contract, and any subcontract, shall be "works made for hire" and shall become the property of the Commission, which shall have all rights of ownership and authorship in such work product. Additionally, the Contractor hereby assigns to the Commission any and all intellectual property rights to any such work product.

The Commission understands and agrees that the Contractor may be party to various talent and performing rights agreements in various parts of the world. For example, in the United States, agreements with the Screen Actors Guild ("SAG"), the American Federation of

Television and Radio Artists ("AFTRA") and the American Federation of Musicians ("AFM") may make the use of talent by the Contractor on the Commission's behalf subject to the terms of such agreements and provide for the Contractor to be ultimately liable to performers for payments that may become due because of use of commercials by the Commission or any party to whom the Commission provides any of the commercials.

6.16 Technology Provisions

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

6.17 Force Majeure

A Force Majeure occurrence is an event or effect that cannot be reasonably anticipated or controlled and occurs without the fault or negligence of the non-performing party and is beyond its control. As herein used, "Force Majeure" includes, but is not limited to, the enactment, imposition or modification of any law which occurs, takes effect or is applied after the effective date of the Contract and which prohibits or materially impedes the performance of the obligations of the parties hereunder, whether caused by new or pre-existing conditions including, but not limited to, riot, sabotage, boycott, embargo, or civil or military disturbances; interruption of or delay in transportation; national emergency; acts of terrorism; inability to procure material; failure of electricity or other utilities; restrictive laws, regulations or orders, or any act or failure to act, of any federal, state or local government or governmental agency or authority; confiscation or seizure by any governmental authority; condemnations by any governmental authority; riots or insurrection; wars or war-like actions; earthquakes, flood, storms, wash-outs, fire, lightning or other severe inclement weather, or other acts of god; explosions or other accidents; nuclear reaction or radiation; epidemic, pandemic, or other public health crisis or emergency, whether national or local; interruption or loss of internet, computer, telephone, broadcast or other communications or service; strikes, lockouts or other labor stop, opt-outs, or disruption; or other similar causes.

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

Any such delay in or failure of performance shall not in and of itself give rise to any liability for damages; however, the Commission may elect to terminate the Contract for cause should its continuing operations, in its sole judgment, be materially threatened or harmed by reason of extended delay or failure of performance, even if the delay or failure of performance is due to a Force Majeure occurrence. During a period of non-performance due to a Force Majeure occurrence, payments from the Commission to the Successful Bidder will be suspended.

6.18 Successful Bidder Personal Background

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

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

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

6.19 Ticket Purchase and Prize Payment Restrictions

Restrictions apply to the purchase of tickets and payment of prizes regarding the Successful Bidder, and to individuals related to the directors, officers, or employees of the Successful Bidder or of the Successful Bidder's significant subcontractors. No Successful Bidder or such individuals, or relative living in the same household as these individuals, shall purchase a Lottery ticket or be paid a prize in any Lottery game or multi-jurisdictional game the Lottery participates in if (1) they conduct duties directly pursuant to the Contract; or (2) they have access to the Commission's data or systems. The Successful Bidder shall ensure that this requirement is made known to each affected individual and must define how the Successful Bidder will comply with this requirement, to the Commission's approval.

6.20 Compliance with Association Standards

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

PART SEVEN – RFP REQUIREMENTS AND CERTIFICATIONS

7.1 Procurement Lobbying Restrictions

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

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

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

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

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

7.2 Non-Collusive Bidding Requirement

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

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

7.3 New York State Vendor Responsibility Questionnaire

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

Bidders are encouraged to complete the online form, as it will expedite Contract approval, if awarded. If a Bidder does not have an online Questionnaire that is current and certified, the Bidder must complete the hardcopy **New York State Vendor Responsibility Questionnaire, Appendix E**. The Bidder acknowledges that the State's execution of the Contract will be contingent upon the Commission's determination that the

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

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

7.4 Vendor Identification Number

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

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

7.5 Electronic Payments

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

7.6 Tax Law Section 5-A

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

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

7.7 New York State Subcontractors and Suppliers

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

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

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

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

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

The Equal Employment Opportunities ("EEO") and Minority/Women-Owned Businesses ("MWBE") requirements are set forth in Appendix I of this RFP.

The MWBE goal established under this solicitation is 30% total (20% MBE and 10% WBE).

7.9 New York State Service-Disabled Veteran-Owned Businesses

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

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

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

The SDVOB goal established under this RFP is 6%.

7.10 Diversity Practices

Each Bidder must provide, in writing, its Diversity Practices form, provided in this RFP as **Appendix J, Diversity Practices Questionnaire**, which will be evaluated and included in the Technical score. Refer to Section 3.2.D.

7.11 Conflicts of Interest

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

- A.** Disclose any existing or contemplated relationship with any other person or entity, including relationships with any member, shareholders of five percent (5%) or more, or parent, subsidiary, or affiliated business organization or entity, that would constitute an actual or potential conflict of interest or appearance of impropriety, relating to other clients/customers of the Bidder, or former

officers and employees of the Commission, in connection with the Bidder rendering services set forth in this RFP. If a conflict does or might exist, the Bidder must describe how the Bidder would eliminate or prevent such conflicts. The Bidder should also indicate what procedures will be followed to detect, notify the Commission of, and resolve any such conflicts.

- B.** Disclose whether the Bidder, or any of its members, shareholders of five percent (5%) or more, or parent, subsidiary, or affiliated business organization or entity, has been the subject of any investigation or disciplinary action by the New York State Joint Commission on Public Ethics or its predecessors (collectively, "JCOPE"), and if so, a brief description must be included indicating how any matter before JCOPE was resolved, or whether it remains unresolved.

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

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

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

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

7.13 Executive Order No. 177 Certification

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

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

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

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

7.14 Insurer Qualifications and Insurance Requirements

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

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

7.15 Bond Requirements

Bidders are required to obtain bonds as specified in **Appendix O, Bond Requirements**.

PART EIGHT – APPENDICES, ATTACHMENTS AND EXHIBITS

8.1 Appendices

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

Letter	Appendix Title
A	Standard Clauses for New York State Contracts
B	Contract Form
C	Bidder/Offerer Disclosure/Certification Form
D	Non-Collusive Bidding Certification
E	Vendor Responsibility Questionnaire
F	Substitute W-9
G	ST-220 Certification
H	Encouraging Use of New York State Businesses in Contract Performance
I	EEO, MWBE and SDVOB Programs
J	Diversity Practices Questionnaire (J.1 – J.3)
K	Vendor Assurance of No Conflict of Interest or Detrimental Effect
L	Statement on Sexual Harassment
M	Anti-Discrimination EO 177 Certification
N	Insurer Qualifications and Insurance Requirements
O	Bond Requirements
P	Year One Estimated Level of Effort

8.2 Attachments

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

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

8.3 Exhibits

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

Letter	Exhibit Title
A	Year One – Fiscal Year Marketing Plan

APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

PLEASE RETAIN THIS DOCUMENT
FOR FUTURE REFERENCE.

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STANDARD CLAUSES FOR NYS CONTRACTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**NEW YORK LOTTERY STRATEGIC MARKETING SERVICES PARTNER
CONTRACT # C202110**

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

WHEREAS the Commission issued a Request for Proposals ("RFP") on February 24, 2022 soliciting proposals from qualified firms to provide the Commission with a Strategic Marketing Services Partner, and clarified the requirements of the RFP with questions and answers dated March 16, 2022 and March 29, 2022 (collectively, the "RFP"); and

WHEREAS the Contractor submitted a Technical Proposal and a Pricing Proposal dated [_____, 2022] (collectively, the "Proposal"), which was deemed by the Commission's evaluation team to be the Best Value from among competing proposals;

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

1. Scope of Services. The Contractor agrees to provide the Commission with a strategic marketing services partner, 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.** The Contract shall be effective for a period of five years, commencing on the date of approval of the Contract by the Office of the New York State Comptroller.

3. **Financial Arrangements.**

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

(b) Payments to the Contractor will be directed by the Commission based on invoices submitted to the Commission. Upon verification of invoices against approved estimates and confirmation of services performed, the Commission will direct payment to the Contractor either (a) by the Commission directly or (b) by the Lottery's full service lottery system provider in fulfillment of its contractual obligation to underwrite the marketing efforts of the Lottery. The Commission shall be responsible for any failure by the full service lottery system provider to make payments to the Contractor as provided herein and shall pay the Contractor directly in the event of such failure.

(c) Payments to third parties by the Contractor can only be reimbursed to the Contractor for work performed in connection with this Contract and the Contractor must pass through to the Commission the third party's best available rate for work performed by the third party, without mark-up and including, without limitation, any discounted rates.

(d) The Commission will not be responsible for any expenses incurred by the Contractor for any obligation not approved in advance by the Commission.

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

5. **Mutual Cooperation.** The objectives of this Contract include maximizing the net proceeds to the State of New York from Lottery marketing and sales efforts at reasonable rates of compensation to the Contractor through the provision of strategic marketing and sales services 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.

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

7. **Termination and Suspension.**

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

(i) a material breach by the Contractor of any of the provisions of this Contract;

(ii) a determination by a court of competent jurisdiction that the Contractor is bankrupt or insolvent;

(iii) a good faith determination by the Commission that continuation of the Contract could place the integrity of the Commission in jeopardy;

(iv) a conviction of the Contractor or any of its directors, officers, or employees of any criminal offense connected to the Contractor's business which, in the sole reasonable opinion of the Executive Director of the Commission, would be prejudicial to public confidence in the New York Lottery or the Commission;

(v) in the judgment of the commission, a real or potential conflict of interest cannot be cured;

(vi) the refusal by the Contractor or any of its directors, officers, or employees to sign a waiver of immunity against subsequent criminal prosecution or to answer any relevant question concerning a transaction or contract, when called before a grand jury, head of a state department, the Commission, a temporary state commission or other state agency, or the organized crime task force in a department of law, which is empowered to compel the attendance of witnesses and examine them under oath, to testify in an investigation, concerning any such transaction or contract had with the State, any political subdivision thereof, a public authority or with any public department, agency or official of the State or of any political subdivision thereof or of a public authority; or

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

If the Contract is cancelled or terminated based on the grounds listed in 6.(a)(vi) or (vii), above, such person, and any firm, partnership or corporation of which the person is a member, partner, director or officer shall be disqualified from thereafter selling to or submitting bids to or receiving awards from or entering into any contracts with the state or any public

department, agency or official thereof, for goods, work or services, for a period of five (5) years after such refusal, and to provide also that any and all contracts made with the State or any public department, agency or official thereof, since the effective date of New York State's State Finance Law §139-A, by such person, and by any firm, partnership or corporation of which such person is a member, partner, director or officer may be cancelled or terminated by the State without incurring any penalty or damages on account of such cancellation or termination, but any monies owing by the State for goods delivered or work done prior to the cancellation or termination shall be paid.

