



**RFP: Creative & Marketing Communications Services
Media Planning & Buying Services**

VENDOR ACKNOWLEDGEMENT OF ADDENDUM

Amendment Number: Three

Date Issued: June 5, 2014

Includes Question & Answer Summary and Clarification Document.

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

FIRM NAME: _____

REPRESENTATIVE SIGNATURE: _____



REQUEST FOR PROPOSALS
FOR CREATIVE & MARKETING COMMUNICATIONS SERVICES
AND MEDIA PLANNING & BUYING SERVICES

Questions and Answers

June 5, 2014

PART ONE

Q.6: B. To the extent the Commission will agree to amend the Appendices to the Master Services Agreement to address the above concerns, will it consider replacing or supplementing those provisions in the Appendices to include language in substantially the following form (subject to good faith negotiations), and if such language is not agreeable, providing alternative language to Contractor prior to Proposal submission deadline?

1. OWNERSHIP AND USE OF MATERIALS

(a) Subject to subsection (f) below, all advertising materials prepared on Commission's behalf or purchased, licensed or otherwise obtained for Commission's account (hereinafter "Materials") shall, upon full payment by Commission of all sums due to Contractor, be considered a "work made for hire" as that term is defined in the Copyright Revision Act of 1976, 17 U.S.C. §101 et seq. and the copyright therein shall be owned by Commission, worldwide, for all purposes. Notwithstanding the foregoing, all materials, rights, and intellectual property owned by third parties (such as talent rights, photography, artwork, props and music) shall remain the sole and exclusive property of such third parties, and Commission agrees to use such third party materials consistent with the restrictions for such third party materials communicated to Commission in writing. Commission agrees that Contractor shall have the right, without prior approval, to use any and all non-confidential Materials following their publication to promote Contractor and to market Contractor's services to third parties, including submitting such Materials to industry award shows and posting them on Contractor's website.

(b) Notwithstanding the foregoing, all software applications, databases, computer programs (including source code and object code for any such programming), and executable code (collectively "Code") as well as other creative content, methodologies and materials in existence prior to this Agreement (or created outside the scope of this Agreement) and all Code or

portions thereof developed or provided by Contractor hereunder, excluding any materials provided by Commission ("Contractor Property"), shall remain the sole and exclusive property of Contractor. Contractor hereby grants a fully paid-up, perpetual, non-exclusive, non-transferable license to Commission to use the Contractor Property to the extent integrated into the Materials and without modification, and solely for the benefit of Commission, within the Territory. For clarity, it is understood that (i) Contractor shall own all modifications, improvements or enhancements to the Contractor Property and (ii) any and all Code utilized by Contractor, or made available by Contractor for use by Commission, that is not integrated within the Materials, may not be used by Commission after the term of this Agreement (or applicable Scope of Work) except pursuant to a separately negotiated license agreement.

(c) Notwithstanding the foregoing, any Materials prepared or proposed by Contractor but not produced and published or broadcast within the term of the applicable Scope of Work, and any Materials prepared or proposed by Contractor and rejected by Commission, shall remain the property of Contractor (the "Preliminary Materials"). Contractor shall have the right to use the Preliminary Materials without limitation; provided, however, that, such uses shall not involve the release of any of Commission's confidential information.

(d) If Commission should desire to use outside the Territory any Materials created and or produced by Contractor hereunder, Commission will inform Contractor prior to such use and in good faith negotiate compensation for such use. Contractor shall not be required to secure any rights in the Materials for use outside the Territory unless specifically agreed to in writing. Commission agrees and acknowledges that Materials used, published or distributed outside the Territory, including by means of the Internet, may violate one or more applicable laws, rules or regulations or third party rights, and that Commission shall bear the sole risk and have the sole responsibility for all such violations, except to the extent that Contractor has specifically agreed in writing to assume any such risk or responsibility.

(e) For clarification purposes, Contractor shall acquire no rights of ownership in intellectual property rights subsisting in any material provided by Commission to Contractor in connection with this Agreement.

