



**Gaming
Commission**

**INVITATION FOR BIDS
FOR
CUSTODIAL BANKING SERVICES**

March 21, 2025

IFB 1007

Notice to Bidders

- The Permissible Contacts for this solicitation are Seth Stark and Alysian Bowers, as noted in Section 1.8 of the Invitation for Bids (“IFB”).
- Bidders are responsible for checking the New York State Gaming Commission’s website (https://www.gaming.ny.gov/about/procurement_opp.current.php) for updated information related to the procurement process and the IFB. The New York State Gaming Commission will not be responsible for a Bidder’s failure to obtain updated information.
- By submission of a bid in response to this IFB, the Bidder agrees to the terms of the resulting Contract, as incorporated into the IFB as **Appendix B**, or as revised through the IFB process. The New York State Gaming Commission does not intend to negotiate terms of the Contract after receipt of Bids or following award (Section 2.2).
- By submitting of a bid in response to this solicitation, the Bidder agrees to comply with the insurance requirements defined in the IFB (Section 2.9).
- The participation goals for Minority and Women-Owned Business Enterprises and Service-Disabled Veteran-Owned Businesses under this IFB are 0%. Equal Employment Opportunities provisions still apply (Section 2.10 and Section 2.11).
- To assist Bidders in completing and submitting the required documents, **Attachment 3, Document Submittal Checklist** is incorporated into this IFB.
- Bidders choosing not to submit a bid in response to this IFB are requested to submit the “Non-Bid Response” form, included in this IFB as **Attachment 4** because the information is useful to the New York State Gaming Commission in the planning and development of future solicitations and Bidders lists.

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PART 1 – GENERAL INFORMATION

1.1 INTRODUCTION

The New York State Gaming Commission (the “Commission”), operator of the New York Lottery program (the “Lottery”), on behalf of the State of New York (the “State”), is issuing this Invitation for Bids (“IFB”) to seek quotes from vendors to provide Custodial Banking Services.

One award will be made under this solicitation. The award will be made to the responsive and responsible Bidder with the lowest total monthly cost. The Contract will commence upon approval of the Office of the New York State Comptroller (“OSC”) and the Office of the New York State Attorney General (“OAG”) and will continue for five years.

The contents of this IFB, any modifications, and the Successful Bidder’s Bid will become contractual obligations if a Contract is awarded. Failure of the Successful Bidder to accept these obligations may result in cancellation of the award. The Commission is the only entity authorized to clarify, modify, amend, alter, or withdraw the provisions of this IFB.

1.2 BACKGROUND INFORMATION

In November 1966, New York State voters approved a constitutional amendment authorizing a state-operated lottery, leading to the establishment of the New York State Division of Lottery. In February 2013, the New York State Division of Lottery merged with the New York State Racing and Wagering Board to form the Commission under Chapter 60 of the Laws of 2012, as part of the FY 2012-2013 Enacted State Budget. The Commission oversees and regulates various gaming and racing programs, including Lottery, Video Lottery, Horse Racing, Charitable Gaming, Indian Casino Gaming and Commercial Casino Gaming. The mission of the Commission’s Lottery is to raise revenue for education in New York State through the administration of lottery games, such as *Numbers*, *Win 4*, *Take 5*, *Lotto*, *Pick 10*, *Cash 4 Life*, *Mega Millions*, and *Powerball*, as well as Instant Scratch-off ticket games.

1.3 MINIMUM QUALIFICATIONS

Any Bidder submitting a bid in response to this IFB must meet the following minimum qualifications. **Bids that do not meet these qualifications will not be considered.**

- A. Bidder must be a state or federally chartered commercial bank authorized to do business in New York State;
- B. Bidder must have a minimum of five years of experience providing institutional custodial services;

- C. Bidder must have a minimum of \$50 billion of assets under custody;
- D. Bidder must have a Service Organization Controls 1, Type II report; and
- E. Bidder must have audited financial statements for the past two years, including an independent auditor's report signed by a Certified Public Accountant.

1.4 SCHEDULE

The following dates are provided for informational and planning purposes. The Commission reserves the right to adjust this schedule as necessary.

IFB Issued	March 21, 2025
Questions Due by 3:00 pm, ET	April 11, 2025
Commission Response to Questions	April 18, 2025
Bids Due by 3:00 pm, ET	April 24, 2025

1.5 IFB APPENDICES AND ATTACHMENTS

The following documents are incorporated into this IFB:

- Appendix A: Standard Clauses for New York State Contracts (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 Certification – Tax Law Section 5-a
 - Appendix H: Encouraging Use of New York State Businesses in Contract Performance
 - Appendix I: EEO and MWBE Program
 - Appendix J: Participation Opportunities for New York State Certified Service-Disabled Veteran-Owned Businesses
 - 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: Insurer Qualifications and Insurance Requirements
 - Appendix O: Executive Order No. 16 Certification
- Attachment 1: Bidder Acknowledgement of Addendum
 - Attachment 2: Bid Form
 - Attachment 3: Document Submittal Checklist
 - Attachment 4: Non-Bid Response

1.6 BIDDER/SUCCESSFUL BIDDER DIFFERENTIATION

Throughout this IFB the term "Bidder," (whether capitalized or not) is used in reference to the preparation and submission of the bid 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."

1.7 HEADINGS

The headings used in this IFB are for convenience only and shall not affect the interpretation of any of the terms and conditions of this IFB.

1.8 PERMISSIBLE CONTACTS

Consistent with the public policy established by the Procurement Lobbying Law, the Contract Management Specialist or Supervisor of Contract Administration designated below are the only authorized points of contact regarding matters relating to this IFB, unless they designate additional points of contact.

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

New York State Gaming Commission
Contracts Office, 5th Floor
354 Broadway
Schenectady, NY 12305

Seth Stark, Contract Management Specialist 3
Seth.Stark@gaming.ny.gov

Or

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

1.9 PROCUREMENT LOBBYING RESTRICTIONS

As required by the Procurement Lobbying Law (New York State's State Finance Law sections 139-j and 139-k), this IFB imposes specific restrictions on communications between the Commission and a Bidder during the procurement process. From the earliest solicitation of offers through final award and approval of the resulting Contract by the Commission, the OSC, and the OAG (the "restricted period"), a Bidder is restricted from making contact with any Commission staff member other than Permissible Contacts identified in Section 1.8 of this IFB, unless the contact is permitted by the statutory exceptions set forth in New York State's State Finance Law section 139-j (3)(a).

Commission employees are permitted to communicate with Bidders regarding this IFB 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 of these provisions may result in a determination of non-responsibility, which can lead to disqualification from contract award consideration. In the event of two determinations of non-responsibility against a Bidder within a four-year period, the 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 if 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 this termination right by providing written notification to the Bidder in accordance with the written notification terms of this Contract.

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

1.10 QUESTIONS AND INQUIRIES

Questions from Bidders regarding this IFB must be submitted via electronic mail no later than the date and time specified in the Schedule (Section 1.4). **Neither faxed nor telephoned questions are acceptable.** If questions are provided via an attachment to electronic mail, the questions must be provided in Microsoft Word format.

Bidders are cautioned that any questions or inquiries regarding the IFB must be written in generic terms and must not contain pricing information. The inclusion of specific information about a Bidder’s pricing in an inquiry may result in the Bidder’s disqualification.

Responses to all questions, and any changes to the IFB resulting from such questions, will be communicated via published addenda, which will be posted on the Commission’s website. Any resulting changes to the IFB based on responses to questions shall be incorporated into the IFB with the same force and effect as if fully set forth herein.

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 bids.

1.11 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 bids, the Bidder must warrant, under penalty of perjury, that its bid was arrived at independently and without collusion, consultation, communication, or agreement aimed at restricting competition. Each Bidder must also warrant that, at the time the Bidder submitted its bid, an authorized and responsible person executed and delivered to the Commission a Non-Collusive Bidding Certification on the Bidder's behalf.

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

1.12 NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE

The 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/vendrep/>

Bidders are encouraged to complete the online form, as it will expedite Contract approval. If the Bidder does not have a current and certified online Questionnaire, 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 rely upon the Bidder's responses to the Questionnaire in making that determination. The Bidder agrees that if the Commission determines that the Bidder's responses to the Questionnaire were intentionally false or intentionally incomplete, the Commission may terminate the Contract by providing 10 days' written notification to the Successful Bidder. Such termination shall not be considered a breach of the Contract, nor shall the Commission be liable for any damages, including lost profit, that the Successful Bidder may incur 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 bid.

1.13 DESIGNATION OF PROPRIETARY INFORMATION (FOIL)

During the evaluation process, the content of each bid will be held in confidence, and details of any bid will not be revealed (except as may be required under the New York State Freedom of Information Law (New York State's Public Officers Law Article 6) ("FOIL") or other State law). The Freedom of Information Law provides for an exception from disclosure for trade secrets or information the disclosure of which 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 that its bid contains trade secrets or other confidential information, the Bidder must submit a request with its bid to exempt such information from disclosure. This request must: (a) identify the specific material in the bid; (b) identify the location (section, page number) of such material; and (c) state the reasons why the Bidder believes the FOIL permits the exemption of such information from disclosure.

Requests for exemption of the entire contents of a bid from disclosure have generally 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 a substantial injury to the Bidder's competitive position.

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

1.14 CLARIFICATION PROCESS

The Commission may request clarification from a Bidder to resolve any ambiguity or to question information presented in the Bidder's bid. Clarifications are an opportunity to explain, but not to make changes to, a bid. 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 bid.

1.15 SITE VISITS

The Commission may visit any site where the Bidder conducts, or has conducted, operations similar to the services required in this IFB. 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.

1.16 DISCLOSURE OF INVESTIGATIONS DURING BID EVALUATION

Subsequent to a Bidder's bid submission, the Commission may initiate investigations into the background 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 bid based upon the results of these 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 such Bidder's bid to be rejected, or a Contract to be canceled by the Commission, in its sole discretion.

