

**New York Lottery Broadcast Studio
Design, Equipment & Integration Service**

C170005

THIS AGREEMENT made this ____ day of _____, 2017 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 [name of company] having an office at [address of company] (the "Contractor").

WHEREAS the Commission issued a Request for Proposals ("RFP") on October 12, 2017 soliciting proposals from qualified firms to provide broadcast studio design, equipment and integration services, and clarified the requirements of the RFP with Addendums, including Questions and Answers, dated October 25, 2017, a mandatory site visit and bidder conference on November 1, 2017 with summary of Questions and Answers dated November 3, 2017, and Questions and Answers, dated November 14, 2017 (collectively, the "RFP"); and

WHEREAS the Contractor submitted a Technical Proposal and a Pricing Proposal dated [_____] (collectively, the "Proposal"), which received the highest total combined score from among competing proposals by the Commission's evaluation team;

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 goods and services in regard to lottery broadcast studio design and integration services, as more fully set forth in the RFP and the Proposal. Both the RFP and the Proposal are hereby incorporated into this Agreement with the same force and effect as if they were fully set forth herein.
2. **Term.** The Agreement shall commence upon approval of the Office of the State Comptroller, and continue for eighteen months, consistent with the schedules and responsibilities defined in the RFP.

3. **Compensation.** In full consideration for all goods and services specified in the RFP and the Proposal, the Commission agrees to pay, and the Contractor agrees to accept, compensation in accordance with the deliverables defined in the RFP and the prices set forth in the Proposal. No minimum amount is guaranteed by this Agreement and the Contractor shall not have any right to make a claim therefor. Expenditures under this Agreement shall not exceed [\$XXXXXX].
4. **Approvals Required.** This Agreement, and any extension of the term of this Agreement or any amendment of the provisions of this Agreement, shall not be effective and binding upon the Commission, the State of New York, or the Contractor unless and until approved by the New York State Attorney General and the State Comptroller. The Commission agrees to exercise its best efforts to obtain such approval.
5. **Mutual Cooperation.** The objective of this Agreement is to provide services to the Commission as set forth in this Agreement. The parties agree to cooperate fully in good faith and to assist each other, to the extent reasonably practicable, in order to accomplish that objective.
6. **Termination.**
 - a. The Commission shall have the right to terminate this Agreement by providing written notice to the Contractor in accordance with Section 11 of this Agreement for any of the following:
 - i. convenience; or
 - ii. a finding that the certification filed by the Contractor in accordance with New York State Finance Law § 139-k was intentionally false or intentionally incomplete.
 - b. The Commission shall have the right to terminate this Agreement for any of the following causes:
 - i. a material breach by the Contractor of any of the provisions of this Agreement;
 - ii. a determination by a court of competent jurisdiction that the Contractor is bankrupt or insolvent;

- iii. a good faith determination by the Commission that continuation of the contract could place the integrity of the Commission in jeopardy; or
- iv. a determination by the Executive Director or his or her designee that the Contractor is non-responsible; or
- v. a conviction of the Contractor or any of its directors, officers, or employees of any criminal offense connected to the Contractor's business which, in the sole reasonable opinion of the Executive Director of the Commission, would be prejudicial to public confidence in the Lottery or the Commission.

If the Commission exercises the right to terminate this Agreement for cause, the Commission shall give the Contractor a written notice that states the cause for which termination is sought. The Contractor shall be entitled to a period of thirty (30) days from receipt of such notice to correct or cure the cause to the reasonable satisfaction of the Commission.

If termination is sought due to a criminal conviction described in subparagraph (v) of paragraph (b) of this Section, 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.

Where the Contractor is determined by the Executive Director or his or her designee to be non-responsible described in subparagraph (iv) of paragraph (b) of this Section upon written notice to the Contractor, and a reasonable opportunity to be heard with appropriate Commission officials or staff, the Agreement may be terminated by the Executive Director or his or her designee at the Contractor's expense. In such event, the Executive Director or his or her designee may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

(c) In the event that the Agreement is terminated under the provisions of (a) or (b) of this section, Contractor shall be entitled to payment for services rendered and materials provided prior to the termination, and subject to setoff, if any, for claims by

the Commission against the Contractor. In no event shall the Commission be liable for lost profits, incidental, consequential, or special damages based upon the exercise of the Commission's termination rights.

7. **Responsible.**

- a. The Contractor shall at all times during the Contract term remain responsible as defined by New York State Finance Law section 163(c). The Contractor agrees, if requested by the Executive Director of the Commission or his or her designee, to present evidence in regard to its continuing legal authority to do business in the State of New York; integrity; experience; ability; prior performance; and organizational and financial capacity.
- b. The Executive Director of the Commission or his or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under this Agreement, at any time, when he or she discovers information that calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor must comply with the terms of the suspension. The Contractor may resume performance of this Agreement at such time as the Executive Director of the Commission or his or her designee issues a written notice authorizing its resumption.

