



**Gaming
Commission**

REQUEST FOR QUOTATIONS

FOR

**C202306V2: Certified Public Accounting Services –
Examination of Financial Statements and Performance of
Agreed Upon Procedures**

November 14, 2023

Notice to Bidders

- **Please Note: This RFQ is reissued from RFQ C202306 dated September 28, 2023. The Scope of Work has changed to decrease the number of games the Agreed Upon Procedures are applied, reducing the number from five to one. Attachment 2 – Quotation Form has been revised to reflect this change.**
- The Designated Contacts for this solicitation are Stacey Relation and Alysyan Bowers, as noted in Section 1.8 of the Request for Quotations (“RFQ”).
- Bidders are responsible for checking the website of the New York State Gaming Commission (the “Commission”) for updated information relative to the procurement process and the RFQ. The Commission will not be responsible for a Bidder’s failure to obtain updated information.
- By submission of a Quotation in response to this RFQ, the Bidder agrees to the terms of the resulting contract in the form incorporated into the RFQ as **Appendix B**, or as revised through the RFQ process. The Commission does not intend to negotiate terms of the contract after receipt of Quotations (Section 1.12).
- By submission of a Quotation in response to this solicitation, the Bidder agrees to comply with the insurance requirements as defined in **Appendix O** in the RFQ (Section 2.14).
- The participation goals for Minority- and Women-Owned Business Enterprises is 30% and for Service-Disabled Veteran-Owned Businesses is 6% under this RFQ. Equal Employment Opportunities provisions still apply (Section 2.16).
- To assist Bidders in completion and submittal of the required documents, **Attachment 4, Document Submittal Checklist**, is incorporated into this RFQ.
- Bidders choosing not to submit a Quotation in response to this RFQ are requested to complete and submit **Attachment 5, Non-Bid Response**, as the information is useful to the Commission in the planning and development of future RFQs and Bidders’ Lists.

PART 1 – GENERAL INFORMATION

1.1 INTRODUCTION

The New York State Gaming Commission (the “Commission”), on behalf of the State of New York is issuing this Request for Quotations (“RFQ”, including any amendments to the Request for Quotation prior to award of a Contract) to solicit Quotations to provide Certified Public Accounting Services (“CPA”) for the examination of financial statements and performance of procedures agreed upon for multijurisdictional lottery games (“Agreed Upon Procedures”). Part 3 of this document further describes the required services.

This procurement opportunity is limited to New York State small businesses, businesses certified pursuant to Article 15-A of the New York State Executive Law, and businesses certified pursuant to Veterans’ Services Law Article 3.

The term of the Contract will be March 1, 2024 through February 28, 2029 as defined in Section 2.5 of this RFQ.

One (1) award will be made as a result of this solicitation.

1.2 BACKGROUND INFORMATION

In November 1966, a constitutional amendment was approved by a majority of New York State voters which established the New York Lottery (the “Lottery”). In February 2013, the Lottery merged with the New York State Racing & Wagering Board to form the Commission under adoption of Chapter 60 of the Laws of 2012 as part of the FY 2012-2013 Enacted State Budget. The Commission oversees and regulates six gaming and racing programs, including Lottery, Video Lottery, Horse Racing, Charitable Gaming, Indian Casino Gaming, and Commercial Casino Gaming.

While the Commission regulates all gaming activity in the State, it only operates and administers the Lottery and Video Lottery programs which are accounted for as an enterprise fund of the State (“Lottery Enterprise Fund”). The Commission prepares financial statements to summarize these two programs with all net proceeds benefitting aid to education. The statements are prepared in conformance with generally accepted accounting principles (“GAAP”) and are audited in accordance with generally accepted auditing standards (“GAAS”). The Commission requires that the financial statements be audited annually by an independent certified public accounting firm.

1.3 MINIMUM QUALIFICATIONS

Any Bidder submitting a Quotation in response to this RFQ must meet the minimum qualifications listed below. **Quotations not meeting these qualifications will not be considered.**

Subcontractors may not be used to meet the Minimum Qualifications.

Minimum Qualifications:

- Be a Certified Public Accounting firm that is in good standing with the New York State Board for Accountancy, or with the State Board for Accountancy where licensed;
- Be registered to practice public accounting in New York State;
- Have demonstrated experience auditing the financial statements prepared on a GAAP basis serving clients in state government within the last five years, including audits of entities utilizing third party service providers where such third parties provide Service Organization Control reports (Type II);
- Be independent of the Commission in accordance with the American Institute of Certified Public Accountants (“AICPA”) and able to conduct the proposed audit; and
- Have a peer review with a rating of “pass”.

1.4 SCHEDULE

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

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| RFQ Issued | November 14, 2023 |
| Confidentiality and Non-Disclosure Agreement | November 27, 2023 |
| Exhibits Issued | As NDAs are received |
| Questions Due by 2:00 pm EDT | November 21, 2023 |
| Answers Issued | November 24, 2023 |
| Bidder Quotations Due by 2:00 pm EST | November 28, 2023 |
| Contract Start Date | March 1, 2024 |

1.5 RFQ APPENDICES, ATTACHMENTS, AND EXHIBITS

The following documents are incorporated into this RFQ:

- Appendix A: Standard Clauses for New York State Contracts (dated June 2023)
- Appendix B: Contract Form (incorporates Appendix A)
- Appendix C: Bidder/Offeror Disclosure/Certification Form
- Appendix D: Non-Collusive Bidding Certification
- Appendix E: New York State Vendor Responsibility Questionnaire
- Appendix F: Substitute Form W-9
- Appendix G: Contractor Certifications – ST-220-CA and ST-220-TD
- Appendix H: Encouraging Use of New York State Businesses in Contract Performance
- Appendix I: EEO, MWBE and SDVOB Programs
- Appendix J: Consultant Disclosure – Forms A and B
- Appendix K: Vendor Assurance of No Conflict of Interest or Detrimental Effect

Appendix L: Statement on Sexual Harassment
Appendix M: Anti-Discrimination EO 177 Certification
Appendix N: Executive Order No. 16 Certification
Appendix O: Insurer Qualifications and Insurance Requirements

Attachment 1: Bidder Acknowledgement of Addendum
Attachment 2a & 2b: Quotation Form
Attachment 3: Confidentiality and Non-Disclosure Agreement
Attachment 4: Document Submittal Checklist
Attachment 5: Non-Bid Response Form

Exhibit 1: New York State Gaming Commission's Financial Statements for the Lottery for Fiscal Year 2021-22

The following Exhibits will be distributed following receipt of the Confidentiality and Non-Disclosure Agreement:

- a. Exhibit 2a: Description of processing Instant Lottery ticket transactions
- b. Exhibit 2b: Description of processing Video Lottery gaming transactions
- c. Exhibit 3: Sample Agreed-Upon Procedure Report

1.6 BIDDER/CONTRACTOR DIFFERENTIATION

Throughout this RFQ the terms "Bidder", "Vendor" may be used interchangeably in reference to the preparation and submission of the Quotation and any requirements preceding the award of the final Contract. In describing post-contract award requirements, an effort is made to use the term "Successful Bidder", and "Contractor".

1.7 HEADINGS

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

1.8 DESIGNATED CONTACTS

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

ALL BIDDERS RESPONDING TO THIS RFQ AND ALL COMMUNICATIONS CONCERNING THIS PROCUREMENT MUST BE ADDRESSED IN WRITING TO THE

CONTRACT MANAGEMENT SPECIALISTS NOTED BELOW (DESIGNATED CONTACTS):

New York State Gaming Commission
Contracts Office, 4th Floor
One Broadway Center
Schenectady, NY 12305

Stacey Relation, Contract Management Specialist 3
Stacey.Relation@gaming.ny.gov

Or

Alysan Bowers, Contract Management Specialist 2
Alysan.Bowers@gaming.ny.gov

RFQ-related questions shall be submitted via electronic mail to the email addresses above by the date specified in the Schedule in Section 1.4.

1.9 PROCUREMENT LOBBYING RESTRICTIONS

As required by the New York State Procurement Lobbying Law (New York State's State Finance Law sections 139-j and 139-k), this RFQ includes and imposes certain restrictions on communications between the Commission and a Bidder during the procurement process. A Bidder is restricted from making contacts from the earliest solicitation of offers through final award and approval of the resulting Contract by the Commission, the Office of the New York State Attorney General ("OAG"), and the Office of the New York State Comptroller ("OSC") ("restricted period") to Commission staff other than Designated Contacts unless the contact is permitted by the statutory exceptions set forth in New York State's State Finance Law section 139-j(3)(a). Designated Contacts are identified above in Section 1.8 of this RFQ.

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

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

The Commission reserves the right, in its sole discretion, to terminate the Contract in the event that the Commission determines that the certification filed by the Bidder in

accordance with New York State's State Finance Law section 139-k was intentionally false or intentionally incomplete. Upon such determination, the Commission may exercise its termination right by providing written notification to the Bidder in accordance with the written notification terms of the Contract.

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

1.10 CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

Each firm must submit a signed and notarized Confidentiality and Non-Disclosure Agreement, incorporated into this RFQ as **Attachment 3**, in order to receive specified Exhibits listed in Section 1.5 of this RFQ. These Exhibits contain confidential information and will only be issued to Bidders who submit the Confidentiality and Non-Disclosure Agreement. These Exhibits will be password protected and sent via email. Passwords will be emailed separately to the contact person designated by the Bidder. Exhibits may assist in the preparation of quotations, but failure to submit the Confidentiality and Non-Disclosure Agreement will not disqualify a bidder.

1.11 QUESTIONS AND INQUIRIES

Questions from Bidders regarding this RFQ must be submitted via electronic mail to Stacey.Relation@gaming.ny.gov and Alysan.Bowers@gaming.ny.gov. If questions are provided via an attachment to electronic mail, the questions should be provided in Microsoft Word format. **Neither faxed nor telephoned questions are acceptable.**

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

A **Bidder Acknowledgement of Addendum Form, Attachment 1**, will be provided with each addendum. Bidders are required to include a signed **Bidder Acknowledgement of Addendum Form** with their respective quotations.

1.12 FORM OF CONTRACTUAL AGREEMENT

The successful applicants will be expected to sign a contract with the Commission. The final contract will be in the form incorporated into the RFQ as **Appendix B** (the "Contract"), or as revised through the RFQ amendment process.

Appendix A, Standard Clauses for New York State Contracts, this RFQ, and the Bidder's Quotation submitted in response to the RFQ, are incorporated into the Contract. The Contract will become binding and effective after approval by the Commission, the OAG, and the OSC.

Every successful applicant responding to this RFQ must include in its response a signed Contract in the form attached as **Appendix B**. Signing the Contract Form and submitting it as part of the response serves as acknowledgment and agreement to the terms of the Contract if deemed the Successful Bidder under the RFQ process. **The Commission does not intend to negotiate any changes in the provisions of the Contract following the receipt of Quotations.** Therefore, any exception to the Contract must be raised in a Bidder question submitted to the Commission pursuant to the Schedule and in accordance with the Question and Answer process set forth in this RFQ. **Failure to comply with this requirement will deem the Quotation non-responsive.**

1.13 NON-COLLUSIVE BIDDING REQUIREMENT

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

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

1.14 NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE

Bidder agrees to fully and accurately complete the New York State Vendor Responsibility Questionnaire ("Questionnaire"), which is available online at:

<https://www.osc.state.ny.us/state-vendors/vendrep/file-your-vendor-responsibility-questionnaire>. Bidders are encouraged to complete the online form, as it will expedite Contract approval. If the Bidder does not have an online Questionnaire that is current and certified, the Bidder must complete the hardcopy **New York State Vendor Responsibility Questionnaire, Appendix E**. The Bidder acknowledges that the State's execution of the Contract will be contingent upon the Commission's determination that the Bidder is responsible, and that the Commission will be relying upon the Bidder's responses to the Questionnaire in making that determination. The Bidder agrees that if it is determined by the Commission that the Bidder's responses to the Questionnaire were intentionally false or intentionally incomplete, on such determination, the Commission may terminate the Contract by providing ten days' written notification to the Contractor. In no case shall such termination of the Contract by the Commission be deemed a breach thereof, nor shall the Commission be liable for any damages for lost profits or otherwise, which may be sustained by the Contractor as a result of such determination.

Unless the New York State Vendor Responsibility Questionnaire has been filed online, the hardcopy Questionnaire, Appendix E, must be completed and submitted with the Quotation.

1.15 DESIGNATION OF PROPRIETARY INFORMATION (FOIL)

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

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

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

For proprietary designations, the Commission's legal staff, as directed by the Designated Contacts, will review each designation and communicate with the Bidder in the determination of such designation. Any designation shall not become final until accepted by the Commission via formal letter. Once a designation is final, the Bidder will be required to submit a redacted version of the Quotation consistent with the accepted designation. The redacted version will be the material that is released in response to a FOIL request.

1.16 QUOTATION SUBMISSION

Quotations may be submitted (1) via email to officer.contracting@gaming.ny.gov or (2) by Contract carrier, courier delivery, in-person delivery, or by U.S. Postal Service, directed to:

New York State Gaming Commission
Contracts Office -- 4th Floor
One Broadway Center
Schenectady, NY 12305

If a hardcopy bid is to be submitted by a method other than U.S. Postal Service, the Bidder should contact one of the Designated Contacts, identified in this RFQ, prior to delivery, to assure that the Designated Contacts have notice of the other method of submission, to best plan for proper receipt of the Quotation.

A. Late Quotations:

A Quotation must be received by the Commission on or before the due date and time specified in the Schedule – Part 1.4 of this RFQ. The Bidder is responsible for timely receipt of its Quotation and should plan for delivery accordingly. Failure of a Bidder to submit a Quotation by the specified time may result in rejection or disqualification of the Quotation.

B. Multiple Quotations from One Bidder Prohibited:

A Bidder shall submit only a single Quotation. Submission of multiple Quotations is not permitted and may result in rejection or disqualification of all of the Bidder's Quotations.

C. Costs Associated with Preparation of Quotations:

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

1.17 CLARIFICATION PROCESS

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

1.18 SITE VISITS

The Commission may visit any site where the Bidder conducts, or has conducted, operations similar to the services required in this RFQ. The Bidder shall cooperate in arranging and coordinating such site visits, but the Bidder shall not be permitted to pay for any travel, accommodations, or other expenses of such site visits.

1.19 DISCLOSURE AND INVESTIGATIONS DURING QUOTATION EVALUATION

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

its sole discretion. Such background investigations may include fingerprint identification by the New York State Division of Criminal Justice Services and the Federal Bureau of Investigation, and such additional investigation as may be required.

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

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

1.20 DISCLOSURE OF LITIGATION AND OTHER INFORMATION

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

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

1.21 NEW YORK STATE PUBLIC OFFICERS LAW

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

1.22 ETHICS REQUIREMENTS

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

1.23 CONFLICTS OF INTEREST

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

- A. Disclose any existing or contemplated relationship with any other person or entity, including relationships with any member, shareholders of five percent (5%) or more, or parent, subsidiary, or affiliated firm or entity, that would constitute an actual or potential conflict of interest or appearance of impropriety, relating to other clients/customers of the Bidder, or former officers and employees of the Commission and its Affiliates, in connection with the Bidder rendering services set forth in this RFQ. If a conflict does or might exist, the Bidder must describe how the Bidder would eliminate or prevent such conflicts. The Bidder should also indicate what procedures will be followed to detect, notify the Commission of, and resolve any such conflicts;

- B. Disclose whether the Bidder, or any of its members, shareholders of five percent (5%) or more, parents, affiliates, or subsidiaries has been the subject of any investigation or disciplinary action by the New York State Commission on Ethics and Lobbying in Government or its predecessor State entities (collectively, "COELIG"), and if so, a brief description must be included indicating how any matter before COELIG was resolved, or whether it remains unresolved; and
- C. Indicate whether the Bidder (including any proposed subcontractors) has performed work for vendors now active, or seeking to become active, in the provision and/or management of gaming systems in lottery jurisdictions and disclose the nature of such work, including when such work was performed. It is incumbent upon the Bidder to demonstrate clearly that such work could have no real or perceived effect on the Bidder's independence and impartiality in the performance of the work required herein. If the Bidder has not performed work for vendors (as described in this paragraph), Bidders should also indicate so.

In addition, the Bidder must complete and return with its Quotation, the Vendor Assurance of No Conflict of Interest or Detrimental Effect form, Appendix K. Any Bidder awarded a contract under this RFQ will have an on-going obligation to inform the Commission of any actual or apparent conflicts of interest. This disclosure obligation is a continuing requirement.

1.24 CHANGE IN FINANCIAL CONDITION

If a Bidder who has submitted a Quotation in response to this RFQ experiences a substantial change in financial condition prior to the award of a Contract pursuant to this RFQ, or if a Successful Bidder experiences a substantial change in financial condition during the term of the Contract with the Commission, the Bidder is required to notify in writing the Executive Director of the Commission, or his or her designee, at the time the change occurs or is identified. Failure to notify the Executive Director of the Commission, or his or her designee, of such a change may result in rejection of a Bidder's Quotation or termination of the Contract, in the sole discretion of the Commission. **This disclosure obligation is a continuing requirement.**

1.25 CHANGE IN OWNERSHIP

If a Bidder experiences a material change in ownership prior to the award of the Contract or during the term of a Contract with the Commission, the Bidder is required to notify in writing the Executive Director of the Commission, or his or her designee, at the time the change occurs or is identified, whichever happens earlier. "Material change in ownership" is defined as any merger, acquisition, assignment or change in parties who, in the aggregate, own greater than five percent (5%) of the Bidder or the parent company of the Bidder. Failure to notify the Commission of such a change may result in the rejection of a Bidder's Quotation or termination of the Contract. The Commission reserves the right,

based on its assessment of a material change in ownership, to reject a Bidder's Quotation or terminate the Contract. **This disclosure obligation is a continuing requirement.**

1.26 NEWS RELEASES

A news release pertaining to this RFQ or the services, evaluation, or projects to which this RFQ relates may not be made without prior written Commission approval, and then only in accordance with express written instructions from the Commission. No outcome of the award under this procurement may be released without prior approval by the Commission, and then only to persons designated by the Commission.

1.27 ADVERTISING

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

1.28 STATE'S RESERVED AUTHORITY

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

- A. Award a Contract for all, part, or none of the services requested by this RFQ;
- B. Waive any informality or technical defect if, in the judgment of the Commission, the best interest of the Commission will be so served;
- C. Eliminate any non-material mandatory specification(s) that cannot be complied with by any of the prospective Bidders;
- D. Amend the RFQ and direct Bidders to submit Quotation modifications accordingly;
- E. Change any of the scheduled dates stated herein;
- F. Reject any or all Quotations received in response to this RFQ, and reissue a modified version of this RFQ;
- G. Withdraw the RFQ at any time, at the sole discretion of the Commission;
- H. Seek clarifications and revisions to Quotations;
- I. Use information obtained through site visits, management interviews, and investigation of a Bidder's qualifications, experience, ability or financial standing, and any material

or information submitted by the Bidder in response to the request by the Commission for clarifying information in the course of evaluation and/or selection under this RFQ;

- J. Disqualify any Bidder whose conduct and/or Quotation fails to conform to the requirements of this RFQ;
- K. Negotiate with the Successful Bidder within the scope of the RFQ in the best interests of the State;
- L. Request best and final offers;
- M. Set aside the original Successful Bidder if the Commission determines that the Bidder is non-responsive or non-responsible. The Commission may then award a Contract to the Bidder with the next highest total combined score; and
- N. Stop the work covered by this RFQ and the Contract at any time that it is deemed the Successful Bidder is unable, unwilling, or incapable of performing the work to the Commission's satisfaction. In the event of such stop, the Commission shall have the right to arrange for the completion of the work in such a manner as it may deem advisable and if the cost thereof exceeds the amount of the Successful Bidder's Quotation, the Successful Bidder and its surety shall be liable to the Commission and the State of New York for any such cost thereof. In the event the Commission stops the work as provided herein, together with the reason thereof, the Bidder shall have ten business days to respond to the Commission's stop order before any such stop order shall become effective. After the ten business days have passed and/or any response received is considered, the Commission may move forward with the original stop order, or modify or withdraw its original stop order, within its discretion.

1.29 PROTEST OR APPEAL

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

- A. Any protest of the award decision shall be filed with the Commission, no later than ten business days following the date of the Commission's written notification to the unsuccessful Bidder that an award was made;
- B. The protest shall clearly state the basis for the protest and include all relevant documentation supporting such protest;
- C. The Commission shall conduct a review of the protest and issue a written determination to the protesting party within fifteen (15) business days of receipt of the protest. If additional time for issuance of the determination is necessary, the Commission shall inform the Bidder of the delay and of the time frame within which a determination may be expected. The final written determination provided to the Bidder will constitute the Commission's final administrative determination of the protest;

- D. For an unsuccessful Bidder to appeal the Commission's final administrative determination of the Bidder's protest, the unsuccessful Bidder must submit such an appeal to OSC's Bureau of Contracts ("BOC"), within ten business days of the Bidder's receipt of the Commission's final administrative determination. The protest appeal shall be in writing and shall contain specific factual and/or legal allegations setting forth the basis on which the protesting party challenges the Contract award by the Commission. A copy of the appeal shall be served on the Commission, the Successful Bidder, and any other party that participated in the review of the protest conducted by the Commission. The unsuccessful Bidder's appeal shall contain written affirmation that a copy of the appeal has been served as required by this paragraph;
- E. The appeal shall be filed with: Director, Bureau of Contracts – 11th Floor, New York State Office of the State Comptroller, 110 State Street, Albany, NY 12236;
- F. The Commission will submit an answer to the appeal to the BOC simultaneously with the Commission's delivery of the Contract to the BOC for its review, or within seven business days of the submission of the appeal, whichever is later. The Commission's answer to the appeal shall include written affirmation that, simultaneous with submission to the BOC, the answer was transmitted to the protestor and the Successful Bidder;
- G. The Successful Bidder may, but is not required to, submit to the BOC an answer to the appeal. Such answer shall include written affirmation that the answer was simultaneously delivered to the Commission and the protester and must meet the submission requirements as noted above for the Commission;
- H. The BOC shall evaluate the merits of the protest, the Commission's determination, and any response submitted by an interested party. The BOC, in its review, may require the Commission, the protesting party, the Successful Bidder, or any other interested party to address additional issues raised; may obtain information from an outside source; or may determine whether the BOC deems it necessary to conduct a fact-finding hearing, and the level of formality of any hearing conducted; and
- I. The BOC will issue a written determination addressing the issues raised by the appeal. All interested parties shall be provided with a copy of the determination. The determination shall be made part of the procurement record.

1.30 EXECUTIVE ORDER NO. 177 CERTIFICATION

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

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

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

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

1.31 CERTIFICATION OF COMPLIANCE WITH STATE FINANCE LAW §139(I)

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

1.32 EXECUTIVE ORDER NO. 16 CERTIFICATION

On March 17, 2022, Governor Kathy Hochul issued Executive Order No. 16, which stated that “[a]ll Affected State Entities are directed to refrain from entering into any new contract or renewing any existing contract with an entity conducting business operations in Russia.” On March 24, 2022, the United States, in coordination with the European Union and the Group of Seven (G-7), imposed sanctions on an additional 400 Russian individuals and entities. The federal sanctions include efforts to block moves by Russian entities and individuals to evade the sanctions imposed or to use international reserves. Executive Order No. 16 is intended to ensure that New York State is not entering into contracts with entities conducting business in Russia and thereby indirectly supporting Russia’s unjustified war against the Ukrainian people. Bidders must certify compliance by signing and returning **Appendix N, EO 16 Certification.**

PART 2 – CONTRACTUAL PROVISIONS

2.1 **GOVERNING LAW**

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

2.2 **STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS**

Appendix A - Standard Contract Clauses for New York State Contracts (dated June 2023) is attached. **Appendix A** becomes part of all New York State contracts and is incorporated in the Contract form found in **Appendix B** of this RFQ.