(f) Notwithstanding any of the provisions of this Agreement, it is understood and agreed that in addition to the services it provides directly to its Commissions as part of the Scope of Work, Contractor through its employees (including those assigned to Commission's business) and various business units of Contractor (or affiliated companies creates various content, ideas or programs, such as television shows, books, theatrical productions, marketing platforms, etc. without initial reference to a Commission or brand and without any initial Commission funding (collectively "Content") and that, with respect to such Content, Contractor is and will remain the owner of all intellectual property rights therein ("Contractor-Owned Properties"). When appropriate,

Contractor may present opportunities to Commission to participate in/with these Contractor-Owned Properties and the parties will agree to negotiate in good faith the terms of such participation. It is further understood and agreed that in the event that a Contractor-Owned Property is appropriate for a category of products assigned by Commission to Contractor, Contractor will provide Commission with the right of first negotiation to participate in/with the given Contractor-Owned Property but that, in the event Commission declines participation in such property, the disposition of such Contractor-Owned Properties may be freely made by Contractor.

2. TALENT

Commission understands and agrees that Contractor is 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") make the use of talent by Contractor on Commission's behalf subject to the terms of such agreements and provide for Contractor to be ultimately liable to performers for payments that may become due because of use of commercials by Commission or any party to whom Commission provides any of the commercials. Therefore, Commission will indemnify Contractor against any loss, including reasonable attorneys' fees, Contractor may sustain resulting from any claim, suit or proceeding ("Claim") made or brought against Contractor by SAG, AFTRA, AFM and/or other applicable entity arising out of or in connection with the use of any Contractor-produced Materials, as authorized by Commission hereunder, by Commission, Commission's employees, authorized agents or by anyone else who obtained the Materials from Commission, regardless of whether such Claim is asserted during or after the Term.

3. INDEMNITY

(a) It will be the responsibility of Contractor to make certain that the necessary contracts or releases have been obtained with or from those whose names, likenesses, testimonials, scripts, musical compositions, or similar materials or rights are used in Commission advertising or other materials prepared under this agreement, and Contractor agrees to indemnify Commission against any liabilities and expenses (including reasonable attorneys' fees) Commission may incur as a result of claims resulting therefrom and/or proceedings relating to libel, slander, defamation, invasion of privacy, piracy, plagiarism, idea misappropriation, and infringement of copyright, property right (other than patent, trademark and trademark related causes of action), title or slogan.

(b) It will be the responsibility of Commission to review all materials prepared under this agreement to confirm the accuracy and legality of the descriptions and depictions of Commission's products, as well as any competitive products described or depicted, and Commission agrees to indemnify Contractor

against any liabilities and expenses (including reasonable attorneys' fees) Contractor may incur as a result of claims resulting therefrom and/or proceedings relating to false, deceptive, or misleading description, depiction, or comparison of Commission and/or competitive products, provided the materials were approved by Commission prior to their use, and any personal injury or product liability claims associated with the Commission's product(s) or use thereof. In addition, (i) when Commission has indicated to Contractor that it has obtained or will obtain any necessary contracts, releases and clearances, or (ii) Commission's use of materials not permitted under the terms of licenses which had been communicated to Commission by Contractor has a given rise to a claim, Commission will indemnify Contractor with respect to any names, materials and the like supplied by Commission.

(c) Except as otherwise set forth in this paragraph, with regard to clearing all copy and other deliverables provided by Contractor with respect to trademarks, service marks, trade names, logos and slogans (the "Marks") of third parties, the final decision as to whether a Mark is clear for use in any territory, shall be the responsibility of Commission. Accordingly, Commission shall also be responsible for (i) obtaining and reviewing comprehensive searches and for final clearance of any Marks in any copy or materials provided hereunder and (ii) any and all registration of the Marks, if Commission so chooses to register same. Contractor makes no representation or warranties with respect to and assumes no obligation for Marks, provided that if requested by Commission, Contractor will obtain, at Commission's expense, preliminary and/or comprehensive searches and internal and/or external Contractor counsel opinions, in the territories specified by Commission, for evaluation by Commission and its trademark counsel.