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

1.17 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 each Bidder list and summarize pending or threatened litigation, administrative or regulatory proceedings, or similar matters that could materially affect the Bidder. As part of this disclosure requirement, the Bidder must also 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 Bidder's bid or in termination of a Contract. **Such disclosures must be included in the Bidder's bid.**

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

1.18 CONFLICTS OF INTEREST

Throughout the procurement process, Bidders must identify, and bring to the attention of the Commission, any 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 a relationship with any member, shareholders owning five percent (5%) or more, or parent, subsidiary, or affiliated firm or entity, that could constitute an actual or potential conflict of interest or that creates the 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 services set forth in this IFB. If a conflict exists or might exist, the Bidder must explain how the Bidder would eliminate or prevent such conflicts. The Bidder should also describe the procedures that will be implemented to detect, notify the Commission of, and resolve any such conflicts; and
- B. Disclose whether the Bidder, or any of its members, shareholders owning 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. If so, a brief description of the matter must be included, explaining how the matter was resolved, or if it remains unresolved.

In addition, the Bidder must complete and submit with its bid, the Vendor Assurance of No Conflict of Interest or Detrimental Effect form, found in Appendix K. Any Bidder awarded a Contract under this IFB will have an ongoing obligation to inform the Commission of any actual or apparent conflicts of interest. This disclosure obligation is a continuing requirement.

1.19 CHANGE IN FINANCIAL CONDITION

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

1.20 CHANGE IN OWNERSHIP

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

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 in relation to any case, proceeding or application, or other 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 in relation to any case, proceeding, application, or transaction with respect to which such person was directly concerned, in which

they personally participated, or that 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, employed by the State to perform services in violation of the provisions of the New York State Public Officers Law, other laws applicable to the service of State employees, or the rules, regulations, opinions, guidelines, or policies issued by the New York State Commission on Ethics and Lobbying in Government (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, who are assigned to perform services pursuant to this Contract, shall be assigned in compliance 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 this Contract pursuant to any Ethics Requirements may share in any net revenues derived from this Contract. The Successful Bidder shall identify and provide the State with notice of those employees of the Successful Bidder and its subcontractor(s) who are former employees of the Commission that will be assigned to perform services pursuant to this Contract, and make sure that such employees comply with all applicable laws and prohibitions. The Commission may request that the Successful Bidder provide the Commission with whatever information the Commission deems appropriate about each such person's engagement, and work cooperatively with the Commission to obtain advice from the New York State Commission on Ethics and Lobbying in Government. If deemed appropriate by the Commission, the Successful Bidder may be required to instruct such individual to seek and obtain an opinion from the New York State Commission on Ethics and Lobbying in Government prior to the individual commencing work under the Contract.

The Commission has 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 Commission also reserves the right to terminate the Contract resulting from this IFB at any time if any work performed under the Contract conflicts with any of the Ethics Requirements.

1.23 HIRING OF COMMISSION PERSONNEL

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

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

By submitting a bid, each Bidder and each person signing on behalf of the Bidder certifies under penalty of perjury, that the Bidder 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's Labor Law section 201-g. The Bidder's certification of compliance with New York State's State Finance Law § 139-I is included with this IFB as **Appendix M, Statement on Sexual Harassment**.

1.25 EXECUTIVE ORDER NO. 177 CERTIFICATION

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

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

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

1.26 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**.

1.27 NEWS RELEASES

A news release pertaining to this IFB, or the services, evaluation, or project related to this IFB, may not be made without the Commission's prior written approval, and then only in accordance with the Commission's express written instructions. No information regarding the outcome of the award under this procurement may be released without the Commission's prior written approval, and then only to persons designated by the Commission.

1.28 ADVERTISING

Each Bidder agrees not to use the Commission's name, logos, images, nor any data or results arising from this procurement 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.

1.29 STATE'S RESERVED AUTHORITY

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

- A. Award a Contract for all, part, or none of the services requested by this IFB;
- 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 specification(s) that cannot be complied with by any of the prospective Bidders;
- D. Amend the IFB and direct Bidders to submit bid modifications accordingly;
- E. Change any of the scheduled dates stated herein;
- F. Reject any or all bids received in response to this IFB, and reissue a modified version of this IFB;
- G. Withdraw the IFB at any time, at the sole discretion of the Commission;
- H. Seek clarifications and revisions to bids;
- I. Use information obtained through site visits, management interviews, and the investigation of a Bidder's qualifications, experience, ability, or financial standing, and any material or information submitted by the Bidder in response to the Commission's request for clarifying information, in

evaluation and/or selection under this IFB;

- J. Disqualify any Bidder whose conduct and/or bid fails to conform to the requirements of this IFB;
- K. Negotiate with the Successful Bidder within the scope of the IFB in the best interests of the Commission;
- L. Request Best and Final Offers;
- M. Set aside the original award to a Successful Bidder if the Commission determines that such Bidder is non-responsive or not responsible. The Commission may then award a Contract to the responsive and responsible Bidder with the next lowest cost, provided that such Bidder is responsible and responsive; and
- N. Stop the work covered by the bid 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. The Commission may then arrange for the completion of the work as it deems advisable, and if the cost thereof exceeds the amount of the bid, the Successful Bidder and its surety shall be liable to the Commission for such cost. If the Commission provides a stop order to the Successful Bidder to stop the work as provided herein, presenting the reason for the stoppage, then the Successful Bidder shall have ten (10) working days to respond thereto before the stop order becomes effective.

PART 2 – CONTRACTUAL PROVISIONS

2.1 GOVERNING LAW

The IFB and any Contract resulting from this IFB shall be governed by and interpreted in accordance with the laws of the State of New York. Any and all disputes or claims arising under this IFB or any Contract resulting from this IFB, other than as specifically set forth in this IFB, shall be brought exclusively in the appropriate New York State court of competent jurisdiction. By submitting a bid, 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 FORM OF CONTRACTUAL AGREEMENT

- A. The Successful Bidder is required to review, and is requested to have legal counsel review, Appendix B, as the Successful Bidder **must be willing to enter into a contract consistent with the terms of** Appendix B if the Successful Bidder is selected for contract award.
- B. Any exception to the Contract in **Contract Form (Appendix B)** must be raised in a Bidder question submitted to the Commission pursuant to the Schedule and in accordance with the question-and-answer process established in this IFB. The Commission does not intend, but reserves the right, to negotiate any changes in the provisions of the Contract following the receipt of bids.
- C. The Commission is constrained from making any modifications that conflict with applicable law and cannot waive statutory requirements or limitations (e.g., Court of Claims Act §§ 8 and 12; Public Officers Law § 17; State Finance Law § 41).
- D. Regarding any banking services schedules and other standard bank-related materials that may be submitted with its bid, the Successful Bidder should note that nothing contained in such schedules and materials shall be effective to the extent that it constitutes a variance from the terms or requirements of the draft Contract or this IFB. Any proposed banking services schedules submitted with the bid must be submitted as an attachment to the bid.
- E. Following the notification of award, the Successful Bidder will be expected to sign a final contract with the Commission. The final contract will be in the form incorporated into the IFB as **Appendix B** (the “Contract”), or as revised through the IFB amendment process. **Appendix A**, Standard Clauses for NYS Contracts, becomes part of all New York State contracts and is incorporated into the Contract. The Contract will become binding and effective after approval by the Commission, the OAG, and OSC.

2.3 SEVERABILITY

If a New York State court of competent jurisdiction determines any portion of this IFB and/or the Contract to be invalid, that portion shall be severed, and the remaining portion of this IFB and/or the Contract shall remain in full force and effect.

2.4 TERM OF CONTRACT

The term of the contract will be from June 4, 2025, through June 3, 2030.

2.5 COMPENSATION, INVOICING, AND PAYMENT

The Successful Bidder will be compensated for services provided in accordance with the Scope of Work, as defined in Part 3 of this IFB, at the fees set forth in the Bid Form, incorporated into the IFB as **Attachment 2**, for each product or service.

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

Payment under the Contract will be made in accordance with New York State's Prompt Payment Law (Article 11-A of New York State's State Finance Law). Payment for services will be made upon completion of the services, in accordance with the terms of this IFB, and upon receipt by the Commission of a proper invoice.

Invoices shall be submitted, on a monthly basis, as a PDF electronic mail attachment and directed to the New York State Business Services Center at accountspayable@ogs.ny.gov, with a copy sent to the Commission's Finance Office at accountspayable@gaming.ny.gov.

The Commission shall promptly process all payments due to the Successful Bidder that conform to the provisions of this IFB and are approved by the Commission's Finance Officer or designee.

2.6 VENDOR IDENTIFICATION NUMBER

To do business with the State, each Bidder is required to obtain a New York State Vendor Identification Number for use in the Statewide Financial System ("SFS"). The Substitute Form W-9 must be completed and submitted directly to the Commission upon notification of award. The purpose of the Substitute Form W-9, which will capture the Successful Bidder's taxpayer identification number, business name, and 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.

The Substitute Form W-9 is included in this IFB as Appendix F.

2.7 ELECTRONIC PAYMENTS

In accordance with a directive by the New York State Division of the Budget, if awarded a Contract under this IFB, the Successful Bidder will be required to enroll to receive direct deposits through the Statewide Financial System's Vendor Portal at <https://esupplier.sfs.ny.gov>. For Vendor Portal login assistance is available through the Statewide Financial System's Help Desk at 518-457-7717 or HelpDesk@sfs.ny.gov.

2.8 TAX LAW SECTION 5-A

The Bidder awarded a Contract pursuant to this IFB 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 Contract Certification forms (ST-220-TD and ST-220-CA), included in this IFB as Appendix G, must be filed in compliance with Tax Law Section 5-a. Any Bidder awarded a Contract under this IFB must, within seven (7) calendar days of notification of award, file ST-220-TD directly with the New York State Department of Taxation and Finance at the address provided on the form, and file ST-220-CA with the Commission.

Bidders can visit the New York State Department of Taxation and Finance website to obtain more information:

<http://www.tax.ny.gov/pdf/publications/sales/pub223.pdf>.

2.9 INSURER QUALIFICATIONS AND INSURANCE REQUIREMENTS

Insurer qualifications and insurance requirements are provided in **Appendix N** of this IFB. Submission of a bid serves as acknowledgment that the Successful Bidder will comply with the insurer qualifications and insurance requirements. The Successful Bidder must comply with these requirements to remain responsible under the terms of the Contract resulting from this IFB.

In the bid, 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 requirements.