2.3 **CONTRACT ELEMENTS**

The Contract resulting from this RFQ will include the following parts:

- Appendix A – Standard Clauses for New York State Contracts (dated June 2023)
- Addenda to the Contract
- Appendix B - Contract Form
- Clarifications and Addenda to the RFQ
- RFQ, Appendices and Attachments
- Clarifications to the Bidder’s Quotation
- Bidder’s Quotation

In the event of a conflict in any provisions of these documents, the order of precedence shall be as listed above from the highest to the lowest.

2.4 **SEVERABILITY**

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

2.5 TERM OF CONTRACT

The Contract's term is March 1, 2024 through February 28, 2029.

2.6 ALL-INCLUSIVE

This is an all-inclusive Contract. Unless otherwise specified, all-inclusive shall mean that the Bidder's Quotation price includes, but is not necessarily limited to, all labor, material, and supplies; all administrative, reporting, or other requirements; and all overhead costs and profit. The Bidder's Quotation price shall also include parking fees and any other ancillary fees and costs, including permits, licenses, insurance, etc. Details of services not explicitly stated in these specifications, but necessarily attendant, are deemed to be understood by the Bidder and included herein.

2.7 COMPENSATION

The Successful Bidder will be compensated for services provided in accordance with the Scope of Work at the rates set forth in the Quotation for each type of service indicated.

Payment under the Contract will be in accordance with New York State Prompt Payment Law (Article 11-A of New York State's State Finance Law).

2.8 CONTRACT INVOICING AND PAYMENT

Payment for services will be made upon completion of services and upon receipt by the Commission of a proper invoice. Payment for services rendered on an hourly rate basis will be made upon submission by the contractor of monthly, itemized invoices.

Invoices shall be consistent with the pricing provided in the Quotation, as defined in this RFQ. 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 required).

Monthly invoices shall be submitted as a PDF attachment and directed to the New York State Business Services Center at accountspayable@ogs.ny.gov and a copy must be directed to the Commission's Finance Office at the following email address: Gaming.sm.invoice.finance@gaming.ny.gov. The Commission shall promptly process all payments due to the Contractor that conform to the provisions of this RFQ and which are approved by the Commission's Contract Administrator and Finance Officer, or designee.

2.9 VENDOR IDENTIFICATION NUMBER

Substitute Form W-9, Appendix F: To do business with the State of New York, each Bidder is required to obtain a New York State Vendor Identification Number for use in the Statewide Financial System ("SFS"). If the Bidder does not already have a Vendor ID

Number, the Substitute Form W-9 must be completed and submitted directly to the Commission upon notification of award. The purpose of the Substitute Form W-9, which will capture the Contractor's taxpayer identification number, business name, and business contact person, is to allow the State to establish a Vendor file in the SFS.

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

2.10 CONSULTANT DISCLOSURE

The Contractor must comply with the requirements of New York State's State Finance Law section 163(4)(g), which imposes certain reporting requirements on contractors doing business as vendors with New York State. In furtherance of these reporting requirements, the Contractor agrees to complete and submit Contractor's Planned Employment Report (**Appendix J – Form A**) within two business days after receiving notice of a Contract award and Contractor's Annual Employment Report (**Appendix J – Form B**) by May 15th for each fiscal year (April 1 – March 31) the Contract term is in effect. Page two of each form provides the necessary addresses for submitting the form.

While the Planned Employment report (Form A) is a one-time projection of the planned employment under the upcoming Contract term, the Annual Employment Report (Form B) is a reporting of the actual employment history for the previous fiscal year.

Forms A and B should be completed as follows:

- **Employment Category:** The Contractor must use specific occupation titles as listed in the O*net occupational classification system found through the U.S. Department of Labor's Employment and Training Administration (www.onetonline.org). The classification system provides a code for various occupational titles; the Contractor should use the code that best defines the employment titles to be utilized under the Contract.
- **Number of Employees:** Enter the number of employees in the employment category employed to provide services (Form A), or who have performed services (Form B), during the reporting period, including part-time employees and employees of subcontractors.
- **Number of Hours Worked or to be Worked:** Enter the number of hours to be worked (Form A), or the number of hours worked (Form B), under the employment category for the relevant reporting periods.
- **Amount payable or paid under the Contract:** Enter the estimated amount to be paid (Form A), or the amount actually paid (Form B), for each employment category for the relevant reporting periods.
- **Scope of Contract (Form B only):** Choose the category that best describes the predominant nature of the services performed under the Contract.

2.11 AUDITOR INDEPENDENCE

The Contractor shall annually submit a statement, signed by an authorized signatory, that the firm is independent of the Commission in accordance with the AICPA standards and is able to conduct the proposed audit.

2.12 TRANSITION

Upon expiration or termination of this Contract, the Contractor shall, upon the appointment of the successor contractor, provide such successor contractor access to all necessary records in the Contractor's possession relating to the services provided under this Contract. At the Commission's request, the Contractor shall, at no cost to the Commission, also make appropriate staff available to the Commission and to the successor contractor during normal business hours to answer questions regarding such records and the services which have been provided by the Contractor under this Contract. The Contractor shall cooperate to the fullest extent with any successor contractor in order to accomplish a smooth and orderly transition, so that the services required are uninterrupted and are not adversely impacted by the change in contractor.

2.13 TAX LAW SECTION 5-A

The Bidder awarded a Contract pursuant to this RFQ must comply with the requirements of New York State Tax Law section 5-a, which requires businesses that are awarded contracts with New York State to certify that they are registered to collect New York State and local sales and use taxes on sales delivered to locations within New York. The OSC or other responsible approver cannot approve the Contract unless the Contractor is registered with the New York State Department of Taxation and Finance to collect sales and compensating use taxes, pursuant to this section.

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

Bidders can visit the New York State Department of Taxation and Finance website to obtain more information: https://www.tax.ny.gov/pubs_and_bulls/tg_bulletins/st/section_5a.htm.

2.14 INSURER QUALIFICATIONS AND INSURANCE REQUIREMENTS

Insurer qualifications and insurance requirements are provided in **Appendix O** of the RFQ. The Contractor must comply with these requirements to remain responsible under the terms of an ensuing Contract.

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

2.15 CONTRACTOR REQUIREMENTS AND PROCEDURES FOR EQUAL EMPLOYMENT AND BUSINESS PARTICIPATION OPPORTUNITIES FOR MINORITY GROUP MEMBERS AND NEW YORK STATE CERTIFIED MINORITY/WOMEN-OWNED BUSINESSES

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

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

The Equal Employment Opportunities (“EEO”) and Minority and/or Women-Owned Business Enterprises (“M/WBE”) requirements are set forth in Appendix I of this RFQ.

The M/WBE goal established under this RFQ is 30%.

2.16 NEW YORK STATE SERVICE-DISABLED VETERAN-OWNED BUSINESSES

Veterans’ Services Law Article 3 provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses (“SDVOB”), thereby further integrating such businesses into New York State’s economy. The Commission recognizes the need to promote the employment of service-disabled veterans and to ensure that certified SDVOBs have opportunities for maximum feasible participation in the performance of Commission contracts.

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

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

The SDVOB goal established under this RFQ is 6%.

2.17 SUCCESSFUL BIDDER RESPONSIBILITIES AS PRIMARY CONTRACTOR

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

The Successful Bidder may have subcontractors; however, the Successful Bidder must accept full responsibility for the performance of any such subcontractor. If any part of the work is to be subcontracted, responses to this RFQ must include a list of subcontractors, as provided in **PART 4 - QUOTATION**.

2.18 APPROVAL OF STAFFING

The Commission reserves the right to review and, if perceived necessary in its discretion, disapprove of any employee of the Successful Bidder that is assigned to the Commission Contract, either at Contract inception or during the term or any extension thereof.

2.19 NEW YORK STATE SUBCONTRACTORS AND SUPPLIERS

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

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

2.20 SUBCONTRACT APPROVAL

Any subcontractor must first be approved by the Commission, which may require the Successful Bidder to replace subcontractors who are determined to be unacceptable, either upon inception or during the term or any extension of the Contract. Subcontractors are subject to background checks of personnel and principals and may also require licensing.

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

The Successful Bidder may arrange for a portion(s) of its responsibilities pursuant to the Contract to be subcontracted to qualified, responsible subcontractors, subject to approval of the Commission. If the Successful Bidder determines to subcontract a portion of the services, the subcontractor(s) must be clearly identified and the nature and extent of its

involvement in and/or proposed performance under the Contract must be fully explained by the Successful Bidder to the Commission. As part of this explanation, the subcontractor must submit to the Commission a completed **Appendix K, Vendor Assurance of No Conflict of Interest or Detrimental Effect**, as required by the Successful Bidder prior to execution of the Contract (See Section 1.23).

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

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

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

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

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

2.21 DELEGATION AND/OR ASSIGNMENT

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

2.22 CODE OF CONDUCT FOR CONTRACTOR

The Commission is an extremely sensitive enterprise because of the nature of the business and because it is government operated. Therefore, it is essential that its operation, and the

operation of other enterprises which would be linked to it in the public mind, avoid not only impropriety but also the appearance of impropriety. Due to this, contractors and subcontractors associated with the Commission are expected to:

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

2.23 OWNERSHIP OF MATERIALS

Ownership of all data, documentary material, and reports originated and prepared exclusively for the Commission pursuant to any Contract resulting from this RFQ shall belong to the Commission. The Successful Bidder agrees that, except where noted, all materials, documents, products, reports, data, and other information, whether finished, unfinished, or draft developed, gathered, or compiled pursuant to this Contract by the Successful Bidder are the sole property of the Commission and that they shall not be used or destroyed by the Successful Bidder or any other person without express written permission of the Commission.

2.24 LICENSED INTELLECTUAL PROPERTY

To the extent that the Bidder utilizes or relies upon the Intellectual Property Rights of a third party in fulfilling its obligations under the Contract, the Bidder will provide the Commission with whatever assurance the Commission deems necessary that the use of such third-party intellectual property is permissible. In addition, in the event of failure to perform or a breach of Contract the Bidder shall ensure continued right of use of licensed intellectual property by the Commission. The Commission will not pay a fee for rights already held by the Bidder; however, if fees are incurred for the licensing of intellectual property owned by any third

party relevant to the fulfillment of the services under this RFQ, any fees to be paid by the Commission for use of a third party's intellectual property will be negotiated on a case by case basis. The Bidder shall provide a list of any third party's intellectual property relevant to this procurement that the Bidder is currently licensed to use.

2.25 COMMISSION SECURITY REQUIREMENTS

The Contractor, including its employees, officers, and agents, shall be required to comply with all present and future security procedures of New York State communicated to it in the performance of the Contract, including ITS Information Security policies and procedures located at <https://its.ny.gov/policies>. In addition, the Contractor, project managers, their employees, officers and agents, and any and all persons involved in projects and work assignments under the Contract will be required, prior to access to any of the Commission's sites, to be given a security clearance by the Commission. Anyone seeking access to a Commission site shall provide his or her name, address, date of birth, company affiliation, and a company point of contact for employment verification, at least one week prior to any site visit. Once preliminary access approval is granted by the Commission, all visitors to a site must provide two forms of valid identification, including one photo ID, and written authorization that they are acting on behalf of a designated employer or contractor. Only after site authorization is confirmed, will the Commission approve access to the Commission site. The Contractor, to the extent the following meets or exceeds ITS Information Security policies described above, shall use industry standard security measures, including standard encryption protocols, to protect and guard the availability and security of all "Confidential Information" as defined within section 13 of the Contract, and adhere to all security policies. The Contractor shall be strictly prohibited from using Confidential Information in any fashion other than that defined herein. The Contractor warrants that it will be properly informed and trained regarding security standards and is prohibited from disclosing Confidential Information to any persons without a need to know. The Commission's information shall not be removed, through any means (stored on non-Commissioned owned devices, photographed, thumb drive, etc.) from any site or facility without express permission, in writing, from Commission management. If removal or storage is required and permission received, Commission electronic data shall be encrypted while at rest and in transit. Upon completion of the assignment, all Commission data must be destroyed in accordance with the sanitization requirements described in ITS Security Policy NYS-S13-003 (See https://its.ny.gov/system/files/documents/2022/10/nys-s13-003_sanitization_secure_disposal_standard.pdf) as updated or superseded at the time the sanitization process is implemented, and, where required, Criminal Justice Information Systems (CJIS) sanitization and disposal standards. Data destruction shall be confirmed in writing to the Commission by an authorized representative of the Contractor.

If immediate purging of all data storage components is not possible, the Contractor shall certify that any data remaining in any storage component will be safeguarded to prevent unauthorized disclosures. The Contractor shall then certify to the Commission, in writing, that it has complied with the provisions of this paragraph. The Commission may withhold payment to the Contractor if Commission data is not released to the Commission in accordance with the preceding sections.

A. Physical Security During the Delivery of Contracted Services

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

B. Access by Personnel

- (i) The Contractor, its officers, agents, subcontractors, and their employees and independent contractors, shall be required to comply with all applicable facility and information security policies and procedures of the Commission and the State in performing the Scope of Work under this RFQ. Such policies and procedures shall be communicated to the Contractor as a condition precedent to Contractor's obligations under this paragraph.
- (ii) The Contractor warrants that each individual performing work under this RFQ is legally eligible to work in the United States and that such eligibility shall be maintained at all times during the engagement while the individual is accessing any Commission site, information systems, or data contained therein. In addition, prior to accessing any Commission site, project information systems or data contained therein, the Contractor, and its officers, agents, sub-contractors, and their collective employees and independent contractors performing work under this RFQ, shall be required to:
 - (a) Obtain security clearance from the Commission, which may include, at the Commission's discretion, a criminal history and/or background investigation of each individual proposed to perform work under the Contract. Each individual assigned to the project by or through the Contractor shall be required to submit identifying information to the Commission.
 - (b) Obtain from the Commission and prominently display on their person, Commission-issued identification cards at all times while physically present at any Commission site.

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

2.26 NON-EXCLUSIVE RIGHTS

Nothing in this RFQ or the Contract resulting from this RFQ shall preclude the Commission from obtaining services from other sources.

PART 3 – SCOPE OF WORK

3.1 **SCOPE OF WORK**

The Commission requests a Quotation from CPA firms interested in entering into a contract with the Commission to perform the professional accounting and auditing services listed below:

- A. Examination of the Commission's annual financial statements for the Lottery; and
- B. Performance of Agreed Upon Procedures for multijurisdictional games.

The Contractor will carry out this project under the direction and control of the Commission's Chief Accountant in the Division of Lottery.

Background information and detailed requirements for each of the above areas is provided in the sections that follow.

A. **EXAMINATION OF FINANCIAL STATEMENTS**

Overview

The firm selected will be required to conduct examinations, in accordance with GAAS, of the financial statements for all funds included in the Lottery Enterprise Fund for the fiscal years ending March 31 in 2024, 2025, 2026, 2027 and 2028.

Duties and Responsibilities of the Auditor

The selected firm will be expected to:

- Conduct a pre-audit conference each fiscal year. The purpose of this conference is to discuss the proposed audit plan and establish timelines for completion of the audit.
- Provide an audit engagement letter stating the terms and conditions of the engagement, including the scope of the audit and the firm's commitment.
- Conduct audit fieldwork and provide progress updates to Commission staff explaining; (1) any progress to date not consistent with the fiscal year audit plan and time schedule, and (2) any accounting or auditing concerns that have come to the auditor's attention that would have an impact on the opinion on the financial statements for the fiscal year being examined. The financial statements for fiscal years 2021-22 is included as Exhibit 1.
- Deliver the audited financial statements and a management letter identifying any internal control deficiencies to the Commission no later than June 30th of each year of the Contract term.
- Upon completion of each year's audit and after all deliverables have been received, conduct an exit conference with Commission staff. The exit conference will provide the auditor an opportunity to report on the audit and discuss the content of the

auditor's reports and any other significant observations and/or issues identified during the audit.

- If necessary, assist Commission management with advice and counsel pertaining to audit recommendations.

The selected firm will be provided with two SSAE 18, SOC I, Type II Reports that describe the internal control environment of third-party contractors utilized for the full-service Lottery system (International Game Technology, PLC) and the video lottery gaming system (Everi Games, Inc.). A description of the transaction processing performed by these two contractors is included as **Exhibits 2a and 2b, respectively**, to enable competing firms to better understand how these entities interface with the Commission's operations.

Workspace

A work area at the Commission's headquarters in Schenectady, including internet connectivity, will be provided for the auditors during their examination of the financial statements. However, the Vendor must be able to perform the entire audit remotely should circumstances and/or restrictions arise, such as those resulting from the COVID-19 pandemic, that would prohibit the Vendor from working at the Commission's headquarters. Equipment and supplies such as binders, personal computers, calculators, etc., are the responsibility of the auditors.

B. PERFORMANCE OF AGREED UPON PROCEDURES FOR MULTI-JURISDICTIONAL GAMES

Overview

The Commission is a party to an agreement entered into with other states participating in multijurisdictional games which currently includes Cash 4 Life. This agreement requires agreed upon procedures in relation to sales verification, prize verification, or other steps, as well as utilizing a certified public accounting firm to test the Commission's Lottery sales and prize results from April 1 of each year through March 31 of the following year, and the receivable or payable as of March 31.

Payment will be made for actual hours worked, based on the hourly rates provided in Attachment 2 – Quotation Form.

Duties and Responsibilities of Tester

The firm selected will be expected to perform the current Agreed Upon Procedures for the multijurisdictional game for the fiscal years ending on March 31st in 2024, 2025, 2026, 2027, and 2028. There is currently one separate Agreed Upon Procedures for Cash 4 Life. A copy of the New York State Lottery Cash 4 Life with Independent Accountant's Report on Applying Agreed-Upon Procedures for the fiscal year ending March 31, 2022 is provided as **Exhibit 3** as a sample for reference.

The tasks outlined in the Agreed Upon Procedures are to be performed annually in accordance with standards established by the AICPA. A report is to be provided to the Commission, by September 30th of each year, of the procedural tasks completed and related findings. Because these procedures do not constitute an audit, an opinion will not be required on any of the elements, accounts, or items of the financial statements. Language addressing the expectations and limitations associated with reporting the procedures above is to be mutually agreed upon prior to issuing the annual report.

PART 4 – QUOTATION

4.1 INTRODUCTION

This Part 4 provides the requirements for the development of a Quotation and the Quotation submission requirements. In preparation of the Quotation, each Bidder should pay special attention to the requirements and information being requested in order to respond fully to the RFQ. Any Quotation found to be incomplete or placing conditions in response to the requirements under this RFQ may be deemed non-responsive and removed from further consideration. **Attachment 4, Document Submittal Checklist**, is provided to assist the Bidder in including all required information and documentation. This checklist must be completed and included with the Bidder's Quotation.

4.2 QUOTATION FORM

Utilizing the Quotation Form, **Attachment 2a & 2b**, the Bidder is to propose pricing based on the Scope of Work set forth in **Part 3** of this RFQ. **Bidder must use Attachment 2a & 2b as directed. Alternative pricing structures will be deemed non-responsive.**

- A. Examination of Financial Statements (Attachment 2a): The cost breakdown for each year should present the following information:
- The staff titles to be assigned to the work;
 - The hourly rates for each staff title;
 - An estimate of the number of hours needed to complete the project for each staff title; and
 - The total annual price to the Commission.

The total annual price to the Commission shall constitute the maximum amount that the firm will be allowed to bill the Commission annually. If the firm completes the work in less time than estimated, only the actual number of hours worked may be billed.

The Bidder must list the specific staff titles to be used, including specialty titles, as only the titles and corresponding rates proposed can be billed. Additionally, a person can only be billed under one title, even if working on different projects.

- B. Performance of Agreed Upon Procedures for Multi-jurisdictional Games (Attachment 2b): The cost breakdown for each year should present the following information:
- The staff titles to be assigned to the work;
 - The hourly rates for each staff title;
 - The number of hours the firm estimates will be needed to complete the project for each staff title; and
 - The total annual price to the Commission.

Pricing submitted on Attachment 2b will apply to each game reviewed.

The total annual price to the Commission shall constitute the maximum amount that the firm will be allowed to bill the Commission annually for the multijurisdictional game. If the firm completes the work in less time than estimated, only the actual number of hours worked may be billed.

The Bidder must list the specific titles to be used, including specialty titles as only the titles and corresponding rates proposed can be billed. Additionally, a person can only be billed under one title, even if working on different projects.

4.3 REFERENCES

The firm must include at least three (3) references relevant to any of the requested services. References must include company name, contact person (name, title, phone number, email address, and mailing address). Information provided must also include a general statement of the type of engagement performed by the Bidder for this reference.

Bidders who have previously held a comparable contract with the Commission within the past three years do not need to submit references. Such Bidders will be evaluated based on the goods and services provided to the Commission.

4.4 SUBCONTRACTORS

If applicable, list all subcontractors, including firm name and address, contact person, and a complete description of work to be subcontracted. Descriptive information relative to the subcontractor's organization and capabilities must be included.

PART 5 – AWARD

5.1 **METHOD OF AWARD**

The Commission intends to procure these services pursuant to its discretionary purchasing authority under State Finance Law section 163(6). This procurement opportunity is limited to New York State small businesses and businesses certified pursuant to Article 15-A of the New York State Executive Law, and/or businesses certified pursuant Veterans' Services Law Article 3.

5.2 **INFORMATION FROM OTHER SOURCES**

The Commission reserves the right to obtain from sources other than the Bidder, information concerning a Bidder, the Bidder's offerings and capabilities, and the Bidder's performance, that the Commission deems pertinent to this RFQ.

References will be checked regarding the Bidder's past experience. The Commission reserves the right to contact references as many times as is necessary and to contact as many references as is necessary, to obtain a complete understanding of the Bidder's performance and experience.

5.3 **NOTICE OF AWARD**

A Contract award notification letter will be sent to the Successful Bidder and unsuccessful Bidders indicating award subject to approval by the OAG and the OSC.

No public discussion or news releases relating to this RFQ or the resulting Contract shall be made by any Bidder without the prior approval of the Commission.

5.4 **DEBRIEFINGS**

The Commission shall, upon request, provide a debriefing to any unsuccessful Bidder that responded to this solicitation regarding the reasons that the Bidder's response was not selected for an award. A debriefing shall be requested by the unsuccessful Bidder within 15 calendar days of release by the state agency of a notice in writing or electronically that the Bidder's offer is unsuccessful.

APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

**PLEASE RETAIN THIS DOCUMENT
FOR FUTURE REFERENCE.**

STANDARD CLAUSES FOR NYS CONTRACTS

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

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

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

3. COMPTROLLER’S APPROVAL. In accordance with Section 112 of the State Finance Law, if this contract exceeds \$50,000 (or \$75,000 for State University of New York or City University of New York contracts for goods, services, construction and printing, and \$150,000 for State University Health Care Facilities) or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$25,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller’s approval of contracts let by the Office of General Services, either for itself or its customer agencies by the Office of General Services Business Services Center, is required when such contracts exceed \$85,000. Comptroller’s approval of contracts established as centralized contracts through the Office of General Services is required when such contracts exceed \$125,000, and when a purchase order or other procurement transaction issued under such centralized contract exceeds \$200,000.

4. WORKERS’ COMPENSATION BENEFITS. In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers’ Compensation Law.

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

6. WAGE AND HOURS PROVISIONS. If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor’s employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in

accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

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

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

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

10. RECORDS. The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, the "Records"). The Records

must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

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

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

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.

In accordance with Section 312 of the Executive Law and 5 NYCRR Part 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

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

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

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

Contractor will include the provisions of "(a), (b) and (c)" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not

apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this clause. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

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

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

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

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

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

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

law will be the responsibility of the contractor to establish to meet with the approval of the State.

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

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

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

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

NYS Department of Economic Development
Division for Small Business and Technology Development
625 Broadway
Albany, New York 12245
Telephone: 518-292-5100

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

NYS Department of Economic Development
Division of Minority and Women's Business Development
633 Third Avenue 33rd Floor
New York, NY 10017
646-846-7364
email: mwbebusinessdev@esd.ny.gov
<https://ny.newnycontracts.com/FrontEnd/searchcertifieddirectory.asp>

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

(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority- and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;

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

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

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

21. RECIPROCITY AND SANCTIONS PROVISIONS. Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively, codified in State Finance Law § 165(6) and Public Authorities Law § 2879(5)) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 2023, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii.