(d) Upon the assertion of any claim or the commencement of any suit or proceeding against an indemnitee by a third party that may give rise to liability of an indemnitor hereunder, the indemnitee promptly shall notify the indemnitor of the existence of such claim, suit or proceeding and the indemnitor shall defend and/or settle the claim at indemnitor's own expense and with counsel of indemnitor's own selection. At its own expense, an indemnitee shall at all times have the right to: (i) hire counsel of its own selection to provide its defense and (ii) fully participate in any settlement that it reasonably believes would have an adverse effect on its business. An indemnitee shall make available to an indemnitor all books and records relating to a claim, suit or proceeding, and the parties agree to render to each other such assistance as reasonably may be requested to ensure a proper and adequate defense.

4. LIMITATION OF LIABILITY

Neither commission nor contractor, nor their respective parents, affiliated companies, directors, officers, employees, shareholders, licensees or agents shall be held liable to the other for indirect, incidental, consequential, special, punitive or exemplary damages arising in any manner from the activities contemplated by this agreement, whether under contract, tort, or other cause of

action, even if such party has been advised of the possibility of such damages. Except as expressly provided herein, neither party makes any warranty, express or implied, regarding the products or services to be provided hereunder or that any software or other electronic devices provided or website created or hosted by contractor will be error free or operate without interruption, and the warranties of title, merchantability and fitness for a particular purpose are expressly excluded. Contractor's total, aggregate liability for any claims hereunder shall not exceed an amount greater than one and one half the amount of payments received and retained by contractor as its contractor fee during the twelve months prior to the date the claim or claims are made up to a maximum of four and one half million dollars.

5. RECORDS AND ACCOUNTS

Commission and its duly authorized representatives shall have the right, upon reasonable notice of no less than fifteen (15) business days, at all reasonable hours of the day, but no more frequently than once during each of year of the Term, to audit Contractor's books of account and records, and all other documents and material in the possession or under the control of Contractor with respect to the subject matter and the terms of this Agreement for the two-year period prior to the requested audit, and to make copies and extracts thereof. It is understood and agreed that the foregoing shall not include individual payroll and personnel records, profit and loss reports, general Contractor overhead, Contractor internal time such as administration, new business or training or records that relate to assignments for different Commissions.

6. FAILURE OF SUPPLIERS/FORCE MAJEURE

Neither party shall be deemed in default of this Agreement to the extent that performance of its obligations (other than Commission's payment obligations) or attempts to cure any breach are delayed or prevented by reason of any act of God, fire, natural disaster, accident, riots, acts of government, acts of war or terrorism, shortage of materials or supplies, failure of transportation or communications or of suppliers of goods or services, or any other cause beyond the reasonable control of such party. In addition, although Contractor shall endeavor to guard against any loss to Commission as the result of the failure of media or suppliers to properly execute their commitments, Contractor will not be responsible for their failure or their other acts or omissions. Commission acknowledges that Contractor has no control over information and Materials once they have been published, released or posted in the public domain as requested or approved by Commission, including, without limitation, via seeding materials on social networking and video sharing websites or via the use of internet-based "widgets." As such, Contractor shall not be responsible for ensuring the accuracy of what any third party publishes or any other resulting third party actions.

7. CANCELLATIONS, AMENDMENTS & MODIFICATIONS

Commission reserves the right to amend, modify, reject, cancel or stop the execution and implementation of any and all advertising concepts, ideas, plans and/or campaigns, including without limitation preparation of Materials, and Contractor shall use reasonable best efforts to carry out any instructions by Commission in connection therewith, provided that in no event may Commission reduce the scope of Services or cancel any services on less than ninety (90) days prior written notice if such reduction or cancellation will result in more than a ten percent (10%) reduction in total compensation under an applicable Scope of Work. During any such ninety (90) day period, the parties agree to negotiate in good faith a revised compensation based on such reduction or cancellation (such revised compensation to take effect following such period or thereafter). However, in any event, Commission agrees that it shall:

- (i) remain obligated to pay Contractor any and all charges for services rendered by Contractor and for expenditures incurred by Contractor, pursuant to this Agreement;
- (ii) remain liable for all reservations, contracts and other arrangements it previously authorized in connection with the preparation, publication and reproduction of any and all Advertisements, including all media contracts and commitments that Contractor is unable to cancel;
- (iii) remain obligated to indemnify Contractor pursuant to this Agreement.
- (iv) be obligated to pay Contractor for any cancellation penalties imposed by any third party.