(b) In the event that the Commission decides to exercise the right to terminate this Contract for cause, the Commission shall give the Contractor written Notice of Intention to Terminate for Cause ("Notice"). Such Notice shall state clearly and specifically the cause for which termination is sought, and the Contractor shall be entitled to a period of thirty (30) days from receipt of such Notice to correct or cure the cause so described to the reasonable satisfaction of the Commission in which case such Notice shall be deemed withdrawn and a nullity. If termination is sought because of a criminal conviction as described in subparagraph (iv) of Paragraph (a) of this section 6, the cause for termination shall be deemed to be cured if the Contractor causes or obtains the dismissal, resignation, retirement, or other removal of the person convicted of such offense during such thirty (30) day period.

Upon written notice to the Contractor, and a reasonable opportunity to be heard with appropriate Commission officials or staff, the Contract may be terminated by the Commission's Executive Director or his or her designee (collectively the "Executive Director") at the Contractor's expense where the Contractor is determined by the Executive Director to be non-responsible or nonresponsible. In such event, the Executive Director may complete the contractual requirements in any manner the Executive Director may deem advisable and pursue available legal or equitable remedies for breach.

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

8. Conflict of Interest.

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

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

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

Commission a signed and completed Vendor Assurance of No Conflict of Interest or Detrimental Effect form for each of its subcontractors prior to entering into a subcontract.

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

9. 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.

10. **Records Retention.** Records required by this Contract to be retained by the Contractor shall be retained for the periods specified in Appendix A, Standard Clauses for New York State Contracts, attached hereto. Such records may be retained in their original form or in any other reliable and readily retrievable format, at the option of the Contractor.

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

(a) As to the Commission:

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

and

Director, Division of Lottery
New York State Gaming Commission
One Broadway Center
Schenectady NY 12305

(b) As to the Contractor:

Contact:
Company Name:
Address:

12. **Relationship.** The relationship of the Contractor to the Commission arising out of this Contract shall be that of an independent contractor. The Contractor, in accordance with its status as an independent contractor, agrees that it will conduct itself consistent with such status, that it will neither hold itself out as, nor claim to be, an officer or employee of the Commission or the State, and that it will not make any claim, demand or application for any right or privilege applicable to an officer or employee of the Commission or the State, including, but not limited to, workers' compensation coverage, unemployment insurance benefits, social security coverage, or retirement membership or credit. All personnel of the Contractor shall be within the employ of the Contractor only or shall be duly contracted subcontractors of the Contractor, which alone shall be responsible for the work of its personnel and its subcontractors' personnel, the direction thereof, and their compensation. Nothing in this Contract shall impose any liability or duty on the Commission or the State on account of any acts, omissions, liabilities or obligations of the Contractor or any person, firm, company, agency, association, corporation, or organization

engaged by the Contractor as expert, consultant, independent contractor, specialist, trainee, employee, servant or agent, for taxes of any nature, including, but not limited to, unemployment insurance and workers' compensation insurance, and the Contractor hereby agrees to indemnify and hold harmless the Commission and the State against any such liabilities.

13. **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.

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

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

15. **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.
- (e) This Contract may be executed in counterparts, each of which shall be deemed an original. Executed copies of this Contract may be sent by facsimile (fax) or as PDF copies sent by email, and any signatures thereon shall be considered for all purposes to be binding as originals.
- (f) If any provision of this Contract is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Contract shall not be affected, but shall remain binding and effective as against all parties hereto.
- (g) No delegation of any duties under this Contract shall be binding upon the State until the Commission has given written consent to such delegation; nor shall assignments of rights to monies due or to become due under the Contract be permitted to any individual or business organization other than the Contractor, except by express written consent of the Commission.

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

CONTRACTOR

NEW YORK STATE
GAMING COMMISSION

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

NEW YORK STATE OFFICE OF THE
ATTORNEY GENERAL

OFFICE OF THE NEW YORK STATE
COMPTROLLER

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

Acknowledgement Required of the Contractor is on the following page:

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

BIDDER/OFFERER DISCLOSURE/CERTIFICATION FORM**CONTRACT/PROJECT DESCRIPTION: New York Lottery Strategic Marketing Services Partner****CONTRACT/PROJECT NUMBER: #C202110****RESTRICTED PERIOD FOR THIS PROCUREMENT: February 24, 2022 through approval of the Office of the State Comptroller.****PERMISSABLE CONTACTS: Technical or Procurement Inquiries: Stacey Relation and Alysian M. Bowers****MWBE or SDVOB Inquiries: Christine Carpenter and Robert J. Williams**

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

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

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

☐ Yes ☐ No

If yes, please answer the following question:

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

☐ Yes ☐ No

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

☐ Yes ☐ No

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

Governmental Entity: _____

Date of Finding of Non-Responsibility: _____

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

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

☐ Yes ☐ No

If yes, provide details:

Governmental Entity: _____

Date of Termination or Withholding of Contract: _____

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

4. TERMINATION CLAUSE:

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

☐ I agree

Name of Contractor's Firm/Company: _____

Contractor Address: _____

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

Print Name: _____

Occupation of Person signing this form: _____

Email Address: _____

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

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

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

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

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

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

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

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

Title

Signature



The submission of the attached Vendor Responsibility Questionnaire is required with your bid.

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

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

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

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

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

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

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

Contractor Name (print)

Signature

Company Name

Date

NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE FOR-PROFIT BUSINESS ENTITY

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

COMPLETION & CERTIFICATION

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

NEW YORK STATE VENDOR IDENTIFICATION NUMBER (VENDOR ID)

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

DEFINITIONS

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

RESPONSES

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

REPORTING ENTITY

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

ASSOCIATED ENTITY

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

STRUCTURE OF THE QUESTIONNAIRE

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

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

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

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

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

I. LEGAL BUSINESS ENTITY INFORMATION

1.4 If the Legal Business Entity's Principal Place of Business is not in New York State, does the Legal Business Entity maintain an office in New York State?
(Select "N/A," if Principal Place of Business is in New York State.)

☐ Yes ☐ No
☐ N/A

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

1.5 Is the Legal Business Entity a New York State certified Minority-Owned Business Enterprise (MBE), Women-Owned Business Enterprise (WBE), New York State Small Business (SB) or a federally certified Disadvantaged Business Enterprise (DBE)?

☐ Yes ☐ No

If "Yes," check all that apply:

- ☐ New York State certified Minority-Owned Business Enterprise (MBE)
☐ New York State certified Women-Owned Business Enterprise (WBE)
☐ New York State Small Business (SB)
☐ Federally certified Disadvantaged Business Enterprise (DBE)

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

Name	Title	Percentage Ownership (Enter 0% if not applicable)

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

II. REPORTING ENTITY INFORMATION

2.0 The Reporting Entity for this questionnaire is:

Note: Select only one.

☐ Legal Business Entity

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

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

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

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

IDENTIFYING INFORMATION

a) Reporting Entity Name

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

Telephone

ext.

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

c) Attach an organizational chart

d) Does the Reporting Entity have a DUNS Number?

☐ Yes ☐ No

If “Yes,” enter DUNS Number

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

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

Name

Title

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

INSTRUCTIONS FOR SECTIONS III THROUGH VII

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

III. LEADERSHIP INTEGRITY

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

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

For each “Yes” or “Other” explain:

IV. INTEGRITY – CONTRACT BIDDING

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

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

For each “Yes,” explain:

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

V. INTEGRITY – CONTRACT AWARD

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

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

For each “Yes,” explain:

VI. CERTIFICATIONS/LICENSES

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

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

For each “Yes,” explain:

VII. LEGAL PROCEEDINGS

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

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

For each “Yes,” explain:

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

VIII. FINANCIAL AND ORGANIZATIONAL CAPACITY

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

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

IX. ASSOCIATED ENTITIES

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

9.0 Does the Reporting Entity have any Associated Entities?

☐ Yes ☐ No

Note: All questions in this section must be answered if the Reporting Entity is either:

- An Organizational Unit; or
- The entire Legal Business Entity which controls, or is controlled by, any other entity(ies).

If “No,” SKIP THE REMAINDER OF SECTION IX AND PROCEED WITH SECTION X.

9.1 Within the past five (5) years, has any Associated Entity Official or Principal Owner been charged with a misdemeanor or felony, indicted, granted immunity, convicted of a crime or subject to a judgment for:

☐ Yes ☐ No

- a) Any business-related activity; or
- b) Any crime, whether or not business-related, the underlying conduct of which was related to truthfulness?

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

9.2 Does any Associated Entity have any currently undischarged federal, New York State, New York City or New York local government liens or judgments (not including UCC filings) over \$50,000?

☐ Yes ☐ No

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

9.3 Within the past five (5) years, has any Associated Entity:

- a) Been disqualified, suspended or debarred from any federal, New York State, New York City or other New York local government contracting process?

☐ Yes ☐ No

- b) Been denied a contract award or had a bid rejected based upon a non-responsibility finding by any federal, New York State, New York City, or New York local government entity?

☐ Yes ☐ No

- c) Been suspended, cancelled or terminated for cause (including for non-responsibility) on any federal, New York State, New York City or New York local government contract?

☐ Yes ☐ No

- d) Been the subject of an investigation, whether open or closed, by any federal, New York State, New York City, or New York local government entity for a civil or criminal violation with a penalty in excess of \$500,000?

☐ Yes ☐ No

- e) Been the subject of an indictment, grant of immunity, judgment, or conviction (including entering into a plea bargain) for conduct constituting a crime?

☐ Yes ☐ No

- f) Been convicted of a criminal offense pursuant to any administrative and/or regulatory action taken by any federal, New York State, New York City, or New York local government entity?

☐ Yes ☐ No

- g) Initiated or been the subject of any bankruptcy proceedings, whether or not closed, or is any bankruptcy proceeding pending?