2.10 SUCCESSFUL BIDDER 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 bid 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 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 Successful Bidder agrees to be bound by such 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 Opportunity (“EEO”) and Minority and Women Owned Business Enterprises (“MWBE”) requirements are set forth in Appendix I of this IFB.

The MWBE participation goal established under this IFB is 0%.

2.11 NEW YORK STATE SERVICE-DISABLED VETERAN-OWNED BUSINESSES

Article 17-B of the New York State Executive Law provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses (“SDVOB”), further integrating these businesses into New York State’s economy. The Commission recognizes the importance of promoting the employment of service-disabled veterans and ensuring 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 IFB as Appendix J.

The SDVOB participation goal established under this IFB is 0%.

2.12 SUCCESSFUL BIDDER RESPONSIBILITIES AS PRIMARY CONTRACTOR

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

If any part of the work is to be subcontracted, the bid response must include a list of subcontractors, as specified in Part 4 of this IFB. The Successful Bidder must accept full responsibility for the performance of any subcontractor.

2.13 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 other supporting roles.

Subcontractor and supplier requirements are set forth in Appendix H of this IFB.

2.14 SUBCONTRACT APPROVAL

For purposes of this section 2.14, “subcontractor” refers to any vendor or agent hired or utilized by the Successful Bidder to support exclusively the Contract. 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 their personnel and principals and may also require licensing.

The Successful Bidder agrees not to subcontract any of its services, except as explained in its Bid, 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 portions of its responsibilities under the Contract to be subcontracted to qualified, responsible subcontractors, subject to the Commission’s approval. If the Successful Bidder decides to subcontract a portion of the services, the subcontractor(s) must be clearly identified, and the nature and extent of the subcontractor’s involvement in and/or proposed performance under this 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 1.18).

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 this IFB. 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 rights to review and to approve or reject any subcontract, as well as any amendments to said

subcontract(s). Such rights shall not make the Commission or the State a party to any subcontract, nor 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 provide the Commission immediate written notice 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 Vendor Responsibility Questionnaire.

The Successful Bidder agrees to disclose any other vendors that significantly support the Successful Bidder's services under the Contract.

2.15 DELEGATION AND/OR ASSIGNMENT

No delegation of any duties under this Contract to another entity shall be binding upon the Commission until the Commission has given written consent to such delegation. Additionally, assignments of rights to moneys due or to become due under this Contract shall not be permitted to be paid to any entity other than the Successful Bidder, except with the express written consent of the Commission.

2.16 SUCCESSFUL BIDDER CODE OF CONDUCT

The Commission's New York Lottery is an extremely sensitive enterprise because of the nature of its business and because it is government-operated. Therefore, it is essential that its operation, and the operation of other enterprises which would be linked to it in the public mind, avoid not only impropriety but also the appearance of impropriety. Therefore, the Successful Bidder and any 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 involved in unfavorable publicity;
- C. make sales presentations in a responsible manner, and when it is necessary to point out the superiority of their goods or services over those of their competitors, to do so in such a manner as to avoid unfavorable publicity for the industry;

- D. avoid promotional activities that could be interpreted as improper and result in embarrassment to the industry;
- E. report security problems, or potential security problems, promptly to the Commission; and
- F. not offer or give any gift, gratuity, favor, entertainment, loan, or any other thing of material monetary value to any Commission employee, or to any individual influencing the outcome of this project.

2.17 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 to confirm that the use of such third-party intellectual property is permissible. In addition, in the event of failure to perform or a breach of the Contract, the Bidder shall ensure that the Commission retains the continued right to use the licensed intellectual property.

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 a third-party that is relevant to the fulfillment of the services under this IFB and/or the resulting Contract, 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.

2.18 MOST FAVORED NATION

The benefits and terms provided by the Successful Bidder shall be at least as favorable as those benefits and terms granted by the Successful Bidder to any previous buyer of the services, equipment, hardware and software described in the bid. If, during the term of the Contract, the Successful Bidder enters into any subsequent contract with any other buyer that offers benefits or terms more favorable than those contained in the Contract, then the Contract shall be deemed to be modified to provide the Commission with those more favorable benefits and terms.

The Successful Bidder shall notify the Commission promptly of the existence of any such more favorable benefits and terms and the Commission shall have the right to receive these more favorable benefits and terms immediately. Upon the Commission's written request, the Successful Bidder shall amend the Contract to reflect the more favorable terms and conditions, but the absence of such written amendment shall not affect the automatic modification of the Contract to include the more favorable benefits and terms, as outlined above.

2.19 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 IFB 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. These materials shall not be used or destroyed by the Successful Bidder or any other party without the Commission's express written permission.

2.20 TECHNOLOGY PROVISIONS

The Successful Bidder must be compliant with all New York State security policies and standards, which are located here: <https://its.ny.gov/eiso/policies/security>. If the Successful Bidder proposes alternative terms to this section, the Commission may, in its sole discretion, consider such alternatives, but is under no obligation to accept them and reserves the right to reject such alternatives, if any. Any proposed alternatives must specifically outline how the Successful Bidder's bid differs from New York State's security policies and standards. Additionally, statutory requirements, including, but not limited to, New York State's General Business Law §§ 899-aa and 899-bb and State Technology Law § 208, are not negotiable.

2.21 INDEMNIFICATION AND LIABILITY

As part of the financial transactions covered by this IFB and the resulting Contract, the Commission intends to include financial transactions related to its operations of the New York Lottery program. These financial transactions include weekly sweeps from thousands of licensed sales agents across New York State, totaling in the hundreds of thousands of dollars each week, making the Commission's needs for financial protection unique from other State agencies, including the Commission's need for protection from consequential, indirect, or special damages incurred by the Commission's operations and the business of the New York Lottery program. Additionally, the Successful Bidder's interaction with the accounts of the Commission's licensed sales agents requires liability and indemnification protection for third parties tied to and potentially affected by these transactions.

A. Indemnification Obligations. To the extent permitted by law, the Successful Bidder shall forever defend, indemnify, and hold harmless the State of New York, the Commission, and their respective commissioners, officers, agents, directors, employees, other contractors, and sales agents, and all agents, employees, officers and directors 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 Successful Bidder's

- (a) response to this IFB,
- (b) obligations to the State of New York or other governmental or legal authority,
- (c) contracts and subcontracts, and
- (d) products and services provided under the Contract.

B. Liability Limitations. To the extent permitted by law, the Successful Bidder shall forever defend, indemnify, and hold harmless the State of New York, the Commission, and their respective commissioners, officers, agents, directors, employees, other contractors, and sales agents, and all agents, employees, officers and directors 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 Successful Bidder's

- (a) response to this IFB,
- (b) obligations to the State of New York or other governmental or legal authority,
- (c) contracts and subcontracts, and
- (d) products and services provided under the Contract.

PART 3- SCOPE OF WORK

3.1 SCOPE OF SERVICES

The Commission seeks custody services related to securities, cash, and other property that the Commission deposits or causes to be deposited under this Contract, including the investment and reinvestments of these assets, as well as income derived therefrom (collectively referred to as the "Assets"). The Successful Bidder agrees to hold the Assets in a custody account established in the name of the Commission (the "Custody Account"), under the terms and conditions outlined below.

The Lottery makes 1-4 buys per year of treasuries typically in totaling \$20 million to \$60 million in the aggregate, with maturities extending over 25+ years. The Commission currently holds 153 Committee on Uniform Securities Identification Procedures numbers ("CUSIPs"). As these CUSIPs mature on a quarterly basis, the Successful Bidder will be directed by the Commission to transfer the proceeds to the New York State Department of Taxation and Finance's Division of Treasury. As of February 28, 2025, the par value of the Lottery's holdings is \$1.083 billion.

SPECIFICATIONS:

- A. As instructed by the Commission, the Successful Bidder shall deliver, purchase, redeem, and collect all income, principal, and other distributions due and payable on Assets, and sell Assets. For purposes of reporting the value of an Asset, the Successful Bidder shall report the value of an Asset based on a value the Successful Bidder receives from a third-party pricing vendor or a value that is readily determinable on an established market, if such value is available to Successful Bidder when preparing the report. The Successful Bidder will provide the Commission with a monthly account statement reflecting Asset transactions during the reporting period and the ending Asset holdings. If the Commission has established an account in Successful Bidder's on-line portal, the Successful Bidder will furnish account statements through such system, and the Commission may perform certain authorized transactions within the Custody Account using this system. Additionally, the Custodian shall deliver or make available a detailed monthly holdings report in electronic format (text file) that includes the following information for the reporting period: CUSIP and/or Stock Symbol or Ticker, asset description and Stock Exchange Daily Official List ("SEDOL"), issue date, maturity date, Moody's rating, S&P rating, price, units, cost, market value, and unrealized gain/loss.
1. Unless the Commission and the Successful Bidder have entered into a separate written agreement that expressly designates the Successful Bidder as an investment manager of the Assets, the account statements described in section 3.1(A), including their timing and form, shall serve as the sole written notification to the Commission of any securities transactions effected by the Successful Bidder for the Custody Account. The Commission retains the right to require that the Successful Bidder provide written notification of such transactions pursuant to 12 CFR § 12.4(a) and/or 12 CFR § 12.4(b) at no additional cost to the Commission. The Commission is responsible for reviewing all reports, accountings, and other statements provided by the

Successful Bidder, and shall notify the Successful Bidder of any mistakes, defects, or irregularities within 90 days of receipt. After this period, all such matters shall be presumed to be ratified, approved, and corrected, and shall not serve as basis for any claim or liability against the Successful Bidder.

