

## Contract for Lottery Drawing Machines

C202009

THIS CONTRACT made this 10<sup>TH</sup> day of MARCH, 2021 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, Schenectady, New York 123015 (the "Commission"), and Smartplay International, Inc., having an office at 1500 Bridgeboro Rd., Edgewater, NJ 08010 (the "Contractor").

WHEREAS the Commission issued an Invitation for Bids on January 5, 2021 soliciting bids from qualified firms to Lottery Drawing Machines and related equipment and maintenance, (the "IFB"); and

WHEREAS the Contractor submitted a Bid dated January 27, 2021, which was the lowest total life cycle cost for a five-year period;

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

1. **Scope of Services.** The Contractor agrees to provide the Commission with lottery drawing machines, accessories, annual maintenance, repairs, parts and consumables, as more fully set forth in the IFB. Both the IFB and the Bid 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 commence upon approval of the Office of the State Comptroller and continue for five (5) years.

3. **Compensation, Invoicing and Payment.**

(a) In full consideration for all services specified in the IFB and the Bid, the Commission agrees to pay, and the Contractor agrees to accept, compensation for goods and services provided in Part 3 of the IFB and as quoted in the Bid Form – Attachment 2. 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 \$315,654.00.

(b) Payment under the Contract will be in accordance with New York State Prompt Payment Law (Article 11-A of the New York State Finance Law). Payment for services will be made upon delivery of goods or completion of the services and upon receipt by the Commission of a proper invoice. Invoices shall be submitted following completion of each Deliverable. Contractor will not be compensated for direct unbillable expenses, such as travel, lodging and other out-of-pocket expenses that are required as a regular course of business. Sales tax should not be included on invoices as New York State Agencies are tax exempt (a tax-exempt certificate will be provided to the successful bidder if needed).

All invoices shall be submitted as a .PDF attachment and directed to the New York State Business Service Center at [accounts.payable@og.state.ny.gov](mailto:accounts.payable@og.state.ny.gov), and a copy must also be directed to the Commission's Finance Office at the following email address: [contracts@financialmanagement.ny.gov](mailto:contracts@financialmanagement.ny.gov). The Commission shall promptly process all payments due to the Contractor that conform to the provisions of this IFB and are approved by the Commission's Contract Administrator and Finance Officer.

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 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 Contract is to ensure that services are provided to the Commission as set forth in this Contract. The parties agree to cooperate fully in good faith and to assist each other, to the extent reasonably practicable, in order to accomplish that objective.

6. **Termination and Suspension.**

(a) The Commission shall have the right to terminate this Contract for convenience or for any of the following causes:

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

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

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

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

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

Such person, and any firm, partnership or corporation of which he is a member, partner, director or officer shall be disqualified from thereafter selling to or submitting bids to or receiving awards from or entering into any contracts with the state or any public department, agency or official thereof, for goods, work or services, for a period of five (5) years after such refusal, and to provide also that any and all contracts made with the State or any public department, agency or official thereof, since the effective date of this law, by such person, and by any firm, partnership or corporation of which he is a member, partner, director or officer may be cancelled or terminated by the State without incurring any penalty or damages on account of

such cancellation or termination, but any monies owing by the State for goods delivered or work done prior to the cancellation or termination shall be paid.

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

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

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

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

**7. Conflict of Interest.**

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

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

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

subcontracting agreement that the subcontractor, in conjunction with any further subcontracting agreement, obtain and deliver to the Commission a signed and completed Vendor Assurance of No Conflict of Interest or Detrimental Effect form for each of its subcontractors prior to entering into a subcontract.

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

**8. Confidentiality and Non-Disclosure.**

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

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

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

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

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

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

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

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

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

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

10. **Notices.** All notices required by this Contract shall be sufficient if in writing and sent by certified mail return receipt requested. 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 New York State Gaming Commission  
One Broadway Center  
Post Office Box 7500  
Schenectady NY 12301-7500

**As to the Contractor:**

Smartplay International, Inc.  
1500 Bridgeboro Rd.  
Edgewater, NJ 08010

11. **Liability and Indemnification.** The Contractor shall be responsible for all damages to life and property due to activities of the Contractor, the Contractor's subcontractors and sub-subcontractors (if any), and the Contractor's agents or employees, in connection with performance of services under this Contract. The Contractor shall defend, indemnify, 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.