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

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

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 this Contract is terminated under the provisions of (a) or (b) of this section, the 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 to the Contractor for lost profits, or incidental, consequential, or special damages based upon the exercise of the Commission's termination rights.

11. **Responsibility.**

- a. The Contractor shall at all times during the Contract term remain responsible as defined by New York State's State Finance Law §163(1)(c). The Contractor agrees, if requested by the Commission's Executive Director, or his or her designee, to present evidence regarding the Contractor's continuing legal authority to do business in the State of New York, as well as its integrity, experience, ability, prior performance, and organizational and financial capacity.
- b. The Commission's Executive Director, 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 suspension, the Contractor must comply with the terms of the suspension. The Contractor may resume performance of this Contract at such time as the Commission's Executive Director, or his or her designee, issues a written notice authorizing its resumption.

12. **Conflicts of Interest.**

- a. The Contractor shall provide a completed "Vendor Assurance of No Conflict of Interest or Detrimental Effect" form (or any updated form identified by the Commission for the same purpose), signed by an authorized executive or legal representative of the Contractor. The Contractor hereby reaffirms the attestations

retained in their original form, or in any other reliable and readily retrievable format, at the option of the Contractor.

15. **Notice**. All notice required by this Contract shall be sufficient if in writing and sent by certified mail with return receipt requested, unless otherwise specifically allowed to be provided by email. All other communications shall be sufficient if communicated in writing by First Class Mail or hand delivery 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:

[Company Name and Address]

16. **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. To the extent permitted by law, the Contractor shall forever defend, indemnify, and hold harmless the State of New York, the Commission, and their respective commissioners, officers, agents, directors, employees, other contractors, and sales agents, and all agents, employees, officers and directors of such contractors and sales agents ("the Indemnified Parties"), from and against any and all claims, liabilities, losses, damages, costs, injuries, debts or expenses (including reasonable fees, court costs, and expenses of attorneys of the Commission's choice), which may be made, incurred, suffered, or required in whole or in part based on, arising out of, or being related to the Contractor's response to this RFQ, as well as the Contractor's and the Contractors' subcontractors' and sub-subcontractors' (a) obligations to the State of New York or other governmental or legal authority, (b) contracts and

subcontracts (including sub-subcontracts), and (c) products and services provided under the Contract.

17. **Relationship.** The relationship of the Contractor to the Commission arising out of this Contract shall be that of an independent contractor. The Contractor retains sole and absolute discretion in the manner and means of carrying out the Contractor's activities and responsibilities under this Contract, except to the extent specified in this Contract. The Contractor, all employees of the Contractor, and the Contractor's subcontractor(s) and sub-subcontractors, if any, in accordance with their respective 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.

All personnel of the Contractor shall be within the employ of the Contractor only, or shall be duly contracted subcontractors of the Contractor, with the Contractor alone responsible for their work, the direction thereof, and their compensation. Nothing in this Contract shall impose any liability or duty on the Commission or the State of New York, for any acts, omissions, liabilities or obligations of the Contractor, a subcontractor, a 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 Indemnified Parties from and against any and all claims, liabilities, losses, damages, costs, injuries, debts or expenses (including reasonable fees, court costs, and expenses of attorneys of the Commission's choice).

18. **Force Majeure.** A Force Majeure occurrence is an event or effect that cannot be reasonably anticipated or controlled. As used herein, Force Majeure means riot, sabotage, boycott, embargo, or civil or military disturbances; interruption of or delay in transportation; national emergency; acts of terrorism; inability to procure material; failure

of electricity or other utilities; restrictive laws, regulations or orders, or any act or failure to act, of any federal, state or local government or governmental agency or authority; confiscation or seizure by any governmental authority; condemnations by any governmental authority; riots or insurrection; wars or war-like actions; earthquakes, flood, storms, wash-outs, fire, lightning or other severe inclement weather, or other acts of god; explosions or other accidents; nuclear reaction or radiation; epidemic, pandemic, or other public health crisis or emergency, whether national or local; interruption or loss of internet, computer, telephone, broadcast or other communications or service; or other similar causes which are 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 this Contract due to a Force Majeure occurrence. Any such delay in or failure of performance shall not constitute a breach of the Contract or give rise to any liability for damages. The Commission shall extend the period for performance, subject to the provisions of Section 6 – Approvals Required, of this Contract, to enable complete performance by the Contractor if reasonable diligence is exercised after the cause of delay or failure has been removed.

19. **Severability.** If any term or section of this Contract is declared by a court having jurisdiction to be illegal or unenforceable, the validity of the remaining terms or sections is unaffected, and, if possible, the rights and obligations of the parties are to be construed and enforced as if the Contract did not contain that term.

20. **Documents Incorporated.** Appendix A, Standard Clauses for New York State Contracts, dated June 2023, the RFQ, and the Quotation are hereby incorporated to the same force and effect as if set forth herein.

21. **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. The RFQ and any clarifying responses by the Commission; and
- e. The Quotation and any clarifying responses by the Contractor.

22. **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. 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.

23. **Spoliation – Notice of Potential Claims.** The Contractor shall promptly notify the Commission of all claims and potential claims that arise, result from, or are related to this Contract. The Contractor shall also take all reasonable steps to preserve all physical evidence and information that may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and grants to the Commission the opportunity to review and inspect the evidence, including the scene of an accident or documentation involved in such claim or potential claim.

24. **Attorney Fees.** In the event a lawsuit is instituted by the Commission to obtain performance due under this Contract, and the Commission is the prevailing party, the Contractor shall, except when prohibited by statute or other rule of law, pay the Commission's reasonable attorney fees and costs in connection with the lawsuit.

25. **Work Product, Equipment, and Materials.** All work product, equipment, or materials created or purchased under this Contract belong to the Commission and must be delivered to the Commission at the Commission's request upon termination of this Contract. The Contractor agrees that all materials prepared under this Contract are "works for hire" within the meaning of the copyright laws of the United States and assigns to the Commission all rights and interests the Contractor may have in the materials it prepares under this Contract, including any right to derivative use of the material. The Contractor

shall execute all necessary documents to enable the Commission to protect its copyrights under this section.

26. **Representations and Warranties.** The Contractor represents and warrants to the Commission that neither the Contractor, in connection with performing the services in performance of this Contract, nor the completed product delivered by the Contractor, will infringe any patent, copyright, trademark, trade secret, or other proprietary right of any person. The Contractor further represents and warrants to the Commission that it will not use any trade secrets or confidential or proprietary information owned by any third party in performing the services related to this contract or in delivery of the completed product, unless it has obtained the appropriate and legal license to use the same in execution of its services under this Contract. The Contractor further represents and warrants to the Commission that neither the Contractor nor any other company or individual performing services pursuant to this Contract is under any obligation to assign or give any work done under this Contract to any third party.
27. **Counterparts.** This Contract may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Contract delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Contract.
28. **Effectiveness of Contract.** This Contract is not effective until fully executed by both parties through their authorized representatives. Upon full execution, the Contract shall be effective as of the day and year first above written.

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

[CONTRACTOR]

NEW YORK STATE
GAMING COMMISSION

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

NEW YORK STATE
Attorney General

NEW YORK STATE COMPTROLLER
Thomas P. DiNapoli

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

The submission of the attached Vendor Responsibility Questionnaire, also found online at <https://www.osc.state.ny.us/vendrep/>, is required with your bid.

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

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

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

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

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

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

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

Contractor Name (print)

Signature

Company Name

Date

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

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

COMPLETION & CERTIFICATION

The person(s) completing the questionnaire must be knowledgeable about the vendor's business and operations. An owner or owner's official representative authorized to legally bind the Reporting Entity must certify the truth of the questionnaire answers.

NEW YORK STATE VENDOR IDENTIFICATION NUMBER (VENDOR ID)

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

DEFINITIONS

All underlined terms are defined in the "New York State Vendor Responsibility Definitions List," found at <https://www.osc.state.ny.us/files/vendors/2017-11/vendor-questionnaire-definitions.pdf>. These terms may not have their ordinary, common or traditional meanings. Each vendor must read the respective definitions for any and all underlined terms. By submitting this questionnaire, the vendor agrees to be bound by the terms as defined in the "New York State Vendor Responsibility Definitions List" existing at the time of certification.

RESPONSES

Every question must be answered fully. Each response must provide **all** relevant information to appropriately explain the answer. If you have concerns as to the legal requirements behind your answers, please seek clarification from your counsel. However, information regarding a determination or finding made in error which was subsequently corrected or overturned, and/or was withdrawn by the issuing government entity is not required to be identified. Individuals and Sole Proprietors may use a Social Security Number but are encouraged to obtain and use a federal Employer Identification Number (EIN).

REPORTING ENTITY

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

ASSOCIATED ENTITY

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

STRUCTURE OF THE QUESTIONNAIRE

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

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

| I. LEGAL BUSINESS ENTITY INFORMATION | | | |
|---|------|--|--|
| <u>Legal Business Entity Name*</u> | | <u>EIN</u> | |
| Address of the <u>Principal Place of Business</u> (street, city, state, zip code) | | <u>New York State Vendor Identification Number</u> | |
| | | Telephone Ext. | Fax |
| Email | | Website | |
| Additional <u>Legal Business Entity</u> Identities: If applicable, list any other <u>DBA</u> , <u>Trade Name</u> , <u>Former Name</u> , Other Identity, or <u>EIN</u> used in the last five (5) years and the status (active or inactive). | | | |
| Type | Name | EIN | Status |
| | | | |
| | | | |
| 1.0 <u>Legal Business Entity</u> Type – Check appropriate box and provide additional information: | | | |
| <input type="checkbox"/> <u>Corporation</u> (including <u>PC</u>) | | Date of Incorporation | |
| <input type="checkbox"/> <u>Limited Liability Company (LLC or PLLC)</u> | | Date of Organization | |
| <input type="checkbox"/> <u>Partnership</u> (including <u>LLP</u> , <u>LP</u> or <u>General</u>) | | Date of Registration or Establishment | |
| <input type="checkbox"/> <u>Sole Proprietor</u> | | How many years in business? | |
| <input type="checkbox"/> Other | | Date Established | |
| If Other, explain: | | | |
| 1.1 Was the <u>Legal Business Entity</u> formed or incorporated in New York State? | | | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| If ‘No,’ indicate jurisdiction where <u>Legal Business Entity</u> was formed or incorporated and attach a <u>Certificate of Good Standing</u> from the applicable jurisdiction or provide an explanation if a <u>Certificate of Good Standing</u> is not available. | | | |
| <input type="checkbox"/> United States State _____ | | | |
| <input type="checkbox"/> Other Country _____ | | | |
| Explain, if not available: | | | |
| 1.2 Is the <u>Legal Business Entity</u> publicly traded? | | | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| If “Yes,” provide <u>CIK Code</u> or Ticker Symbol | | | |
| 1.3 Does the <u>Legal Business Entity</u> have a <u>DUNS</u> Number? | | | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| If “Yes,” Enter <u>DUNS</u> Number | | | |

*All underlined terms are defined in the “New York State Vendor Responsibility Definitions List,” which can be found at <https://www.osc.state.ny.us/files/vendors/2017-11/vendor-questionnaire-definitions.pdf>

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

I. LEGAL BUSINESS ENTITY INFORMATION

| | |
|--|--|
| 1.4 If the <u>Legal Business Entity</u> 's <u>Principal Place of Business</u> is not in New York State, does the <u>Legal Business Entity</u> maintain an office in New York State? (Select "N/A," if <u>Principal Place of Business</u> is in New York State.) | <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A |
|--|--|

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

| | |
|---|--|
| 1.5 Is the <u>Legal Business Entity</u> a New York State certified <u>Minority-Owned Business Enterprise</u> (MBE), <u>Women-Owned Business Enterprise</u> (WBE), <u>Service-Disabled Veteran-Owned Business</u> (SDVOB), <u>New York State Small Business</u> (SB) or a federally certified <u>Disadvantaged Business Enterprise</u> (DBE)? If "Yes," check all that apply: <input type="checkbox"/> New York State certified <u>Minority-Owned Business Enterprise</u> (MBE) <input type="checkbox"/> New York State certified <u>Women-Owned Business Enterprise</u> (WBE) <input type="checkbox"/> New York State certified <u>Service-Disabled Veteran-Owned Business</u> (SDVOB) <input type="checkbox"/> <u>New York State Small Business</u> (SB) <input type="checkbox"/> Federally certified <u>Disadvantaged Business Enterprise</u> (DBE) | <input type="checkbox"/> Yes <input type="checkbox"/> No |
|---|--|

1.6 Identify Officials and Principal Owners of the Reporting Entity, if applicable. For each person, include name, title, date of birth, and percentage of ownership. For each Business Entity that is a Principal Owner, include name, address, EIN, and percentage ownership. Identify all Business Entities owning 25% or more of the Reporting Entity and include name, address, EIN and percentage of ownership. Attach additional pages if necessary. If applicable, reference to relevant SEC filing(s) containing the required information is optional. Each Business Entity identified as a Principal Owner must also submit a vendor responsibility questionnaire.

If there is no person or Business Entity that owns 25% or more of the Reporting Entity (or 10% or more if the Reporting Entity is publicly traded), check here.

| Name of Officials and Principal Owners (for each person, please include a middle initial) | Title | Date of Birth | Percentage Ownership <i>(Enter 0% if not applicable)</i> |
|---|---------|---------------|---|
| | | | |
| | | | |
| | | | |
| | | | |
| Name of each Business Entity owning 25% or more of Reporting Entity | Address | EIN | Percentage Ownership |
| | | | |
| | | | |
| | | | |
| | | | |

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

II. REPORTING ENTITY INFORMATION

2.0 The Reporting Entity for this questionnaire is:

Note: Select only one.

Legal Business Entity

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

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

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

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

IDENTIFYING INFORMATION

| | |
|--|-----------------------|
| a) <u>Reporting Entity</u> Name | |
| Address of the <u>Primary Place of Business</u> (street, city, state, zip code) | Telephone ext. |
| b) Describe the relationship of the <u>Reporting Entity</u> to the <u>Legal Business Entity</u> | |
| c) Attach an <u>organizational chart</u> | |
| d) Does the Reporting Entity have a <u>DUNS</u> Number? <input type="checkbox"/> Yes <input type="checkbox"/> No | |
| If “Yes,” enter <u>DUNS</u> Number | |
| e) Identify the designated manager(s) responsible for the business of the <u>Reporting Entity</u> . <i>For each person, include name and title. Attach additional pages if necessary.</i> | |
| Name | Title |
| | |
| | |

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

Certification

The undersigned: (1) recognizes that this questionnaire is submitted for the express purpose of assisting New York State government entities (including the Office of the State Comptroller (OSC)) in making responsibility determinations regarding award or approval of a contract or subcontract and that such government entities will rely on information disclosed in the questionnaire in making responsibility determinations; (2) acknowledges that the New York State government entities and OSC may, in their discretion, by means which they may choose, verify the truth and accuracy of all statements made herein; and (3) acknowledges that intentional submission of false or misleading information may result in criminal penalties under State and/or federal law, as well as a finding of non-responsibility, contract suspension or contract termination.

It being acknowledged and agreed that all responses included in this questionnaire are to the knowledge, information and belief of the Business Entity, the undersigned certifies under penalties of perjury that they:

The undersigned certifies that he/she:

- are knowledgeable about the submitting Business Entity's business and operations;
- have legal authority to bind the Business Entity;
- have read and understand all of the questions contained in the questionnaire, including all definitions;
- have not altered the content of the questionnaire in any manner;
- have reviewed and/or supplied full and complete responses to each question;
- have provided true, accurate and complete responses, including all attachments, if applicable;
- understand that New York State government entities will rely on the information disclosed in the questionnaire when entering into a contract with the Business Entity; and
- are under an obligation to update the information provided herein to include any material changes to the Business Entity's responses at the time of bid/proposal submission through the contract award notification, and may be required to update the information at the request of the New York State government entities or OSC prior to the award and/or approval of a contract, or during the term of the contract.

Signature of Owner/Official _____ Date: _____

Printed Name of Signatory _____

Title _____

Name of Business _____

Address _____

City, State, Zip _____



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

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

Part I: Vendor Information

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

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

| | | | | | | | | | | | |
|---|---|--|--|--|--|--|--|--|--|--|--|
| 1. Enter your TIN here: (<i>DO NOT USE DASHES</i>) See instructions. | <table border="1" style="margin: auto; border-collapse: collapse;"> <tr> <td style="width: 20px; height: 20px;"></td> <td style="width: 20px; height: 20px;"></td> <td style="width: 20px; height: 20px;"></td> <td style="width: 20px; height: 20px;"></td> <td style="width: 20px; height: 20px;"></td> <td style="width: 20px; height: 20px;"></td> <td style="width: 20px; height: 20px;"></td> <td style="width: 20px; height: 20px;"></td> <td style="width: 20px; height: 20px;"></td> <td style="width: 20px; height: 20px;"></td> </tr> </table> | | | | | | | | | | |
| | | | | | | | | | | | |
| 2. Taxpayer Identification Type (check appropriate box): <input type="checkbox"/> Employer ID No. (EIN) <input type="checkbox"/> Social Security No. (SSN) <input type="checkbox"/> Individual Taxpayer ID No. (ITIN) <input type="checkbox"/> N/A (Non-United States Business Entity) | | | | | | | | | | | |

Part III: Address

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

Part IV: Certification and Exemption from Backup Withholding

Under penalties of perjury, I certify that:

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

Sign Here:

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

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

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

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

NYS Office of the State Comptroller Instructions for Completing Substitute Form W-9

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

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

Part I: Vendor Information

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

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

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

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

Part III: Address

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

Part IV: Certification and Exemption from Backup Withholding

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

Part V: Vendor Primary Contact Information

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

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



Department of Taxation and Finance

Contractor Certification

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

ST-220-TD

(4/15)

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

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

General information

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

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

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

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

Mail completed form to:

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

Privacy notification

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

Need help?



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

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



Telephone assistance

Sales Tax Information Center: (518) 485-2889

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

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



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

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

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

Section 1 – Contractor registration status

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

Section 2 – Affiliate registration status

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

Section 3 – Subcontractor registration status

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

Sworn to this ____ day of _____, 20 ____

(sign before a notary public)

(title)



Contractor Certification to Covered Agency

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

ST-220-CA

(12/11)

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

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

I, _____, hereby affirm, under penalty of perjury, that I am _____

(name)

(title)

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

(Mark an X in only one box)

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

The contractor has previously filed Form ST-220-TD with the Tax Department in connection with _____

(insert contract number or description)

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

Sworn to this ____ day of _____, 20 ____

(sign before a notary public)

(title)

Instructions

General information

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

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

When to complete this form

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

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

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

Individual, Corporation, Partnership, or LLC Acknowledgment

STATE OF }
: SS.:
COUNTY OF }

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

Town of _____,

County of _____,

State of _____; and further that:

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

[] (If an individual): _he executed the foregoing instrument in his/her name and on his/her own behalf.

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

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

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

Notary Public

Registration No.

Privacy notification

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

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

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

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

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

Need help?



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

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



Telephone assistance

Sales Tax Information Center: (518) 485-2889

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

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



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

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

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

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

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

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

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

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

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

Firm Name: _____

Signature: _____

Date: _____

EEO, MWBE AND SDVOB PROGRAMS

Forms:

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

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

I. General Provisions

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

II. MWBE Contract Goals

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

III. Equal Employment Opportunity ("EEO")

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

B. In performing the Contract, the Contractor shall:

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

C. Staffing Plan—Form I-2

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

D. Workforce Audit Report

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

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

IV. MWBE Utilization Plan – Form I-3

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

V. Waivers—Form I-4

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

VI. Quarterly MWBE Contractor Compliance Report

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

VII. Liquidated Damages - MWBE Participation

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

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

Article 3 of the New York State Veterans' Services Law provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses (“SDVOB”), thereby further integrating such businesses into New York State’s economy. The New York State Gaming Commission (the “Commission”) recognizes the need to promote the employment of service-disabled veterans and to ensure that certified service-disabled veteran-owned businesses have opportunities for maximum feasible participation in the performance of the Commission’s contracts.

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

I. SBVOB Contract Goals

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

II. SDVOB Utilization Plan – Form I-3

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

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

III. Request for Waiver—Form I-4

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

Waiver requests should be sent to the Commission at:

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

IV. Required Good Faith Efforts

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

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

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

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

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

VI. Breach of Contract and Damages

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



MWBE and SDVOB Participation / Equal Employment Opportunity Policy Statement

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

NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY POLICY

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

MWBE PARTICIPATION (MWBE)

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

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



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

SDVOB PARTICIPATION (SDVOB)

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

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

Agreed on this _____ day of _____ 20_____.

By: _____
(SIGNATURE)

Print Name: _____

Title: _____



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

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

MWBE Contract Goals

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

EEO Contract Goals

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

SDVOB Contract Goals

_____ % Service Disabled Veteran Business Participation

(Signature of Contractor’s Authorized Representative)

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

STAFFING PLAN

C202306

I-2

Submit with Bid or Proposal – Instructions on page 2

| | | |
|---------------------------|--------------------------|--|
| Solicitation No.: | Reporting Entity: | Report includes Contractor's/Subcontractor's: <input type="checkbox"/> Work force to be utilized on this contract <input type="checkbox"/> Total work force |
| Offeror's Name: | | <input type="checkbox"/> Offeror <input type="checkbox"/> Subcontractor Subcontractor's name _____ |
| Offeror's Address: | | |

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

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

| | | |
|--|--|---|
| PREPARED BY (Signature): | TELEPHONE NO.: EMAIL ADDRESS: | DATE: |
| NAME AND TITLE OF PREPARER (Print or Type): | | Submit completed with bid or proposal MWBE 101 (Rev 03/11) |

General instructions: All Offerors and each subcontractor identified in the bid or proposal must complete an EEO Staffing Plan (MWBE 101) and submit it as part of the bid or proposal package. Where the work force to be utilized in the performance of the State contract can be separated out from the contractor's and/or subcontractor's total work force, the Offeror shall complete this form only for the anticipated work force to be utilized on the State contract. Where the work force to be utilized in the performance of the State contract cannot be separated out from the contractor's and/or subcontractor's total work force, the Offeror shall complete this form for the contractor's and/or subcontractor's total work force.