2. The Successful Bidder shall forward to any person authorized to direct the purchase or sale of an Asset under this Contract, any information the Successful Bidder receives regarding the Assets concerning voluntary and mandatory corporate actions, subject to the following exceptions:
 - a. If, during the term of this Agreement, the Successful Bidder receives notice of a class-action litigation or proof of claim with respect to any of the Assets held in the Custody Account during the class-action period, the Successful Bidder shall promptly advise the Commission of such litigation or proof of claim, so that the Commission may decide on whether to opt-in or opt-out of such claim, and if the Commission chooses not to opt-in or opt-out, whether the Commission wishes for the Commission or the Successful Bidder, on behalf of the Commission, to complete whatever steps may be necessary to preserve any claim the Commission may have in such class-action litigation; ;
 - b. The Successful Bidder will not forward “mini-tenders,” defined as tender offers for less than five percent of the outstanding securities of a company, generally with an offer price at or below market value. For equity issues, the Successful Bidder will not forward a tender offer to the Commission unless it involves five percent or greater of the outstanding securities, and is subject to review by the Securities and Exchange Commission (“SEC”); and
 - c. The Successful Bidder will not forward a tender offer to the Commission for a debt issue if the following conditions apply: it is not registered with the SEC; it operated on a “first received, first buy” basis with no withdrawal privilege and includes a guarantee of delivery clause; or if the offer includes language stating that “the purchase price includes all accrued interest on the note and has been determined in the sole discretion of the buyer and may be more than or less than the fair market value of the notes” or similar language.
3. The Successful Bidder shall have the following authority and responsibility in the performance of its duties under the Contract:
 - a. To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and other instruments that may be necessary or appropriate for the proper discharge of its duties under the Contract.
 - b. To maintain Assets at any registered clearing agency (such as the Depository Trust Company) or any Federal Reserve Bank (each a “Depository”) or with any sub-custodian. The Successful Bidder may

permit such Assets to be registered in the name of Successful Bidder, its nominee, the Depository, the Depository's nominee, the sub-custodian, or the sub-custodian's nominee. In connection with transactions involving foreign securities, the Successful Bidder may employ securities depositories, clearing agencies, clearance systems, sub-custodians, or agents located outside the United States.

- c. To hire service providers, including, but not limited to, attorneys, depositories, sub-custodians, and provider affiliated with the Successful Bidder, to assist the Successful Bidder in exercising its powers under the Contract.
- d. To perform any other acts necessary for the proper discharge of the Successful Bidder's duties under the Contract.
- e. To hold Assets uninvested pending cash investment, distribution, dispute resolution, or for other operational reasons, and to deposit such Assets in an interest-bearing or non-interest-bearing deposit account of the Successful Bidder, notwithstanding the Successful Bidder's receipt of "float" income from such un-invested cash.
- f. As directed by the Commission, to bring, defend, or settle lawsuits involving the Custody Account or the Assets, with all expenses borne by the Custody Account.
- g. To withhold the delivery or distribution of Assets that are the subject of a dispute pending final adjudication of the dispute by a court of competent jurisdiction.
- h. To distribute Assets as specified herein.
- i. To safe-keep Assets as specified herein.
- j. To register any Asset in the name of the Successful Bidder, its nominee, or to hold any Asset in unregistered or bearer form, or in such form as will pass title by delivery, provided that the Successful Bidder's records at all times show that all such assets are part of the Account. .
- k. To collect all income, principal, and other distributions due and payable on the Assets. If an Asset is in default or if payment is refused after due demand, and Successful Bidder receives notice of such default or refusal from an Asset's issuer or transfer agent, the Successful Bidder shall notify the Commission promptly.
- l. To exchange foreign currency into and out of United States dollars through customary channels, including the Successful Bidder's foreign exchange department.

- m. To advance funds or securities in furtherance of settling securities transactions and other financial market transactions under the Contract.
- B. Upon the receipt of instructions from the Commission, the Successful Bidder shall settle the Commission's purchases of securities on a contractual settlement basis. For the purposes of § 9-206 of the Uniform Commercial Code, the Commission acknowledges its legal obligation to pay the purchase price to Successful Bidder for such purchases at the time of the purchase. The Commission shall not instruct the Successful Bidder to sell any Asset until the Commission has fully paid for that Asset. Furthermore, the Commission shall not engage in any practice whereby it relies on the proceeds from the sale of an Asset to pay for the earlier purchase of the same Asset.
- C. Upon receipt of instructions from the Commission, the Successful Bidder shall deliver Assets held by it as the Successful Bidder under the Contract that have been sold by or for the Commission, against payment to the Successful Bidder of the amount specified in such instructions, in accordance with current securities industry practice and in a form satisfactory to the Successful Bidder. The Commission acknowledges that the current securities industry practice for physical securities is for physical delivery of such securities against later payment on delivery date. The Successful Bidder agrees to use commercially reasonable efforts to obtain payment on the same business day as the delivery date; however, the Commission assumes sole responsibility of all risks associated with payment for such deliveries. The Successful Bidder shall not be responsible for the risks associated with the collectability of checks received for the Account.
- D. The Successful Bidder shall provide the Commission with settlement of all purchases and sales of Assets for the Commission in accordance with the Successful Bidder's instruction-deadline schedule, provided that the Successful Bidder has all the information necessary and that the Custody Account holds sufficient Assets necessary to complete the transaction.
 - 1. If the Custody Account does not have sufficient funds to pay for an Asset, the Commission agrees that it shall not initiate any trade without ensuring that sufficient Assets are available to settle the trade. Additionally, the Commission shall not notify any third party that the Successful Bidder will settle the purchase of an Asset if necessary funds are not available.
 - 2. The Successful Bidder shall not be liable or responsible for any act, omission, default, or insolvency of any broker, bank, trust company, person, or other agent designated by the Commission to purchase or sell securities for the Custody Account.
- E. In the absence of specific investment instruction regarding cash Assets held in the Custody Account, the Successful Bidder will use such Assets to purchase a position via sweep option identified by the Successful Bidder. If no sweep option is identified, the Successful Bidder will hold such Assets un-invested.

- F. The Commission and the Successful Bidder acknowledge that, except to those Assets that are subject to a separate written investment management agreement signed by both parties, the Successful Bidder is not a fiduciary with respect to any Asset or the Commission. The powers and duties of the Successful Bidder under the Contract do not include discretionary authority, control, or responsibility with respect to the management or disposition of any Asset, nor do they include the authority or responsibility to render investment advice with respect to any Asset.
- G. Notwithstanding any provisions to the contrary, the Successful Bidder shall, without providing notice, cause Assets to participate in any mandatory exchange transaction that neither requires nor permits approval by the owner of the Assets (such as reorganization, recapitalization, redemption in kind, or consolidation). The Successful Bidder will tender or exchange securities held for other securities, a combination of securities and cash, or cash alone, in accordance with the terms of such transactions.
- H. The Successful Bidder shall annually provide a Service Organization Controls (“SOC”) 1, Type II report. If required by the Commission, the Successful Bidder shall provide a bridge or gap letter to cover such period between the date of the SOC report and the end of the Commission’s fiscal year (April 1 through March 31).
- I. The Successful Bidder shall appoint an account manager employed by the Successful Bidder to act as a liaison between the Commission and the Successful Bidder.

PART 4 – BID RESPONSE & SUBMISSION

4.1 **BID RESPONSE**

A. Qualifications

Each Bidder must submit a signed transmittal letter that includes the information below to demonstrate the Bidder's qualifications.

1. A statement that the bid will be valid for 120 days from the bid due date.

2. A description of the Bidder's experience in relation to the minimum qualifications listed in Section 1.3 of the IFB, including the following details:
 - The amount of the Assets Under Custody ("AUC") for the previous five years;
 - A relevant charter or license demonstrating eligibility as a State or Federal bank;
 - The previous year's complete SOC report;
 - Financial statements for the previous two years (if publicly available, provide a link);
 - A sample of monthly reports that the Successful Bidder produces, that provide all or nearly all of the reporting elements required under the Contract.

B. Pricing

Utilizing the Bid Form, **Attachment 2**, the Bidder shall propose pricing based on the Scope of Work set forth in **Part 3** of this IFB. **Bidders must use Attachment 2 as directed. Alternative pricing structures will be deemed non-responsive.**

C. Required Documents

Bidder must provide required documentation as described throughout this IFB and as summarized in the Document Submittal Checklist, **Attachment 3**.

D. References

The Bidder must include at least three (3) references relevant to the requested services. Each reference must include the following details: company name, contact person (including name, title, phone number, email address, and mailing address) and a general description of the type of engagement the Bidder performed for the reference.

Bidders who have previously held a comparable contract with the Commission within the past three years are not required to submit reference forms. These Bidders will be evaluated based on their previous performance with the Commission. The Commission reserves the right to request additional references and further information if deemed necessary by the Commission.

E. Subcontractors

The Successful Bidder agrees not to subcontract any services without prior written approval from the Commission. The Commission's approval shall not be unreasonably withheld upon receipt of a written request to subcontract.

4.2 SUBMISSION OF BID

Bids 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 -- 5th Floor
354 Broadway
Schenectady, NY 12305

If submitting a hardcopy bid by a method other than U.S. Postal Service, the Bidder should contact one of the Permissible Contacts, identified in this IFB, prior to delivery, to ensure proper notice of the other method of submission, to best plan for proper receipt of the bid.

A. Timeliness of Bids

Regardless of the method of submission used, all bids must be received by the Commission on or before the due date and time specified in the IFB's Schedule (Section 1.4). The Bidder is responsible for ensuring the Commission's timely receipt of the Bidder's bid and should plan for delivery accordingly. If the Commission does not receive a Bidder's submission by the specified time, the Bidder's bid may be rejected or disqualified from consideration.

B. Multiple Bids from One Bidder Prohibited

A Bidder may submit only one bid. Multiple bid submissions from or involving a Bidder are prohibited and may result in the rejection or disqualification of all of the bids involving that Bidder.

C. Costs Associated with the Preparation of Bids

The Commission and the State shall not be liable for any costs incurred by a Bidder in the preparation or submission of a bid. Accordingly, the Commission

and the 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 the State shall be limited to those set forth in the Contract.

D. Bid Receipt

If a bid is hand-delivered to the Commission, at the time of delivery, an individual from the Commission's Contract Administration Office will provide the deliverer with a receipt. This receipt will identify the date and time the bid was received at the Security Desk in the Commission's lobby, located on the ground floor of 354 Broadway, Schenectady. The time noted on this receipt will serve as the official time of the bid receipt. In addition, whether the bid is hand-delivered or delivered by any other method, the Commission will confirm receipt by electronic mail, provided that electronic mail contact information is included on the outer packaging of the bid.

PART 5 – AWARD

5.1 METHOD OF AWARD

The award will be made to the responsive and responsible Bidder offering the lowest total monthly cost for services.