A.6: B.1: Through this response, Section 2.22 of the RFP is amended to replace the section with the following:

OWNERSHIP OF PROPOSAL CONTENTS, MATERIALS AND INTELLECTUAL PROPERTY; USE OF TALENT

(a) Any and all materials submitted with the proposal shall not be returned and will be maintained by the Lottery as part of the procurement record. It is not the intent of the Lottery to use proposals for anything other than supporting documentation. The Lottery reserves the authority to use any and all information contained in the proposal to the extent permitted or required by law. The Lottery shall not be liable for any payment to unsuccessful bidders.

(b) Ownership of all data, documentary material and operating reports originated and prepared exclusively for the Lottery pursuant to any

Contract resulting from this RFP shall belong to the Lottery. Contractor agrees that, except where noted by the Lottery, all materials, documents, products, reports, data and other information, whether finished, unfinished, or draft developed, gathered or compiled under this agreement by vendor are the sole exclusive property of the Lottery and that they shall not be used by the vendor or any other person or destroyed without express written permission of the Lottery. Any work product created pursuant to this Agreement and any subcontract shall be “works made for hire” and shall become the property of the Lottery, which shall have all rights of ownership and authorship in such work product. Additionally, the Contractor hereby assigns to the New York Lottery any and all intellectual property rights to any such work product.

(c) Contractor or its representative shall take commercially reasonable steps to obtain copyright and or trademark registration on behalf of the Lottery for advertising material as requested by the Lottery.

(d) Commission understands and agrees that Contractor is 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") make the use of talent by Contractor on Commission's behalf subject to the terms of such agreements and provide for Contractor to be ultimately liable to performers for payments that may become due because of use of commercials by Commission or any party to whom Commission provides any of the commercials.

- B.2: See Answer to Question this response B.1.**
- B.3: See Answer to Question 4(g)**
- B.4: See amended Section 10 of Contracts C140008 and C140009 included with this response.**
- B.5: We do not accept this change as it conflicts with Appendix A – Standard Clauses for New York State Contracts.**
- B.6: We accept this provision; please see §12 of the revised contracts, C140008 and C140009 included with this response.**
- B.7: The Commission makes no guarantee as to minimum amount of work available under the resulting contract. Any changes to the staffing needs will be made at each annual review and monthly labor fee will be adjusted accordingly. Any significant changes in scope would require a new procurement. See also §11 of the revised contracts C140008 and C140009 included with this response.**

PART TWO

Q.32: It is advertising industry practice that payment for certain services, such as TV production and talent payments, be paid in part or in total prior to completion of

services. Will the Lottery follow this industry standard and provide the required payments for these services?

A.32: The Commission is seeking guidance from the New York State Office of the Comptroller on this question. We will post the response on our website as soon as we receive their response.

Reference: Section 2.22

Q.58: Please clarify if creative materials prepared and submitted in response to this RFP become the property of the New York Lottery? If so, it would be expected that the agency would be compensated for these materials.

A.58: See Answer to Question B.1 (a).

Q.136: Why is the timeline being extended?

A.136: Due to the amount of complex questions received and the proposed contract language changes, we determined that an additional Question and Answer period was necessary for clarifications and to allow more time for potential bidders to prepare the Phase One Proposals as a result of these clarifications.

CREATIVE & MARKETING COMMUNICATIONS SERVICES
CONTRACT # C140008

THIS AGREEMENT made this ____ day of _____, 2014 by and between the NEW YORK STATE GAMING COMMISSION, DIVISION OF LOTTERY, 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 on May 12, 2014 soliciting proposals from qualified firms to provide Advertising and Media services, and clarified the requirements of the Request for Proposals with a list of Questions and Answers dated May 29, 2014 and July 31, 2014 (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 Creative & Marketing Communications 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. This Agreement shall be for a term of five years commencing as of January 15, 2015.