☐ Yes ☐ No

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

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

X. FREEDOM OF INFORMATION LAW (FOIL)

10. Indicate whether any information supplied herein is believed to be exempt from disclosure under the Freedom of Information Law (FOIL).
Note: A determination of whether such information is exempt from FOIL will be made at the time of any request for disclosure under FOIL.

☐ Yes ☐ No

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

XI. AUTHORIZED CONTACT FOR THIS QUESTIONNAIRE

Name	Telephone ext.	Fax
Title	Email	

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

Certification

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

The undersigned certifies that he/she:

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

Signature of Owner/Officer _____

Printed Name of Signatory _____

Title _____

Reporting Entity Name _____

Address _____

City, State, Zip _____

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

_____ Notary Public



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

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

Part I: Vendor Information

1. Legal Business Name:	2. Business name/disregarded entity name, if different from Legal Business Name:
3. Entity Type (Check one only): <input type="checkbox"/> Individual Sole Proprietor <input type="checkbox"/> Partnership <input type="checkbox"/> Limited Liability Co. <input type="checkbox"/> Corporation <input type="checkbox"/> Not For Profit <input type="checkbox"/> Trusts/Estates <input type="checkbox"/> Federal, State or Local Government <input type="checkbox"/> Public Authority <input type="checkbox"/> Disregarded Entity <input type="checkbox"/> Other _____	
<input type="checkbox"/> Exempt Payee	

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

1. Enter your TIN here: (DO NOT USE DASHES) See instructions.	<table border="1" style="width:100%; height: 25px;"> <tr> <td style="width:12.5%;"></td> <td style="width:12.5%;"></td> <td style="width:12.5%;"></td> <td style="width:12.5%;"></td> <td style="width:12.5%;"></td> <td style="width:12.5%;"></td> <td style="width:12.5%;"></td> <td style="width:12.5%;"></td> <td style="width:12.5%;"></td> </tr> </table>									
2. Taxpayer Identification Type (check appropriate box): <input type="checkbox"/> Employer ID No. (EIN) <input type="checkbox"/> Social Security No. (SSN) <input type="checkbox"/> Individual Taxpayer ID No. (ITIN) <input type="checkbox"/> N/A (Non-United States Business Entity)										

Part III: Address

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

Part IV: Certification and Exemption from Backup Withholding

Under penalties of perjury, I certify that:

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

Sign Here:

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

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

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

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

NYS Office of the State Comptroller

Instructions for Completing Substitute Form W-9

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

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

Part I: Vendor Information

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

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

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

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

Part III: Address

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

Part IV: Certification and Exemption from Backup Withholding

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

Part V: Vendor Primary Contact Information

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

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

**Contractor Certification**(Pursuant to Tax Law Section 5-a, as amended,
effective April 26, 2006)**ST-220-TD**

(4/15)

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

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

General information

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

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

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

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

Mail completed form to:

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

Privacy notification

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

Need help?

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

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

**Telephone assistance**

Sales Tax Information Center: (518) 485-2889

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

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



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

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

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

Section 1 – Contractor registration status

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

Section 2 – Affiliate registration status

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

Section 3 – Subcontractor registration status

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

Sworn to this ____ day of _____, 20 ____

(sign before a notary public)

(title)

Schedule A – Listing of each entity (contractor, affiliate, or subcontractor) exceeding \$300,000 cumulative sales threshold

List the contractor, or affiliate, or subcontractor in Schedule A only if such entity exceeded the \$300,000 cumulative sales threshold during the specified sales tax quarters. See directions below. For more information, see Publication 223.

A Relationship to contractor	B Name	C Address	D Federal ID number	E Sales tax ID number	F Registration in progress

Column A – Enter **C** in column A if the contractor; **A** if an affiliate of the contractor; or **S** if a subcontractor.

Column B – Name - If the entity is a corporation or limited liability company, enter the exact legal name as registered with the NY Department of State, if applicable. If the entity is a partnership or sole proprietor, enter the name of the partnership and each partner's given name, or the given name(s) of the owner(s), as applicable. If the entity has a different DBA (doing business as) name, enter that name as well.

Column C – Address - Enter the street address of the entity's principal place of business. Do not enter a PO box.

Column D – ID number - Enter the federal employer identification number (EIN) assigned to the entity. If the entity is an individual, enter the social security number of that person.

Column E – Sales tax ID number - Enter only if different from federal EIN in column D.

Column F – If applicable, enter an X if the entity has submitted Form DTF-17 to the Tax Department but has not received its certificate of authority as of the date of this certification.

Individual, Corporation, Partnership, or LLC Acknowledgment

STATE OF }
 : SS.:
COUNTY OF }

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

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

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

Notary Public

Registration No. _____

**Contractor Certification to Covered Agency**

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

ST-220-CA

(12/11)

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

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

I, _____, hereby affirm, under penalty of perjury, that I am _____
(name) (title)

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

(Mark an X in only one box)

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

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

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

Sworn to this ____ day of _____, 20 ____

(sign before a notary public)

(title)

Instructions

General information

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

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

When to complete this form

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

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

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

Individual, Corporation, Partnership, or LLC Acknowledgment

STATE OF _____ }
: _____ SS.:
COUNTY OF _____ }

On the ____ day of _____ in the year 20____, before me personally appeared _____, known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that _____ he resides at _____,

Town of _____,

County of _____,

State of _____; and further that:

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

☐ (If an individual): _____ he executed the foregoing instrument in his/her name and on his/her own behalf.

☐ (If a corporation): _____ he is the _____ of _____, the corporation described in said instrument; that, by authority of the Board of Directors of said corporation, _____ he is authorized to execute the foregoing instrument on behalf of the corporation for purposes set forth therein; and that, pursuant to that authority, _____ he executed the foregoing instrument in the name of and on behalf of said corporation as the act and deed of said corporation.

☐ (If a partnership): _____ he is a _____ of _____, the partnership described in said instrument; that, by the terms of said partnership, _____ he is authorized to execute the foregoing instrument on behalf of the partnership for purposes set forth therein; and that, pursuant to that authority, _____ he executed the foregoing instrument in the name of and on behalf of said partnership as the act and deed of said partnership.

☐ (If a limited liability company): _____ he is a duly authorized member of _____, LLC, the limited liability company described in said instrument; that _____ he is authorized to execute the foregoing instrument on behalf of the limited liability company for purposes set forth therein; and that, pursuant to that authority, _____ he executed the foregoing instrument in the name of and on behalf of said limited liability company as the act and deed of said limited liability company.

Notary Public

Registration No.

Privacy notification

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

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

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

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

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

Need help?



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

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



Telephone assistance

Sales Tax Information Center: (518) 485-2889

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

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



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

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

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

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

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

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

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

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

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

Firm Name: _____

Signature _____ Date: _____

EEO, MWBE AND SDVOB PROGRAMS

Forms:

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

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

I. General Provisions

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

II. MWBE Contract Goals

- A. For purposes of this solicitation, the Commission hereby establishes an overall goal of **30%** for MWBE participation, **10%** for New York State certified Minority-owned Business Enterprises (“MBE”) participation and **20%** for New York State certified Women-owned Business Enterprises (“WBE”) and participation (collectively, “MWBE Contract Goals”) based on the current availability of qualified MBEs and WBEs.
- B. For purposes of providing meaningful participation by MWBEs on the Contract and achieving the MWBE Contract Goals established in Section II-A hereof, the Contractor should reference the directory of MWBEs at the following internet address: <https://ny.newnycontracts.com>. Additionally, the Contractor is encouraged to contact the Division of Minority and Women’s Business Development at (212) 803-2414 or mwbebusinessdev@esd.ny.gov to discuss additional methods of maximizing participation by MWBEs on the Contract.
- C. The Contractor understands that only sums paid to MWBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1, may be applied towards the achievement of the applicable MWBE participation goal. The portion of a contract with an MWBE serving as a supplier that shall be 60% of the total value of the contract. The portion of a contract with an MWBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be the monetary value for fees, or the markup percentage, charged by the MWBE.
- D. The Contractor must document “good faith efforts,” pursuant to 5 NYCRR § 142.8, to provide meaningful participation by MWBEs as subcontractors and suppliers in the performance of the Contract. Such documentation shall include, but not necessarily be limited to:
 1. Evidence of outreach to MWBEs;
 2. Any responses by MWBEs to the Contractor’s outreach;
 3. Copies of advertisements for participation by MWBEs in appropriate general circulation, trade, and minority or women-oriented publications;
 4. The dates of attendance at any pre-bid, pre-award, or other meetings, if any, scheduled by the Commission with MWBEs; and,
 5. Information describing specific steps undertaken by the Contractor to reasonably structure the Contract scope of work to maximize opportunities for MWBE participation.

III. Equal Employment Opportunity (“EEO”)

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

B. In performing the Contract, the Contractor shall:

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

C. Staffing Plan—Form I-2

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

D. Workforce Audit Report

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

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

IV. MWBE Utilization Plan – Form I-3

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

V. Waivers—Form I-4

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

VI. Quarterly MWBE Contractor Compliance Report

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

VII. Liquidated Damages - MWBE Participation

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

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

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

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

I. SBVOB Contract Goals

- A. The Commission hereby establishes an overall goal of 6% for SDVOB participation, based on the current availability of qualified SDVOBs. For purposes of providing meaningful participation by SDVOBs, the Bidder/Contractor should reference the directory of New York State Certified SDVOBs found at: <https://ogs.ny.gov/veterans/>. Questions regarding compliance with SDVOB participation goals should be directed to the Commission’s Designated Contacts. Additionally, following Contract execution, Contractor is encouraged to contact the Office of General Services’ Division of Service-Disabled Veterans’ Business Development at 518-474-2015 or VeteransDevelopment@ogs.ny.gov to discuss additional methods of maximizing participation by SDVOBs on the Contract.
- B. Contractor must document “good faith efforts” to provide meaningful participation by SDVOBs as subcontractors or suppliers in the performance of the Contract (see clause IV below).
 1. Evidence of outreach to SDVOBs;
 2. Any responses by SDVOBs to the Contractor’s outreach;
 3. Copies of advertisements for participation by SDVOBs in appropriate general circulation,
 4. The dates of attendance at any pre-bid, pre-award, or other meetings, if any, scheduled by the Commission with SDVOBs; and,
 5. Information describing specific steps undertaken by the Contractor to reasonably structure the Contract scope of work to maximize opportunities for SDVOB participation.