12. **Relationship.** The relationship of the Contractor to the Commission arising out of this Contract shall be that of an independent contractor. The Contractor, all employees of the Contractor and the Contractor's subcontractor(s) and sub-subcontractors, 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 Contract 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, sub-subcontractor, or any agent of the Contractor for any taxes, unemployment insurance and workers' compensation. The Contractor hereby agrees to defend, indemnify, and hold harmless the Commission and the State of New York against any such liabilities.

13. **Documents Incorporated.** Appendix A, Standard Clauses for New York State Contracts, dated October 2019, the IFB, and the Bid are hereby incorporated to the same force and effect as if set forth herein.

14. **Order of Precedence.** Any conflict between this Contract 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 Contract;
- c. Contract;
- d. IFB and any clarifying responses by the Commission;
- e. Bid and any clarifying responses by the Contractor.

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 Contract between the Commission and the Contractor, and no modification thereof shall be binding unless the same is in writing and signed by the respective parties.

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

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

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

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

Smartplay International, Inc.

By: [Signature]

Title: PRESIDENT

Date: 3/10/2021

NEW YORK STATE  
GAMING COMMISSION

By: [Signature]

Title: Executive Director

Date: 11 March 2021

NEW YORK STATE  
Letitia James

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

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

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

NEW YORK STATE COMPTROLLER  
Thomas P. DiNapoli

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

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

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 New Jersey )  
SS.:  
COUNTY OF Camden )

New Jersey County Of Camden  
this to be the original document  
10 day of March, 2021  
Wense Straub  
WENSE STRAUB, Notary Public  
Commission Expires 1/18/2026

On this 10 day of March, in the year 2021, before me personally came Thomas Markert, to me known, who, being by me duly sworn did depose and say that he/she resides in Edgewater Park, NJ; that he/she is the President of the Smart Play, 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.

Wense L Straub  
Notary Public

**Bowers, Alysian (GAMING)**

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**From:** Maggi, Benjamin <Benjamin.Maggi@ag.ny.gov>  
**Sent:** Wednesday, March 24, 2021 1:01 PM  
**To:** Bowers, Alysian (GAMING); Contract Approval  
**Subject:** Approved - RE: NYS Gaming Commission Contract C202009 - Smartplay International - Lottery Drawing Machines

*ATTENTION: This email came from an external source. Do not open attachments or click on links from unknown senders or unexpected emails.*

Approved As To Form: 3/24/2021 by Benjamin Maggi  
Received: 3/24/2021

*Reminder: Agencies must forward the contract approved by the OAG Contract Approval Section along with the email in which the OAG Contract Approval Section approved the contract, to OSC via the Comptroller's EDSS system. If you are not enrolled in the EDSS system and have not made alternative arrangements with OSC on how to submit your transaction, please contact OSC at 518-408-4672 or email [ITServiceDesk@osc.ny.gov](mailto:ITServiceDesk@osc.ny.gov).*

OAG: CAS please file and enter. "P"

Benjamin L. Maggi  
Assistant Attorney General  
New York State Office of the Attorney General  
Contract Approval Section  
The Capitol, Albany, NY 12224  
(518) 776-2350  
ATTORNEY CLIENT PRIVILEGED/NOT FOR DISSEMINATION

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**From:** Bowers, Alysian (GAMING) <Alysian.Bowers@gaming.ny.gov>  
**Sent:** Wednesday, March 24, 2021 11:21 AM  
**To:** Maggi, Benjamin <Benjamin.Maggi@ag.ny.gov>; Contract Approval <contractapproval@ag.ny.gov>  
**Subject:** FW: Non-Approved - RE: NYS Gaming Commission Contract C202009 - Smartplay International - Lottery Drawing Machines

Good morning Mr. Maggi,

Just checking in to confirm that you received the revised documents last Thursday. I've reattached the documents here (with the exception of the 5<sup>th</sup>, because it's so large – if necessary, I'm also happy to resend that).

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

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

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

Smartplay International, Inc.

By: [Signature]  
Title: PRESIDENT  
Date: 3/10/2021

NEW YORK STATE  
GAMING COMMISSION

By: [Signature]  
Title: EXECUTIVE DIRECTOR  
Date: 11 March 2021

NEW YORK STATE  
Letitia James

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

NEW YORK STATE COMPTROLLER  
Thomas P. DiNapoli

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_  

APPROVED
DEPT. OF AUDIT & CONTROL
May 27 2021
Randolph McConnach
FOR THE STATE COMPTROLLER

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