3. Compensation. In full consideration for all goods and services specified in the RFP and the Proposal, the Commission agrees to pay, and the Contractor agrees to accept, compensation in accordance with the prices set forth in the Proposal. No minimum amount is guaranteed by this Agreement and the Contractor shall not have any right to make a claim therefor. The contract value is not to exceed _____.

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 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 obtain Creative & Marketing Communications Services. 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 for convenience, upon 30 days written notice, or 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 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.

(b) In the event that the Commission decides to exercise the right to terminate this Agreement for cause, the Commission shall give the Contractor advance 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 Agreement in the event it is found that the certification filed by the Contractor in accordance with New York 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 Agreement.

(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. 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.

7. 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. 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 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 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.

8. Records Retention. Records required by this Agreement 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.

9. Notices. All notices required by this Agreement shall be sufficient if in writing and sent by certified mail return receipt requested and all other communications shall be sufficient if

communicated in writing to the following addresses or to such other addresses as may be designated from time to time by the parties in writing:

(a) As to the Commission:

Executive Director of the New York State Gaming Commission
One Broadway Center
Post Office Box 7500
Schenectady NY 12301-7500

(b) As to the Contractor:

[Name and Address]

10. Liability and Indemnification.

(a) 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 save harmless the New York Lottery, the Commission, the State of New York, and their officers, employees, agents, assigns and retailers from and against any and all third party claims, liabilities, losses, damages, costs, or expenses, including reasonable attorneys' fees, which may be incurred, suffered, or required in whole or in part by an actual or alleged act or omission of:

(i) The Contractor, its officers, employees, agents, successors and assigns,
and/or

(ii) A Subcontractor, its officers, employees, agents, successors and assigns.

(b) Notwithstanding the above, neither the Contractor nor the Commission shall be liable for any consequential, indirect or special damages of any kind which may result directly or

indirectly from such performance, including, without limitation, damages resulting from loss of use or loss of profit by the Commission, the Contractor, or by others.

11. Cancellations and Modifications. The Commission reserves the right to amend, modify, reject, cancel or stop the execution and implementation of any and all advertising concepts, ideas, plans and/or campaigns, including without limitation preparation of Materials, and Contractor shall use reasonable best efforts to carry out any instructions by Commission in connection therewith. The Commission agrees that it shall:

- (i) remain obligated to pay Contractor any and all charges for services rendered by Contractor and for expenditures or charges incurred by Contractor, pursuant to this Agreement;
- (ii) remain liable for all reservations, contracts and other arrangements it previously authorized in connection with the preparation, publication and reproduction of any and all Advertisements, including all media contracts and commitments that Contractor is unable to cancel.

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

Neither the Contractor nor the Lottery shall be liable to the other for any delay in or failure of performance under the contract resulting from this RFP due to a Force Majeure

occurrence. Any such delay in or failure of performance shall not constitute a default or give rise to any liability for damages. The existence of such causes of such delay or failure shall extend the period for performance to such extent as determined by the Contracting Officer to be necessary to enable complete performance by the Contractor if reasonable diligence is exercised after the cause of delay or failure has been removed.

13. Relationship. The relationship of the Contractor to the Commission arising out of this Agreement 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 by reason hereof, and that it will not by reason hereof, 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 their work, the direction thereof, and their compensation. Nothing in this Agreement 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, and the Contractor hereby agrees to indemnify and hold harmless the Commission and the State against any such liabilities.

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

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

- (a) Appendix A – Standard Clauses for New York State Contracts;
- (b) Any amendments to the Agreement;
- (c) Agreement;
- (d) Request for Proposal and any clarifying responses by the Commission;
- (e) Vendor Proposal and any clarifying responses by the vendor.

16. 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) This instrument and the documents incorporated herein represent the entire agreement between the Commission and the Contractor, and no modification thereof shall be binding unless the same is in writing and signed by the respective parties.

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

(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) 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 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: _____

STATE OF _____)
) ss.:
COUNTY OF _____)

On this ____ day of _____, 2014, before me personally came _____, to me known, who being duly sworn, did depose and say that he or she resides in _____ (if the place of residence is in a city, include the house and street number), that he or she is the _____ of [company name], the corporation which executed this contract, and that he or she was authorized to execute this contract on behalf of said corporation.