Instructions for completing:

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

RACE/ETHNIC IDENTIFICATION

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

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

OTHER CATEGORIES

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

MWBE and SDVOB Utilization Plan

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

* indicates mandatory fields

* Contractor Name: _____

Address: _____

* Representative Name: _____

Town, State & Zip: _____

* Phone: _____

* Contract/Project Number: _____

* Fax: _____

RFP/RFQ/Solicitation Number: _____

* Email: _____

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

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

* SDVOB Goal: _____%

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

MWBE and SDVOB Utilization Plan

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

| | | | | | | | | | | | |
|---|--|----------------|----------------|---|--|---|--|--------------|-------|---|--|
| <p>PREPARED BY (Signature): _____ DATE: _____</p> <p>Preparer's Name (Print or Type): _____</p> <p>Preparer's Title: _____</p> <p>Date: _____</p> <p>SUBMISSION OF THIS FORM CONSTITUTES THE CONTRACTOR'S ACKNOWLEDGEMENT AND AGREEMENT TO COMPLY WITH THE MWBE AND SDVOB REQUIREMENTS SET FORTH UNDER NYS EXECUTIVE LAW ARTICLE 15-A AND NYS VETERANS' SERVICES LAW ARTICLE 3, 5 NYCRR PART 143, 9 NYCRR PART 252, AND THE ABOVE-REFERENCED SOLICITATION. FAILURE TO SUBMIT COMPLETE AND ACCURATE INFORMATION MAY RESULT IN A FINDING OF NONCOMPLIANCE AND POSSIBLE TERMINATION OF YOUR CONTRACT.</p> <p>The MWBE Certification status of the firms listed on this form MUST be verified using the New York State Contract System's Directory of Certified Minority and Women-owned Business Enterprises. _____ This directory is available at https://ny.newnycontracts.com.</p> <p>The SDVOB Certification status of the firms listed on this form MUST be verified using the Directory of New York State Certified Service-Disabled Veteran-Owned Businesses. _____ This directory is available at https://online.ogs.ny.gov/SDVOB/search.</p> | <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; padding: 5px;">TELEPHONE NO.:</td> <td style="width: 50%; padding: 5px;">EMAIL ADDRESS:</td> </tr> <tr> <td colspan="2" style="padding: 5px;"> <p><u>Policy Regarding Use of MWBE Suppliers and Brokers</u></p> <p>Only sums paid to MWBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1, may be applied towards the achievement of the applicable MWBE participation goal.</p> <p>FOR CONSTRUCTION/CAPITAL PROJECTS – The portion of a contract with an MWBE serving as a supplier that shall be deemed to represent the commercially useful function performed by the MWBE shall be 60% of the total value of the contract. The portion of a contract with an MWBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be the monetary value for fees, or the markup percentage, charged by the MWBE.</p> <p>FOR ALL OTHER PROJECTS - The portion of a contract with an MWBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be 25% of the total value of the contract.</p> </td> </tr> <tr> <td colspan="2" style="text-align: center; padding: 5px;"> <p>** FOR COMMISSION USE ONLY **</p> </td> </tr> <tr> <td style="padding: 5px;">REVIEWED BY:</td> <td style="padding: 5px;">DATE:</td> </tr> <tr> <td colspan="2" style="padding: 5px;"> <p>UTILIZATION PLAN APPROVED?</p> <p><input type="checkbox"/> YES <input type="checkbox"/> PARTIAL <input type="checkbox"/> NO Date: _____</p> </td> </tr> </table> | TELEPHONE NO.: | EMAIL ADDRESS: | <p><u>Policy Regarding Use of MWBE Suppliers and Brokers</u></p> <p>Only sums paid to MWBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1, may be applied towards the achievement of the applicable MWBE participation goal.</p> <p>FOR CONSTRUCTION/CAPITAL PROJECTS – The portion of a contract with an MWBE serving as a supplier that shall be deemed to represent the commercially useful function performed by the MWBE shall be 60% of the total value of the contract. The portion of a contract with an MWBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be the monetary value for fees, or the markup percentage, charged by the MWBE.</p> <p>FOR ALL OTHER PROJECTS - The portion of a contract with an MWBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be 25% of the total value of the contract.</p> | | <p>** FOR COMMISSION USE ONLY **</p> | | REVIEWED BY: | DATE: | <p>UTILIZATION PLAN APPROVED?</p> <p><input type="checkbox"/> YES <input type="checkbox"/> PARTIAL <input type="checkbox"/> NO Date: _____</p> | |
| TELEPHONE NO.: | EMAIL ADDRESS: | | | | | | | | | | |
| <p><u>Policy Regarding Use of MWBE Suppliers and Brokers</u></p> <p>Only sums paid to MWBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1, may be applied towards the achievement of the applicable MWBE participation goal.</p> <p>FOR CONSTRUCTION/CAPITAL PROJECTS – The portion of a contract with an MWBE serving as a supplier that shall be deemed to represent the commercially useful function performed by the MWBE shall be 60% of the total value of the contract. The portion of a contract with an MWBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be the monetary value for fees, or the markup percentage, charged by the MWBE.</p> <p>FOR ALL OTHER PROJECTS - The portion of a contract with an MWBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be 25% of the total value of the contract.</p> | | | | | | | | | | | |
| <p>** FOR COMMISSION USE ONLY **</p> | | | | | | | | | | | |
| REVIEWED BY: | DATE: | | | | | | | | | | |
| <p>UTILIZATION PLAN APPROVED?</p> <p><input type="checkbox"/> YES <input type="checkbox"/> PARTIAL <input type="checkbox"/> NO Date: _____</p> | | | | | | | | | | | |



Waiver Request Form

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

FORM A

**New York State Consultant Services
Contractor's Planned Employment**
From Contract Start Date Through the End of the Contract Term

State Agency Name: NYS Gaming Commission
 State Agency Department ID: 20050 Agency Business Unit:
 Contractor Name: Contract Number:
 Contract Start Date: / / Contract End Date: / /

| Employment Category | Number of Employees | Number of Hours to be Worked | Amount Payable Under the Contract |
|---------------------|---------------------|------------------------------|-----------------------------------|
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| Total this Page | 0.00 | 0.00 | \$ 0.00 |
| Grand Total | | | |

Name of person who prepared this report:

Title:

Phone #:

Preparer's Signature: _____

Date Prepared: / /

(Use additional pages, if necessary)

Page of

Form A--Consultant Disclosure Instructions

The State Consulting Services Contractor's Planned Employment Report (this Form A) is due within two (2) business days after receiving notice of a contract award. The completed Report must be submitted to the Gaming Commission at officer.contracting@gaming.ny.gov.

Complete Form A for contracts for consulting services in accordance with the following:

Employment category: the specific occupation(s), as listed in the O*NET occupational classification system, which best describe the employees anticipated to be providing services under the contract. (Note: Access the O*NET database, which is available through the US Department of Labor's Employment and Training Administration website at www.online.onetcenter.org.)

Number of employees: the total number of employees in the employment category employed anticipated to provide services under the contract, including part time employees and employees of subcontractors.

Number of hours to be worked: the total number of hours anticipated be worked by the employees in the employment category.

Amount payable under the contract: the total amount payable by the State to the State contractor under the contract, for work by the employees in the employment category, for services to be provided during the Report Period.

If you have any questions regarding this requirement under the Consultant Disclosure Law, please contact the Contract Unit at officer.contracting@gaming.ny.gov or at (518) 388-0924.

FORM B

**New York State Consultant Services
Contractor's Annual Employment Report**
Report Period: April 1, to March 31,

Contracting State Agency Name: NYS Gaming Commission
 Contract Number: _____ Agency Business Unit: 20050
 Contract Term: / / to / / Agency Department ID:
 Contractor Name:
 Contractor Address:
 Description of Services Being Provided:

Scope of Contract (Choose one that best fits):
 Analysis Evaluation Research Training
 Data Processing Computer Programming Other IT consulting
 Engineering Architect Services Surveying Environmental Services
 Health Services Mental Health Services
 Accounting Auditing Paralegal Legal Other Consulting

| Employment Category | Number of Employees | Number of Hours Worked | Amount Payable Under the Contract |
|---------------------|---------------------|------------------------|-----------------------------------|
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| Grand Total | | | |

Name of person who prepared this report: _____
 Title: _____ Phone #: _____
 Preparer's Signature: _____
 Date Prepared: / /

(Use additional pages, if necessary)

Form B – Consultant Disclosure Instructions

The State Consulting Services Annual Employment Report (this Form B) will be due no later than May 15th following each fiscal year the contract is in effect.

The completed Report must be submitted to OSC, DCS, and the Gaming Commission:
CDMOST@osc.ny.gov; SubmitformB@cs.ny.gov; officer.contracting@gaming.ny.gov.

OSC: CDMOST@osc.ny.gov
 or
 NYS Office of the State Comptroller Bureau of Contracts
 110 State Street, 11th Floor Albany, NY 12236
 Attn: Consultant Reporting

DCS: SubmitformB@cs.ny.gov
 or
 NYS Department of Civil Service
 Empire State Plaza
 Albany, NY 12239

NYS Gaming Commission: officer.contracting@gaming.ny.gov
 or
 NYS Gaming Commission
 1 Broadway Center
 Schenectady, NY 12305

Submit the completed Form B by May 15 for the period April 1 through March 31, and annually by May 15th thereafter for each State fiscal year (or portion thereof) the contract is in effect, in accordance with the following:

Scope of Contract: a general classification of the single category that best fits the predominate nature of the services provided under the contract.

Employment Category: the specific occupation(s), as listed in the O*NET occupational classification system, which best describe the employees providing services under the contract. (Note: Access the O*NET database, through the US Department of Labor's Employment and Training Administration website at www.online.onetcenter.org.)

Number of Employees: the total number of employees in the employment category employed that provided services under the contract during the Report Period, including part time employees and employees of subcontractors.

Number of hours worked: the total number of hours worked during the Report Period by the employees in the employment category.

Amount Payable under the Contract: the total amount paid or payable by the State to the State contractor under the contract, for work by the employees in the employment category, for services provided during the Report Period.

If you have any questions regarding this requirement under the Consultant Disclosure Law, please contact the Contract Unit at officer.contracting@gaming.ny.gov or at (518) 388-0924.

Vendor Assurance of No Conflict of Interest or Detrimental Effect

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

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

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

Certification Under Executive Order No. 16 Prohibiting State Agencies and Authorities from Contracting with Businesses Conducting Business in Russia

Executive Order No. 16 provides that “all Affected State Entities are directed to refrain from entering into any new contract or renewing any existing contract with an entity conducting business operations in Russia.” The complete text of Executive Order No. 16 can be found [here](#).

The Executive Order remains in effect while sanctions imposed by the federal government are in effect. Accordingly, vendors who may be excluded from award because of current business operations in Russia are nevertheless encouraged to respond to solicitations to preserve their contracting opportunities in case the sanctions are lifted during a solicitation or even after award in the case of some solicitations.

As defined in Executive Order No. 16, an “entity conducting business operations in Russia” means an institution or company, wherever located, conducting any commercial activity in Russia or transacting business with the Russian Government or with commercial entities headquartered in Russia or with their principal place of business in Russia in the form of contracting, sales, purchasing, investment, or any business partnership.

Is Vendor an entity conducting business operations in Russia, as defined above? Please answer by checking one of the following boxes:

- 1. No, Vendor does not conduct business operations in Russia within the meaning of Executive Order No. 16.
- 2.a. Yes, Vendor conducts business operations in Russia within the meaning of Executive Order No. 16 but has taken steps to wind down business operations in Russia or is in the process of winding down business operations in Russia. (Please provide a detailed description of the wind down process and a schedule for completion.)
- 2.b. Yes, Vendor conducts business operations in Russia within the meaning of Executive Order No. 16 but only to the extent necessary to provide vital health and safety services within Russia or to comply with federal law, regulations, executive orders, or directives. (Please provide a detailed description of the services being provided or the relevant laws, regulations, etc.)
- 3. Yes, Vendor conducts business operations in Russia within the meaning of Executive Order No. 16.

The undersigned certifies under penalties of perjury that they are knowledgeable about the Vendor’s business and operations and that the answer provided herein is true to the best of their knowledge and belief.

Vendor Name: _____
(legal entity)

By: _____
(signature)

Name: _____

Title: _____

Date: _____

Performance of Agreed Upon Procedures for Multi-Jurisdictional Games

Fiscal Year 2027/2028

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|--------------|
| Staff Titles |
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| Hourly Rate | Annual Hours per Game | Annual Total Per Game |
|-----------------------|--------------------------|--------------------------|
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| \$ - | 0 | \$ - |
| \$ - | 0 | \$ - |
| \$ - | 0 | \$ - |
| \$ - | 0 | \$ - |
| \$ - | 0 | \$ - |
| Annual Total*: | | \$ - |

Five Year AUP Total:

| |
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| \$ - |
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*The Annual Total will represent the maximum billable amount for that year. Payment will be based on actual hours, but may not exceed the amount indicated for the year.

ATTACHMENT 3: CONFIDENTIALITY & NON-DISCLOSURE AGREEMENT

THIS CONFIDENTIALITY & NON-DISCLOSURE AGREEMENT is between the State of New York (“State”), acting by and through the New York State Gaming Commission (the “Commission”) having its principal place of business at One Broadway Center, Schenectady, New York 12305, and _____ (“Bidder”), or an officer, agent, employee, partner, or subcontractor of the Bidder _____ (“Affiliate”) with the executing party’s principal place of business at _____ (“this Agreement”). This Agreement is signed in relation to the provision by the Bidder and/or Affiliate of services to the Commission under Request for Quotations Number _____ (hereinafter “the RFQ”).

1. Definitions. For the purposes of this Agreement, the following terms shall be defined as follows:

I. Confidential Information

“Confidential Information” shall be defined to include any data and/or information (oral, visual, or written) of which Bidder or Affiliate becomes aware during the course of performing services under or as part of the RFQ, regardless of form or medium of disclosure (e.g., verbal, hard copy, or electronic) or the source(s) of information (e.g., the Commission, other state agencies, state employees, electronic systems, or third party contractors) provided to Bidder and/or Affiliate, or which Bidder and/or Affiliate obtains, discovers, derives or otherwise becomes aware of as a result of the RFQ other than:

- (a) information that is previously rightfully known to Bidder or Affiliate, respectively, without restriction on disclosure;
- (b) information that is or becomes, from no act or failure to act on the part of the Bidder or Affiliate, respectively, generally known in the relevant industry or in the public domain; or
- (c) information that is independently developed by Bidder or Affiliate, respectively, without the use of Confidential Information.

II. Authorized Person

“Authorized Person” shall be defined as a person authorized by the Commission as having a need to receive, possess, store, access, view and/or use Confidential Information for an Authorized Use.

III. Authorized Use

“Authorized Use” shall be defined as the use of Confidential Information by the Bidder, Affiliate, or Authorized Persons, solely for the purpose of participating in the RFQ.

2. Term

Bidder’s and Affiliate’s obligations under this Agreement shall commence upon their respective execution of this Agreement, whichever occurs first, and shall survive in perpetuity.

3. Duty to Protect Confidential Information

Bidder and Affiliate, respectively, agree not to disclose Confidential Information to anyone, except as provided in this Agreement. In addition, Bidder shall safeguard all Confidential Information from unauthorized access, loss, theft, destruction, and the like. Bidder and Affiliate shall independently or jointly notify the Commission immediately upon becoming aware that confidential information is in the possession of or has been disclosed to an unauthorized person or entity.

4. Press Releases

Bidder and/or Affiliate shall not issue any press releases, give or make any presentations, or give to any print, electronic or other news media information regarding his/her participation in the RFQ, or the RFQ in

general - nor shall Bidder or Affiliate authorize or permit any other person or entity to do so - without the Commission's prior written approval. Bidder and Affiliate shall, independently or jointly, immediately refer any media requests or other requests for information to the Commission.

5. Use Restriction

Bidder and Affiliate shall not receive, possess, store, access, view and/or use Confidential Information for any purpose other than an Authorized Use. Bidder and Affiliate shall not permit unauthorized persons or entities to gain access to Confidential Information and shall not divulge methods of accessing Confidential Information to unauthorized persons.

6. Security Obligations Regarding Confidential Information

Bidder and Affiliate, respectively, agree to comply with the following security obligations as well as any other such obligations conveyed to him/her during the course of the RFQ process in accordance with the RFQ:

- a. Unless otherwise authorized by the Commission, Confidential Information may not be stored on personal (non-Commission) computing or other electronic or mobile storage devices or taken or removed in any form from the Commission.
- b. Bidder and Affiliate shall comply with all federal and state laws.
- c. Bidder and Affiliate shall comply with all Commission policies and procedures including but not limited to those that provide for accessing, protecting, and preserving State assets.
- d. Bidder and Affiliate shall take no action to intrude upon, disrupt, or deny services to the Commission.
- e. Bidder and Affiliate shall use only those access rights granted by the Commission.

7. Certification by Bidder of Return of Confidential Information

Upon submission of the RFQ, Bidder shall return Confidential Information stored in a tangible format to the Commission, or destroy such Confidential Information that Bidder possesses in a format that cannot be returned, and further agrees to submit to the Commission, on Bidder's or Affiliate's letterhead, respectively, a Certification of Return or Destruction of Confidential Information certifying that all copies of Confidential Information have been returned or destroyed, using the certification form attached hereto

8. Termination

Bidder's and Affiliates respective Authorized Use of Confidential Information shall terminate automatically upon the first to occur of any of the following: (a) breach of this Agreement; or (b) completion or termination of Bidder's and/or Affiliate's respective participation in the RFQ.

9. Compliance

Should Bidder or Affiliate breach this Agreement, the State shall have all equitable and legal rights to pursue criminal prosecution and to seek civil redress directly from Bidder and/or Affiliate for such breach, to prevent further breaches, and to be fully compensated (including litigation costs and reasonable attorney fees) for losses or damages resulting from such breach, whether the compensation sought is for damages or for injunctive relief, within the Commission's discretion. In the event of a breach by Bidder or Affiliate, Bidder and Affiliate agree to be held jointly and severally liable for any monetary or equitable damages incurred by the Commission, regardless of the number of third parties involved in such breach or the resulting damages, unless and until another source of reimbursement has paid or otherwise acted to cure the damages incurred, with the complete curing of damages being determined by the Commission. Curing of monetary damages does not negate the Commission's rights to pursue criminal prosecution related to a breach and its effects, when applicable.

10. Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of New York. If any provision of Agreement is declared by a court of competent jurisdiction to be invalid, illegal, or unenforceable, the other provisions shall remain in full force and effect.

11. Miscellaneous

- a. The parties acknowledge that each has had an opportunity to retain an attorney to review the terms and conditions of this Agreement. No provision hereof shall be interpreted against the interests of one party solely because such provision was drafted by such party or by the attorney for such party.
- b. 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.
- c. This Agreement may be executed in counterparts, each of which shall be deemed an original. Executed copies of this Agreement may be sent by facsimile (fax) or as PDF copies sent by email, and any signatures thereon shall be considered for all purposes to be binding as originals.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the date indicated below their respective signatures herein:

| | |
|---|--|
| <p>BIDDER or AFFILIATE</p> <p>By: _____ Signature</p> <p>_____</p> <p>Printed Name</p> <p>_____</p> <p>Title</p> <p>_____</p> <p>Date</p> | <p>NEW YORK STATE GAMING COMMISSION</p> <p>By: _____ Signature</p> <p>_____</p> <p>Printed Name</p> <p>_____</p> <p>Title</p> <p>_____</p> <p>Date</p> |
|---|--|

**CERTIFICATION FORM
CERTIFICATION OF RETURN OR DESTRUCTION OF
CONFIDENTIAL INFORMATION PURSUANT TO
CONFIDENTIALITY & NON-DISCLOSURE AGREEMENT
DATED _____**

Pursuant to the Confidentiality & Non-Disclosure Agreement between the State of New York, acting by and through the New York State Gaming Commission and _____ (“Bidder” or “Affiliate”) dated _____, Bidder or Affiliate acknowledges its authority to receive, possess, store, access, view and/or use Confidential Information, and that such Bidder or Affiliate is now certifying the following action has been taken regarding such Confidential Information:

Returned: Provide a description of returned Confidential Information, electronic information, and/or tangible property:

Destroyed: Provide a description of destroyed Confidential Information, electronic information or tangible property:

Bidder or Affiliate - Signature

Bidder or Affiliate - Printed Name

Date

Acknowledgment for Certification of Return or Destruction of Confidential Information

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; and that he/she signed his/her name(s) thereto by authority of the board of directors of said corporation.

 Notary Public



RFQ – C202306V2 Certified Public Accounting Services

DOCUMENT SUBMITTAL CHECKLIST

Submissions Required with Quotation:

| Description of Document | RFP | Submittal Requirements | Checklist |
|---|-------|--|-----------|
| Bidder Acknowledgement of Addendum (Attachment 1) | §1.11 | With Quotation, if applicable | |
| Document Submittal Checklist (Attachment 4) | §4.1 | With Quotation | |
| Contract Form (Appendix B) (incorporates Appendix A) | §1.12 | Must be signed—With Quotation | |
| Procurement Lobbying Bidder Disclosure (Appendix C) | §1.9 | With Quotation | |
| Non-Collusive Bidding Certification (Appendix D) | §1.13 | With Quotation | |
| NYS Vendor Responsibility Questionnaire (Appendix E) | §1.14 | With Quotation, unless filed online | |
| Work Force Employment Staffing Plan (Appendix I-2) | §2.15 | With Quotation | |
| MWBE/SDVOB Utilization Plan Form (Appendix I-3) <ul style="list-style-type: none"> • Proposed Plan | §2.15 | Proposed plan, including estimated percentage—With Quotation | |
| Encouraging Use of New York State Businesses in Contract Performance (Appendix H) | §2.19 | With Quotation | |
| Vendor Assurance of No Conflict of Interest or Detrimental Effect (Appendix K) | §1.23 | With Quotation | |
| Anti-Discrimination EO 177 Certification (Appendix M) | §1.30 | With Quotation | |
| Statement on Sexual Harassment (Appendix L) | §1.31 | With Quotation | |
| Executive Order No. 16 Certification (Appendix N) | §1.32 | With Quotation | |

| | | | |
|--|-------|--|--|
| Insurer Qualifications and Insurance Requirements (Appendix O) • Compliance Statement | §2.14 | Include a statement of compliance—With Quotation | |
| Designation of Proprietary Information (FOIL) | §1.15 | With Quotation | |
| Disclosure of Litigation | §1.20 | With Quotation | |
| References | §4.3 | With Quotation | |

Submissions Required Subsequent to Award:

| Description of Document | RFP | Submittal Requirements | Checklist |
|---|-------|---|-----------|
| Substitute Form W-9 (Appendix F) | §2.9 | Upon notification of award | |
| Consultant Disclosure Forms (Appendix J, forms A and B) | §2.10 | Within two days of notification of award | |
| ST-220 Contractor Certification forms (Appendix G) • ST220-TD (submit to DTF) • ST220-CA (submit to Commission) | §2.13 | Within seven calendar days of notification of award | |
| EEO and MWBE Program Equal Employment Opportunity Policy Statement (Appendix I-1) | §2.15 | Within 72 hours of notice of award | |
| Insurer Qualifications and Insurance Requirements (Appendix O) | §2.14 | Upon notification of award provide insurance certificates | |

FIRM NAME: _____

REPRESENTATIVE SIGNATURE: _____



NON-BID RESPONSE

RFQ: C202306V2 Certified Public Accounting Services

If your company will not be submitting a response to the RFQ, it would be helpful in the preparation of future bidding opportunities to understand why your company is not submitting a Quotation. Please help us by selecting your reason from the choices below or selecting "Other" with a brief explanation.

_____ Although the bid is within the scope of our business, and we are interested in principle, at present, we are unable to respond, due to other commitments.

_____ The services / products described in the subject RFQ are not within our area of expertise.

_____ We do not have the staffing / resources available at this time to provide the services requested.

_____ There were certain requirements or restrictions stated in the RFQ that preclude our company from bidding. Those requirements are:

_____ Other: _____

This form may be emailed to: officer.contracting@gaming.ny.gov, or mailed to:

New York State Gaming Commission
Contract Unit, 4th Floor
One Broadway Center
Schenectady, NY 12305

Please be advised that **no response** may result in removal of your company from our bidders' List.

NEW YORK STATE LOTTERY

**Financial Statements and Supplementary Information
Years Ended March 31, 2022 and 2021
With Independent Auditor's Report**



MITCHELL TITUS
ACHIEVING EXCELLENCE TOGETHER

NEW YORK STATE LOTTERY
Financial Statements and Supplementary Information
Years Ended March 31, 2022 and 2021

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INDEPENDENT AUDITOR'S REPORT

Gaming Commissioners and Senior Management
New York State Gaming Commission

Report on the Audit of the Financial Statements

Opinion

We have audited the financial statements of the New York State Lottery (the Lottery), an enterprise fund of the State of New York, as of and for the years ended March 31, 2022 and 2021, and the related notes to the financial statements, which collectively comprise the Lottery's basic financial statements as listed in the table of contents.

In our opinion, the accompanying financial statements present fairly, in all material respects, the financial position of the New York State Lottery as of March 31, 2022 and 2021, and the changes in its financial position and its cash flows for the years then ended in accordance with accounting principles generally accepted in the United States of America.

Basis for Opinion

We conducted our audits in accordance with auditing standards generally accepted in the United States of America (GAAS). Our responsibilities under those standards are further described in the Auditor's Responsibilities for the Audit of the Financial Statements section of our report. We are required to be independent of the Lottery and to meet our other ethical responsibilities, in accordance with the relevant ethical requirements relating to our audits. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Emphasis of Matter

As discussed in Note 1, the Lottery's financial statements are intended to present the financial position and the changes in financial position and cash flows of the Lottery and do not purport to, and do not, present fairly the financial position of the State of New York, as of March 31, 2022 and 2021, the changes in its financial position, or, where applicable, its cash flows for the years then ended in conformity with accounting principles generally accepted in the United States of America. Our opinion is not modified with respect to this matter.