In the event of tie bids, the Commission shall consider the following categories, in the order listed, to break the tie and make an award. Once a tie-breaking category is satisfied, no consideration will be given to later categories:

- A. If a tied bid is submitted by a certified MWBE or SDBOV as the prime vendor, preference shall be given to the certified MWBE or SDVOB. If the tie is between a certified MWBE and certified SDVOB, the tie break will proceed to consider criterion B;
- B. Preference will be given to the Bidder with the most years of successful business experience with the Commission; and
- C. If a tie persists after considering A and B, above, the award will be determined by random selection.

5.2 INFORMATION FROM OTHER SOURCES

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

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 ("Notification of Tentative Award") will be sent to the Successful Bidder, as well as to the unsuccessful Bidders, notifying them of award subject to approval by the OSC and OAG.

No public discussion or news releases relating to this IFB 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 IFB regarding the reasons that the Bidder's response was not selected for an award. A debriefing shall be requested by the unsuccessful Bidder within fifteen (15) calendar days of release by the Commission of a notice

in writing or electronically that the Bidder's bid was unsuccessful. The Successful Bidder is also entitled to a debriefing.

5.5 PROTEST OR APPEAL

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

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

and it 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. In its review, the BOC may require the Commission, the protesting party, the Successful Bidder, or any other interested party to address additional issues raised; may obtain information from an outside source; or may determine whether it deems it necessary to conduct a fact-finding hearing, and the level of formality of any hearing conducted.
- I. The BOC will issue a written determination addressing the issues raised by the appeal. Copies of the determination will be provided to all interested parties, and the determination will be made part of the procurement record.

APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

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

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STANDARD CLAUSES FOR NYS CONTRACTS

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

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

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

3. COMPTROLLER’S APPROVAL. In accordance with Section 112 of the State Finance Law, 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.

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

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

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

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

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

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

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

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

CUSTODIAL BANKING SERVICES
Contract # C2025XX

THIS AGREEMENT made effective on this ___ day of _____, 20__ by and between the New York State Gaming Commission, an executive agency of the State of New York, having an office at 354 Broadway, Schenectady, NY 12305 (the “Commission”), and _____, a national banking association organized under the laws of the United States and having an office at _____ (the "Contractor").

WHEREAS, the Commission has an ongoing program to fund its prize obligations related to the New York Lottery program, which are paid over an extended period of installments through the purchase of securities; and

WHEREAS, the Commission utilizes a custodian to provide custody services with respect to the safekeeping of assets within its portfolio; and

WHEREAS the Commission issued an Invitation for Bid (“IFB”) on [_____], soliciting bids from qualified banking associations to provide Custodial Banking Services to the Commission for this purpose; and

WHEREAS the Contractor submitted a Bid dated [_____], which the Commission deemed to be the lowest cost among the competing Bids, as defined within the IFB; and

WHEREAS the Commission and the Contractor wish to enter into this Contract for security holdings custodian services provided by the Contractor for the term of this Contract;

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

ARTICLE I – SERVICES TO BE PROVIDED

SECTION 1.1 – SCOPE OF WORK

The Contractor agrees to provide the Commission with custody services in connection with (A.) securities, cash, and other property that the Commission deposits, or causes to be deposited, under this Contract; (B.) investment and reinvestment of such deposits; and (C.) income on such deposits, investments, and reinvestments, as provided herein (each an “Asset”, or collectively the “Assets”). The Contractor further agrees to hold these Assets in a custody account established in the name of the Commission (the “Custody Account”), as more fully set forth in the IFB. Both the IFB and the Contractor’s Bid are hereby incorporated into this Contract with the same force and effect as if they were fully set forth herein.

ARTICLE II – COMPENSATION FOR SERVICES

Section 2.1 – Overall Compensation

- A. The Commission shall compensate the Contractor [XXXXXXXXXX] per month, which will cover:
- i. Security Holding Fees that consist of monthly DTC/Fed Fee per security and monthly physical fee per security.
 - ii. Portfolio Transaction Fees that consist of repurchase agreement transaction, DTC or Federal Reserve transaction, physical transaction, amortized security principal/interest pay down, and domestic wires.
 - iii. Monthly statements of account activity and values of the Assets held in the Account.
 - iv. The Commission's access to the Contractor's on-line portal for the Commission's viewing of information, statements, and monitoring the Custody Account.
- B. Total expenditures under this Contract shall not exceed [XXXXXXXXXX] for the Term of the Contract.

Section 2.2 – Payment

Payment under this Contract shall be made in accordance with New York State's Prompt Payment Law (Article 11-A of New York State's State Finance Law). Payment for services will be rendered upon the Contractor's satisfactory completion of the services, in accordance with the terms of this Contract, and upon the Commission's receipt of a proper invoice.

Invoices shall be submitted on a monthly basis as a PDF email attachment and sent to the New York State Business Service Center at accountspayable@ogs.ny.gov, with a copy sent to the Commission's Finance Office at accountspayable@gaming.ny.gov.

The Commission shall promptly process all payments due to the Contractor that conform to the provisions of this Contract and have been approved by Commission staff.

Section 2.3 – Advance of Funds or Securities; Outstanding Fees and Expenses

In the event of any advance of funds or securities under this Contract, or for any outstanding compensation, expenses, fees, costs, or other charges incurred by the Contractor in providing services under this Contract, or any other indebtedness of the Commission to the Contractor, the Commission grants the Contractor a first-priority lien and security interest in the Assets. The Contractor may seek to enforce this lien and security interest at any time. Nothing in this Contract shall constitute as a waiver of any of the Contractor's rights as a securities intermediary under Uniform Commercial Code § 9-206.

None of the provisions of this Contract shall require the Contractor to expend or risk its own funds, or otherwise incur any liability, financial or otherwise, in the performance of its duties under this Contract or in the exercise of any of its rights or powers under this Contract if the Contractor has reasonable grounds to believe that repayment of such funds, satisfactory to the Contractor, is not assured.

ARTICLE III – TIME AND MANNER OF PERFORMANCE

Section 3.1 – Term of Contract

This Contract shall be in effect from June 4, 2025 through June 3, 2030 (the “Term”).

Section 3.2 – Transition

The Contractor shall use its best efforts to ensure a smooth and orderly transition of its duties and responsibilities to a successor custodian at the end of the Contract’s Term.

Section 3.3 – Personnel, Equipment and Supplies

The Contractor shall provide all resources, personnel, equipment, and supplies required to perform the services outlined in Article I.

Section 3.4 – Standards of Performance and Warranties

The Contractor warrants that it possesses the experience, knowledge, character, and licenses necessary to perform the scope of services described in the Contract. The Contractor shall perform such services in a competent and professional manner.

Section 3.5 – Independent Contractor

The relationship of the Contractor to the Commission arising out of this Agreement shall be that of an independent contractor. The Contractor, in accordance with its status as an independent contractor, agrees that it will conduct itself consistent with such status, that it will neither hold itself out as, nor claim to be, an officer or employee of the Commission or the State of New York (“the State”) by reason hereof, and that it will not make any claim, demand, or application for any right or privilege applicable to an officer or employee of the Commission or the State, including, but not limited to, workers' compensation coverage, unemployment insurance benefits, social security coverage, or retirement membership or credit.

All personnel of the Contractor shall be within the employ of the Contractor only or shall be duly contracted subcontractors of the Contractor, which alone shall be responsible for their work, the direction thereof, and their compensation. Nothing in this Contract shall impose any liability or duty on the Commission or the State for any acts, omissions, liabilities, or obligations

of the Contractor or any person, firm, company, agency, association, corporation, or organization engaged by the Contractor as expert, consultant, independent contractor, specialist, trainee, employee, servant, or agent, including, but not limited to, any taxes, unemployment insurance, and workers' compensation insurance.

Section 3.6 – Insurance Requirements

The insurance requirements applicable to this Contract are outlined in **Appendix N**. The Contractor must fully comply with these requirements to remain responsible under the terms of the Contract.

Section 3.7 – Subcontractor

Subcontracting under this Contract is not permitted without the prior written approval of the Commission. The following entities and arrangements shall not be considered to be subcontractors or subcontracting arrangements or relationships: clearing corporations, nominees, fund issuers or their affiliates, or providers of software or systems used for maintaining records, providing pricing data, or generating reports relating to the Assets.

ARTICLE IV – CONFLICTS OF INTEREST, PUBLIC OFFICERS LAW, ETHICS REQUIREMENTS, ANTI-DISCRIMINATION & COMPLIANCE WITH STATE FINANCE LAW § 139(I)

Section 4.1 – Conflicts of Interest

a. The Contractor has submitted a Vendor Assurance of No Conflict of Interest or Detrimental Effect form, signed by an authorized executive or legal representative, attesting that the Contractor's performance of services under this Contract does not and will not create a conflict of interest or position the Contractor to breach any other contract currently in force with the State of New York. The Contractor further attests that the Contractor will not act in any manner that is detrimental to any Commission project on which the Contractor is rendering services.

b. The Contractor reaffirms its previous attestations and further covenants and represents that there is and shall be no actual or potential conflict of interest that could hinder the Contractor's satisfactory or ethical performance of its duties under this Contract. The Contractor is required to notify the Commission immediately of any actual or potential conflicts of interest.

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

Section 4.2 – Anti-Discrimination

The Contractor has provided an EO 177 Certification form, signed by an authorized executive or legal representative attesting that the Contractor does not have institutional policies or practices that fail to address harassment or 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.

Section 4.3 – Compliance with State Finance Law § 139(I)

By signing this Contract, the Contractor certifies, under penalty of perjury, that it has implemented a written policy addressing sexual harassment prevention in the workplace and provides annual sexual harassment prevention training to all of its employees. This policy shall, at a minimum, meet the requirements of New York State Labor Law § 201-g.

ARTICLE V – LIABILITY, CONFIDENTIALITY, SECURITY

Section 5.1 – Confidentiality and Non-Disclosure

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

b. Confidential Information does not include information that, at the time of the Commission’s disclosure to the Contractor: (i) is already in the public domain or becomes publicly known through no act of the Contractor; (ii) is already known by the Contractor free of any confidential obligations; (iii) is information that the Commission has approved in writing for disclosure; or (iv) is required to be disclosed by the Contractor pursuant to law, rule, regulation or legal or regulatory process, so long as the Contractor, only to the extent permitted by the subject law, rule, regulation or legal or regulatory process, provides the Commission with notice of such disclosure requirement so that the Commission may, at the Commission’s expense, seek to defend against the required disclosure prior to any such disclosure.

c. The Contractor may use Confidential Information solely for the purpose of providing services to the Commission pursuant to this Contract. The Contractor shall not reproduce

or make copies of any written Confidential Information without the express written permission of the Commission, except as otherwise may be required to perform its duties under this Contract and to comply with applicable law, rule, regulation, or legal or regulatory process. The Commission's disclosure of Confidential Information to the Contractor shall not convey to the Contractor any right to or interest in such Confidential Information and the Commission shall retain all right and title to such Confidential Information at all times.