Notary Public

MEDIA PLANNING & BUYING SERVICES
CONTRACT # C140009

THIS AGREEMENT made this ____ day of _____, 2014 by and between the NEW YORK STATE GAMING COMMISSION, DIVISION OF LOTTERY, 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 on May 12, 2014 soliciting proposals from qualified firms to provide Advertising and Media services, and clarified the requirements of the Request for Proposals with a list of Questions and Answers dated May 29, 2014 and July 31, 2014 (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 Media Planning & Buying 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. This Agreement shall be for a term of five years commencing as of January 15, 2015.

3. Compensation. In full consideration for all goods and services specified in the RFP and the Proposal, the Commission agrees to pay, and the Contractor agrees to accept, compensation in accordance with the prices set forth in the Proposal. No minimum amount is guaranteed by this Agreement and the Contractor shall not have any right to make a claim therefor. The contract value is not to exceed _____.

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 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 obtain Media Planning & Buying Services. 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 for convenience, upon 30 days written notice, or 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 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.

(b) In the event that the Commission decides to exercise the right to terminate this Agreement for cause, the Commission shall give the Contractor advance 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 Agreement in the event it is found that the certification filed by the Contractor in accordance with New York 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 Agreement.

(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. 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.

7. 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. 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 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 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.

8. Records Retention. Records required by this Agreement 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.

9. Notices. All notices required by this Agreement shall be sufficient if in writing and sent by certified mail return receipt requested and all other communications shall be sufficient if

communicated in writing to the following addresses or to such other addresses as may be designated from time to time by the parties in writing:

(a) As to the Commission:

Executive Director of the New York State Gaming Commission
One Broadway Center
Post Office Box 7500
Schenectady NY 12301-7500

(b) As to the Contractor:

[Name and Address]

10. Liability and Indemnification.

(a) 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 save harmless the New York Lottery, the Commission, the State of New York, and their officers, employees, agents, assigns and retailers from and against any and all third party claims, liabilities, losses, damages, costs, or expenses, including reasonable attorneys' fees, which may be incurred, suffered, or required in whole or in part by an actual or alleged act or omission of:

- (i) The Contractor, its officers, employees, agents, successors and assigns,
and/or
- (ii) A Subcontractor, its officers, employees, agents, successors and assigns.

(b) Notwithstanding the above, neither the Contractor nor the Commission shall be liable for any consequential, indirect or special damages of any kind which may result directly or

indirectly from such performance, including, without limitation, damages resulting from loss of use or loss of profit by the Commission, the Contractor, or by others.

11. Cancellations and Modifications. The Commission reserves the right to amend, modify, reject, cancel or stop the execution and implementation of any and all advertising concepts, ideas, plans and/or campaigns, including without limitation preparation of Materials, and Contractor shall use reasonable best efforts to carry out any instructions by Commission in connection therewith. The Commission agrees that it shall:

- (i) remain obligated to pay Contractor any and all charges for services rendered by Contractor and for expenditures or charges incurred by Contractor, pursuant to this Agreement;
- (ii) remain liable for all reservations, contracts and other arrangements it previously authorized in connection with the preparation, publication and reproduction of any and all Advertisements, including all media contracts and commitments that Contractor is unable to cancel.

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

Neither the Contractor nor the Lottery shall be liable to the other for any delay in or failure of performance under the contract resulting from this RFP due to a Force Majeure

occurrence. Any such delay in or failure of performance shall not constitute a default or give rise to any liability for damages. The existence of such causes of such delay or failure shall extend the period for performance to such extent as determined by the Contracting Officer to be necessary to enable complete performance by the Contractor if reasonable diligence is exercised after the cause of delay or failure has been removed.

13. Relationship. The relationship of the Contractor to the Commission arising out of this Agreement 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 by reason hereof, and that it will not by reason hereof, 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 their work, the direction thereof, and their compensation. Nothing in this Agreement 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, and the Contractor hereby agrees to indemnify and hold harmless the Commission and the State against any such liabilities.