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Responsibilities of Management for the Financial Statements

The Lottery's management is responsible for the preparation and fair presentation of the financial statements in accordance with accounting principles generally accepted in the United States of America, and for the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the financial statements, management is required to evaluate whether there are conditions or events, considered in the aggregate, that raise substantial doubt about the Lottery's ability to continue as a going concern for one year after the date that the financial statements are issued.

Auditor's Responsibilities for the Audit of the Financial Statements

Our objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinion. Reasonable assurance is a high level of assurance but is not absolute assurance and therefore is not a guarantee that an audit conducted in accordance with GAAS will always detect a material misstatement when it exists. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control. Misstatements are considered material if there is a substantial likelihood that, individually or in the aggregate, they would influence the judgment made by a reasonable user based on the financial statements.

In performing an audit in accordance with GAAS, we:

- Exercise professional judgment and maintain professional skepticism throughout the audit.
- Identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, and design and perform audit procedures responsive to those risks. Such procedures include examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements.
- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Lottery's internal control. Accordingly, no such opinion is expressed.
- Evaluate the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluate the overall presentation of the financial statements.



MITCHELL TITUS

- Conclude whether, in our judgment, there are conditions or events, considered in the aggregate, that raise substantial doubt about the Lottery's ability to continue as a going concern for a reasonable period of time.

We are required to communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit, significant audit findings, and certain internal control-related matters that we identified during the audit.

Required Supplementary Information

Accounting principles generally accepted in the United States of America require that the management's discussion and analysis, the required schedules of the Lottery's proportionate share of the net pension liability for New York State and Local Employees' Retirement System, the Lottery's contributions for the New York State and Local Employees' Retirement System, and changes in the Lottery's total other postemployment benefits liability and related ratios on pages 4 through 10 and 41 through 43 be presented to supplement the basic financial statements. Such information is the responsibility of management and, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. We have applied certain limited procedures to the required supplementary information in accordance with auditing standards generally accepted in the United States of America, which consisted of inquiries of management about the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We do not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance.

Mitchell Titus, LLP

July 8, 2022

MANAGEMENT'S DISCUSSION AND ANALYSIS (UNAUDITED)

The management of the New York State Lottery (the New York Lottery or the Lottery) offers readers the following general overview and analysis of the New York Lottery's financial position and activities for the fiscal years ended March 31, 2022 and 2021. We encourage readers to consider this information in conjunction with the detailed financial statements and explanatory notes that follow. The New York Lottery's basic financial statements for the fiscal years ended March 31, 2022 and 2021 have been prepared in accordance with accounting principles generally accepted in the United States of America.

FINANCIAL HIGHLIGHTS

- New York Lottery revenue totaled \$10.355 billion, while the required allocation for the Lottery Aid to Education was \$3.608 billion for fiscal year 2022.
- New York Lottery revenue, net in fiscal year 2022 was more than the net revenue of 2021 by \$1.761 billion, or 20.5%. In fiscal year 2021, the annual revenue decreased by \$1.146 billion, or 11.8%.
- The required allocation for the Lottery Aid to Education in fiscal year 2022 was more than the required allocation of 2021 by \$17.4 million, or 0.5%. Comparatively, the required allocation for Aid to Education in fiscal year 2021 was more than the required allocation of 2020 by \$213.9 million, or 6.3%.
- Prize expense increased by \$487.1 million, or 11%, during fiscal year 2022. Prize expense decreased by \$209.1 million, or 4.5%, during fiscal year 2021. Prize expense generally follows the changes occurring in sales of the corresponding games.
- Operating income increased by \$560.0 million, or 18.6%, during fiscal year 2022. Operating income decreased by \$295.6 million, or 8.9%, during fiscal year 2021.
- Nonoperating income increased by \$13.4 million during fiscal year 2022 after decreasing by \$262.4 million during fiscal year 2021. Changes in this category are generally the result of unrealized gains/losses on investments, which can change by significant amounts in either direction from year to year.
- Working capital (current assets minus current liabilities) increased by \$52.9 million in fiscal year 2022 after increasing by \$140.9 million in fiscal year 2021.

OVERVIEW OF FINANCIAL STATEMENTS

The New York Lottery presents its financial statements using the accrual basis of accounting, which is comparable to the method used by many private sector businesses. The accrual basis recognizes revenue when earned, not when received. Likewise, expenses are recognized when incurred, not when paid. The Lottery prepares the following financial statements:

MANAGEMENT'S DISCUSSION AND ANALYSIS (UNAUDITED)

OVERVIEW OF FINANCIAL STATEMENTS *(continued)*

Statements of Net Position – This statement provides information on the nature and amount of the Lottery's assets, deferred outflows of resources, liabilities, deferred inflows of resources and net position at the close of fiscal years 2022 and 2021. The relationship of assets and deferred outflows of resources to liabilities and deferred inflows of resources and resulting net position is one indicator of the financial condition of the Lottery and can also be a reflection of changes within the Lottery.

Statements of Revenue, Expenses, and Changes in Net Position – This statement reflects the Lottery's operating and nonoperating revenue and expenses and the change in net position for fiscal years 2022 and 2021.

Statements of Cash Flows – This statement is presented on the direct method of reporting and reflects cash flows from operating activities as well as capital and noncapital financing and investing activities for fiscal years 2022 and 2021. Cash collections and payments are reflected in this statement to arrive at the net increase or decrease in cash and cash equivalents for the year.

The above-mentioned financial statements, the notes to the financial statements and this management's discussion and analysis provide information about the Lottery's overall financial condition.

This management's discussion and analysis is meant to be an introduction to the financial statements and to assist readers in understanding the results of the operations and the financial condition of the New York Lottery. The notes to the financial statements are an integral part of the statements and include additional data and explanations, which are to be used in concert with the financial statements.

Following the notes to the financial statements are pension and other postemployment benefits (OPEB) schedules, presented as Required Supplementary Information, which provide details on the Lottery's net pension and OPEB liability and contributions.

The New York Lottery deposits its net proceeds into six accounts held in joint custody by the Commissioner of Taxation and Finance and the State Comptroller. These six accounts and the purpose of the funds are as follows:

- Lottery Education Account – Accumulates the required deposits for Lottery Aid to Education from revenue, not including video gaming revenues.
- Prize Pending Account – Consists of Lottery prizes claimed but not yet paid from revenue, excluding video gaming revenues.
- Administration Account – Utilized to pay for the Lottery's administrative costs that are not related to or funded by video gaming revenues.
- Video Gaming Education Account – Accumulates the required deposits for Lottery Aid to Education from video gaming operations.
- Video Gaming Prize Pending Account – Consists of video gaming prizes awarded that have not yet been claimed.

MANAGEMENT'S DISCUSSION AND ANALYSIS (UNAUDITED)

OVERVIEW OF FINANCIAL STATEMENTS *(continued)*

- Video Gaming Administration Account – Utilized to pay the administrative costs of video gaming.

FINANCIAL ANALYSIS

Summary of Net Position – The comparative summary of net position represents the Lottery's financial position as of March 31, 2022, 2021 and 2020 (in millions):

| | March 31, | | | 2022 vs. 2021 | | 2021 vs. 2020 | |
|--------------------------------------|---------------|---------------|---------------|----------------|----------------|---------------|----------------|
| | 2022 | 2021 | 2020 | Dollar Change | Percent Change | Dollar Change | Percent Change |
| Current assets | \$ 1,855 | \$ 1,383 | \$ 1,215 | \$ 472 | 34.1 % | \$ 168 | 13.8 % |
| Long-term investments, net | 1,020 | 1,151 | 1,310 | (131) | (11.4) | (159) | (12.1) |
| Capital assets | - | - | - | - | - | - | - |
| Total assets | 2,875 | 2,534 | 2,525 | 341 | 13.5 | 9 | 0.4 |
| Total deferred outflows of resources | 18 | 19 | 6 | (1) | (5.3) | 13 | 216.7 |
| Current liabilities | 1,396 | 977 | 950 | 419 | 42.9 | 27 | 2.8 |
| Noncurrent liabilities | 1,007 | 1,090 | 1,119 | (83) | (7.6) | (29) | (2.6) |
| Total liabilities | 2,403 | 2,067 | 2,069 | 336 | 16.3 | (2) | (0.1) |
| Total deferred inflows of resources | 25 | 5 | 7 | 20 | 400.0 | (2) | (28.6) |
| Restricted net position | 394 | 331 | 214 | 63 | 19.0 | 117 | 54.7 |
| Unrestricted net position | 71 | 150 | 241 | (79) | (52.7) | (91) | (37.8) |
| Total net position | \$ 465 | \$ 481 | \$ 455 | \$ (16) | (3.3)% | \$ 26 | 5.7 % |

Current Assets – Current assets consist of cash and cash equivalents, accounts receivable, instant ticket inventory, and short-term investments. During fiscal year 2022, current assets increased by \$472.3 million, which represented an increase of 34.1% from the previous year. This increase was primarily a result of an increase in cash in education accounts. In fiscal year 2021, current assets increased by \$167.9 million, which represented a increase of 13.8% from the previous year. This increase was primarily a result of an increase in cash in administrative accounts and cash held for prizes pending.

Long-Term Investments, Net – During fiscal year 2022, long-term investments, net decreased by \$130.9 million, which represented a decrease of 11.4% from the previous year. This decrease was primarily a result of unfavorable market conditions. In fiscal year 2021, long-term investments, net decreased by \$158.5 million, which represented a decrease of 12.1% from the previous year. This decrease was primarily a result of unfavorable market conditions.

Capital Assets – Capital assets consist of equipment and leasehold improvements. During fiscal year 2022, no capital assets were added and \$0.4 million were disposed. Additional information about the Lottery's capital assets can be found in Note 1 of the notes to the basic financial statements.

MANAGEMENT'S DISCUSSION AND ANALYSIS (UNAUDITED)

FINANCIAL ANALYSIS *(continued)*

Deferred Outflows of Resources – Deferred outflows of resources relate to deferred pension costs determined in accordance with Governmental Accounting Standards Board (GASB) Statement No. 68, *Accounting and Financial Reporting for Pensions—an Amendment of GASB Statement No. 27* (GASB Statement No. 68) and deferred other postemployment benefits (OPEB) determined in accordance with GASB Statement No. 75, *Accounting and Financial Reporting for Postemployment Benefits Other Than Pensions*. Deferred outflows of resources decreased by \$0.8 million in fiscal year 2022, which was a 4.0% decrease. In fiscal year 2021, deferred outflows of resources increased \$12.9 million, representing a 212.9% increase.

Current Liabilities – Current liabilities consist of prizes awarded in the past year that remain unclaimed, amounts due to Aid to Education, accrued expenses, accounts payable, the value of Lottery tickets purchased in advance of game drawings (unearned ticket sales), the short-term portion of long-term prizes payable, and amounts due to employees for unused vacation leave. In total, these accounts increased by \$419.5 million during fiscal year 2022 primarily due to an increase in the amounts due to aid to education. This change can be compared to the year ended March 31, 2021, when there was a \$27 million annual increase in total current liabilities.

Noncurrent Liabilities – Noncurrent liabilities consist of amounts due to be paid more than one year after the close of the fiscal year for installment prizes, pension and OPEB liabilities and unused employee vacation leave. During fiscal year 2022, noncurrent liabilities decreased by \$83.1 million, primarily due to the decrease of long-term prizes payable. During fiscal year 2021, noncurrent liabilities decreased by \$28.4 million, primarily due to the decrease of long-term prizes payable. Additional information about the Lottery's noncurrent liabilities can be found in Note 5 of the financial statements.

Deferred Inflows of Resources – Deferred inflows of resources relate to deferred pension costs and deferred OPEB determined in accordance with GASB Statement No. 68 and GASB Statement No. 75, respectively. Deferred inflows of resources increased by \$20.6 million in fiscal year 2022, which was a 453.0% increase from the previous year due to an increase in the net difference between projected and actual investment earnings on pension plan investments and changes of assumptions for OPEB deferred inflows. Deferred inflows of resources decreased by \$2.7 million in fiscal year 2021, which was a 37.0% decrease from the previous year due to a decrease in the net difference between projected and actual investment earnings on pension plan investments and a decrease in differences between expected and actual experience for OPEB deferred inflows.

Net Position – Restricted net position for future prizes consists of prize funds that are in excess of prizes actually claimed at the fiscal year end, but which is necessary to ensure future prize payments. For example, prize funds from past sales are utilized to pay an accumulating or future New York Lotto, Powerball, Mega Millions or Cash 4 Life jackpot or contribute toward a created but unclaimed instant ticket prize. These amounts are available by statute for this purpose.

Unrestricted net position presented on the statements of net position is largely the cumulative result of increases in the fair value of investments held by the Lottery to pay annuity prizes. Since the full maturity value of the investments is needed to pay the annuity prizes, the Lottery does not expect to realize any permanent gain on these investments.

MANAGEMENT'S DISCUSSION AND ANALYSIS (UNAUDITED)

FINANCIAL ANALYSIS *(continued)*

Summary of Revenue, Expenses, and Changes in Net Position – The following summary compares the Lottery's revenues, expenses and changes in net position for March 31, 2022, 2021 and 2020 (in millions).

| | March 31, | | | 2022 vs. 2021 | | 2021 vs. 2020 | |
|--|---------------|---------------|---------------|----------------|----------------|---------------|----------------|
| | 2022 | 2021 | 2020 | Dollar Change | Percent Change | Dollar Change | Percent Change |
| <i>Operating revenue</i> | | | | | | | |
| Lottery revenue, net | \$ 10,355 | \$ 8,595 | \$ 9,741 | \$ 1,760 | 20.5 % | \$ (1,146) | (11.8)% |
| <i>Operating expenses</i> | | | | | | | |
| Direct expenses | (6,673) | (5,492) | (6,303) | (1,181) | (21.5) | 811 | 12.9 |
| Indirect expenses | (110) | (91) | (130) | (19) | (20.9) | 39 | 30.0 |
| Total operating expenses | (6,783) | (5,583) | (6,433) | (1,200) | (21.5) | 850 | 13.2 |
| Operating income | 3,572 | 3,012 | 3,308 | 560 | 18.6 | (296) | (8.9) |
| <i>Nonoperating revenue (expenses)</i> | | | | | | | |
| Nonoperating (expenses) income | (24) | (35) | 229 | 11 | 31.4 | (264) | (115.3) |
| Nonoperating expenses | (46) | (49) | (50) | (3) | (6.1) | (1) | (2.0) |
| Total nonoperating (expenses) revenue | (70) | (84) | 179 | 14 | 16.7 | (263) | (146.9) |
| Income before required allocation | 3,502 | 2,928 | 3,487 | 574 | 19.6 | (559) | (16.0) |
| Required allocation – contribution | | | | | | | |
| for Aid to Education | (3,608) | (3,591) | (3,377) | (17) | (0.5) | (214) | (6.3) |
| Transfer to NYS general fund | - | (4) | - | 4 | - | (4) | - |
| Lottery Aid Guarantee | 90 | 693 | - | (603) | (87.0) | 693 | - |
| Change in net position | (16) | 26 | 110 | (42) | (161.5) | (84) | (76.4) |
| Net position, beginning of year | 481 | 455 | 345 | 26 | 5.7 | 110 | 31.9 |
| Net position, end of year | \$ 465 | \$ 481 | \$ 455 | \$ (16) | (3.3)% | \$ 26 | 5.7 % |

Revenue – The New York Lottery exists for the sole purpose of raising revenue to help support Aid to Education. The Lottery achieves its mission through the sale of Lottery tickets at approximately 14,900 licensed retail locations across the State. The Lottery also achieves its mission through eight licensed video lottery gaming facilities located in Saratoga, Farmington, Hamburg, Batavia, Vernon, Yonkers, Suffolk and New York City.

During fiscal year 2022, the Lottery achieved \$3.7 billion in draw sales, \$4.5 billion in instant sales, and \$2.2 billion in video lottery gaming net machine income for a total of \$10.4 billion, an increase of \$1.761 billion, or 20.5%, over the previous fiscal year, primarily due to the reopening of video lottery facilities that were closed in fiscal year 2021 due to the COVID-19 pandemic. During fiscal year 2021, the Lottery achieved \$3.5 billion in draw sales, \$4.2 billion in instant sales, and \$900 million in video lottery gaming net machine income for a total of \$8.6 billion, a decrease of \$1.145 billion, or 11.8%, over the previous fiscal year, primarily due to the closure of video lottery gaming facilities due to the COVID-19 pandemic.

MANAGEMENT'S DISCUSSION AND ANALYSIS (UNAUDITED)

FINANCIAL ANALYSIS (continued)

The following table shows a comparison of the Lottery's revenue by game and the percentage of total revenue by game for March 31, 2022, 2021 and 2020 (in millions):

| Game | 2022 | | 2021 | | 2020 | |
|------------------------------|------------------|--------------------------|-----------------|--------------------------|-----------------|--------------------------|
| | Revenue | Percent of total revenue | Revenue | Percent of total revenue | Revenue | Percent of total revenue |
| Mega Millions | \$ 295 | 2.8% | \$ 334 | 3.9% | \$ 300 | 3.1% |
| Lotto | 57 | 0.6 | 59 | 0.7 | 65 | 0.7 |
| Take 5 | 225 | 2.2 | 219 | 2.5 | 227 | 2.3 |
| Pick 10 | 34 | 0.3 | 32 | 0.4 | 30 | 0.3 |
| Numbers | 959 | 9.3 | 942 | 11.0 | 947 | 9.7 |
| Win 4 | 948 | 9.1 | 903 | 10.5 | 975 | 10.0 |
| Powerball | 358 | 3.5 | 257 | 3.0 | 251 | 2.6 |
| Cash 4 Life | 121 | 1.2 | 120 | 1.4 | 122 | 1.3 |
| Instant | 4,518 | 43.6 | 4,232 | 49.2 | 4,115 | 42.2 |
| Quick Draw | 663 | 6.4 | 568 | 6.6 | 695 | 7.1 |
| Subtotal traditional lottery | 8,178 | 79.0 | 7,666 | 89.2 | 7,727 | 79.3 |
| Video gaming, net * | 2,177 | 21.0 | 929 | 10.8 | 2,014 | 20.7 |
| Total revenue | \$ 10,355 | 100.0% | \$ 8,595 | 100.0% | \$ 9,741 | 100.0% |

* Video gaming revenue represents net machine income after awarding prizes. Video gaming credits played and won were as follows:

| | 2022 | 2021 | 2020 |
|---------------------------|-----------------|---------------|-----------------|
| Credits played | \$ 37,869 | \$ 16,407 | \$ 37,935 |
| Credits won | (35,692) | (15,478) | (35,921) |
| Net machine income | \$ 2,177 | \$ 929 | \$ 2,014 |

Direct Expenses – Direct expenses consist of prize expense for traditional Lottery games, commissions to Lottery retailers and video lottery gaming facilities, fees to gaming contractors, expenses of providing instant tickets to players, and telecommunications expenses. The largest expenditure in this category is prize expense, which made up 73.5% of direct expenses. Prizes increased by \$487.1 million to \$4.9 billion in fiscal year 2022. At the same time, retailer commissions increased by \$585.7 million to \$1.5 billion, and gaming contractor fees increased by \$112.4 million to \$248.7 million.

Prizes decreased by \$209.1 million to \$4.4 billion in fiscal year 2021. At the same time, retailer commissions decreased by \$505.6 million to \$903.5 million, and gaming contractor fees decreased by \$89.3 million to \$136.2 million.

Indirect Expenses – Indirect expenses include marketing, state agency charges, personal services, fringe benefits and other administrative costs. These costs were \$110.4 million during fiscal year 2022, an increase of 21.3% from the prior year. Corresponding costs in fiscal year 2021 were \$91 million, which was 30.2% lower than in fiscal year 2020.

Nonoperating Revenue (Expenses) – Nonoperating revenue and expenses consist of miscellaneous income plus the net growth or decline in the fair value of investments used to fund long-term prizes. Investment loss of \$30.7 million in 2022, loss of \$43.3 million in 2021, and income of \$217.1 million in 2020 consists of both the fair value adjustments of investments plus the normal growth of the value of the Lottery's investments as the securities move closer to maturity. The market-driven fair value adjustment, which is subject to considerable variance over time, is the primary factor causing significant differences from year to year.

MANAGEMENT'S DISCUSSION AND ANALYSIS (UNAUDITED)

FINANCIAL ANALYSIS *(continued)*

Investment expense is a reflection of the Lottery expending the investment income to increase the valuation of the long-term prizes payable to winners. The amortized discount of prizes payable decreased by \$2.4 million from \$48.8 million in fiscal year 2021 to \$46.4 million in fiscal year 2022. The annual fair value adjustment of investments flows to the unrestricted net position balance on the statements of net position.

Income before Required Allocation and Change in Net Position – Revenue and expenses for fiscal year 2022 resulted in revenue before required allocation totaling \$3.5 billion. This amount consists of a required allocation for Aid to Education of \$3.6 billion that transfers out as a contribution for Aid to Education, a transfer in of \$90 million for a Lottery Aid Guarantee (see Note 1), and a \$16.4 million decrease in net position for the year. The \$16.4 million decrease in net position is a combination of a \$62.6 million increase in net position restricted for prizes and a \$79 million decrease in unrestricted net position. Revenue and expenses for fiscal year 2021 resulted in revenue before required allocation totaling \$2.9 billion. This amount consists of a required allocation for Aid to Education of \$3.6 billion that transfers out as a contribution for Aid to Education, a transfer in of \$692.8 for a Lottery Aid Guarantee (see Note 1), a transfer out of \$4.1 million to the NYS general fund (see Note 1) and a \$26.4 million increase in net position for the year. The \$26.4 million increase in net position is a combination of a \$117.4 million increase in net position restricted for prizes and a \$91.0 million decrease in unrestricted net position.

Summary and Outlook – As a mature business entity, the New York Lottery generally anticipates only moderate but steady growth from year to year. An opportunity to move beyond normal growth would not be expected unless there was an addition of new games or an expansion in gaming facilities.

Contacting New York Lottery's Financial Management – This financial report is designed to provide the State of New York, the public, and other interested parties with an overview of the financial results of the New York State Lottery and an explanation of the Lottery's financial condition. If you have any questions about this report or require additional information, email info@gaming.ny.gov or write to the New York State Gaming Commission Communications Office, One Broadway Center, P.O. Box 7500, Schenectady, NY 12301-7500.

NEW YORK STATE LOTTERY

Statements of Net Position

March 31, 2022 and 2021

(In thousands)

| | <u>2022</u> | <u>2021</u> |
|---|-------------------|-------------------|
| ASSETS | | |
| <i>Current assets</i> | | |
| Cash and cash equivalents | \$ 1,266,656 | \$ 765,143 |
| Accounts receivable, net | 477,787 | 492,898 |
| Instant ticket inventory | 13,591 | 13,148 |
| Investments | 97,513 | 112,017 |
| Total current assets | <u>1,855,547</u> | <u>1,383,206</u> |
| <i>Noncurrent assets</i> | | |
| Long-term investments, net | 1,020,223 | 1,151,095 |
| Capital assets | 32 | 52 |
| Total noncurrent assets | <u>1,020,255</u> | <u>1,151,147</u> |
| Total assets | <u>2,875,802</u> | <u>2,534,353</u> |
| DEFERRED OUTFLOW OF RESOURCES | | |
| Total assets and deferred outflows of resources | <u>18,166</u> | <u>18,920</u> |
| | <u>2,893,968</u> | <u>2,553,273</u> |
| LIABILITIES | | |
| <i>Current liabilities</i> | | |
| Prizes payable | 130,268 | 137,315 |
| Unclaimed prizes | 538,966 | 462,618 |
| Due to Lottery Aid to Education | 707,133 | 359,021 |
| Accounts payable and accrued liabilities | 8,918 | 6,847 |
| Unearned ticket sales | 10,093 | 9,981 |
| Compensated absences | 985 | 1,089 |
| Total current liabilities | <u>1,396,363</u> | <u>976,871</u> |
| <i>Noncurrent liabilities</i> | | |
| Compensated absences | 198 | 219 |
| Net pension liability | 40 | 11,988 |
| Other postemployment benefits | 66,213 | 74,882 |
| Long-term prizes payable | 940,861 | 1,003,293 |
| Total noncurrent liabilities | <u>1,007,312</u> | <u>1,090,382</u> |
| Total liabilities | <u>2,403,675</u> | <u>2,067,253</u> |
| DEFERRED INFLOW OF RESOURCES | | |
| Total liabilities and deferred inflows of resources | <u>25,177</u> | <u>4,553</u> |
| | <u>2,428,852</u> | <u>2,071,806</u> |
| NET POSITION | | |
| Invested in capital assets | 32 | 52 |
| Restricted for future prizes | 393,735 | 331,104 |
| Unrestricted | 71,349 | 150,311 |
| Total net position | <u>\$ 465,116</u> | <u>\$ 481,467</u> |

See accompanying notes to basic financial statements.