8. **Conflicts of Interest.**

- a. The Contractor shall provide a Vendor Assurance of No Conflict of Interest or Detrimental Effect form, signed by an authorized executive or legal representative, attesting that the Contractor's performance of the services neither creates a conflict of interest with, nor positions the Contractor to breach any other contract currently in force with, the State of New York; and 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 Agreement. 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 Agreement, 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 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 due to existing or new relationships the Contractor may have. The Commission will review the nature of any relationship and reserves the right to terminate this Agreement 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 Agreement. 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. Confidential Information may include, but is not limited to the following
 - i. operational and infrastructure information relating to: bid documents, plans, drawings, specifications, reports, product information;
 - ii. business and security processes and procedures;
 - iii. personnel and organizational data, and financial statements; information system IP addresses, passwords, security controls, architectures and designs; and

- iv. such other data, information and images that the Commission deems confidential.
 - b. Confidential Information does not include information that, at the time of Commission 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 confidential 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 so long as the Contractor provides the Commission with notice of such disclosure requirement and 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 Agreement. The Contractor shall not make copies of any written Confidential Information 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 to 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.** The retention of records required by the Contractor under this Agreement shall be retained for the periods specified in Appendix A, attached hereto. Such records may be retained in their original form or in any other reliable and readily retrievable format, at the option of the Contractor.

11. **Notices.** All notices required by this Agreement shall be sufficient if in writing and sent by certified mail return receipt requested. 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:

As to the Commission:

Executive Director of the Commission

One Broadway Center

Post Office Box 7500

Schenectady NY 12301-7500

As to the Contractor:

[Name and Address]

12. **Liability and Indemnification.** The Contractor shall be responsible for all damages to life and property due to activities of the Contractor, as well as the subcontractors (if any), agents or employees of the Contractor in connection with performance of services under this Agreement. The Contractor shall indemnify, defend, and hold harmless the Commission and the State of New York, and their officers, employees, agents and assigns from and against any and all third party claims, liabilities, losses, damages, costs, or expenses, including reasonable attorneys' fees, which may be incurred, suffered, or required in whole or in part by an actual or alleged act or omission of:

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

13. **Relationship.** The relationship of the Contractor to the Commission arising out of this Agreement shall be that of an independent contractor. The Contractor, all employees of the Contractor and the Contractor's subcontractor(s), if any, in accordance with its status as an independent contractor, agree that they will conduct themselves consistent with such status, that they will neither hold themselves out as, nor claim to be, an officer or employee of the Commission or the State of New York, and that they will not make any claim, demand or application for any right or privilege applicable to an officer or employee of the Commission or the State of New York, including, but not limited to,

workers' compensation coverage, unemployment insurance benefits, social security coverage, or retirement membership or credit.

Nothing in this Agreement shall impose any liability or duty on the Commission or the State of New York, for any acts, omissions, liabilities or obligations of the Contractor, subcontractor or any agent of the Contractor for any taxes, unemployment insurance and workers' compensation. The Contractor hereby agrees to indemnify and hold harmless the Commission and the State of New York against any such liabilities.

14. **Force Majeure.** A Force Majeure occurrence is an event or effect that cannot be reasonably anticipated or controlled. As used herein, Force Majeure means fire, explosion, action of the elements, governmental interference, rationing or any other cause which is beyond the control of the party affected and which, by the exercise of reasonable diligence, said party is unable to prevent.

Neither the Contractor nor the Commission shall be liable to the other for any delay in or failure of performance under the Agreement resulting from this RFP due to a Force Majeure occurrence. Any such delay in or failure of performance shall not constitute a breach of the Agreement or give rise to any liability for damages. The Commission shall extend the period for performance, subject to the provisions of Section 4 of this Agreement, to enable complete performance by the Contractor if reasonable diligence is exercised after the cause of delay or failure has been removed.

15. **Documents Incorporated.** Appendix A, Standard Clauses for New York State Contracts, the RFP, and the Proposal are hereby incorporated to the same force and effect as if set forth herein.

16. **Order of Precedence.** Any conflict between this Agreement and the documents incorporated herein shall be resolved according to the following order of precedence:

- a. Appendix A – Standard Clauses for New York State Contracts;
- b. Any amendments to the Agreement;
- c. Agreement;
- d. RFP and any clarifying responses by the Commission;

- e. Proposal and any clarifying responses by the Contractor.

17. **Miscellaneous Provisions.**

- a. A waiver of enforcement of any provision of this Agreement shall not constitute a waiver of any other provision of this Agreement nor shall it preclude the affected party from subsequently enforcing such provision.
- b. The headings contained in this Agreement are intended for ease of reference only and shall not be interpreted to limit or modify any of the provisions of this Agreement.

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

[CONTRACTOR]

NEW YORK STATE
GAMING COMMISSION

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

ATTORNEY GENERAL

COMPTROLLER
Thomas P. DiNapoli

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

Acknowledgement

ACKNOWLEDGEMENT BY INDIVIDUAL

STATE OF _____)

SS.:

COUNTY OF _____)

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

Notary Public

ACKNOWLEDGEMENT BY UNINCORPORATED ASSOCIATION

STATE OF _____)

SS.:

COUNTY OF _____)

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

Notary Public

ACKNOWLEDGEMENT BY CORPORATION

STATE OF _____)

SS.:

COUNTY OF _____)

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

Notary Public