II. SDVOB Utilization Plan – Form I-3

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

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

III. Request for Waiver—Form I-4

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

Waiver requests should be sent to the Commission at:

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

IV. Required Good Faith Efforts

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

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

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

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

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

VI. Breach of Contract and Damages

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

MWBE and SDVOB Participation / Equal Employment Opportunity Policy Statement

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

NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY POLICY

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

MWBE PARTICIPATION (MWBE)

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

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

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

SDVOB PARTICIPATION (SDVOB)

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

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

Agreed on this _____ day of _____ 20_____.

By: _____
(SIGNATURE)

Print Name: _____

Title: _____

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

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

MWBE Contract Goals

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

EEO Contract Goals

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

SDVOB Contract Goals

_____ % Service Disabled Veteran Business Participation

 (Signature of Contractor's Authorized Representative)

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

Staffing Plan

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

Submit with Bid or Proposal – Instructions on page 2

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

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

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

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

Staffing Plan Instructions

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

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

Instructions:

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

RACE/ETHNIC IDENTIFICATION:

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

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

OTHER CATEGORIES:

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



MWBE and SDVOB Utilization Plan

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

* indicates mandatory fields

* Contractor Name: _____

Address: _____

* Representative Name: _____

Town, State & Zip: _____

* Phone: _____

* Contract/Project Number: _____

* Fax: _____

RFP/RFQ/Solicitation Number: _____

* Email: _____

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

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

* SDVOB Goal: _____%

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



MWBE and SDVOB Utilization Plan

7. If unable to fully meet the MWBE and/or SDVOB goals set forth in the contract, the Contractor must submit a Waiver Request form.

PREPARED BY (Signature): _____ DATE: _____

Preparer's Name (Print or Type): _____

Preparer's Title: _____

Date: _____

SUBMISSION OF THIS FORM CONSTITUTES THE CONTRACTOR'S ACKNOWLEDGEMENT AND AGREEMENT TO COMPLY WITH THE MWBE AND SDVOB REQUIREMENTS SET FORTH UNDER NYS EXECUTIVE LAW ARTICLES 15-A AND 17-B, 5 NYCRR PART 143, 9 NYCRR PART 252, AND THE ABOVE-REFERENCED SOLICITATION. FAILURE TO SUBMIT COMPLETE AND ACCURATE INFORMATION MAY RESULT IN A FINDING OF NONCOMPLIANCE AND POSSIBLE TERMINATION OF YOUR CONTRACT.

The MWBE Certification status of the firms listed on this form **MUST** be verified using the New York State Contract System's Directory of Certified Minority and Women-owned Business Enterprises.

This directory is available at <https://ny.newnycontracts.com>.

The SDVOB Certification status of the firms listed on this form **MUST** be verified using the Directory of New York State Certified Service-Disabled Veteran-Owned Businesses.

This directory is available at <https://online.ogs.ny.gov/SDVOB/search>.

TELEPHONE NO.:

EMAIL ADDRESS:

Policy Regarding Use of MWBE Suppliers and Brokers

Only sums paid to MWBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1, may be applied towards the achievement of the applicable MWBE participation goal.

FOR CONSTRUCTION/CAPITAL PROJECTS – The portion of a contract with an MWBE serving as a supplier that shall be deemed to represent the commercially useful function performed by the MWBE shall be 60% of the total value of the contract. The portion of a contract with an MWBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be the monetary value for fees, or the markup percentage, charged by the MWBE.

FOR ALL OTHER PROJECTS - The portion of a contract with an MWBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be 25% of the total value of the contract.

**** FOR COMMISSION USE ONLY ****

REVIEWED BY:

DATE:

UTILIZATION PLAN APPROVED?

☐ YES ☐ PARTIAL ☐ NO Date: _____

Waiver Request Form

Request for Waiver		
Contractor Name:	Fed ID No.:	
Full Address:	Contract / Project Number:	
Project Details (Project Name, Project Location):	Have you Previously submitted a Waiver Request? (YES/NO)	
Current Contract Value:	MWBE Goal: MBE % + WBE % Overall MWBE Goal: % SDVOB Goal: %	
<p>By submitting this form and the required information, the Contractor certifies that every “Good Faith Effort” has been taken to promote MWBE and SDVOB participation pursuant to the MWBE and SDVOB requirements set forth under the contract. Review 5 NYCRR § 142.8 and 9 NYCRR § 252, Contractor’s Good Faith Efforts, for the precise definition of “Good Faith Effort.” Failure to adequately demonstrate Good Faith Efforts will result in a denial of your Waiver Request. It is the Contractor’s responsibility to ensure that adequate, clear and complete information is presented to the Commission.</p>		
<p>*UTILIZATION VALUE MET:</p> <p style="margin-left: 40px;">MBE: \$ _____ WBE: \$ _____ SDVOB: \$ _____</p>		
<p>*CONTRACTOR IS REQUESTING :</p> <ol style="list-style-type: none"> 1. <input type="checkbox"/> MBE Waiver – A waiver of the MBE Goal for this procurement is requested. REQUESTED MBE GOAL: _____% 2. <input type="checkbox"/> WBE Waiver – A waiver of the WBE Goal for this procurement is requested. REQUESTED WBE GOAL: _____% 3. <input type="checkbox"/> OVERALL MWBE Waiver – A waiver of the MWBE Goal for this procurement is requested. REQUESTED MWBE GOAL: _____% 4. <input type="checkbox"/> SDVOB Waiver – A waiver of SDVOB Participation Goal for this procurement is requested. REQUESTED SDVOB GOAL: _____% 		
<p>PREPARED BY (Signature): _____ Date: _____</p> <p>SUBMISSION OF THIS FORM CONSTITUTES THE CONTRACTOR’S ACKNOWLEDGEMENT AND AGREEMENT THAT IT HAS MADE GOOD FAITH EFFORTS, PURSUANT TO 5 NYCRR §142.8 AND/OR 9 NYCRR §252, TO INCLUDE THE PARTICIPATION OF NEW YORK STATE CERTIFIED MINORITY AND WOMEN OWNED BUSINESSES AND SERVICE DISABLED VETERAN OWNED BUSINESSES IN THE ABOVE PROJECT OR CONTRACT. CONTRACTOR HEREBY AGREES TO PROVIDE ANY AND ALL RELEVANT DOCUMENTATION IN SUPPORT OF THE DEMONSTRATION OF ITS GOOD FAITH EFFORTS AND ACKNOWLEDGES THAT IT HAS PROVIDED WITH THIS WAIVER REQUEST ALL AVAILABLE DOCUMENTATION SUPPORTING ITS GOOD FAITH EFFORTS.</p>		
*Name and Title of Preparer:	*Telephone Number:	*Email:

Waiver Request Form

Contractor's Good Faith Efforts

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

Waiver Request Form

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

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



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

Contract No.: _____

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

Signature

Print Name and Title

Date

Submission of this form constitutes the Contractor's acknowledgement as to the accuracy of the information contained herein. Failure to submit complete and accurate information may result in a finding of noncompliance, non-responsibility, suspension and/or termination of the Contract.

For Commission's Use Only

Reviewed By: Date:

APPENDIX J

Diversity Practices

J.1: Diversity Practices Questionnaire

J.2: How to Score Diversity Practices

J.3: Diversity Practices Scoring Matrix

Diversity Practices Questionnaire

(Response worth up to 5 Technical Points)

Note: Points will not be awarded based on your company's status as a certified MWBE firm; monies spend within your own firm; or training provided to your own employees. All points awarded will be based on the information provided in response to the questions herein pertaining to efforts made toward New York State certified MWBE firms.

I, _____, as _____ (title) of _____ firm or company (hereafter referred to as the company), swear and/or affirm under penalty of perjury that the answers submitted to the following questions are complete and accurate to the best of my knowledge:

1. Does your company have a Chief Diversity Officer or other individual who is tasked with supplier diversity initiatives? **Yes or No**

If Yes, provide the name, title, description of duties assigned to the position and evidence of initiatives performed by this individual or individuals.

2. What percentage of your company's gross revenues (from your prior fiscal year) was paid to New York State certified minority and/or women-owned business enterprises as subcontractors, suppliers, joint-venturers, partners or other similar arrangement for the provision of goods or services to your company's clients or customers?

3. What percentage of your company's overhead (i.e. those expenditures that are not directly related to the provision of goods or services to your company's clients or customers) or non-contract-related expenses (from your prior fiscal year) was paid to New York State certified minority- and women-owned business enterprises as suppliers/contractors?¹

4. Does your company provide technical training² to minority- and women-owned business enterprises? **Yes or No**

If Yes, provide a description of such training which should include, but not be limited to, the date the program was initiated, the names and the number of minority- and women-owned business enterprises participating in such training, the number of years such training has been offered and the number of hours per year for which such training occurs.

¹ Do not include onsite project overhead.

² Technical training is the process of teaching employees how to more accurately and thoroughly perform the technical components of their jobs. Training can include technology applications, products, sales and service tactics, and more. Technical skills are job-specific as opposed to soft skills, which are transferable.

5. Is your company participating in a government approved minority- and women-owned business enterprises focused mentor protégé program? **Yes or No**

If Yes, identify the governmental mentoring program in which your company participates and provide evidence demonstrating the extent of your company's commitment to the governmental mentoring program.

6. Does your company include specific quantitative goals for the utilization of minority- and women-owned business enterprises in its non-government procurements? **Yes or No**

If Yes, provide a description of such non-government procurements (including time period, goal, scope and dollar amount) and indicate the percentage of the goals that were attained.

7. Does your company have a formal minority- and women-owned business enterprises supplier diversity program? **Yes or No**

If Yes, provide documentation of program activities and a copy of policy or program materials.

NOTE: All information provided in connection with the questionnaire is subject to audit and any fraudulent statements are subject to criminal prosecution and debarment.

Signature of Owner/Official _____

Printed Name of Signatory _____

Title _____

Name of Business _____

Address _____

City, State, Zip _____

INFORMATION ONLY

How to Score Diversity Practices

Diversity practices are the efforts of contractors to include New York State-certified Minority and Women-owned Business Enterprises (“MWBEs”) in their business practices. Diversity practices may include past, present, or future actions and policies, and include activities of contractors on contracts with private entities and governmental units other than the State of New York. Assessing the diversity practices of contractors enables contractors to engage in meaningful, capacity-building collaborations with MWBEs.