NEW YORK STATE LOTTERY

Statements of Revenue, Expenses, and Changes in Net Position

Years Ended March 31, 2022 and 2021

(In thousands)

| | <u>2022</u> | <u>2021</u> |
|--|--------------------|--------------------|
| OPERATING REVENUE | | |
| Lottery revenue, net | \$ 10,355,484 | \$ 8,594,877 |
| <i>Operating expenses</i> | | |
| Prize expense, net | (4,901,590) | (4,414,498) |
| Retailer commissions | (1,489,198) | (903,542) |
| Gaming contractor fees | (248,654) | (136,229) |
| Instant ticket direct expenses | (17,227) | (20,962) |
| Telecommunications expenses | (16,518) | (16,730) |
| Total direct expenses | <u>(6,673,187)</u> | <u>(5,491,961)</u> |
| Marketing and advertising expenses | (74,104) | (53,125) |
| Personal service and fringe benefits | (26,343) | (27,584) |
| Other administrative costs | (5,606) | (4,929) |
| State agency charges | (4,352) | (5,377) |
| Depreciation | (20) | (20) |
| Total indirect expenses | <u>(110,425)</u> | <u>(91,035)</u> |
| Total operating expenses | <u>(6,783,612)</u> | <u>(5,582,996)</u> |
| Operating income | <u>3,571,872</u> | <u>3,011,881</u> |
| NONOPERATING REVENUE (EXPENSES) | | |
| Investment loss | (30,713) | (43,291) |
| Other revenue, net | 6,980 | 8,538 |
| Investment expense, net | (46,385) | (48,783) |
| Total nonoperating expenses, net | <u>(70,118)</u> | <u>(83,536)</u> |
| Income before required allocation | 3,501,754 | 2,928,345 |
| Required allocation for Lottery Aid to Education | (3,608,105) | (3,590,653) |
| Transfers to NYS general fund | - | (4,119) |
| Lottery Aid Guarantee | 90,000 | 692,820 |
| Change in net position | (16,351) | 26,393 |
| Net position, beginning of year | <u>481,467</u> | <u>455,074</u> |
| Net position, end of year | <u>\$ 465,116</u> | <u>\$ 481,467</u> |

See accompanying notes to basic financial statements.

NEW YORK STATE LOTTERY
Statements of Cash Flows
Years Ended March 31, 2022 and 2021
(In thousands)

| | <u>2022</u> | <u>2021</u> |
|---|---------------------|---------------------|
| CASH FLOWS FROM OPERATING ACTIVITIES | | |
| Cash received from net lottery revenue | \$ 10,483,901 | \$ 8,559,231 |
| Cash payments for prizes | (5,026,789) | (4,575,192) |
| Cash payments for commissions | (1,489,240) | (903,536) |
| Cash payments for contractor fees | (247,906) | (134,765) |
| Cash payments for telecommunications | (16,518) | (16,730) |
| Cash payments for instant ticket direct expenses | (17,352) | (21,132) |
| Cash payments for other operating expenses | (136,394) | (88,965) |
| Other cash receipts | 6,980 | 8,537 |
| Net cash provided by operating activities | <u>3,556,682</u> | <u>2,827,448</u> |
| CASH FLOWS FROM INVESTING ACTIVITIES | | |
| Proceeds from investment maturities | 111,910 | 111,464 |
| Purchases of investments | (17,876) | (19,568) |
| Interest on cash and cash equivalents and investments | 20,790 | 22,483 |
| Net cash provided by investing activities | <u>114,824</u> | <u>114,379</u> |
| CASH FLOWS FROM NONCAPITAL FINANCING ACTIVITIES | | |
| Cash transfer to State for Lottery Aid to Education | (3,259,993) | (3,500,993) |
| Cash transferred to State General Fund | - | (4,119) |
| Cash received from State General Fund for Lottery Aid Guarantee | 90,000 | 692,820 |
| Net cash used in noncapital financing activities | <u>(3,169,993)</u> | <u>(2,812,292)</u> |
| Net change in cash and cash equivalents | 501,513 | 129,535 |
| Cash and cash equivalents, beginning of year | 765,143 | 635,608 |
| Cash and cash equivalents, end of year | <u>\$ 1,266,656</u> | <u>\$ 765,143</u> |
| <i>Reconciliation of operating income to net cash provided by operating activities</i> | | |
| Operating income | \$ 3,571,872 | \$ 3,011,881 |
| <i>Adjustments to reconcile operating income to net cash provided by operating activities</i> | | |
| Depreciation | 20 | 20 |
| Other cash receipts | 6,819 | 8,382 |
| Investment expenses | (46,385) | (48,783) |
| <i>Change in operating assets, deferred outflows, liabilities and deferred inflows</i> | | |
| Change in accounts receivable, net | 15,111 | (37,482) |
| Change in ticket inventory | (443) | 119 |
| Change in prizes payable | (69,479) | (44,076) |
| Change in unclaimed prizes | 76,348 | (66,994) |
| Change in compensated absences | (125) | 99 |
| Change in deferred outflows | 754 | (12,873) |
| Change in net pension liability | (11,948) | 8,384 |
| Change in other postemployment benefits | (8,669) | 9,391 |
| Change in deferred inflows | 20,624 | (2,675) |
| Change in pension contribution payable | - | (1,016) |
| Change in accounts payable and accrued liabilities | 2,071 | 2,969 |
| Change in unearned ticket sales | 112 | 102 |
| Net cash provided by operating activities | <u>\$ 3,556,682</u> | <u>\$ 2,827,448</u> |
| <i>Noncash investing activities</i> | | |
| Change in unrealized gains on investments | \$ (77,920) | \$ (93,662) |
| Amortization of investment discount | 26,578 | 28,043 |

See accompanying notes to basic financial statements.

NEW YORK STATE LOTTERY
Notes to Financial Statements
Years Ended March 31, 2022 and 2021

NOTE 1 ORGANIZATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

The New York State Lottery (Lottery) was established in 1967. In 1976, the Lottery was placed under the Division of the Lottery, an independent unit of the New York State Department of Taxation and Finance, which operates in accordance with the provisions of the New York State Lottery for Education Law (Tax Law Article 34). On February 1, 2013, the Division of Lottery merged with the New York State Racing and Wagering Board into a single oversight entity called the New York State Gaming Commission, which was given responsibility to administer traditional and video lottery games as part of its overall responsibility for regulation and enforcement of gaming activity in New York. The purpose of the Lottery is to raise revenue for education in the State of New York (the State) through the administration of lottery games.

The accompanying financial statements are only those of the Lottery and do not present fairly the financial position of the State as of March 31, 2022 and 2021, and the changes in the State's financial position and cash flows for the years then ended in conformity with accounting principles generally accepted in the United States of America (U.S. GAAP). The Lottery is included in the State's basic financial statements as an enterprise fund.

Basis of Presentation

The Lottery applies all applicable Governmental Accounting Standards Board (GASB) pronouncements and prepares its financial statements under the economic resources measurement focus, whereby all inflows, outflows and balances affecting net position are reported, and the accrual basis of accounting. Revenue is recognized when earned and expenses are recognized when incurred. The primary operating revenue of the Lottery is ticket sales from games. Nonoperating income consists mostly of investment income and unrealized gains on investments. Operating expenses consist of direct expenses for prizes, commissions to Lottery retailers, fees to gaming contractors, expenses for providing instant tickets to players, and telecommunications. Other operating expenses that are indirect to the results of each game include marketing, state agency charges, personal services, and fringe benefits. Nonoperating expense includes the amortization of the discount on long-term prizes payable.

The more significant accounting policies of the Lottery are described below:

Revenue Recognition

(i) Draw Games

Revenue from ticket sales for Lotto, Quick Draw, Take 5, Pick 10, Mega Millions, Powerball, Cash 4 Life, Numbers and Win 4 games, and promotional games (draw games) is recognized when the related drawing takes place. Receipts from subscription sales and other ticket sales for future drawings are recorded as unearned revenue and will not be recognized as revenue until the related drawings take place.

NEW YORK STATE LOTTERY
Notes to Financial Statements
Years Ended March 31, 2022 and 2021

NOTE 1 ORGANIZATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES
(continued)

Revenue Recognition *(continued)*

(ii) Instant Games

Revenue from Instant Games is recognized based on the dollar value of the total number of tickets available for sale. Tickets are available for sale upon being activated on the Lottery Validation System at the retailer locations.

(iii) Video Gaming

Revenue from video lottery gaming is recognized based on net machine income, which is defined as amounts played less prizes won.

Interactive Fantasy Sports

Article 14 of the New York State Racing, Pari-Mutuel Wagering and Breeding Law authorizes licensed entities to conduct interactive fantasy sports wagering. All taxes derived from the conduct of such activity is deposited into the interactive fantasy sports education account (a non-enterprise fund account). Chapter 56 of the Laws of 2021 authorized the deposit of \$5 million from the interactive fantasy sports education account to the lottery education account for supplemental aid to education. The amount deposited from interactive fantasy sports amounted to \$5 million in the fiscal years ended March 31, 2022 and March 31, 2021. The amount is recognized in other revenue, net in the financial statements.

Prize Expense

The Lottery recognizes prize expense for draw games equivalent to the actual prize liability incurred for each drawing. Prize expense for Instant Games is recognized when instant books are activated by retailers and is based on the percentage of sales allocated to prizes for each game. Video lottery revenue is reported net of prizes, so prize expense is not recognized on these games. Prize expense is adjusted accordingly for any prizes unclaimed within the time period allowed by law.

NEW YORK STATE LOTTERY
Notes to Financial Statements
Years Ended March 31, 2022 and 2021

NOTE 1 ORGANIZATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES
(continued)

Commissions and Fees

Retailers selling draw and Instant Game tickets receive a commission of 6% based on the total tickets sold. Video gaming facilities receive a varying percent of incremental annual net machine income according to provisions of Section 1612 of the New York State Tax Law. The particular percent applied to a range of net machine income can vary depending on the facility's number of video gaming machines, geographical area of the state, population level, or proximity to Native American gaming facilities. The full-service Lottery system contractor and the video gaming central processing contractor receive fees equal to a contractual percentage of the sales generated through the network maintained by the respective contractor. Video lottery terminal contractors are paid based on a base price percentage of revenue, plus the costs of any selected additional options outlined in each vendor's catalog. All other gaming contractors are paid fees based on the units of service provided (see Note 13).

Fund Transfers

The New York State budget guarantees the amount of education funding provided by the Lottery (Lottery Aid Guarantee) by way of a transfer from the New York State general fund. For fiscal year 2022, \$90,000,000 was transferred as a Lottery Aid Guarantee. In fiscal year 2021 a Lottery Aid Guarantee transfer of \$692,820,000 was required due to a COVID related decline in revenue.

The New York State budget authorizes the transfer of up to \$1 billion from any enterprise fund to the New York State general fund. For fiscal year 2021, \$4.1 million was transferred from Lottery administrative expense funds to the New York State general fund. No such transfer occurred in fiscal year 2022.

Accounts Receivable

Accounts receivable primarily represent amounts due from retailers through a Lottery gaming contractor and amounts due from video lottery gaming facilities, net of commissions and fees, as well as amounts due from agents for Instant Game tickets that have been activated, but not yet settled. Instant ticket settlements occur within 45 days after a book of tickets is activated. Video lottery gaming receivables are received two business days after each sales day and draw games are collected within four business days after the close of each sales week.

NEW YORK STATE LOTTERY
Notes to Financial Statements
Years Ended March 31, 2022 and 2021

NOTE 1 ORGANIZATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES
(continued)

Allocation of Revenue from Ticket Sales

The allocation of ticket sales is made in accordance with the provisions of the New York State Lottery for Education Law, which requires:

- Allocations of ticket sales revenue to New York for educational purposes are to be at least 20.75% for the New York State Lottery Instant Games, 30.00% for multi-state games such as Mega Millions, Powerball, Cash 4 Life, 35.00% for Take 5, Numbers, Win-4, and Pick 10, 45.00% for Lotto and promotional games, and 25.00% for Quick Draw. In addition, the Lottery has statutory authority to issue up to five Instant Games per year with at least 10.75% for educational purposes. For video lottery, the required allocation to education is a varying percent of each facility's annual incremental net machine income, generally dependent on the facilities' geographic location.
- Allocations of ticket sales revenue for the payment of lottery prizes are not to exceed 64.25% for the New York State Lottery Instant Games, 55.00% for multi-state games, such as Mega Millions, Powerball, Cash 4 Life, 50.00% for Take 5, Numbers, Win-4, and Pick 10, 40.00% for Lotto and 60.00% for Quick Draw. In addition, the Lottery has statutory authority to issue up to five Instant Games per year with up to 74.25% allocated to prizes. Video lottery is required to pay prizes that average no less than 90% of gross sales.
- Allocations of ticket sales revenue from all traditional games for the payment of Lottery administrative expenses (including agent commissions and contractor fees) are not to exceed 15%. For video lottery, 10% of net revenue (the total revenue wagered after payout for prizes) is allocated for Lottery Administration. Unlike traditional games, the video lottery administrative allocation does not include commissions and fees, which are described separately (see previously within Commissions and Fees). Any excess of the maximum allocation over actual administrative expenses is allocated to education. Such allocations amounted to approximately \$338,446,124 and \$300,182,569 for fiscal years 2022 and 2021, respectively. Administrative expenses incurred by the Lottery represent telecommunications, advertising, salary and other operating costs.

Cash and Cash Equivalents

For purposes of the statements of cash flows, the Lottery considers cash equivalents to be amounts held with banks and amounts held under the joint custody of the Commissioner of Taxation and Finance and the Comptroller of the State through the Short-Term Investment Pool (STIP), which is used for the temporary investment of funds not required for immediate payments. Only investments with maturities of 90 days or less at the time of purchase are classified as cash equivalents.

NEW YORK STATE LOTTERY
Notes to Financial Statements
Years Ended March 31, 2022 and 2021

NOTE 1 ORGANIZATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES
(continued)

Investments

Investments, consisting of U.S. Treasury bonds, U.S. Treasury strips, bonds guaranteed by U.S. Agency for International Development and New York City Transitional Finance Authority municipal bonds, are carried at fair value. Investment income represents accretion of bond discount, interest on bonds and deposits, and the change in fair value of investments.

Inventory

Instant Game tickets are purchased from printing vendors. Tickets not activated for sale are held in inventory and valued at cost by game. Tickets are charged to instant ticket direct expense under the first-in, first-out accounting method when activated for sale by lottery retailers. At the conclusion of an Instant Game, unused inventory is charged to instant ticket direct expense.

Capital Assets

Capital assets consist of equipment and leasehold improvements, which are carried at historical cost. Equipment is capitalized when it has cost in excess of \$40,000 and a useful life of two years or more. Leasehold improvements are capitalized when they have a cost of \$100,000 or more. Depreciation of equipment is computed using the straight-line method over five years, the estimated useful lives of the assets. Leasehold improvements and equipment acquired under capital leases are amortized using the straight-line method over ten and five years, respectively, which is the lesser of their useful lives or the term of the leases. Changes in capital assets and related accumulated depreciation are shown in the table below, by major class of asset, for the years ended March 31, 2022 and 2021 (in thousands).

| | 2020 | Additions | Deletions | 2021 | Additions | Deletions | 2022 |
|-------------------------------|--------------|----------------|-------------|--------------|----------------|-------------|--------------|
| <i>Leasehold improvements</i> | | | | | | | |
| Cost | \$ 4,526 | \$ - | \$ - | \$ 4,526 | \$ - | \$ - | \$ 4,526 |
| Accumulated depreciation | (4,526) | - | - | (4,526) | - | - | (4,526) |
| Net value | - | - | - | - | - | - | - |
| <i>Equipment</i> | | | | | | | |
| Cost | 1,506 | - | - | 1,506 | - | (356) | 1,150 |
| Accumulated depreciation | (1,434) | (20) | - | (1,454) | (20) | 356 | (1,118) |
| Net value | 72 | (20) | - | 52 | (20) | - | 32 |
| Total | \$ 72 | \$ (20) | \$ - | \$ 52 | \$ (20) | \$ - | \$ 32 |

When assets are retired or otherwise disposed of, the cost and related accumulated depreciation or amortization are removed from the accounts and any resulting gain or loss is reflected in other revenue, net in the period of disposal.

NEW YORK STATE LOTTERY
Notes to Financial Statements
Years Ended March 31, 2022 and 2021

NOTE 1 ORGANIZATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES
(continued)

Prizes Payable

Lotto, Powerball, Mega Millions and Cash 4 Life jackpot players have the option of selecting a lump-sum payment or a long-term annuity payment. Some Instant Games also have jackpot prizes that are long-term annuity payments. Prizes payable represents the liability for those prizes, which are payable in annual installments. Such prize payments are funded by the Lottery's investments. The amortization of the long-term annuity payment discount is recorded as investment expense in the accompanying statements of revenue, expenses and changes in net position. Any excess of investment maturities over related annuity prize payments is recorded in restricted net position and made available for future prizes.

Unclaimed Prizes

Unclaimed prizes as of March 31, 2022 and 2021 were \$538,966,000 and \$462,618,000, respectively. Prizes unclaimed for one year after the drawing date (lapsed) are forfeited by the ticket holder. Total prizes lapsed amounted to approximately \$112,831,000 and \$232,776,000 for fiscal years 2022 and 2021, respectively. These forfeited prizes are netted against prize expense in the accompanying statements of revenue, expense, and changes in net position.

Pursuant to New York State Tax Law Section 1614, the Lottery retains forfeited prizes for supplemental prizes in subsequent lottery games. During the fiscal years 2022 and 2021, these supplemental prizes were used for Mega Millions, Powerball, Cash 4 Life, Lotto, Quick Draw, Take 5, Numbers, Win 4, and various Instant Games. New York State Tax Law Section 1614 requires any lapsed prizes in excess of sixty million dollars for the fiscal year to be allocated to Education. The total amount of lapsed prizes (including the Lottery's share of multi-state games) and interest on such funds allocated to Aid to Education for fiscal years 2022 and 2021 was approximately \$55,099,255 and \$176,236,000, respectively.

Restricted Net Position

Restricted net position for prizes includes forfeited prizes and other prize assets that are restricted under New York State Tax Law Sections 1612 and 1614 for the purpose of meeting future prize expense.

Use of Estimates

The preparation of financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the amounts reported and disclosed in the financial statements and related notes. Actual results could differ from those estimates.

NEW YORK STATE LOTTERY
Notes to Financial Statements
Years Ended March 31, 2022 and 2021

NOTE 1 ORGANIZATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES
(continued)

Multi-State Lottery Association (MUSL)

The Lottery is a member of the Multi-State Lottery Association (MUSL). MUSL is a non-profit, government benefit association owned and operated by its member lotteries. MUSL included 36 state lotteries as well as the lotteries of the District of Columbia, Puerto Rico and the U.S. Virgin Islands as of March 31, 2022. MUSL performs certain administrative and marketing functions on behalf of its members. Through membership in MUSL, the Lottery participates in the multi-jurisdictional lottery games of Powerball and Mega Millions. A copy of the MUSL financial statements may be obtained by submitting a written request to MUSL, 8101 Birchwood Court, Suite R, Johnston, IA 50131.

Recently Issued Accounting Pronouncements

During 2017, the GASB issued Statement No. 87, *Leases* (GASB Statement No. 87). The objective of this Statement is to better meet the information needs of financial statement users by improving accounting and financial reporting for leases by governments. This Statement increases the usefulness of governments' financial statements by requiring recognition of certain lease assets and liabilities for leases that previously were classified as operating leases and inflows of resources or outflows of resources recognized based on the payment provisions of the contract. It establishes a single model for lease accounting based on the foundational principle that leases are financings of the right to use an underlying asset. Under this Statement, a lessee is required to recognize a lease liability and an intangible right-to-use lease asset, and a lessor is required to recognize a lease receivable and a deferred inflow of resources, thereby enhancing the relevance and consistency of information about governments' leasing activities. GASB Statement No. 87 is effective for the Lottery's March 31, 2023 financial statements. The Lottery is evaluating the impact of this Statement on the financial statements.

In January 2020, the GASB issued Statement No. 92, *Omnibus 2020*. The objectives of this Statement are to enhance the comparability in accounting and financial reporting and to improve the consistency of authoritative literature by addressing practice issues that have been identified during implementation and application of certain GASB Statements. Implementation of GASB 92 is planned for fiscal years 2022 and 2023. There was no impact to the Lottery's financial statements for fiscal year 2022. Currently, the Lottery is evaluating the impact of GASB No. 92 on the financial statements for fiscal 2023.

NOTE 1 ORGANIZATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES
(continued)

Recently Issued Accounting Pronouncements (continued)

During 2020, the GASB issued Statement No. 96, *Subscription-Based Information Technology Arrangements* (GASB 96). The objective of this Statement is to better meet the information needs of financial statement users by establishing uniform accounting and financial reporting requirements for subscription-based information technology arrangements (SBITA). The SBITA is defined as a contract that conveys the control of the right to use another party's information technology software, alone or in combination with tangible capital assets, as specified in the contract for a period of time in an exchange or exchange like transaction. This Statement increases the usefulness of governments' financial statements by requiring recognition of an intangible SBITA asset and corresponding subscription liability. This Statement also provides capitalization criteria for outlays other than subscription payments including implementation costs of an SBITA and requires certain note disclosures. GASB 96 is effective for the Lottery's March 31, 2024 financial statements. Currently, the Lottery is evaluating the impact of GASB No. 96 on the financial statements.

During 2020, the GASB issued Statement No. 97, *Certain Component Unit Criteria, and Accounting and Financial Reporting for Internal Revenue Code Section 457 Deferred Compensation Plans*. The objectives of this Statement are to better meet the information needs of financial statement users relating to Section 457 plans of fiduciary component units and mitigate costs associated with the reporting of certain defined plans. This Statement establishes the criteria for determining whether a primary government is financially accountable for a potential component unit and requires that a Section 457 plan be classified as either a pension plan or another employee benefit plan depending on whether the plan meets the definition of a pension plan. GASB No. 97 is effective for the Lottery's fiscal year ending March 31, 2023. Currently, the Lottery is evaluating the impact of GASB No. 97 on the financial statements.

During 2021, the GASB issued Statement No. 98, *The Annual Comprehensive Financial Report*. This Statement establishes the term *annual comprehensive financial report* and its acronym ACFR. There was no material impact to the financial statements as a result of adopting GASB 98.

During 2022, the GASB issued Statement No. 99, *Omnibus 2022*. The objectives of this Statement are to enhance comparability in accounting and financial reporting and to improve the consistency of authoritative literature by addressing (1) practice issues that have been identified during implementation and application of certain GASB Statements and (2) accounting and financial reporting for financial guarantees. Implementation of GASB 99 is required for fiscal years 2022, 2024 and 2025. There was no material impact to the financial statements as a result of adopting and implementing GASB 99 for the 2022 financial statements. Currently, the Lottery is evaluating the impact of GASB 99 on the 2024 and 2025 financial statements.

NOTE 1 ORGANIZATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES
(continued)

Recently Issued Accounting Pronouncements *(continued)*

During 2022, the GASB issued Statement No. 100, *Accounting Changes and Error Corrections—an amendment of GASB Statement No. 62*. The primary objective of this Statement is to enhance accounting and financial reporting requirements for accounting changes and error corrections to provide more understandable, reliable, relevant, consistent, and comparable information for making decisions or assessing accountability. Currently, the Lottery is evaluating the impact of GASB 100 on the 2025 financial statements.