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

e. Upon written request by the Commission, the Contractor shall return all written Confidential Information to the Commission. Notwithstanding the foregoing, the Contractor may retain copies of Confidential Information (and any derivative work) as required to comply with applicable law, regulation, supervisory authority, or other applicable judicial or governmental inquiry, examination, or order, as needed to document its performance of its duties hereunder, as is preserved in ordinary-course back-ups by its electronic-communication and information management systems not regularly accessible by non-information technology employees, or for the purpose of defending any pending or threatened lawsuits.

f. Nothing in this section shall be interpreted to limit or expand the Commission's obligations under New York State's Public Officers Law Articles 6 and 6-a, which pertains to the Freedom of Information Law (FOIL) and the Personal Privacy Protection Law, respectively. Similarly, nothing in this section shall be interpreted to limit or expand the applicability of these laws' exemption to disclosure of records possessed by the Commission.

ARTICLE VI – REQUIRED CERTIFICATIONS

Section 6.1 – New York State's State Finance Law §§ 139-j and 139-k Certification

By executing this Contract, the Contractor certifies that all information provided to the Commission concerning New York State's State Finance Law §§ 139-j and 139-k is complete, true and accurate.

Section 6.2 - Vendor Responsibility

a. The Contractor shall at all times during the Contract term remain responsible within the meaning of New York State's State Finance Law.

b. If requested by the Commission's Executive Director or their designee (collectively referred to herein as "Executive Director of the Commission"), the Contractor agrees to provide evidence of the Contractor's ongoing legal authority to do business in New York State, as well as its integrity, experience, ability, prior performance, and organizational and financial capacity.

c. The Executive Director of the Commission in their sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, if new information arises that calls into question the Contractor's responsibility. In the event of such suspension, the Contractor will be given written notice outlining the particulars of such suspension. The Contractor must comply with the terms of the suspension order immediately upon receipt of such notice. Activities under the Contact may resume at such time as the Executive Director of the Commission issues a written notice authorizing the resumption of performance.

d. Should it be determined at any time that the Contractor is not responsible, nonresponsible, or non-responsible, the Commission will notify the Contractor in writing setting forth the basis for the determination and affording the Contractor reasonable time in which to refute the determination, justify why the basis for the determination is not relevant to this Contract, or to take corrective action to eliminate the responsibility impediment. If the responsibility condition cannot be reconciled to the satisfaction of the Commission the Contract will be terminated by written notification given by the Commission to the Contractor.

ARTICLE VII – APPROVALS AND MUTUAL COOPERATION

Section 7.1 – Approvals Required

This Contract, and any extension of the term of this Contract or any amendment of the provisions of this Contract, shall not be effective and binding upon the Commission, the State of New York (“the State”), or the Contractor unless and until approved by the Office of the New York State Attorney General (“OAG”) and the Office of the New York State Comptroller (“OSC”). The Commission agrees to exercise its best efforts to obtain such approvals.

Section 7.2 – Mutual Cooperation

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

ARTICLE VIII – SUSPENSION OR TERMINATION

a. The Commission has the right to terminate this Contract for convenience or for any of the following causes:

- i. A material breach by the Contractor of any of the provisions of this Contract;
- ii. A determination by a court of competent jurisdiction that the Contractor is bankrupt or insolvent;
- iii. A good faith determination by the Commission that continuation of the Contract could place the integrity of the Commission in jeopardy; or

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

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

c. The Commission reserves the right to terminate this Contract in the event it is found that the certification filed by the Contractor in accordance with New York State's State Finance Law § 139-k was intentionally false or intentionally incomplete. Upon such finding, the Commission may exercise its termination right by providing written notice to the Contractor in accordance with the written notice terms of this Contract. There shall be no thirty-day cure period for termination under this paragraph.

- d. Throughout the term of this Contract and any extensions, the Contractor must remain responsible as "responsible" and "non-responsible" or "nonresponsible" are treated in New York State's State Finance Law.

- e. Upon written notice to the Contractor and after providing a reasonable opportunity to be heard before appropriate Commission officials or staff, the Executive Director of the Commission may terminate the Contract at the Contractor's expense where the Contractor is determined by the Executive Director of the Commission to be nonresponsible or non-responsible. In such event, the Executive Director of the Commission may complete the contractual requirements in any manner the Executive Director of the Commission deems advisable and may pursue available legal or equitable remedies for breach.

ARTICLE IX – MISCELLANEOUS

Section 9.1 – Records Retention

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

Section 9.2 – Notices

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

(a) As to the Commission:

Executive Director
New York State Gaming Commission
354 Broadway
Schenectady NY 12305

Cc: General Counsel
New York State Gaming Commission
354 Broadway
Schenectady, NY 12305

(b) As to the Contractor:

Contact:
Company Name:
Address:

Section 9.3 – Force Majeure

For purposes of this Contract, a Force Majeure occurrence is an event, condition, or effect that is caused by facts and circumstances that are beyond the reasonable control of such party and leads to non-performance, but that cannot be reasonably anticipated or controlled and occurs without the fault or negligence of the non-performing party. As herein used, Force Majeure includes, but is not limited to, the enactment, imposition or modification of any law that occurs, takes effect or is applied after the date of the Contract and that prohibits or materially impedes the performance of the obligations of the Commission and/or the Contractor, whether caused by new or pre-existing conditions including, but not limited to, riot, sabotage, boycott, embargo, or civil or military disturbances; interruption of or delay in transportation; national emergency; acts of terrorism; inability to procure material; rationing; failure of electricity or other utilities; restrictive laws, regulations or orders, or any act or failure to act, or interference 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; war or war-like actions; earthquake, flood, storm, wash-outs, fire, lightning or other severe inclement weather or action of the elements, or other acts of God; explosions or other accidents; nuclear reaction or

radiation; epidemic, pandemic, or other public health crisis or emergency, whether national or local; interruption or loss of internet, computer, telephone, broadcast or other communications or service; strikes, lockouts or other labor stoppage, disturbance, or disruption; or any other cause that is beyond the control of the party affected, and that, by the exercise of reasonable diligence, said party is unable to prevent delays arising as a result thereof or to predict and through advance planning avoid such delays.

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

While any such delay in or failure of performance shall not in and of itself give rise to any liability for damages, the Commission may elect to terminate the Contract for cause should the Commission's continuing operations, in its sole judgment, be materially threatened or harmed by reason of extended delay or failure of performance, even if the delay or failure of performance is due to a Force Majeure occurrence.

Section 9.4 – Documents Incorporated

Appendix A, Standard Clauses for New York State Contracts, dated June 2023, is hereby incorporated into this Contract with the same force and effect as if fully set forth herein.

Section 9.5 – Order of Precedence

In the event of any conflict among any provisions of this Contract and the documents incorporated herein, the conflict shall be resolved in the following order of precedence, listed from the highest to the lowest order of precedence:

- (a) Appendix A – Standard Clauses for New York State Contracts, dated June 2023;
- (b) Any amendments to the Contract;
- (c) The Contract, along with attachments and exhibits.
- (d) Clarifications and Addenda to the IFB
- (e) IFB, Appendices, and Attachments

(f) Clarifications to the bid

(g) Bid Form

Section 9.6 – General

(a) This Contract constitutes the entire agreement between the Parties. No statement, promise, condition, understanding, inducement, or representation, whether oral or written, express or implied, that is not contained herein shall be binding or valid. This Contract may not be amended or modified except by a written instrument executed in the same manner by both parties.

(b) If any provision of this Contract is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Contract shall not be affected, but shall remain binding and effective as against all parties hereto.

(c) 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.

(d) 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.

(e) This Contract may be executed in counterparts, each of which shall be deemed an original. Unless original executed versions are specifically required by the IFB, executed copies of this Contract may be sent as PDF copies sent by email, and any signatures thereon shall be considered for all purposes to be binding as originals.

(g) The parties acknowledge that each has had an opportunity to retain an attorney to review the terms and conditions of this Contract. 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.

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

CONTRACTOR

NEW YORK STATE
GAMING COMMISSION

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

OFFICE OF THE NEW YORK STATE
ATTORNEY GENERAL
Letitia James

OFFICE OF THE NEW YORK STATE
COMPTROLLER
Thomas P. DiNapoli

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

Acknowledgement Required of the Contractor is on the following page:

Acknowledgement

ACKNOWLEDGEMENT BY INDIVIDUAL

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

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

Notary Public

ACKNOWLEDGEMENT BY UNINCORPORATED ASSOCIATION

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

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

Notary Public

ACKNOWLEDGEMENT BY CORPORATION

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

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

Notary Public

BIDDER/OFFERER DISCLOSURE/CERTIFICATION FORM

CONTRACT/PROJECT DESCRIPTION: Custodial Banking Services

CONTRACT/PROJECT NUMBER: IFB 1007

RESTRICTED PERIOD FOR THIS PROCUREMENT: March 21, 2025 through approval of the Office of the State Comptroller

PERMISSABLE CONTACTS: Seth Stark and Alysan Bowers

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

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

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

Yes No

If yes, please answer the following question:

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

Yes No

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

Yes No

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

Governmental Entity: _____

Date of Finding of Non-Responsibility: _____

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

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

Yes No

If yes, provide details:

Governmental Entity: _____

Date of Termination or Withholding of Contract: _____

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

4. TERMINATION CLAUSE:

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

I agree

Name of Contractor’s Firm/Company: _____

Contractor Address: _____

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

Print Name: _____

Occupation of Person signing this form: _____

Email Address: _____

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

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

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

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

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

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

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

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

Title

Signature

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

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

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

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

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

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

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

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

Contractor Name (print)

Signature

Company Name

Date

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

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

COMPLETION & CERTIFICATION

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

NEW YORK STATE VENDOR IDENTIFICATION NUMBER (VENDOR ID)

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

DEFINITIONS

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

RESPONSES

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

REPORTING ENTITY

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

ASSOCIATED ENTITY

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

STRUCTURE OF THE QUESTIONNAIRE

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

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

I. LEGAL BUSINESS ENTITY INFORMATION			
<u>Legal Business Entity Name</u> *		<u>EIN</u> (Enter 9 digits, without hyphen)	
Address of the <u>Principal Place of Business</u> (street, city, state, zip code)		<u>New York State Vendor Identification Number</u>	
		Telephone ext.	Fax
Email		Website	
Additional <u>Legal Business Entity</u> Identities: If applicable, list any other <u>DBA</u> , <u>Trade Name</u> , <u>Former Name</u> , Other Identity, or <u>EIN</u> used in the last five (5) years and the status (active or inactive).			
Type	Name	EIN	Status
1.0 <u>Legal Business Entity</u> Type – Check appropriate box and provide additional information:			
<input type="checkbox"/> <u>Corporation</u> (including <u>PC</u>)		Date of Incorporation	
<input type="checkbox"/> <u>Limited Liability Company (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 www.osc.state.ny.us/vendrep/documents/definitions.pdf.