This guide provides instructions on how to determine whether diversity practices should be scored on your procurement, step-by-step instructions as to how to apply diversity practices, and suggestions as to how to customize diversity practices to the particular needs of your organization.

Is My Procurement Subject to Diversity Practices?

Diversity practices are intended to be applied on procurements in which procurement personnel exercise their subjective judgment in selecting one or more successful contractors on the basis of best value, NOT on procurements that are awarded based upon lowest price. The following checklist illustrates when diversity practices should be scored as part of a procurement:

1. Is the procurement based upon best value (RFP or RFQ)? Yes ☐ No ☐
2. Is the anticipated award \$250,000 or greater? Yes ☐ No ☐
3. Is scoring for diversity practices practical, feasible, and Yes ☐ No ☐
appropriate?

If the answer to all three questions is “Yes,” the procurement should be scored for diversity practices. If the answer to questions 1 or 2 is “No,” no further action is needed and the procurement should not be scored for diversity practices. If the answer to question 3 is “No,” such determination should be documented in writing and diversity practices should not be scored. For more information on when a procurement is subject to diversity practices, please see the frequently asked questions below.

Frequently Asked Questions

May I score diversity practices and award points to contractors that are MWBEs based upon their MWBE certification on the same procurement? No. Procurements may award points to contractors based upon their efforts to collaborate with and promote MWBEs (diversity practices) OR award points to contractors based upon whether they are certified as MWBEs (quantitative factor), but may not score for both. Procurements may not be scored for diversity practices when a quantitative factor is applied.

When is it NOT practical, feasible, or appropriate to score diversity practices? In circumstances where MWBE firms are not available to participate as subcontractors or suppliers in the industry

that is the subject of the procurement, contractors' ability to implement diversity practices may be too minimal to score respondents to an RFP or an RFQ. However, it is important to note that diversity practices should be scored when MWBEs are available to participate as subcontractors or suppliers in the industry, even if such subcontracting or supplying opportunities do not exist on the specific project that is the subject of your procurement.

Additionally, certain methods of identifying contractors may not be conducive to scoring for diversity practices. For example, where an RFQ is to be used to identify the availability of contractors and inform the contents of a future RFP, it may be appropriate to defer scoring of diversity practices until the RFP used to select the successful contractor or contractors is ultimately released.

Should I score for diversity practices where multiple vendors will be selected via a procurement, and the award to each of them is anticipated to be less than \$250,000? Yes. Diversity practices should be scored where the aggregated spending via a procurement is expected to equal or exceed \$250,000, even if the amount allocated to each successful contractor is less than \$250,000.

Scoring for Diversity Practices

Once you determine to score diversity practices as part of a procurement, you must identify the number of points you intend to allocate to contractors' diversity practices and include appropriate language in your RFP or RFQ, score the diversity practices of contractors using the diversity practices matrix, and weight each score in accordance with the percentage of points allocated to diversity practices.

Where an organization determines to score diversity practices as part of determining best value on a procurement, the RFP or RFQ in question should include the following: (1) a provision indicating that diversity practices will be scored, (2) the maximum number of points that may be awarded based upon respondents' diversity practices, and (3) a diversity practices questionnaire that respondents may provide as part of their response to the RFP or RFQ. A sample provision indicating that diversity practices will be scored is provided below:

[Name of Agency] has determined, pursuant to New York State Executive Law Article 15-A, that the assessment of the diversity practices of respondents to this procurement is practical, feasible, and appropriate. Accordingly, respondents to this procurement shall be required to include as part of their response to this procurement, as described in [Section ###] herein, forms [Diversity Form Numbers].

The diversity practices questionnaire provided by the Division of Minority and Women's Business Development provides eight questions for respondents to answer. Your organization may include additional questions, as discussed in more detail on page 5. The following provides a guide to scoring responses to each of the questions.

Question 1

Question 1 solely addresses whether the respondent employs a chief diversity officer. In order to receive points for a response to question 1, a respondent should provide all of the information requested, including evidence of initiatives performed by the chief diversity officer. Merely identifying a chief diversity officer without providing the requested information should result in a score of zero.

Questions 2 and 3

These questions direct respondents to provide information on the share of expenditures that the respondents made with MWBEs. Only the prior fiscal year of a respondent should be taken into account when assigning a score to questions 2 and 3. Any additional data that respondents provide illustrating expenditures made with MWBEs in other fiscal years should be disregarded.

In addition, any data regarding expenditures made to businesses certified as MWBEs by an entity other than the State of New York should be disregarded. Expenditures made to businesses with certifications other than MWBE, such as Disadvantaged Business Enterprises and Service-Disabled Veteran-owned Business Enterprises, are not to be considered in this analysis.

Question 4

Respondents may score points in response to question 4 by identifying industry-specific technical training of MWBEs. Technical training is specific to the industry in question, and does not include generic training in skills that are transferrable across industries. Examples of trainings that do not qualify as technical training include trainings in managerial skills and leadership, effective communication, and professional development and networking. Examples of technical training topics include the use, installation, or safe handling of particular products, the use of industry-specific IT, and industry-specific sales and customer service strategies.

In assessing the robustness of a respondent's technical training, you should take into account the duration of the technical training program, the number of MWBEs served, and the total number of hours devoted to technical training of MWBEs. The characteristics of a robust technical training program will vary based upon the nature of the industry and the associated opportunities for MWBE training. However, characteristics of technical training programs fitting the "minimum" scoring criterion will typically be that the respondent has been providing technical training for one year or less, that the respondent has provided fewer than one hundred hours of technical training, or that the respondent has provided technical training to only one MWBE firm in a contracting area for which there is significant MWBE availability.

Question 5

In order for a respondent to receive points for its response to question 5, the respondent must provide documentation demonstrating its participation in a mentor-protégé program approved by a governmental entity. Such governmental entity need not necessarily be the State of New York.

Appropriate documentation of the existence of a mentor-protégé program will vary based upon the approving governmental entity. Only documents generated by a governmental entity should be accepted to demonstrate the existence of a mentor-protégé program.

A robust mentor-protégé program must include the following elements:

- The mentee must be able to meaningfully participate in the delivery of contract requirements.
- For services contracts: at least one element of the scope must be performed by the MWBE with the Prime serving as mentor. Multi-year contracts must have a plan in place to expose the MWBE to each element of the scope through the lifetime of the contract.
- Mentor and mentee must enter into an agreement, approved by a governmental entity, which outlines the expectations of each party.
- Specific metrics must be identified which will be used to measure the effectiveness and success of the Mentor/Protégé relationship.

Question 6

Question 6 evaluates both the existence of MWBE goals on the part of the respondent in its own contracting, and the respondent's achievement of these goals. Whether a goal is robust depends on the availability of MWBEs in the industry in question. One tool to assist you in determining the availability of MWBE firms in the industry is the New York State Contract System MWBE Directory <<https://ny.newnycontracts.com/>>. This analysis should, to the extent possible, be based upon subcontracting activities that are available in the industry in which the respondent is engaged, not solely the availability of MWBE subcontractors for the procurement being made by your organization.

Once you have evaluated the robustness of the goal, you must take into account the share of the goal that the respondent has achieved. A respondent should only receive a robust score if the respondent has achieved a significant portion of an appropriate goal; achieving a small percentage of a robust goal should not entitle a respondent to a robust score.

Question 7

Question 7 considers whether a respondent has an immersive, formal program to promote the use of MWBEs as suppliers. A formal supplier diversity program must be documented via a program policy manual or similar document describing the requirements for participation and elements of the program, as well as documentation of program activities.

Characteristics of a supplier diversity program meeting the minimum requirement for the respondent to be awarded points could include a supplier diversity program with weak verification procedures focused solely on creating a list of diverse suppliers from which the respondent may procure goods or services. A robust supplier diversity program may be characterized by rigorous verification of MWBE status, plans for outreach to MWBE suppliers, and training and education programs designed to increase the capacity of MWBE suppliers.

Question 8

The final question considers the use of MWBEs on the procurement for which diversity practices are being scored. This is the only criterion that considers the circumstances of the procurement exclusively, without regard to the respondent's other activities to promote MWBEs. The robustness of a utilization plan is to be assessed based upon the availability of MWBEs to perform as subcontractors and suppliers to the respondent on the procurement. As with question 6, you should refer to the MWBE Directory in order to determine the availability of MWBEs.

Determine the Weighted Score

Once you have added the scores for all eight questions for a respondent, multiply that score based upon the weight you have assigned to diversity practices on the procurement. For example, if diversity practices account for 8% of the available points on your RFP and a respondent achieves a total score of 50 points for diversity practices on the diversity practices matrix, that respondent's weighted score is the product of 50 points and .08, or 4 points.

Customizing Diversity Practices

The eight questions reflected on the diversity practices questionnaire constitute the minimum required to assess the diversity practices of respondents. You may add additional questions to the diversity practices questionnaire to customize it to your procurement activities. In order to determine whether additional fields may be useful, consider some of the following questions:

- Are there particular resources or skills needed to serve as a subcontractor or supplier in the industry?
- Are there technical or financial barriers to entry in the industry?
- Could respondents facilitate MWBE training and participation in the industry in ways not reflected on the questionnaire?
- Are there specific types of MWBE subcontractors or suppliers that are particularly underutilized in the industry in question?

In the case that you decide to include additional questions on the diversity practices questionnaire, you must revise the diversity practices matrix accordingly to reflect any points to be awarded to respondents for additional questions.