During 2022, the GASB issued Statement No. 101, *Compensated Absences*. The objective of this Statement is to better meet the information needs of financial statement users by updating the recognition and measurement guidance for compensated absences. That objective is achieved by aligning the recognition and measurement guidance under a unified model and by amending certain previously required disclosures. Currently, the Lottery is evaluating the impact of GASB 101 on the 2025 financial statements.

NOTE 2 CASH AND CASH EQUIVALENTS

Lottery deposits of cash and cash equivalents are made in accordance with New York State Finance Law Sections 92c and 98a and New York State Tax Law Sections 1611 and 1612. Lottery sales receipts are allocated and deposited in separate fund accounts for prizes, education, and administration under the joint custody of the Commissioner of Taxation and Finance and the Comptroller of the State of New York. Per Section 98a of the New York State Finance Law, the accounts for prizes and administration earn interest through participation in a STIP administered by the Office of the State Comptroller of the State of New York. The prize account interest is used for future lottery prizes. The STIP is reported at amortized cost. The carrying amount of the joint custody accounts included in cash and cash equivalents was \$1,234,122,000 and \$738,695,000 as of March 31, 2022 and 2021, respectively.

The Lottery also maintains sole custody accounts that are used for daily cash management purposes. The Lottery manages the investment of its cash balances to minimize its uninvested funds. As of March 31, 2022 and 2021, the amount of sole custody accounts included in cash and cash equivalents was \$32,534,000 and \$26,448,000, respectively.

NEW YORK STATE LOTTERY
Notes to Financial Statements
Years Ended March 31, 2022 and 2021

NOTE 2 CASH AND CASH EQUIVALENTS *(continued)*

The Lottery's deposits are collateralized under a program administered by the Office of the State Comptroller of the State of New York. To manage custodial credit risk, the State requires that its depository banks pledge collateral based on available bank balances. All securities pledged as collateral are held by the State's fiscal agent in the name of the State. The Lottery's deposits with financial institutions were fully collateralized at fiscal year end. The Lottery manages custodial credit risk by using several financial institutions and by minimizing balances in the sole custody accounts.

NOTE 3 INVESTMENTS

The Lottery is authorized by the Office of the State Comptroller per State statute to invest prize funds, which will provide for the payment of prizes payable (see Note 4). The Lottery invests in U.S. Treasury bonds, U.S. Treasury strips, bonds guaranteed by the U.S. Agency for International Development and New York City Transitional Finance Authority municipal bonds, which are guaranteed by the full faith and credit of the United States. The fair value of these investments as of March 31, 2022 and 2021 was \$1,117,737,000 and \$1,263,112,000, respectively. During fiscal years 2022 and 2021, approximately \$26,578,000 and \$28,043,000, respectively, of amortized discount was included in investment income.

The amortized costs of these investments consisted of the following at March 31 (in thousands):

| | <u>2022</u> | <u>2021</u> |
|--|--------------------------|--------------------------|
| Maturity value | \$ 1,242,397 | \$ 1,330,881 |
| Unamortized discount | <u>(229,184)</u> | <u>(250,212)</u> |
| Total at amortized cost | 1,013,213 | 1,080,669 |
| Less: Investments, maturing within one year, at amortized cost | <u>95,990</u> | <u>107,804</u> |
| Long-term investments, at amortized cost | <u><u>\$ 917,223</u></u> | <u><u>\$ 972,865</u></u> |

The fair value hierarchy categorizes the inputs to valuation techniques used to measure fair value into three levels. Level 1 inputs are quoted prices (unadjusted) for identical assets or liabilities in active markets that a government can access at the measurement date. Level 2 inputs are inputs other than quoted prices included within Level 1 that are observable for an asset or liability, either directly or indirectly. Level 3 inputs are unobservable inputs for an asset or liability. The fair value hierarchy gives the highest priority to Level 1 inputs and the lowest priority to Level 3 inputs.

NEW YORK STATE LOTTERY
Notes to Financial Statements
Years Ended March 31, 2022 and 2021

NOTE 3 INVESTMENTS *(continued)*

Fair value of the Lottery's investments are measured by Level 1 inputs based upon quoted prices in active markets or Level 2 inputs based upon quoted prices for identical or similar assets in markets that are not active or other observable inputs such as interest rates and yield curves observable at commonly quoted intervals. There are no Level 3 investments as of March 31, 2022 and 2021.

The fair values of the U.S. Government obligations were valued using quoted market prices (Level 1). Bonds guaranteed by the U.S. Agency for International Development and New York City Transitional Finance Authority bonds are valued at the closing price reported on the markets not actively traded (Level 2).

Balances and fair value measurements of the Lottery's investments as of March 31 were as follows (in thousands):

| Investments | 2022 | | | 2021 | | |
|---|-------------------|-------------------|---------------------|-------------------|-------------------|---------------------|
| | Level 1 | Level 2 | Total | Level 1 | Level 2 | Total |
| U.S. Treasury strips | \$ 6,156 | \$ - | \$ 6,156 | \$ 6,252 | \$ - | \$ 6,252 |
| U.S. Treasury bonds | 564,347 | - | 564,347 | 613,072 | - | 613,072 |
| New York City Transitional Finance Authority bonds | - | 403,969 | 403,969 | - | 454,533 | 454,533 |
| Bonds guaranteed by U.S. Agency for International Development | - | 143,265 | 143,265 | - | 189,255 | 189,255 |
| Total investments | \$ 570,503 | \$ 547,234 | \$ 1,117,737 | \$ 619,324 | \$ 643,788 | \$ 1,263,112 |

Maturities of the investments in each of the five fiscal years following March 31, 2022, and the five-year incremental totals thereafter, are as follows (in thousands):

| | Maturities | Interest Due | Total |
|-----------|---------------------|---------------------|---------------------|
| 2023 | \$ 97,657 | \$ 19,001 | \$ 116,658 |
| 2024 | 93,847 | 18,091 | 111,938 |
| 2025 | 98,948 | 16,990 | 115,938 |
| 2026 | 67,694 | 15,830 | 83,524 |
| 2027 | 63,828 | 14,730 | 78,558 |
| 2028-2032 | 245,512 | 66,935 | 312,447 |
| 2033-2037 | 175,028 | 56,512 | 231,540 |
| 2038-2042 | 306,038 | 15,939 | 321,977 |
| 2043-2047 | 59,605 | - | 59,605 |
| 2048-2052 | 34,240 | - | 34,240 |
| | \$ 1,242,397 | \$ 224,028 | \$ 1,466,425 |

NEW YORK STATE LOTTERY
Notes to Financial Statements
Years Ended March 31, 2022 and 2021

NOTE 3 INVESTMENTS *(continued)*

Credit risk is the risk that an issuer will not fulfill its obligations. The Lottery's policy is to follow New York State law, which limits the investments that the Lottery can make and generally limits the Lottery's exposure to credit risk. The Lottery has generally limited its investments to obligations backed by the full faith of the U.S. Government. Beginning in 2011, the Lottery held similarly rated New York City Transitional Finance Authority municipal bonds. The credit ratings of the Lottery's investments as published by Moody's and Standard & Poor's are included below for those investments where credit ratings were available.

Interest rate risk is the risk that changes in interest rates will adversely affect the fair value of an investment. The Lottery's policy for managing this risk is generally to hold investment securities to maturity, at which time the fair value of the investment is equal to its stated maturity value.

As of March 31, 2022 and 2021, the Lottery had the following investments and maturities (amounts in thousands):

| Investment Type | 2022 Fair Value | Moody's Credit Rating | S&P Credit Rating | 2022 Investment Maturities (Fair Value) | | |
|---|---------------------|-----------------------------|-------------------------|--|------------------------|-----------------------|
| | | | | Less than Five Years | 5 Years to 10 Years | More than 10 Years |
| | | | | U.S. Treasury strips | \$ 6,156 | N/A |
| U.S. Treasury bonds | 564,347 | N/A | N/A | 190,552 | 145,913 | 227,882 |
| New York City Transitional Finance Authority bonds | 403,969 | Aa1 | AAA | 100,456 | 22,718 | 280,795 |
| Bonds guaranteed by U.S. Agency for International Development | 143,265 | N/A | N/A | 115,002 | 28,263 | - |
| Total | \$ 1,117,737 | | | \$ 406,010 | \$ 203,050 | \$ 508,677 |

| Investment Type | 2021 Fair Value | Moody's Credit Rating | S&P Credit Rating | 2021 Investment Maturities (Fair Value) | | |
|---|---------------------|-----------------------------|-------------------------|--|------------------------|-----------------------|
| | | | | Less than Five Years | 5 Years to 10 Years | More than 10 Years |
| | | | | U.S. Treasury strips | \$ 6,252 | N/A |
| U.S. Treasury bonds | 613,072 | N/A | N/A | 208,732 | 158,598 | 245,742 |
| New York City Transitional Finance Authority bonds | 454,533 | Aa1 | AAA | 114,890 | 40,272 | 299,371 |
| Bonds guaranteed by U.S. Agency for International Development | 189,255 | N/A | N/A | 149,675 | 39,580 | - |
| Total | \$ 1,263,112 | | | \$ 473,297 | \$ 244,702 | \$ 545,113 |

Custodial credit risk for investments is the risk that in the event of the failure of the counterparty to perform on a transaction, the Lottery will not be able to recover the value of investment securities that are in the possession of an outside party. To manage this risk, all of the Lottery's investments are insured or registered securities held by the Lottery or its agent in the Lottery's name.

NEW YORK STATE LOTTERY
Notes to Financial Statements
Years Ended March 31, 2022 and 2021

NOTE 4 PRIZES PAYABLE

Prizes payable consisted of the following as of March 31 (in thousands):

| | <u>2022</u> | <u>2021</u> |
|--------------------------------------|--------------------------|----------------------------|
| Total obligation | \$ 1,483,952 | \$ 1,606,338 |
| Unamortized discount | <u>(412,823)</u> | <u>(465,730)</u> |
| Total carrying amount | 1,071,129 | 1,140,608 |
| Less: Prizes payable within one year | <u>130,268</u> | <u>137,315</u> |
| Long-term prizes payable | <u><u>\$ 940,861</u></u> | <u><u>\$ 1,003,293</u></u> |

The amortized discount on the prizes payable is based on interest rates ranging from 0.01% to 7.58% and 0.14% to 7.69% for fiscal years 2022 and 2021, respectively, and reflects the interest rates earned by the investments held to fund the related liabilities. The amortization of discount is recorded as an investment expense in the accompanying statements of revenue, expenses, and changes in net position and amounted to \$46,385,000 and \$48,783,000 for fiscal years 2022 and 2021, respectively.

The aggregate amount of prizes payable due in each of the five fiscal years following March 31, 2022, and the five-year incremental totals thereafter, is as follows (in thousands):

| <u>Year</u> | <u>Amount</u> |
|-------------|----------------------------|
| 2023 | \$ 123,900 |
| 2024 | 111,047 |
| 2025 | 101,771 |
| 2026 | 95,516 |
| 2027 | 84,905 |
| 2028-2032 | 357,607 |
| 2033-2037 | 144,169 |
| 2038-2042 | 139,205 |
| 2043-2047 | 113,298 |
| 2048-2052 | 82,826 |
| 2053-2057 | 59,560 |
| 2058-2062 | 37,180 |
| Thereafter | <u>32,968</u> |
| | <u><u>\$ 1,483,952</u></u> |

NEW YORK STATE LOTTERY
Notes to Financial Statements
Years Ended March 31, 2022 and 2021

NOTE 5 LONG-TERM LIABILITIES

The Lottery's long-term liabilities as of March 31, 2022 and 2021 are comprised of the following (in thousands):

| | <u>Balance at March 31, 2021</u> | <u>Additions</u> | <u>Reductions</u> | <u>Balance at March 31, 2022</u> | <u>Current Portion</u> |
|---|--|------------------|---------------------|--|----------------------------|
| Compensated absences (Note 11) | \$ 1,308 | \$ 944 | \$ (1,068) | \$ 1,184 | \$ 985 |
| Net pension liability (Note 7) | 11,988 | - | (11,948) | 40 | - |
| Other postemployment benefits (Note 10) | 74,882 | 4,858 | (13,527) | 66,213 | - |
| Prizes payable (Note 4) | 1,140,608 | 59,432 | (128,911) | 1,071,129 | 130,268 |
| Total | <u>\$ 1,228,786</u> | <u>\$ 65,234</u> | <u>\$ (155,454)</u> | <u>\$ 1,138,566</u> | <u>\$ 131,253</u> |

| | <u>Balance at March 31, 2020</u> | <u>Additions</u> | <u>Reductions</u> | <u>Balance at March 31, 2021</u> | <u>Current Portion</u> |
|---|--|-------------------|---------------------|--|----------------------------|
| Compensated absences (Note 11) | \$ 1,209 | \$ 999 | \$ (900) | \$ 1,308 | \$ 1,089 |
| Pension contribution payable (Note 7) | 1,360 | - | (1,360) | - | - |
| Net pension liability (Note 7) | 3,604 | 11,103 | (2,719) | 11,988 | - |
| Other postemployment benefits (Note 10) | 65,491 | 11,536 | (2,145) | 74,882 | - |
| Prizes payable (Note 4) | 1,184,684 | 84,145 | (128,221) | 1,140,608 | 137,315 |
| Total | <u>\$ 1,256,348</u> | <u>\$ 107,783</u> | <u>\$ (135,345)</u> | <u>\$ 1,228,786</u> | <u>\$ 138,404</u> |

NOTE 6 REQUIRED ALLOCATION FOR AID TO EDUCATION

The required allocation and contribution transferred out for Aid to Education during the fiscal years ended March 31, 2022 and 2021 are as follows (in thousands):

| | <u>2022</u> | <u>2021</u> |
|---|---------------------|---------------------|
| Cash transferred to Aid to Education | \$ 3,259,993 | \$ 3,500,993 |
| Prior-year payable | (359,021) | (269,361) |
| Current-year payable | 707,133 | 359,021 |
| Required allocation for Aid to Education | <u>\$ 3,608,105</u> | <u>\$ 3,590,653</u> |

NOTE 7 PENSION BENEFITS

Substantially all employees of the Lottery are members of the State and Local Employees' Retirement System (ERS). The program is part of the State and Local Retirement System (the System), which is a cost-sharing, multi-employer public employee retirement system. The Comptroller of the State of New York is the sole trustee and administrative head of the System.

NEW YORK STATE LOTTERY
Notes to Financial Statements
Years Ended March 31, 2022 and 2021

NOTE 7 PENSION BENEFITS *(continued)*

For purposes of determining net pension liability and other pension-related amounts, information about the fiduciary net position of the ERS and additions to and deductions from the ERS fiduciary net position has been determined on the same basis reported by the System. The System issues a publicly available financial report that includes financial statements, expanded disclosures, and required supplementary information for the System. The report may be obtained by writing to the New York State and Local Retirement System, Office of the State Comptroller, 110 State Street, Albany, New York, 12244-0001, or at www.osc.state.ny.us/pension/cafr.htm.

The System provides retirement benefits as well as death and disability benefits. Retirement benefits are established by the New York State Retirement and Social Security Law. Vesting, retirement benefits, and contributory requirements depend upon the point in time at which an employee last joined the System. Most members of the System who joined before July 27, 1976 are enrolled in a noncontributory plan; the Lottery contributes the entire amount determined to be payable to the System. Personnel who joined the System on or after July 27, 1976 are required by law to contribute some percent of their gross salary for a specified number of years of employment; the Lottery withholds and contributes the balance payable to the System for these employees.

The Lottery paid to the Office of the State Comptroller of the State of New York \$2,863,000 and \$2,719,000 during fiscal years 2022 and 2021, respectively, to cover required employer contributions for retirement benefits, which equaled 100% of the required contribution in each year. These payments represented 18.06% and 16.96% of covered payroll for 2022 and 2021, respectively.

Net Pension Liabilities and Other Pension-Related Amounts

The Lottery recognized a net pension liability of \$39,913 and \$11,987,968 as of March 31, 2022 and 2021, respectively, for its proportionate share of the ERS net pension liability.

The State's proportionate share of the collective net pension liability reported at March 31, 2022, was measured as of March 31, 2021, and was determined using an actuarial valuation as of April 1, 2020, with updated procedures used to roll forward the total pension liability to March 31, 2021. The State of New York's proportion of the ERS net pension liability measured as of March 31, 2021, was 43% for the ERS, which was comparable with the proportions allocated to the State as of March 31, 2020 of 43%. The State's proportion related to the plan was determined consistently with the manner in which contributions to the pension plan are determined. The State's total projected long-term contribution effort to the ERS was compared to the total projected long-term contribution effort from all employers to the ERS in order to determine the State's proportion of the plan's net pension liability.

NEW YORK STATE LOTTERY
Notes to Financial Statements
Years Ended March 31, 2022 and 2021

NOTE 7 PENSION BENEFITS *(continued)*

Net Pension Liabilities and Other Pension-Related Amounts *(continued)*

The Office of the State Comptroller provided the Lottery with its proportionate share of the ERS collective liability. The statewide proportionate share of the ERS collective net pension liability measured as of March 31, 2021 and 2020 allocated to the Lottery enterprise fund was 0.09% and 0.11%, respectively.

Actuarial Assumptions

The total pension liability for the March 31, 2021 measurement date was determined by using an actuarial valuation as of April 1, 2020, with update procedures used to roll forward the total pension liability to March 31, 2021. The total pension liability for the March 31, 2020 measurement date was determined by using an actuarial valuation as of April 1, 2019, with update procedures used to roll forward the total pension liability to March 31, 2020. The actuarial valuation for the ERS used the following actuarial assumptions for the valuations as of April 1, 2020 and 2019:

| | |
|--|---|
| Actuarial cost method | Entry age normal |
| Inflation | 2.7% (2020); 2.5% (2019) |
| Salary scale | 4.4% (2020); 4.2% (2019) |
| Investment rate of return, including inflation | 5.9% (2020); 6.8% (2019) compounded annually, net of investment expenses |
| Cost-of-living adjustments | 1.4% (2020); 1.3% (2019) annually |
| Decrements | Based upon fiscal year 2016-20 experience (2020) 2011-2015 experience (2019) |
| Pensioner mortality | Gender/Collar specific tables based upon fiscal year 2016-2020 experience (2020); 2011-2015 experience (2019) |
| Mortality improvement | Society of Actuaries Scale MP-2020 (2020); Society of Actuaries Scale MP-2018 (2019) |

Expected Rate of Return

The long-term expected rate of return on pension plan investments was determined in accordance with Actuarial Standard of Practice (ASOP) No. 27, *Selection of Economic Assumptions for Measuring Pension Obligations*. ASOP No. 27 provides guidance on the selection of an appropriate assumed investment rate of return. Consideration was given to expected future real rates of return (expected returns, net of pension plan investment expense and inflation) for equities and fixed income as well as historical investment data and plan performance. The target allocation and best estimates of arithmetic real rates of return for each major asset class are summarized below:

NEW YORK STATE LOTTERY
Notes to Financial Statements
Years Ended March 31, 2022 and 2021

NOTE 7 PENSION BENEFITS *(continued)*

Expected Rate of Return *(continued)*

| Valuation as of April 1, 2020 | | |
|--------------------------------------|--------------------------|--|
| Asset Class | Target Allocation | Long-term Expected Rate of Return |
| Domestic equity | 32% | 4.05% |
| International equity | 15 | 6.30 |
| Private equity | 10 | 6.75 |
| Real estate | 9 | 4.95 |
| Opportunistic/ARS portfolio | 3 | 4.50 |
| Credit | 4 | 3.63 |
| Real assets | 3 | 5.95 |
| Fixed Income | 23 | 0.00 |
| Cash | 1 | 0.50 |
| Total | <u>100%</u> | |

| Valuation as of April 1, 2019 | | |
|--------------------------------------|--------------------------|--|
| Asset Class | Target Allocation | Long-term Expected Rate of Return |
| Domestic equity | 36% | 4.05% |
| International equity | 14 | 6.15 |
| Private equity | 10 | 6.75 |
| Real estate | 10 | 4.95 |
| Absolute return strategies | 2 | 3.25 |
| Opportunistic portfolio | 3 | 4.65 |
| Real assets | 3 | 5.95 |
| Bonds and mortgages | 17 | 0.75 |
| Cash | 1 | 0.00 |
| Inflation-indexed bonds | 4 | 0.50 |
| Total | <u>100%</u> | |

Discount Rate

The discount rate used to calculate the ERS total pension liability at March 31, 2022 and 2021 was 5.9% and 6.8%, respectively. The projection of cash flows used to determine the discount rate assumes that contributions from plan members will be made at the current contribution rates and that contributions from employers will be made at statutorily required rates, actuarially. Based upon the assumptions, the System's fiduciary net position was projected to be available to make all projected future benefit payments of current plan members. Therefore, the long-term expected rate of return on pension plan investments was applied to all periods of projected benefit payments to determine the total pension liability.

NEW YORK STATE LOTTERY
Notes to Financial Statements
Years Ended March 31, 2022 and 2021

NOTE 7 PENSION BENEFITS *(continued)*

Discount Rate *(continued)*

The following presents the Lottery's current period net pension liability using the current period discount rate assumption, as well as what the net pension liability would be if it were calculated using a discount rate that is 1 percentage-point lower or 1 percentage-point higher than the current assumption (in thousands):

| Lottery Net Pension Liability for Year Ended | 1% Decrease (4.9%)* | Current Assumption (5.9%)* | 1% Increase (6.9%)* |
|---|----------------------------|-----------------------------------|----------------------------|
| March 31, 2022 | \$ 11,078 | \$ 40 | \$ (10,140) |
| March 31, 2021 | \$ 22,001 | \$ 11,988 | \$ 2,766 |

* The discount rate at March 31, 2021 was 6.8% (current assumption); 5.8% (1% decrease); and 7.8% (1% increase).

For the years ended March 31, 2022 and 2021, the Lottery recognized a net pension liability of \$39,913 and \$11,987,968, respectively, for its proportionate share of the ERS net pension liability. For the years ended March 31, 2022 and 2021, the Lottery recognized pension expense of \$885,044 and \$4,015,014, respectively, related to ERS. Deferred outflows of resources and deferred inflows of resources related to ERS are summarized from the following sources (in thousands):

| <u>Deferred Outflows of Resources</u> | <u>2022</u> | <u>2021</u> |
|---|--------------------|--------------------|
| Difference between expected and actual experience | \$ 487 | \$ 706 |
| Changes in assumptions | 7,339 | 241 |
| Net difference between projected and actual investment earnings on pension plan investments | - | 6,146 |
| Changes in proportion and differences between employer contributions and proportionate share of contributions | 74 | 17 |
| Contributions made subsequent to measurement date | 1,761 | 1,795 |
| Total deferred outflows of resources | \$ 9,661 | \$ 8,905 |
| | <u>2022</u> | <u>2021</u> |
| | <u>2022</u> | <u>2021</u> |
| <u>Deferred Inflows of Resources</u> | | |
| Difference between expected and actual experience | \$ - | \$ - |
| Changes in assumptions | 139 | 208 |
| Net difference between projected and actual investment earnings on pension plan investments | 11,465 | - |
| Changes in proportion and differences between employer contributions and proportionate share of contributions | 150 | 172 |
| Total deferred inflows of resources | \$ 11,754 | \$ 380 |

NEW YORK STATE LOTTERY
Notes to Financial Statements
Years Ended March 31, 2022 and 2021

NOTE 7 PENSION BENEFITS (continued)

Discount Rate (continued)

Amounts reported as deferred outflows of resources and deferred inflows of resources related to pensions for the Lottery will be recognized in pension expense as follows:

| <u>Year</u> | <u>Amount</u> |
|-------------|---------------|
| 2023 | \$ (724,038) |
| 2024 | (274,616) |
| 2025 | (645,356) |
| 2026 | (2,209,465) |

The amount of deferred outflows of resources as of March 31, 2022 and 2021 that will be applied as a reduction of the pension liability in the subsequent fiscal period is \$1,761,000 and \$1,795,000, respectively.