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

I. LEGAL BUSINESS ENTITY INFORMATION

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

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

Name	Title	Percentage Ownership <i>(Enter 0% if not applicable)</i>

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

II. REPORTING ENTITY INFORMATION

2.0 The Reporting Entity for this questionnaire is:

Note: Select only one.

Legal Business Entity

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

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

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

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

IDENTIFYING INFORMATION

a) Reporting Entity Name

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

Telephone

ext.

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

c) Attach an organizational chart

d) Does the Reporting Entity have a DUNS Number?

Yes No

If “Yes,” enter DUNS Number

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

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

Name

Title

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

INSTRUCTIONS FOR SECTIONS III THROUGH VII

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

III. LEADERSHIP INTEGRITY	
<i>Within the past five (5) years, has any current or former reporting entity official or any individual currently or formerly having the authority to sign, execute or approve bids, proposals, contracts or supporting documentation on behalf of the reporting entity with any government entity been:</i>	
3.0 <u>Sanctioned</u> relative to any business or professional permit and/or license?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Other
3.1 <u>Suspended, debarred, or disqualified</u> from any <u>government contracting process</u> ?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Other
3.2 The subject of an <u>investigation</u> , whether open or closed, by any <u>government entity</u> for a civil or criminal violation for any business-related conduct?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Other
3.3 Charged with a misdemeanor or felony, indicted, granted immunity, convicted of a crime or subject to a <u>judgment</u> for: a) Any business-related activity; or b) Any crime, whether or not business-related, the underlying conduct of which was related to truthfulness?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Other
For each “Yes” or “Other” explain:	

IV. INTEGRITY – CONTRACT BIDDING	
<i>Within the past five (5) years, has the reporting entity:</i>	
4.0 Been <u>suspended or debarred</u> from any <u>government contracting process</u> or been <u>disqualified</u> on any government procurement, permit, license, concession, franchise or lease, including, but not limited to, <u>debarment</u> for a violation of New York State Workers’ Compensation or Prevailing Wage laws or New York State Procurement Lobbying Law?	<input type="checkbox"/> Yes <input type="checkbox"/> No
4.1 Been subject to a denial or revocation of a government prequalification?	<input type="checkbox"/> Yes <input type="checkbox"/> No
4.2 Been denied a contract award or had a bid rejected based upon a <u>non-responsibility finding</u> by a <u>government entity</u> ?	<input type="checkbox"/> Yes <input type="checkbox"/> No
4.3 Had a low bid rejected on a <u>government contract</u> for failure to <u>make good faith efforts</u> on any <u>Minority-Owned Business Enterprise, Women-Owned Business Enterprise or Disadvantaged Business Enterprise</u> goal or <u>statutory affirmative action requirements</u> on a previously held contract?	<input type="checkbox"/> Yes <input type="checkbox"/> No
4.4 Agreed to a voluntary exclusion from bidding/contracting with a <u>government entity</u> ?	<input type="checkbox"/> Yes <input type="checkbox"/> No
4.5 Initiated a request to withdraw a bid submitted to a <u>government entity</u> in lieu of responding to an information request or subsequent to a formal request to appear before the <u>government entity</u> ?	<input type="checkbox"/> Yes <input type="checkbox"/> No
For each “Yes,” explain:	

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

V. INTEGRITY – CONTRACT AWARD

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

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

For each “Yes,” explain:

VI. CERTIFICATIONS/LICENSES

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

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

For each “Yes,” explain:

VII. LEGAL PROCEEDINGS

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

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

For each “Yes,” explain:

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

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

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

IX. ASSOCIATED ENTITIES

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

9.0 Does the Reporting Entity have any Associated Entities?

Yes No

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

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

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

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

Yes No

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

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

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

Yes No

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

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

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

Yes No

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

Yes No

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

Yes No

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

Yes No

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

Yes No

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

Yes No

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

Yes No

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

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

X. FREEDOM OF INFORMATION LAW (FOIL)

10. Indicate whether any information supplied herein is believed to be exempt from disclosure under the Freedom of Information Law (FOIL). Note: A determination of whether such information is exempt from FOIL will be made at the time of any request for disclosure under FOIL.	<input type="checkbox"/> Yes <input type="checkbox"/> No
--	--

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

XI. AUTHORIZED CONTACT FOR THIS QUESTIONNAIRE

Name	Telephone	Fax
	ext.	
Title	Email	

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

Certification

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

The undersigned certifies that he/she:

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

Signature of Owner/Officer _____

Printed Name of Signatory _____

Title _____

Reporting Entity Name _____

Address _____

City, State, Zip _____

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

_____ Notary Public



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

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

Part I: Vendor Information

1. Legal Business Name:	2. Business name/disregarded entity name, if different from Legal Business Name:
-------------------------	--

3. Entity Type (Check one only): <input type="checkbox"/> Individual Sole Proprietor <input type="checkbox"/> Partnership <input type="checkbox"/> Limited Liability Co. <input type="checkbox"/> Corporation <input type="checkbox"/> Not For Profit <input type="checkbox"/> Trusts/Estates <input type="checkbox"/> Federal, State or Local Government <input type="checkbox"/> Public Authority <input type="checkbox"/> Disregarded Entity <input type="checkbox"/> Other _____	<input type="checkbox"/> Exempt Payee
---	--

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

1. Enter your TIN here: (<i>DO NOT USE DASHES</i>) See instructions.	<table border="1" style="width: 100%; height: 20px; border-collapse: collapse;"> <tr> <td style="width: 12.5%;"></td> <td style="width: 12.5%;"></td> <td style="width: 12.5%;"></td> <td style="width: 12.5%;"></td> <td style="width: 12.5%;"></td> <td style="width: 12.5%;"></td> <td style="width: 12.5%;"></td> <td style="width: 12.5%;"></td> <td style="width: 12.5%;"></td> <td style="width: 12.5%;"></td> </tr> </table>										
2. Taxpayer Identification Type (check appropriate box):											
<input type="checkbox"/> Employer ID No. (EIN) <input type="checkbox"/> Social Security No. (SSN) <input type="checkbox"/> Individual Taxpayer ID No. (ITIN) <input type="checkbox"/> N/A (Non-United States Business Entity)											

Part III: Address

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

Part IV: Certification and Exemption from Backup Withholding

Under penalties of perjury, I certify that:

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

Sign Here:

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

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

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

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

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

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

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

Part I: Vendor Information

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

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

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

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

Part III: Address

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

Part IV: Certification and Exemption from Backup Withholding

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

Part V: Vendor Primary Contact Information

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

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



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)

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

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

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

- Column A – Enter **C** in column A if the contractor; **A** if an affiliate of the contractor; or **S** if a subcontractor.
- Column B – Name - If the entity is a corporation or limited liability company, enter the exact legal name as registered with the NY Department of State, if applicable. If the entity is a partnership or sole proprietor, enter the name of the partnership and each partner's given name, or the given name(s) of the owner(s), as applicable. If the entity has a different DBA (doing business as) name, enter that name as well.
- Column C – Address - Enter the street address of the entity's principal place of business. Do not enter a PO box.
- Column D – ID number - Enter the federal employer identification number (EIN) assigned to the entity. If the entity is an individual, enter the social security number of that person.
- Column E – Sales tax ID number - Enter only if different from federal EIN in column D.
- Column F – If applicable, enter an X if the entity has submitted Form DTF-17 to the Tax Department but has not received its certificate of authority as of the date of this certification.

Individual, Corporation, Partnership, or LLC Acknowledgment

STATE OF }
: SS.:
COUNTY OF }

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

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

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

Notary Public
Registration No. _____



Contractor Certification to Covered Agency

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

ST-220-CA

(12/11)

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

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

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

(name)

(title)

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

(Mark an X in only one box)

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

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

(insert contract number or description)

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

Sworn to this ____ day of _____, 20 ____

(sign before a notary public)

(title)

Instructions

General information

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

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

When to complete this form

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

- 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: _____

APPENDIX I - IFB 1007
EEO and MWBE Program

I: Contractor Requirements and Procedures for Business Participation Opportunities for EEO and MWBE Program

I-1: Work Force Employment Utilization Report Instructions

I-2: Work Force Employment Staffing Plan

I-3: Work Force Employment Periodic Report

I-4: MWBE Utilization Plan Form

I-5: MWBE Quarterly Subcontracting/Supplier Activity Report

I-6: MWBE Quarterly Subcontracting/Supplier Activity Report Business Information Report

I-7: MWBE Request for Waiver Form

PARTICIPATION BY MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES: 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 and the regulations promulgated thereunder. 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. Contract Goals

For purposes of this solicitation, the Commission hereby establishes an overall goal of **0% (0% MBE and 0% WBE)** for MWBE participation, based on the current availability of qualified MBEs and WBEs.

- A. 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 (646)585-0832 or mwbebusinessdev@esd.ny.gov to discuss additional methods of maximizing participation by MWBEs on the Contract.
- B. 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 broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be 25 percent of the total value of the contract.