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

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

- (a) Appendix A – Standard Clauses for New York State Contracts;
- (b) Any amendments to the Agreement;
- (c) Agreement;
- (d) Request for Proposal and any clarifying responses by the Commission;
- (e) Vendor Proposal and any clarifying responses by the vendor.

16. 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) This instrument and the documents incorporated herein represent the entire agreement between the Commission and the Contractor, and no modification thereof shall be binding unless the same is in writing and signed by the respective parties.

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

(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) 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 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: _____

STATE OF _____)
) ss.:
COUNTY OF _____)

On this ____ day of _____, 2014, before me personally came _____, to me known, who being duly sworn, did depose and say that he or she resides in _____ (if the place of residence is in a city, include the house and street number), that he or she is the _____ of [company name], the corporation which executed this contract, and that he or she was authorized to execute this contract on behalf of said corporation.

Notary Public



REQUEST FOR PROPOSALS
FOR CREATIVE & MARKETING COMMUNICATIONS SERVICES
AND MEDIA PLANNING & BUYING SERVICES

Clarification Document

June 5, 2014

1. **Acknowledgements for addenda issued during Phase One should be submitted with your Phase One proposal due June 24, 2014 at 3:00 pm. Any addenda issued after the Phase One proposal due date should be submitted with your Phase Two proposal due August 21, 2014 at 3:00 pm.**

2. **LOT 1 - Section 3.2 of the RFP is amended to replace the following paragraphs:**
 - B. Dedicated Account Management Team** – Provide a seasoned, **dedicated** Account Management Team that will work collaboratively with the Lottery’s Marketing Unit to manage the daily activities of the account. This Account Management Team will be assigned exclusively to the Lottery business. A key role of the Account Management Team is to become thoroughly involved with the Lottery’s business and keep on top of industry trends, sales performance, and product developments. They will also work closely with the Account Planning Team (defined in item C of this section) to ensure that consumer-centric strategies are being developed that tie into Lottery’s business objectives. The Account Management Team will be responsible for establishing regular communications between the Media Agency and the Creative Agency to ensure seamless integration of the advertising program. The Account Management Team will also be responsible for preparation of the following reports:
 1. **Status Report** – Weekly status reports will be issued detailing all current projects, production jobs, promotional events, reporting and meetings. Status reports shall include timelines for all initiatives, allowing no fewer than 5 days for Lottery approval at any stage.

2. **Annual Advertising Plans** – Based on the Lottery’s Fiscal Year (April – March) and following receipt of the Lottery’s Marketing Plan, the Agency is expected to prepare an annual advertising plan in partnership with the Director of Advertising / Marketing Unit which must include at a minimum:

- a. Innovative approaches for planned business initiatives, including how these strategies achieve the Lottery’s goals with measurable Key Performance Indicators for post-initiative evaluations.
- b. A general breakdown of proposed spending for production, talent, research, and other projected expenses.
- c. Opportunities for special events, promotional activities, and any other topics specified by the Lottery.

C. Strategic Account Planning / Market Research / Brand Metric and Advertising Communication Tracking – Provide a team of experts in strategic planning (“Account Planning Team”). The Account Planning Team’s responsibility will be to gain and transfer extensive knowledge of the Lottery’s various customer and prospect consumer groups from a demographic and psychographic perspective. Alongside the Lottery’s Director of Advertising, it is also their responsibility to propose, conduct and analyze market research as necessary to gain such consumer insights to inform strategic direction for the account. The Account Planning Team must be responsible for the development of consumer-led strategies for all initiatives, providing relevant consumer insights or recommendations for additional market research to support the proposed initiatives in Annual Advertising planning and drafting of all creative briefs. The Account Planning Team will work closely with the Account Management Team to gain a thorough understanding of the Lottery’s business objectives and product specifications to enable the Account Planning Team to develop consumer insights to deliver effective marketing and advertising strategies that will achieve stated objectives for each initiative and the account as a whole.

F. Hispanic and Multi-cultural Marketing – The Agency will develop effective strategies for reaching the diverse New York State population and integrate such marketing efforts into general market program to achieve stated goals. If the Agency determines that a separate diversity initiative would improve deliverables, then the Agency shall present the recommendation to the Lottery for approval with complete rationale for the initiative.