NOTE 8 OPERATING INCOME

Composition of operating income for fiscal 2022 and 2021 by type of lottery game is as follows (in thousands):

| | <u>2022</u> | | | | | <u>Net</u> |
|-------------------------------|----------------------|-----------------------|-----------------------|-------------------------------|--------------------|---------------------|
| | <u>Expenses</u> | | | | | |
| <u>Revenue</u> | <u>Prizes**</u> | <u>Commissions</u> | <u>Fees</u> | <u>Instant Direct Expense</u> | | |
| Mega Millions | \$ 294,562 | \$ (144,333) | \$ (17,312) | \$ (3,284) | \$ - | \$ 129,633 |
| Lotto | 57,115 | (19,153) | (3,137) | (663) | - | 34,162 |
| Take 5 | 225,050 | (111,233) | (13,498) | (2,025) | - | 98,294 |
| Pick 10 | 34,143 | (17,761) | (2,049) | (307) | - | 14,026 |
| Numbers | 958,642 | (449,456) | (57,519) | (8,627) | - | 443,040 |
| Win 4 | 948,111 | (455,452) | (56,887) | (8,532) | - | 427,240 |
| Powerball | 358,376 | (160,068) | (21,502) | (3,673) | - | 173,133 |
| Cash 4 Life | 120,869 | (58,635) | (6,934) | (1,252) | - | 54,048 |
| Instant | 4,517,682 | (3,091,064) | (271,060) | (43,155) | (17,227) | 1,095,176 |
| Quick Draw | 663,531 | (395,327) | (39,812) | (6,189) | - | 222,203 |
| Total traditional lottery | 8,178,081 | (4,902,482) | (489,710) | (77,707) | (17,227) | 2,690,955 |
| Video gaming | 2,177,403 * | 892 | (999,488) | (170,947) | - | 1,007,860 |
| | <u>\$ 10,355,484</u> | <u>\$ (4,901,590)</u> | <u>\$ (1,489,198)</u> | <u>\$ (248,654)</u> | <u>\$ (17,227)</u> | 3,698,815 |
| Telecommunications | | | | | | (16,518) |
| Indirect expenses | | | | | | (110,425) |
| Total operating income | | | | | | <u>\$ 3,571,872</u> |

* Video gaming revenue represents net machine income after awarding prizes. Video gaming credits played and won were as follows:

| | |
|---------------------------|---------------------|
| Credits played | \$ 37,868,954 |
| Credits won | (35,691,551) |
| Net machine income | <u>\$ 2,177,403</u> |

** Prizes unclaimed after one year are forfeited and are netted against prizes.

NEW YORK STATE LOTTERY
Notes to Financial Statements
Years Ended March 31, 2022 and 2021

NOTE 8 OPERATING INCOME (continued)

| | 2021 | | | | | Net |
|-------------------------------|---------------------|-----------------------|---------------------|---------------------|------------------------|---------------------|
| | Expenses | | | | | |
| | Revenue | Prizes** | Commissions | Fees | Instant Direct Expense | |
| Mega Millions | \$ 333,933 | \$ (161,661) | \$ (19,640) | \$ (3,713) | \$ - | \$ 148,919 |
| Lotto | 59,663 | (26,773) | (3,260) | (684) | - | 28,946 |
| Take 5 | 218,750 | (107,284) | (13,125) | (1,975) | - | 96,366 |
| Pick 10 | 31,836 | (15,243) | (1,910) | (288) | - | 14,395 |
| Numbers | 942,313 | (442,420) | (56,539) | (8,508) | - | 434,846 |
| Win 4 | 903,244 | (381,905) | (54,195) | (8,155) | - | 458,989 |
| Powerball | 257,074 | (125,390) | (15,435) | (2,832) | - | 113,417 |
| Cash 4 Life | 119,718 | (69,526) | (6,805) | (1,254) | - | 42,133 |
| Instants | 4,231,743 | (2,749,061) | (253,904) | (40,608) | (20,962) | 1,167,208 |
| Quick Draw | 567,863 | (337,296) | (34,072) | (5,375) | - | 191,120 |
| Total traditional lottery | 7,666,137 | (4,416,559) | (458,885) | (73,392) | (20,962) | 2,696,339 |
| Video gaming | 928,740 * | 2,061 | (444,657) | (62,837) | - | 423,307 |
| | <u>\$ 8,594,877</u> | <u>\$ (4,414,498)</u> | <u>\$ (903,542)</u> | <u>\$ (136,229)</u> | <u>\$ (20,962)</u> | 3,119,646 |
| Telecommunications | | | | | | (16,730) |
| Indirect expenses | | | | | | (91,035) |
| Total operating income | | | | | | <u>\$ 3,011,881</u> |

* Video gaming revenue represents net machine income after awarding prizes. Video gaming credits played and won were as follows:

| | |
|---------------------------|-------------------|
| Credits played | \$ 16,407,139 |
| Credits won | (15,478,399) |
| Net machine income | <u>\$ 928,740</u> |

** Prizes unclaimed after one year are forfeited and are netted against prizes.

NOTE 9 DEFERRED COMPENSATION

The State offers its employees, including Lottery employees, a deferred compensation plan created in accordance with Internal Revenue Code Section 457. The plan, which is available to all employees, permits them to defer a portion of their salary until future years. The deferred compensation is not available to employees until termination, retirement, death, or unforeseeable emergency. All amounts of compensation deferred under the plan are placed in trust for the participants and their beneficiaries.

NOTE 10 OTHER POSTEMPLOYMENT BENEFITS

General Information about the OPEB Plan

As a New York State (State) agency, the Lottery participates in the New York State Health Insurance Program (NYSHIP), which is administered by the State as a single-employer, defined benefit plan. The State has the authority to establish and amend benefit terms, as well as pay OPEB benefits as they come due. Under the plan, the State provides certain healthcare benefits for eligible retired employees and their dependents. In order to qualify, retirees must meet certain age requirements and minimum service periods that vary based on the time they last entered benefits-eligible service. Retirees generally contribute a percent of the cost of single and dependent coverage for health insurance benefits. The percent varies based on when the employee retired and the salary grade for those retiring on or after January 1, 2012. The State covers 100% of the cost of single coverage for employees retired prior to January 1, 1983 who are enrolled in the Empire Plan or another plan of equal or lower cost. The NYSHIP does not issue a stand-alone financial report and the NYSHIP's agent activities are included within the financial statements of the State.

During the fiscal years ended March 31, 2022 and 2021, NYSHIP provided health insurance coverage through the Empire Plan, an indemnity health insurance plan with managed care components; various Health Maintenance Organizations (HMOs); and through the Student Employee Health Plan (SEHP). Generally, these include hospital, medical, mental health, substance abuse benefits, and prescription drug benefits.

The Lottery's policy regarding retiree healthcare benefits is to pay the amounts billed through the State's fringe benefit rate on a pay-as-you-go basis. The Lottery has no obligation beyond the payment of the State's fringe benefit rate for retiree healthcare benefits.

There were 373 total Lottery employees and participants covered by the benefit terms, as follows: 201 active employees and 172 retirees and surviving spouses receiving benefit payments. There were annual pay-as-you-go disbursements of \$2,377,840 and \$2,289,068 for 2022 and 2021, respectively. Retiree healthcare benefit costs are included in personnel service and fringe benefits expenses in the accompanying statements of revenue, expenses, and change in net position.

Actuarial Methods and Assumptions

As of March 31, 2022 and 2021, the Lottery reported a liability of \$66,213,025 and \$74,881,721, respectively, for its proportionate share of the net OPEB liability included in the accompanying statements of net position. The net OPEB liability as of March 31, 2022 and 2021 was measured as of March 31, 2021 and 2020, respectively, and was determined by an actuarial valuation as of April 1, 2020 and 2019, respectively, with updated procedures used to roll forward the net OPEB liability to March 31, 2021 and 2020, respectively.

NEW YORK STATE LOTTERY
Notes to Financial Statements
Years Ended March 31, 2022 and 2021

NOTE 10 OTHER POSTEMPLOYMENT BENEFITS *(continued)*

Actuarial Methods and Assumptions *(continued)*

The State's proportion related to the plan was determined consistently with the manner in which OPEB actual expenses are paid. The Office of the State Comptroller provided the Lottery with its proportionate share of the OPEB liability. The statewide proportionate share of the OPEB liability measured as of March 31, 2022 and 2021 allocated to the Lottery enterprise fund was 0.126% each year.

The actuarial valuation included the following actuarial assumptions:

| | |
|-----------------------|--|
| Actuarial cost method | Entry age normal |
| Inflation | 2.5% |
| Discount rate | 2.34% (2020); 2.84% (2019) |
| Mortality improvement | Society of Actuaries' Scale MP-2020 (2020); Society of Actuaries' Scale MP-2018 (2019); |

The discount rate for fiscal years ended March 31, 2021 and 2020 is based on the Bond Buyer 20-year general obligation municipal bond index rate at March 31, 2021 and 2020, respectively.

The salary rate varies by years of service, starting at 8.8% and decreasing to 3.3% after 18 years of service.

For the measurement period ended March 31, 2021, the health care cost trend rates were split to reflect separate trends for pre-65 and post-65 claims. The pre-65 trend assumption begins at 5.75% and decreases to a 4.50% long-term trend rate for all health care benefits after seven years. The trend assumption for post-65 begins at 5.00% and decreases to a 4.50% long-term trend rate for all health care benefits after seven years. The drug assumption begins at 7.00% and decreases to a 4.50% long-term trend rate after seven years.

For the measurement period ended March 31, 2020, the health care cost trend rates were split to reflect separate trends for pre-65 and post-65 claims. The pre-65 trend assumption begins at 6.25% and decreases to a 4.50% long-term trend rate for all health care benefits after eight years. The trend assumption for post-65 begins at 5.20% and decreases to a 4.50% long-term trend rate for all health care benefits after eight years. The drug assumption begins at 9.00% and decreases to a 4.50% long-term trend rate after seven years.

Additionally, a trend of 3.00% per year has been assumed for employer group waiver plan benefits.

There were no significant changes in actuarial assumptions or other inputs, as of the March 31, 2021 measurement date described above, which affected the measurement of the collective total OPEB liability since the prior measurement date as of March 31, 2020.

NEW YORK STATE LOTTERY
Notes to Financial Statements
Years Ended March 31, 2022 and 2021

NOTE 10 OTHER POSTEMPLOYMENT BENEFITS *(continued)*

Actuarial Methods and Assumptions *(continued)*

In accordance with GASBS No. 75, *Accounting and Financial Reporting for Postemployment Benefits Other Than Pensions*, the actuarial valuation of OPEB also includes the value of sick leave that will be converted to reduce the retiree's share of health insurance premiums.

Net OPEB Liability

The following table shows the changes in the Lottery's net OPEB liability as of the measurement date (in thousands):

| | <u>March 31, 2021</u> | <u>March 31, 2020</u> |
|--|-------------------------|-------------------------|
| Service cost | \$ 2,639 | \$ 1,950 |
| Interest | 2,219 | 2,441 |
| Differences between expected and actual experience | (2,134) | 481 |
| Change in assumptions | (9,104) | 6,664 |
| Benefit payments | <u>(2,289)</u> | <u>(2,145)</u> |
| Net changes | (8,669) | 9,391 |
| Total OPEB liability, beginning of fiscal year | <u>74,882</u> | <u>65,491</u> |
| Total OPEB liability, end of fiscal year | <u><u>\$ 66,213</u></u> | <u><u>\$ 74,882</u></u> |

There were no significant changes between the March 31, 2021 measurement date and March 31, 2022 that will have a significant effect on the total OPEB liability at March 31, 2022.

There are no assets accumulated in a qualified trust related to the OPEB Plan.

Sensitivity of net OPEB liability to change in discount rate. The following presents the net OPEB liability of the Lottery at March 31, 2022 and 2021, as well as what the Lottery's net OPEB liability would be if it were calculated using a discount rate that is 1% lower and 1% higher than the current year rate (in thousands):

| <u>Total OPEB Liability</u> | <u>1% Decrease (1.34%)*</u> | <u>Current Assumption (2.34%)*</u> | <u>1% Increase (3.34%)*</u> |
|-----------------------------|-------------------------------------|--|-------------------------------------|
| March 31, 2022 | \$ 78,847 | \$ 66,213 | \$ 56,335 |
| March 31, 2021 | \$ 89,388 | \$ 74,882 | \$ 63,587 |

* The discount rate at March 31, 2021 was 2.84% (current assumption); 1.84% (1% decrease); and 3.84% (1% increase).

NEW YORK STATE LOTTERY
Notes to Financial Statements
Years Ended March 31, 2022 and 2021

NOTE 10 OTHER POSTEMPLOYMENT BENEFITS *(continued)*

Net OPEB Liability *(continued)*

Sensitivity of net OPEB liability to change in health care cost trend rates. The following presents the net OPEB liability of the Lottery at March 31, 2022, as well as what the Lottery's net OPEB liability would be if it were calculated using healthcare cost trend rates that are 1% lower and 1% higher than the current year rate (in thousands):

| <u>Total OPEB Liability</u> | <u>1% Decrease</u> | <u>Current Assumption</u> | <u>1% Increase</u> |
|-----------------------------|------------------------|-------------------------------|------------------------|
| March 31, 2022 | \$ 55,075 | \$ 66,213 | \$ 80,944 |
| March 31, 2021 | \$ 62,261 | \$ 74,882 | \$ 91,566 |

In 2022 and 2021, the Lottery recognized expenses related to OPEB of \$4,469,262 and \$2,437,869, respectively, which is included in personnel service and fringe benefits expenses in the accompanying statements of revenue, expenses, and changes in net position. As of March 31, the Lottery reported deferred outflows and deferred inflows of resources related to OPEB from the following sources (in thousands):

| <u>Deferred Outflows of Resources</u> | <u>2022</u> | <u>2021</u> |
|---|------------------|------------------|
| Difference between expected and actual experience | \$ 514 | \$ 669 |
| Changes in assumptions or other inputs | 5,613 | 7,056 |
| Employer contributions subsequent to measurement date | 2,378 | 2,289 |
| Total deferred outflows of resources | <u>\$ 8,505</u> | <u>\$ 10,014</u> |
| | | |
| <u>Deferred Inflows of Resources</u> | <u>2022</u> | <u>2021</u> |
| Difference between expected and actual experience | \$ 3,411 | \$ 2,641 |
| Changes in assumptions or other inputs | 10,013 | 1,532 |
| Total deferred inflows of resources | <u>\$ 13,424</u> | <u>\$ 4,173</u> |

NEW YORK STATE LOTTERY
Notes to Financial Statements
Years Ended March 31, 2022 and 2021

NOTE 10 OTHER POSTEMPLOYMENT BENEFITS *(continued)*

Net OPEB Liability *(continued)*

Amounts reported as deferred outflows of resources and deferred inflows of resources related to OPEB for Lottery will be recognized in OPEB expense as follows (in thousands):

| <u>Year</u> | <u>Amount</u> |
|-------------|---------------|
| 2023 | \$ (2,057) |
| 2024 | (1,608) |
| 2025 | (786) |
| 2026 | (1,496) |
| 2027 | (1,350) |

The amount of deferred outflows of resources as of March 31, 2022 and 2021 that will be applied as a reduction of the OPEB liability in the subsequent period is \$2,377,840 and \$2,289,068, respectively.

NOTE 11 EMPLOYEES' COMPENSATED ABSENCES

Under the terms of the Lottery's personnel policies and its union agreements, vacation pay benefits may be paid upon termination, up to a maximum of 225 hours. The Lottery recognizes employees' compensated absence benefits when earned. The liability for employees' compensated absences was approximately \$1,183,000 and \$1,308,000 as of March 31, 2022 and 2021, respectively, and is recorded as compensated absences in the accompanying statements of net position.

NOTE 12 LEASES

The Lottery has entered into operating leases for equipment and building space. Rental expense was approximately \$2,351,000 and \$2,284,000 in 2022 and 2021, respectively.

NEW YORK STATE LOTTERY
Notes to Financial Statements
Years Ended March 31, 2022 and 2021

NOTE 12 LEASES *(continued)*

Future minimum lease payments under all noncancelable leases having initial or remaining terms in excess of one year as of March 31, 2022 are as follows (in thousands):

| <u>Year</u> | <u>Operating Leases</u> |
|--|-----------------------------|
| 2023 | \$ 1,946 |
| 2024 | 4,034 |
| 2025 | 3,946 |
| 2026 | 3,935 |
| 2027 | 3,939 |
| 2028 and thereafter | 1,547 |
| Total minimum payments required | \$ 19,347 |

NOTE 13 COMMITMENTS AND CONTINGENCIES

Contractual Arrangements

The Lottery maintains a gaming network of approximately 14,900 retailer locations where all traditional lottery games are sold. Instant Game tickets are also sold through approximately 4,200 self-service terminals. International Game Technology (formerly known as GTECH Corporation) is responsible for operating all traditional Lottery games, including maintenance of terminals and related communication services, under a contract expiring on August 6, 2022.

Instant Game sales are also supported by services provided under additional contracts:

- (1) Under a contract amendment that expires August 5, 2022, Scientific Games International is the primary supplier of Instant Game tickets.
- (2) Under a contract amendment expiring August 5, 2022, Pollard Banknote Limited is an alternate supplier of Instant Game tickets.
- (3) Under a contract amendment that expires on August 5, 2022, IGT Global Solutions Corporation (formerly known as GTECH Printing Corporation) is an alternate supplier of Instant Game tickets.

NOTE 13 COMMITMENTS AND CONTINGENCIES *(continued)*

Contractual Arrangements *(continued)*

Video lottery games are offered on approximately 16,900 video gaming machines spread over nine video lottery gaming facilities. Everi Games, Inc. provides a central processing system for the operation of video lottery games under a contract expiring on December 31, 2029. Video lottery gaming machines are provided by vendors under contracts expiring on December 31, 2029. These contracts are paid based on a base price percentage of revenue, plus the costs of any selected additional options outlined in each vendor's catalog.

Litigation

The Lottery has been named as a defendant in several lawsuits. While the ultimate outcome of these lawsuits cannot be predicted at this time, it is the opinion of management and in-house counsel that the disposition of any litigation in which the Lottery is involved will not have a material adverse effect on the financial position of the Lottery.

Effects of COVID-19

On March 22, 2020, Governor Cuomo announced the "New York State on PAUSE" executive order in response to the global COVID-19 pandemic. Among other measures, the order closed all non-essential businesses statewide. Traditional lottery games were deemed essential and continued to operate. Consumer demand and retail points of sale were negatively affected. Video lottery gaming facilities were closed until September 2020, at which time they reopened at limited capacity. On June 15, 2021, restrictions on the number of people permitted to attend large-scale entertainment venues, including video lottery gaming facilities were discontinued. During the period of closure, there was no revenue from video lottery gaming. The loss of revenue from both traditional and video lottery games resulted in a Lottery Aid Guarantee from the State general fund of \$692,820,000 in 2021.

REQUIRED SUPPLEMENTARY INFORMATION (UNAUDITED)

NEW YORK STATE LOTTERY

Required Supplementary Information (Unaudited)
 Years Ended March 31, 2022 and 2021

The schedules that follow are required supplementary information and are presented as of and for the Lottery's fiscal year ended March 31 using a measurement date of the preceding March 31:

**Schedule of Lottery's Proportionate Share of Net Pension Liability
 for New York State and Local Employees' Retirement System**

As of and for the Years Ended March 31
 (Dollars in thousands)

| Fiscal Year End | Lottery's Proportionate (Percentage) Share of Collective Net Pension Liability | Lottery's Proportionate (Amount) Share of Collective Net Pension Liability | Lottery's Covered Payroll | Lottery's Proportionate Share of Collective Net Pension Liability as a Percentage of Covered Payroll | Plan's Fiduciary Net Position as a Percentage of the Total Pension Liability |
|------------------------|---|---|----------------------------------|---|---|
| 2022 | 0.09% | \$ 40 | \$ 16,035 | 0.25% | 99.95% |
| 2021 | 0.11% | \$ 11,988 | \$ 16,790 | 71.40% | 86.39% |
| 2020 | 0.12% | \$ 3,604 | \$ 18,058 | 19.96% | 96.27% |
| 2019 | 0.12% | \$ 1,719 | \$ 18,633 | 9.23% | 98.24% |
| 2018 | 0.12% | \$ 4,839 | \$ 17,546 | 27.58% | 94.70% |
| 2017 | 0.12% | \$ 8,324 | \$ 17,583 | 47.34% | 90.69% |
| 2016 | 0.13% | \$ 1,883 | \$ 17,460 | 10.78% | 97.95% |

The "Schedule of Lottery's Proportionate Share of Net Pension Liability" presented above illustrates the required 10-year trend of information. However, until we can compile a full 10-year trend of information, we are presenting the information for which information was available.

NEW YORK STATE LOTTERYRequired Supplementary Information (Unaudited) *(continued)*
Years Ended March 31, 2022 and 2021**Schedule of Lottery's Contributions for New York State and
Local Employees' Retirement System**As of and for the Years Ended March 31
(Dollars in thousands)

| Fiscal Year End | Required Contributions | Lottery's Contributions Recognized by the Pension Plan | Contribution Excess/ (Deficiency) | Lottery's Covered Payroll | Lottery's Contributions as a Percentage of Covered Payroll |
|--------------------------------|-----------------------------------|---|--|--|---|
| 2022 | \$ 2,863 | \$ 2,863 | - | \$ 15,853 | 18.06% |
| 2021 | \$ 2,719 | \$ 2,719 | - | \$ 16,035 | 16.96% |
| 2020 | \$ 2,945 | \$ 2,945 | - | \$ 16,790 | 17.54% |
| 2019 | \$ 3,328 | \$ 3,328 | - | \$ 18,058 | 18.43% |
| 2018 | \$ 3,414 | \$ 3,414 | - | \$ 18,633 | 18.32% |
| 2017 | \$ 2,896 | \$ 2,896 | - | \$ 17,546 | 16.51% |
| 2016 | \$ 2,921 | \$ 2,921 | - | \$ 17,583 | 16.61% |

The "Schedule of Lottery's Contributions" presented above is to illustrate the required 10-year trend of information. However, until we can compile a full 10-year trend of information, we are presenting the information for which information was available.

NEW YORK STATE LOTTERY

Required Supplementary Information (Unaudited) (continued)
Years Ended March 31, 2022 and 2021

The schedule that follows is required supplementary information and is presented as of and for the Lottery's fiscal year ended March 31 using a measurement date of the preceding March 31:

Schedule of Changes in Net OPEB Liability and Related Ratios

As of and for the Year Ended March 31,
(Dollars in thousands)

| | 2022 | 2021 | 2020 | 2019 |
|---|-------------------------|-------------------------|-------------------------|-------------------------|
| <i>Total OPEB liability</i> | | | | |
| Service cost | \$ 2,639 | \$ 1,950 | \$ 2,022 | \$ 2,184 |
| Interest | 2,219 | 2,441 | 2,561 | 2,725 |
| Differences between actual and expected experience | (2,134) | 481 | 448 | (5,979) |
| Changes of assumptions or other inputs | (9,104) | 6,664 | (3,428) | (295) |
| Benefit payments | <u>(2,289)</u> | <u>(2,145)</u> | <u>(2,142)</u> | <u>(2,034)</u> |
| Net change in total OPEB liability | (8,669) | 9,391 | (539) | (3,399) |
| Total OPEB liability, beginning | <u>74,882</u> | <u>65,491</u> | <u>66,030</u> | <u>69,429</u> |
| Total OPEB liability, ending | <u>\$ 66,213</u> | <u>\$ 74,882</u> | <u>\$ 65,491</u> | <u>\$ 66,030</u> |
| Net position as a percentage of OPEB liability | N/A | N/A | N/A | N/A |
| Covered payroll | \$ 8,404 | \$ 9,774 | \$ 10,712 | \$ 11,426 |
| Net OPEB liability as a percentage of covered payroll | <u>787.9%</u> | <u>766.1%</u> | <u>611.4%</u> | <u>577.9%</u> |

Changes in benefit terms: There were no significant legislative changes in benefits for the periods presented.

The "Schedule of Changes in Net OPEB Liability and Related Ratios" presented above illustrates the required 10-year trend of information. However, until we can compile a full 10-year trend of information, we are presenting the information for which information was available.