New York State Diversity Practices Scoring Matrix

Appendix J.3- C202110

Questions

Q1 - CDO or other person tasked with function					Yes	No	Total
					5 pts	0 pts	
Q2 - Percentage of prior yr. revenues that involved MWBEs as subs or JVs/partners							
	20%+	15-19%	10-14%	5-9%	1-4%	0%	
	20 pts	14 pts	10 pts	6 pts	2 pts	0pts	
Q3 - Percentage of overhead expenses paid to MWBEs							
	20%+	15-19%	10-14%	5-9%	1-4%	0%	
	16 pts	10 pts	7 pts	4 pts	1 pts	0pts	
Q4 - MWBE Training							
			Robust	Moderate	Minimum	None	
			16 pts	8 pts	4 pts	0 pts	
Q5 - MWBE Mentoring							
			Robust	Moderate	Minimum	None	
			12 pts	8 pts	4 pts	0 pts	
Q6 - Written MWBE goals included in the Company's procurements							
			Robust	Moderate	Minimum	No	
			20 pts	12 pts	6 pts	0 pts	
Q7 - Formal Supplier Diversity Program							
			Robust	Moderate	Minimum	No	
			6 pts	4 pts	2 pts	0 pts	
Q8 - Utilization Plan							
			Robust	Moderate	Minimum	No	
			5 pts	3 pts	1 pts	0 pts	

Total Diversity Score
(Max 100 pts)

Weighted Score (Up to
10% of Technical)

Vendor Assurance of No Conflict of Interest or Detrimental Effect

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

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

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

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

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

Name, Title:

Signature:

Date:

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

Statement on Sexual Harassment

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

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

Authorized Signatory

Signature

Title

Company Name

Anti-Discrimination EO 177 Certification

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

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

Generally, the Human Rights Law applies to:

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

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

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

Contractor:

By: _____

Name: _____

Title: _____

Date: _____, 20__

INSURER QUALIFICATIONS AND INSURANCE REQUIREMENTS

Insurer Qualifications

All insurance required under this RFP must be written by 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 New York State Gaming Commission (the "Commission").

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

Insurance Requirements

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

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

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

General Conditions

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

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

2. Policy Forms. Policies must be written on an ***occurrence*** basis, except as may be otherwise specifically provided herein, or agreed to in writing by the

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

3. *Certificates of Insurance/Notices.* The Contractor shall provide a Certificate or Certificates of Insurance, in a form satisfactory to the Commission, before commencing any work under 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. Be signed by an authorized representative of the insurance carrier or producer.

4. *Primary Coverage.* All insurance policies shall provide that the required coverage shall apply on a primary, and not on an excess or contributing, basis as to any other insurance that may be available to the Commission for any claim arising from the Contractor's work under this Contract, or as a result of the Contractor's activities. Any other insurance maintained by the Commission shall be excess of and shall not contribute with the Contractor's insurance regardless of the "other insurance" clause contained in either party's policy of insurance.

5. *Policy Renewal/Expiration.* At least 14 days prior to the expiration of any insurance policy required by this Contract, evidence of renewal or replacement policies of insurance with terms no less favorable to the Commission than the

expiring policies shall be delivered to the Commission in the manner required for service of notice in Paragraph A.3 above. If, at any time during the term of 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. Deadlines for Providing Insurance Documents after Renewal or Upon Request. As set forth herein, certain insurance documents must be provided to the Commission contact identified in the Contract Award Notice after renewal or upon request by the Commission. This requirement means that the Contractor shall provide any applicable insurance documents to the Commission as soon as possible, but in no event later than the following time periods:

- For certificates of insurance: five business days from request or renewal, whichever is later;
- For information on self-insurance or self-retention programs: 15 calendar days from request or renewal, whichever is later;
- For other requested documentation evidencing coverage: 15 calendar days from request or renewal, whichever is later;
- For additional insured and waiver of subrogation endorsements: 30 calendar days from request or renewal, whichever is later; and
- For notice of cancellation or non-renewal and proof of replacement coverage that complies with the requirements of this section: five business days from request or renewal, whichever is later.

Notwithstanding the foregoing, if the Contractor shall have promptly requested the insurance documents from its broker or insurer and shall have thereafter diligently taken all steps necessary to obtain such documents from its insurer and submit them to the Commission, but fails to provide the documents within the timeframes above, the Commission shall extend the time period for a

reasonable period under the circumstances, but in no event shall the extension exceed 30 calendar days from the Commission's original request.

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

8. Subcontractors. Should the Contractor engage a subcontractor, the Contractor shall endeavor to impose the same insurance requirements of this document on the subcontractor, as applicable. Required insurance limits should be determined commensurate with the work of the subcontractor. An Additional Insured endorsement evidencing such coverage shall be provided to the Contractor prior to the commencement of any work by a subcontractor and shall be provided to the Commission upon request. For subcontractors that are self-insured, the subcontractor shall be obligated to defend and indemnify the above-named Additional Insureds with respect to Commercial General Liability and Business Automobile Liability, in the same manner that the subcontractor would have been required pursuant to this section had the subcontractor obtained insurance policies to provide such defense and indemnity. Proof of insurance or self-insured status shall be supplied to the Commission.

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

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

An Additional Insured endorsement evidencing such coverage shall be provided to the Commission within 30 days of renewal or upon request, whichever is later. Any such Additional Insured endorsement must specify that coverage is available to the State of New York, the Commission, and their respective commissioners, officers, agents, and employees as "Additional Insureds", without limiting the scope of coverage available based on the source of negligent conduct otherwise covered under the pertinent insurance policy. In other words, the "Additional Insured" coverage conferred should be the same as if the Additional Insureds were included as Named Insureds on the insurance policy. For Contractors who are self-insured, the Contractor shall be obligated to defend and indemnify the above-named Additional Insureds with respect to Commercial General Liability and Business Automobile Liability, in the same manner that the Contractor would have been required to defend and indemnify pursuant to this Attachment had the Contractor obtained such insurance policies.

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

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

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

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

Personal and Advertising Injury coverage must cover claims arising from, but not limited to, occurrences committed by the Contractor, including, but not limited to, the following:

- defamation, libel, slander, product disparagement or trade libel;
- invasion of or interference with the right to privacy or publicity, including intrusion upon seclusion, false light invasion of privacy, public disclosure of private facts and misappropriation of names or likeness;
- negligent or intentional infliction of emotional distress, outrage or outrageous conduct;
- false arrest, detention or imprisonment, or malicious prosecution;

- trespass, wrongful entry or eviction;
- infringement of copyright, piracy, plagiarism and misappropriation of ideas under implied contract; and
- infringement or dilution of title or slogan, trademark, trade name, trade dress, service mark or service name.

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

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

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

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

The CGL policy, and any umbrella/excess policies used to meet the "Each Occurrence" limits specified above, must be endorsed to be primary with respects to the coverage afforded the Additional Insureds, and such 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. Professional Errors and Omissions. The Contractor shall procure and maintain during, and for a period of one year after completion of, this Contract, Professional Errors and Omissions Insurance in the amount of \$1,000,000 issued to and covering damage for liability imposed on the Contractor by this Contract or law arising out of any negligent act, error, or omission in the rendering of or failure to render services required by this Contract.

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

- Consulting;
- Data processing;
- Programming;
- System integration;

- Hardware or software development;
- Installation;
- Distribution or maintenance;
- Systems analysis or design;
- Training, staffing or other support services;
- Manufactured, distributed, licensed, marketed or sold cloud computing services; and
- Any electronic equipment, computer software developed, manufactured, distributed, licensed, marketed or sold.

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

3. **Property Insurance.** The Contractor must maintain insurance on all buildings, furniture, fixtures, computer and communications equipment it uses to provide the services under the Contract 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.
4. **Media Liability Insurance.** To the extent that Personal and Advertising Liability insurance is not available to, or excluded from coverage for, the Contractor under the CGL Policy because the Contractor is a business engaged in advertising, publishing, broadcasting, or similar activities, the Contractor must obtain separate Media Liability insurance coverage with a limit of not less than \$5,000,000 to cover claims arising from, but not limited to, occurrences committed by the Contractor such as:
 - defamation, libel, slander, product disparagement or trade libel;
 - invasion of or interference with the right to privacy or publicity, including intrusion upon seclusion, false light invasion of privacy, public disclosure of private facts and misappropriation of names or likeness;
 - negligent or intentional infliction of emotional distress, outrage or outrageous conduct;
 - false arrest, detention or imprisonment, or malicious prosecution;
 - trespass, wrongful entry or eviction;
 - infringement of copyright, piracy, plagiarism and misappropriation of ideas under implied contract; and
 - infringement or dilution of title or slogan, trademark, trade name, trade dress, service mark or service name.
5. **Business Automobile Liability.** The Contractor shall provide a valid and complete Certificate of automobile liability insurance for owned, non-owned, and hired vehicles with limits of not less than \$2,000,000 for personal injury to

each person, \$4,000,000 for personal injury in each accident, and \$2,000,000 for property damage.

6. **Crime Insurance.** The Contractor must maintain crime insurance with a limit of not less than \$1,000,000 protecting the State of New York and the Commission against losses resulting from fraudulent or dishonest acts by the Contractor, any subcontractors, or any officer, employee or agent of the Contractor or any subcontractors.
7. **Data Breach and Privacy/Cyber Liability Insurance.** The Contractor must maintain insurance with a limit of not less than \$1,000,000 per occurrence, protecting the State of New York and the Commission against losses resulting from failure to protect confidential information and failure of the security of the Contractor's computer systems, or the Commission's systems, due to the actions of the Contractor, which results in unauthorized access to confidential information.
8. **Workers' Compensation and Disability.** For work to be performed in New York State, the Contractor shall provide and maintain insurance coverage during the life of this Contract for the benefit of such employees as are required to be covered by the New York State Workers' Compensation Law (www.wcb.ny.gov).

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

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

A. Workers' Compensation and Employers Liability Coverage:

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

- **Form GSI-105.2** – Certificate of Participation in Workers' Compensation Group Board-approved self-insurance, available from the Bidder's Group Self-Insurance Administrator.

B. Disability Benefits:

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

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

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

BOND REQUIREMENTS

PROPOSAL VALIDITY AND PROPOSAL BOND

Proposals must remain valid for a period of one-hundred and eighty (180) days.

Each Bidder 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 twenty-five thousand dollars (\$25,000). 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 Bidder 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 Bidder upon the award of the Contract. The check or Proposal Bond of the Bidder awarded the Contract (the "Successful Bidder") 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 Bidder 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

Each Bidder 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 a Bidder sues the Commission, the State of New York, or any of their respective officers, employees, representatives, other contractors, or sales agents with regard to any matter relating to this RFP, determination of responsiveness of the 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 Litigation Bond shall provide for payment of the Commission's and State of New York's reasonable attorneys' fees, expenses and court costs resulting from such litigation, and shall remain in effect for a period of two (2) years from the date of submission of the Proposal.