1. **Hispanic/Multi-Cultural Account and Creative Teams** – Whether provided in-house or through a partner Agency, the Contracted Agency must provide account and creative teams with relevant experience and multi-lingual expertise to manage the Lottery’s Diversity marketing programs. It will be the responsibility of these teams to ensure that the Lottery’s Hispanic and Multi-Cultural activities are effective for the target audiences and work synergistically with the General Market programs.

2. **Translation Services** – These services may include translation in multiple languages, terminology creation and management, editing, proofreading, studio linguistic advising and post-processing, and cultural review. Translation services must be available upon request. In its advertising, the Lottery has used translation services for Spanish, Chinese (Mandarin) and Korean.

M. Budget / Billing Management – Due to the size of the Lottery’s advertising budget, budget/billing staff is required to work directly with the Lottery Marketing and Gaming Commission Finance Units on a daily basis. They must be (become) familiar with competitive bidding requirements and have the capability to track production costs of advertising and retail materials on a per unit basis. (Note: The New York Lottery has formal, highly detailed procedures for budget management and expenditure requirements. Poor budget management and failure to comply with these procedures may result in delayed authorizations to proceed with media and/or production projects as well as substantially delayed payment of bills and invoices based upon inadequate billing documentation. Bidders should give strong consideration to allocation of at least one, full-time person for Lottery budget management support.)

3. LOT 1 - Section 4.1.C.1 of the RFP is amended to replace the following paragraph:

1. Thorough description of the organization, including employee capacity to undertake and successfully carry out the proposed services. Indicate the specific staff that will work on the Lottery business, if the Bidder is successful.

NOTE: STAFF CHANGES ARE AT THE DISCRETION OF THE NY LOTTERY.

4. LOT 1 - Section 4.3 of the RFP is amended to replace the following paragraph:

- C. The Agency must also provide resources for development and management of the Lottery's Hispanic marketing efforts. Whether this function will be provided by an in-house team or whether the Agency will be subcontracting with a Spanish Language or Multi-Cultural Agency must be clearly defined in the proposal.

5. LOT 2 – Section 3.2 of the RFP is amended to replace the following paragraph:

B. Dedicated Account Management Team – The Agency shall provide a seasoned, dedicated media Account Management Team that will work collaboratively with the Lottery's Marketing Unit to manage the daily activities of the account. This Account Management Team will be assigned exclusively to the Lottery business. The Account Management Team will be responsible for establishing regular communications between the Media Agency and the Creative Agency to ensure seamless integration of the advertising program. The Account Management Team will also be responsible for preparation of the following reports:

1. **Status Report** – Weekly status reports will be issued detailing all current projects and initiatives. Status reports shall include timelines and deadlines for all activity, allowing no fewer than 5 business days for Lottery approval, unless authorized by the Lottery.
2. **Current Flowcharts** – The Account Management Team is responsible for maintaining current flowcharts for all fiscal year media activity. Detailed flowcharts must specify media type, market tiers, GRP levels, creative rotation, and costs for each campaign. Costs are to be summarized by campaign, by month, by quarter, and year. Any time there is a change in media plans or activity, flowcharts must be updated and provided to the Lottery within 48 hours.

H. Budget / Billing Management – Due to the size of the Lottery's advertising budget, budget/billing staff is required to work directly with the Lottery Marketing and Finance Units on a daily basis. They must be (become) familiar with competitive bidding requirements and have the capability to track production costs of advertising and retail materials on a per unit basis. (Note: the New York Lottery has formal, highly detailed procedures for budget management and expenditure requirements. Poor budget management and failure to comply with these procedures may result in delayed authorizations to proceed with media and/or production projects as well as substantially delayed payment of bills and invoices based upon inadequate billing documentation. Bidders should give strong consideration to allocation of at least one, full-time person for Lottery

budget management support.)

6. LOT 2 - Section 4.3 of the RFP is amended to replace the following paragraph:

- C. The Agency must also provide resources for development and management of the Lottery's Hispanic marketing efforts. Whether this function will be provided by an in-house team or whether the Agency will be sub-contracting with a Spanish Language agency within the parent company's organization must be clearly defined in the proposal.