PERFORMANCE BOND

Upon notification of the Contract award, the Successful Bidder will be required to obtain a Performance Bond or other acceptable form of security in the amount of \$500,000 dollars (\$500,000). The Performance Bond shall be maintained throughout the term of any resulting Contract, and any extension or renewal thereof. The Performance Bond may be paid in full or in part to the Commission if the Successful Bidder defaults in the performance of the Contract.

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 and a claim on the Proposal Bond or check

provided in lieu of a Proposal Bond.

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

Year One Estimated Level of Effort

Job Title by Department	Enter the Percent of FTE for Year 1 - Limited to Whole Percentages (e.g., staff dedicating half of their time to the Lottery account = 50%.) Dedicated Account Management Team must be 100% If a title listed is not proposed for Year One, indicate 0%	Enter Staff Name or TBD (include subcontractor name if utilizing a subcontractor)
Dedicated Account Management Team		
Account Director	100%	
Group Account Director	100%	
Project Manager	100%	
Research and Analytics Manager	100%	
Communications Manager	100%	
Strategy		
Director Account Planning		
Director Account & Communications Planning		
Director of Social		
Account Planning Supervisor		
Account Planner		
Director of Analytics		
Senior Analyst		
Analyst Specialist		
Assistant Analyst Specialist		
Research		
Research Director		
Research Supervisor		
Research Specialist		
Assistant Research Specialist		
Creative		
Executive Creative Director		
Group Creative Director		
Creative Director		
Associate Creative Director		
Art Director - Social		
Art Director - Digital		
Art Director		
Senior Copywriter		
Copywriter		
Assistant Copywriter		

Year One Estimated Level of Effort

Digital Designer		
Assistant Digital Designer		
Assistant Art Director		
Assistant Copywriter		
Graphic Designer		
Assistant Graphic Designer		
Production		
Broadcast Production Director		
Digital Production Director		
Broadcast Production Manager		
Senior Digital Producer		
Business Manager		
Music Producer		
Senior Content Creator		
Director Print Production Services		
Print Production Manager		
Print Production Supervisor		
Art Production/Buying Manager		
Art Production/Buying Supervisor		
Art Buyer		
Assistant Art Buyer		
Traffic Specialist		
Talent Management/Payment Specialist		
Attorney		
Paralegal		
Project Management & Traffic Services		
Senior Project Manager		
Project Manager		
Traffic Manager		
Traffic Supervisor		
Traffic Specialist		
Assistant Traffic Specialist		
Digital Production & Content Management Services		
Digital Production Director		
Digital Production Manager		
Digital Producer		
Associate Digital Producer		
Director of Content Management		
Content Manager		
Community Manager		
Finance- one position must be 100% dedicated per 2.3(E)		
Senior Budget Manager		
Finance Manager		
Staff Accountant		

Year One Estimated Level of Effort

Billing Coordinator		
Broadcast Production Services		
Director Broadcast Production		
Broadcast Production Manager		
Broadcast Production Supervisor		
Broadcast Producer		
Assistant Broadcast Producer		
Junior Media Buyer		
Media Services		
Media Director		
Group Media Director		
Associate Media Director		
Media Planning Supervisor		
Media Buyer		
Assistant Media Buyer		
Digital Media Buyer		
Digital Media Director		
Digital Media Coordinator		
Social Media Director		
Social Media Planner		
Search Director		
Search Supervisor		
Search Marketing Specialist		
Search Marketing Analyst		
Media Research Manager		
Media Research Assistant		
Digital Data Analyst		
Talent Management & Payment Services		
Manager Talent Management/Payment Services		
Talent Management/Payment Specialist		
Proofreading & Editorial Services		
Editorial Manager		
Proofreader		
Editor		

FIRM NAME: _____

REPRESENTATIVE NAME (PRINT): _____

REPRESENTATIVE SIGNATURE: _____

ATTACHMENTS

- Attachment 1: Bidder Acknowledgement of Addendum**
- Attachment 2a: Pricing Proposal Form**
- Attachment 2b: Rate Card**
- Attachment 3: Document Proposal Submittal Checklist**
- Attachment 4: Non-Bid Response Form**



**Gaming
Commission**

RFP: C202110 – New York Lottery Strategic Marketing Services Partner

BIDDER ACKNOWLEDGEMENT OF AMENDMENT

Amendment Number: _____

Date Issued: _____

Summary:

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

FIRM NAME: _____

REPRESENTATIVE SIGNATURE: _____

PRICING PROPOSAL
STANDARD HOURLY RATES BY JOB TITLE FOR CONTRACT YEARS 1-5
AND INDIRECT COSTS MARKUP

1. Instructions -- Sum of Average Labor Rates: Enter the hourly labor rate for each job title available that may provide service to the Lottery account at any point during the contract term. All Hourly Labor Rates are to be expressed in whole dollars. Any job title that may be billed during the contract term must include an hourly labor rate in this document. Job titles and labor rates cannot be changed or added later. For any job titles that are not available with or through the Bidder, please state "N/A".

For each functional area, please provide the average labor rate for the rates provided. Labor Rates will be scored by utilizing the sum of the average labor rate for each functional area. The lowest sum will receive all 20 available points, and other bids will receive a score proportionate to the lowest score by utilizing the following formula: $L/B \times [20] = P$ (L = low bidder; B = bidder being scored; [20] = percentage allocated to cost; P= resultant points).

Note: The Commission makes no guarantee as to minimum amount of work available under the resulting Contract. Any changes to the Contractor's staffing needs will be agreed upon by both parties at each annual review and the monthly Agency Fee will be adjusted accordingly. Any significant changes in scope would require a Contract amendment or new procurement.

2. Instructions -- Indirect Cost Percentage: Enter the percentage markup over direct labor costs. This percentage will be applied to the total labor costs each contract year.

The Indirect Costs percentage shall remain valid for the entire term of the resulting Contract.

The lowest percentage will receive all 10 available points, and other bids will receive a score proportionate to the lowest score by utilizing the following formula: $L/B \times [10] = P$ (L = low bidder; B = bidder being scored; [10] = percentage allocated to cost; P= resultant points).

Title	Year 1 - Year 5	
	Hourly Labor Rate	
Dedicated Account Management Team		
Account Director		
Group Account Director		
Project Manager		
Research and Analytics Manager		
Communications Manager		
	Average Labor Rate:	\$
Strategy		
Director Account Planning		
Director Account & Communications Planning		
Director of Social		
Account Planning Supervisor		
Account Planner		
Director of Analytics		
Senior Analyst		
Analyst Specialist		
Assistant Analyst Specialist		
	Average Labor Rate:	\$

Research		
Research Director		
Research Supervisor		
Research Specialist		
Assistant Research Specialist		
	Average Labor Rate:	\$
Creative		
Executive Creative Director		
Group Creative Director		
Creative Director		
Associate Creative Director		
Art Director - Social		
Art Director - Digital		
Art Director		
Senior Copywriter		
Copywriter		
Assistant Copywriter		
Digital Designer		
Assistant Digital Designer		
Assistant Art Director		
Assistant Copywriter		
Graphic Designer		
Assistant Graphic Designer		
	Average Labor Rate:	\$
Production		
Broadcast Production Director		
Digital Production Director		
Broadcast Production Manager		
Senior Digital Producer		
Business Manager		
Music Producer		
Senior Content Creator		
Director Print Production Services		
Print Production Manager		
Print Production Supervisor		
Art Production/Buying Manager		
Art Production/Buying Supervisor		
Art Buyer		
Assistant Art Buyer		
Traffic Specialist		
Talent Management/Payment Specialist		
Attorney		
Paralegal		
	Average Labor Rate:	\$
Project Management & Traffic Services		
Senior Project Manager		
Project Manager		
Traffic Manager		
Traffic Supervisor		
Traffic Specialist		

Assistant Traffic Specialist		
Digital Production & Content Management Services		
Digital Production Director		
Digital Production Manager		
Digital Producer		
Associate Digital Producer		
Director of Content Management		
Content Manager		
Community Manager		
	Average Labor Rate:	\$
Finance- one position must be 100% dedicated per 2.3(E)		
Senior Budget Manager		
Finance Manager		
Staff Accountant		
Billing Coordinator		
	Average Labor Rate:	\$
Broadcast Production Services		
Director Broadcast Production		
Broadcast Production Manager		
Broadcast Production Supervisor		
Broadcast Producer		
Assistant Broadcast Producer		
Junior Media Buyer		
	Average Labor Rate:	\$
Media Services		
Media Director		
Group Media Director		
Associate Media Director		
Media Planning Supervisor		
Media Buyer		
Assitant Media Buyer		
Digital Media Buyer		
Digital Media Director		
Digital Media Coordinator		
Social Media Director		
Social Media Planner		
Search Director		
Search Supervisor		
Search Marketing Specialist		
Serach Marketing Analyst		
Media Research Manager		
Media Research Assistant		
Digital Data Analyst		
	Average Labor Rate:	\$
Talent Management & Payment Services		
Manager Talent Management/Payment Services		
Talent Management/Payment Specialist		
	Average Labor Rate:	\$

Proofreading & Editorial Services	
Editorial Manager	
Proofreader	
Editor	
Average Labor Rate:	
	\$

1. Sum of Average Labor Rates (20 Points): \$

2. Indirect Cost (Percentage of Direct Labor Costs) (10 Points): %

FIRM NAME: _____

REPRESENTATIVE NAME (PRINT): _____

REPRESENTATIVE SIGNATURE: _____



RFP – New York Lottery Strategic Marketing Services Partner

DOCUMENT SUBMITTAL CHECKLIST

Submissions Required with Proposal:

Description of Document	RFP	Submittal Requirements	Checklist
Transmittal Letter	§5.4	Must contain a statement that the proposal will remain valid for 180 days from the Proposal due date.	
Bidder Acknowledgement of Amendment (Attachment 1)	§1.6	With Proposal, if applicable	
Document Submittal Checklist (Attachment 3)	§5.4	With Proposal	
Contract Form (Appendix B) (incorporates Appendix A)	§6.2	Must be signed—With Proposal	
Bidder/Offerer Disclosure/Certification Form (Appendix C)	§7.1	With Proposal	
Non-Collusive Bidding Certification (Appendix D)	§7.2	With Proposal	
NYS Vendor Responsibility Questionnaire (Appendix E)	§7.3	With Proposal, unless filed online	
Encouraging Use of New York State Businesses in Contract Performance (Appendix H)	§7.7	With Proposal	
Work Force Employment Staffing Plan (Appendix I-2)	§7.8	With Proposal	
MWBE/SDVOB Utilization Plan Form (Appendix I-3) <ul style="list-style-type: none">Proposed Plan	§7.8	Proposed plan, including estimated percentage—With Proposal	
Diversity Practices Questionnaire (Appendix J)	§3.2	With Proposal	
Vendor Assurance of No Conflict of Interest or Detrimental Effect (Appendix K)	§7.11	With Proposal	
Statement on Sexual Harassment (Appendix L)	§7.12	With Proposal	
Anti-Discrimination EO 177 Certification (Appendix M)	§7.13	With Proposal	

Insurer Qualifications and Insurance Requirements (Appendix N) • Compliance Statement	§7.14	Include a statement of compliance with the insurer qualifications and insurance requirement—With Proposal	
Bond Requirements (Appendix O) • Proposal Bond • Litigation Bond	§7.15	With Proposal	
Estimated Level of Effort (Appendix P)	§3.2 (B)(4)	With Proposal	
Designation of Proprietary Information (FOIL)	§5.11	With Proposal	
Disclosure and Investigations During Proposal Evaluations	§5.12	With Proposal	
Disclosure of Litigation	§5.13	With Proposal	
References	§3.2.4	Include three with Proposal	
Technical & Pricing Proposals	§5.4	Submit Technical and Pricing Proposals Separately as Defined in RFP	

Submissions Required Subsequent to Award:

Description of Document	RFP	Submittal Requirements	Checklist
Substitute Form W-9 (Appendix F)	§7.4	Upon notification of award	
ST-220 Contractor Certification forms (Appendix G) • ST220-TD (submit to DTF) • ST220-CA (submit to Commission)	§7.6	Within seven calendar days of notification of award	
Equal Employment Opportunity Policy Statement (Appendix I-1)	§7.8	Within 72 hours of notice of award	
Insurer Qualifications and Insurance Requirements (Appendix N)	§7.14	Provide insurance certificates upon notification of award	
Bond Requirements (Appendix O) • Performance Bond	§7.15	Upon notification of award	

FIRM NAME: _____

REPRESENTATIVE SIGNATURE: _____



Gaming Commission

One Broadway Center, Schenectady, NY 12305

www.gaming.ny.gov

NON-BID RESPONSE

RFP: New York Lottery Strategic Marketing Services Partner

Company Name: _____

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

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

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

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

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

_____ Other: _____

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

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

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

FISCAL YEAR 2022-2023	2022 APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	2023 JAN	FEB	MAR
GAME LAUNCHES												
Draw Games	no launch	no launch	no launch	no launch	no launch	no launch	no launch	no launch	no launch	no launch	no launch	no launch
Instant Games	April 5	May 3	June 7	July 5	August 2	September 6	October 4	November 1	December 6	January 3	February 7	March 7
ADVERTISING & PROMOTIONS												
Draw Games Advertising	PB/MM High Jackpot Support (turn on when needed)	PB/MM High Jackpot Support (turn on when needed)	PB/MM High Jackpot Support (turn on when needed)	PB/MM High Jackpot Support (turn on when needed)	PB/MM High Jackpot Support (turn on when needed)	PB/MM High Jackpot Support (turn on when needed)	PB/MM High Jackpot Support (turn on when needed)	PB/MM High Jackpot Support (turn on when needed)	PB/MM High Jackpot Support (turn on when needed)	PB/MM High Jackpot Support (turn on when needed)	PB/MM High Jackpot Support (turn on when needed)	PB/MM High Jackpot Support (turn on when needed)
Draw Games Promotion		Draw Game Promotion Shared Adv Campaign (1 of 4)			Draw Game Promotion Shared Adv Campaign (2 of 4)			Draw Game Promotion Shared Adv Campaign (3 of 4)			Draw Game Promotion Shared Adv Campaign (3 of 4)	
Jackpot Billboards/OOH	Always on	Always on	Always on	Always on	Always on	Always on	Always on	Always on	Always on	Always on	Always on	Always on
Other					Draw Games Promotion New Year's Rockin' Eve	Draw Games Promotion New Year's Rockin' Eve						
Scratch-off Advertising Integrated Campaign	April Launch \$1,000,000 Lucky Dog	April Launch \$1,000,000 Lucky Dog				September Game Launch Campaign	September Game Launch Campaign	Holiday Season Campaign	Holiday Season Campaign	Family Scratch-off Series Campaign	Family Scratch-off Series Campaign	Family Scratch-off Series Campaign
Other Scratch-Off Advertising			Fast Family Scratch-off Games Digital advertising, POS, owned assets campaign	Fast Family Scratch-off Games Digital advertising, POS, owned assets campaign								
Problem Gambling Awareness	Ongoing	Ongoing	Ongoing	Ongoing	Ongoing	Ongoing	Ongoing	Ongoing	Ongoing	Ongoing	Ongoing	Problem Gambing Awareness Month (3/1 - 3/31)
Community Awareness Sponsor	Awareness Days/Month	Awareness Days/Month	Awareness Days/Month	Awareness Days/Month	Awareness Days/Month	Awareness Days/Month	Awareness Days/Month	Awareness Days/Month	Awareness Days/Month	Awareness Days/Month	Awareness Days/Month	Awareness Days/Month
Community Print (multi-language)	April Games	April Games	Summer Campaign	Summer Campaign	TBD	September Games	September Games	Holiday Season/Promo Support	Holiday Season/Promo Support	Family/Series	Family/Series or Promo Support	Family Series
Content Management & Calendar	Newsletter, push notifications, calendar, campaigns, second chance content, awareness months/days, etc.	Newsletter, push notifications, calendar, campaigns, second chance content, awareness months/days, etc.	Newsletter, push notifications, calendar, campaigns, second chance content, awareness months/days, etc.	Newsletter, push notifications, calendar, campaigns, second chance content, awareness months/days, etc.	Newsletter, push notifications, calendar, campaigns, second chance content, awareness months/days, etc.	Newsletter, push notifications, calendar, campaigns, second chance content, awareness months/days, etc.	Newsletter, push notifications, calendar, campaigns, second chance content, awareness months/days, etc.	Newsletter, push notifications, calendar, campaigns, second chance content, awareness months/days, etc.	Newsletter, push notifications, calendar, campaigns, second chance content, awareness months/days, etc.	Newsletter, push notifications, calendar, campaigns, second chance content, awareness months/days, etc.	Newsletter, push notifications, calendar, campaigns, second chance content, awareness months/days, etc.	Newsletter, push notifications, calendar, campaigns, second chance content, awareness months/days, etc.
Social Media Management	Ongoing	Ongoing	Ongoing	Ongoing	Ongoing	Ongoing	Ongoing	Ongoing	Ongoing	Ongoing	Ongoing	Ongoing
Digital Engagement	Search & Social	Search & Social	Search & Social	Search & Social	Search & Social	Search & Social	Search & Social	Search & Social	Search & Social	Search & Social	Search & Social	Search & Social
Consumer Promotions		Q1 Promo - Digital advertising, POS, owned assets campaign			Q1 Promo - Digital advertising, POS, owned assets campaign/effort			Q1 Promo - Digital advertising, POS, owned assets campaign/effort			Q1 Promo - Digital advertising, POS, owned assets campaign/effort	
	April Scratch-off Launch 2nd Chance Program	April Scratch-off Launch 2nd Chance Program				Sept Scratch-off Launch 2nd Chance Program	Sept Scratch-off Launch 2nd Chance Program	Holiday Season Scratch-off Launch 2nd Chance Program	Holiday Season Scratch-off Launch 2nd Chance Program	Family Scratch-off Launch 2nd Chance Program	Family Scratch-off Launch 2nd Chance Program	Family Scratch-off Launch 2nd Chance Program
Events & Sponsorships	Spring Sports	Spring Sports	Spring Sports	Spring Sports	Spring Sports	Spring Sports	Spring Sports					
	Winter Sports	Winter Sports	Winter Sports		Fall Sports	Fall Sports	Fall Sports	Fall Sports	Fall Sports	Fall Sports		
					State Fair & Erie County Fairs		Winter Sports	Winter Sports	Winter Sports	Winter Sports	Winter Sports	Winter Sports
RETAIL												
Permanent POS		Updates (as needed/timing TBD, approximate placement)			Updates (as needed/timing TBD, approximate placement)		Holiday Season Specialty TBD			Updates (as needed/timing TBD, approximate placement)	Promo Support	
Specialty POS		Promo Support		Promo Support				Promo Support				
Newsletter/Comms	News & Sales Tools	News & Sales Tools	News & Sales Tools	News & Sales Tools	News & Sales Tools	News & Sales Tools	News & Sales Tools	News & Sales Tools	News & Sales Tools	News & Sales Tools	News & Sales Tools	News & Sales Tools
Retailer Incentives	April Launch Tie-in	April Launch Tie-in				September Launch Tie-in	September Launch Tie-in	Holiday Tie-in	Holiday Tie-in	Jan-Mar Tie-in	Jan-Mar Tie-in	Jan-Mar Tie-in
STRATEGY												
Corporate Chain Strategy/Support			Strategy Kickoff		Review							
Retail Strategy/Support	Ongoing	Ongoing	Ongoing	Ongoing	Ongoing	Ongoing	Ongoing	Ongoing	Ongoing	Ongoing	Ongoing	Ongoing
Research (Branding)								Kickoff TBD				
Customer Journey Mapping						Kickoff					Implementation	
New Player Initiatives				Research			Implementation					
Research - Tracking Study & Panels	Ongoing	Ongoing	Ongoing	Ongoing	Ongoing	Ongoing	Ongoing	Ongoing	Ongoing	Ongoing	Ongoing	Ongoing
Analysis & Reporting	Ongoing	Ongoing	Ongoing	Ongoing	Ongoing	Ongoing	Ongoing	Ongoing	Ongoing	Ongoing	Ongoing	Ongoing

BOLD = Full Campaign (typically ~\$5-7MM Budget)
Italic = Always on or ready, budgeted as needed
Regular Type = Suggested & Support Items, budget TBD