- C. 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 any of its subcontractors, does not have an existing EEO policy statement, the Commission may require the Contractor or subcontractor to adopt a model statement (see Form – 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. Form I-2 - Staffing Plan
- 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 or within a reasonable time, as directed by the Commission.
- D. Form I-3 - Workforce Utilization Report
- 1. The Contractor shall submit a Workforce Utilization Report, and shall require each of its subcontractors to submit a Workforce Utilization Report, in such form as shall be required by the Commission on a quarterly basis during the term of the Contract. The report is to be completed by the 10th day following the end of each quarter during the term of the Contract.
 - 2. Separate forms shall be completed by the Contractor and any subcontractors.
- 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

- A. The Contractor represents and warrants that the Contractor has submitted an MWBE Utilization Plan, or shall submit an MWBE Utilization Plan at such time as shall be required by the Commission, through the New York State Contract System ("NYSCS"), which can be viewed 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

- 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 through the NYSCS, or a non-electronic method provided by the Commission. 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 MWBE Contract Goals. If the documentation included with the waiver request is complete, the Commission shall evaluate the request and issue a written notice of approval or denial within twenty (20) business days of receipt.
- 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 is required to submit a quarterly MWBE Contractor Compliance Report through the NYSCS 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.

MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES – EQUAL EMPLOYMENT OPPORTUNITY POLICY STATEMENT

MWBE AND EEO POLICY STATEMENT

I, _____, the (awardee/contractor) _____ agree to adopt the following policies with respect to the project being developed or services rendered at _____.

MWBE

This organization will and will cause its contractors and subcontractors to take good faith actions to achieve the MWBE contract participations 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 and solicit bids from them 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. The 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, if legally permissible, bonding and other credit requirements are waived or appropriate alternatives developed to encourage MWBE participation.

EEO

(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, disability or marital status.

(c) At the request of the contracting agency, 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) The Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. The Contractor and 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.

(e) This 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 the State contract.

Agreed to this _____ day of _____, 20____

By _____

Print: _____ Title: _____

_____ is designated as the Minority Business Enterprise Liaison

(Name of Designated Liaison)

responsible for administering the Minority and Women-Owned Business Enterprises- Equal Employment Opportunity (MWBE-EEO) program.

MWBE Contract Goals

____percent Minority and Women's Business Enterprise Participation

____percent Minority Business Enterprise Participation

____percent Women's Business Enterprise Participation

Authorized Representative

Title: _____

Date: _____

WORKFORCE EMPLOYMENT UTILIZATION REPORT INSTRUCTIONS

Instructions for Submitting the Workforce Utilization Report

The Workforce Utilization Report (“Report”) is to be submitted on a monthly basis for construction contracts, and a quarterly basis for all other contracts, during the life of the contract to report the actual workforce utilized in the performance of the contract broken down by job title. When the workforce utilized in the performance of the contract can be separated out from the contractor’s and/or subcontractor’s total workforce, the contractor and/or subcontractor shall submit a Report of the workforce utilized on the contract. When the workforce to be utilized on the contract cannot be separated out from the contractor’s and/or subcontractor’s total workforce, information on the contractor’s and/or subcontractor’s total workforce may be included in the Report.

Reports are to be submitted electronically, using the provided Report worksheet, to gam.sm.gamingcompliance@gaming.ny.gov within ten (10) days following the end of each month or quarter, whichever is applicable.

Instructions for Completing the Workforce Utilization Report

1. **REPORTING ENTITY:** Check off the appropriate box to indicate if the entity completing the Report is the contractor or a subcontractor.
2. **FEDERAL EMPLOYER IDENTIFICATION NUMBER:** Enter the Federal Employer Identification Number (FEIN) assigned by the IRS. Contractors utilizing their social security number in lieu of an FEIN should leave this field blank.
3. **CONTRACTOR NAME and CONTRACTOR ADDRESS:** Enter the primary business address for the entity completing the Report.
4. **CONTRACT NUMBER:** Enter the number of the contract to which the Report applies.
5. **REPORTING PERIOD:** Check off the box that corresponds to the applicable quarterly or monthly reporting period for this Report. Only select one box.
6. **WORKFORCE IDENTIFIED IN REPORT:** Check off the appropriate box to indicate if the workforce being reported is just for the contract or the contractor’s or subcontractor’s total workforce.
7. **OCCUPATION CLASSIFICATIONS and SOC JOB TITLE:** Select the occupation classification and job title that best describes each group of employees performing work on the state contract under columns A and B.
8. **EEO JOB TITLE and SOC CODE:** These fields will populate automatically based upon the Occupation Classifications and SOC Job Titles selected. Do not modify the results generated in these fields.
9. **NUMBER OF EMPLOYEES and NUMBER OF HOURS:** Enter the number of employees and total number of hours worked by such employees for each job title under the columns corresponding to the gender and racial/ethnic groups with which the employees most closely identify.
10. **TOTAL COMPENSATION:** Enter the total compensation paid to all employees for each job code, and each gender and racial/ethnic group, identified in the Report. Contractors and subcontractors should report only compensation for work on the contract paid to employees during the period covered by the Report. Compensation should include only sums which must be reported in Box 1 of IRS Form W2.
11. **PREPARER’S INFORMATION:** Enter the name and title for the person completing the form, enter the date upon which the Report was completed, and check the box accepting the name entered into the Report as the digital signature of the preparer.

Race/Ethnic Identification

Race/ethnic designations do not denote scientific definitions of anthropological origins. For the purposes of this Report, an employee must be included in the group with which he or she most closely identifies. No person may be counted in more than one race/ethnic group. In determining an employee's race or ethnicity, a contractor may rely upon an employee's self-identification, employment records, or, in cases where an employee refuses to identify his or her race or identity, observer identification. The race/ethnic categories for this Report 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/AFRICAN AMERICAN** a person, not of Hispanic origin, who has origins in any of the black racial groups of the original peoples of Africa.
- **HISPANIC/LATINO** a person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race.
- **ASIAN, NATIVE HAWAIIAN OR OTHER 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 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.

Resources

If you have questions regarding these requirements, are unsure of the appropriate job titles to include in your Report, or otherwise require assistance in preparing or submitting the Report, please contact gam.sm.gamingcompliance@gaming.ny.gov, 518-388-2134.

WORK FORCE EMPLOYMENT STAFFING PLAN

Project/RFP Title _____ Location of Contract _____
 Contractor/Firm Name _____ Address _____
 County _____ Zip _____
 State _____ Zip _____

Check applicable categories (1) Staff Estimates include: Contract/Project Staff __ Total Work Force __ Subcontractors __
 (2) Type of Contract: Construction Consultants __ Commodities __ Services/Consultants __

Total Anticipated Work Force											Total Percent Minority Employees	Total Percent Female Employees
Federal Occupational Category	Total Number of Employees		Black (Not of Hispanic Origin)		Hispanic		Asian or Pacific Islander		Native American/ Alaskan Native			
	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female		
Officials/Admin												
Professionals												
Technicians												
Sales Workers												
Office & Clerical												
Craft Workers												
Operatives												
Laborers												
Service Workers												
TOTALS												

Company Official's Name _____ Title _____
 Company Official's Signature _____ Date _____
 Telephone Number _____

**INSTRUCTIONS FOR COMPLETING THE NEW YORK STATE
GAMING COMMISSION’S MINORITY AND WOMEN-OWNED
BUSINESS ENTERPRISE PROGRAM VENDOR/CONTRACTOR’S
MWBE UTILIZATION PLAN FORM**

As mandated by Article 15-A of the Executive Law and the new subtitle N of 9 NYCRR 540 et seq, the New York State Gaming Commission (the “Commission”) has established a goal of **0% (0% MBE and 0% WBE)** participation by New York State Certified Minority and Women-owned Business Enterprise (MWBE) as subcontractors/suppliers in this contract. Contractors must submit the attached MWBE Utilization Plan Form indicating how they will intend to comply with the established goals.

For the directory of New York State certified MWBE’s, please visit the New York State's Division of Minority and Women-owned Business Development website at: <https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>

Completion of the Form:

The Commission will complete all the un-shaded areas including: agency information, contract details, and summary of allocation of MWBE utilization and related value.

The contractor will complete the remaining, shaded, areas. It is important that the contractor provide detailed contact information including: name, phone number and email address.

Within the utilization section of the form, the contractor must list the names and addresses of all subcontractors or suppliers that will be utilized during this contract. The following items should be completed for each vendor listed:

- Subcontractor’s Federal ID#
- Subcontractor information as follows:
 - By checking the appropriate boxes, indicate whether the subcontractors are “SUB” or “SUP”, minority-owned business enterprise “MBE” or women-owned business enterprise “WBE”, and if they are NYS Certified.
- Brief description of the work the subcontractor’s will provide.

Note: additional sheets may be used if necessary.

Attestation and Form Acceptance

The preparer must attest to the information provided by signing in the appropriate space; in addition, print the name of the contractor, provide telephone number, and date. The last section, bottom right, will be completed by the Commission upon its review of the form. The contractor will be notified of the acceptance or deficiency of the MWBE Utilization Plan Form.

If assistance is required in completing this form or locating a New York State certified vendor to utilize as subcontractors or suppliers, please contact the Commission’s Contracts Officer at (518) 388-3329.

**NEW YORK STATE GAMING COMMISSION
VENDOR/CONTRACTOR'S MINORITY AND WOMEN-OWNED BUSINESS UTILIZATION PLAN FORM**

AGENCY NAME _____
 AGENCY CONTACT _____
 AGENCY PHONE _____

CONTRACTOR NAME AND ADDRESS	CHECK APPROPRIATE BOX		DATE SUBMITTED		TOTAL VALUE OF CONTRACT		
	<input type="checkbox"/> SUPPLIER <input type="checkbox"/> CONTRACTOR		CONTRACTOR'S FID#		CONTRACT EFFECTIVE DATES		
PROJECT DESCRIPTION	GOALS MBE WBE		JOB NUMBER (IF APPLICABLE)		CONTRACT NUMBER		
MWBE SUBCONTRACTOR/SUPPLIER NAME & ADDRESS	CHECK ONE	SUBCONTRACTOR/SUPPLIER TAXPAYER/FEDERAL ID #	MBE (CHECK)	WBE (CHECK)	NYS CERTIFIED (CHECK)	DESCRIPTION OF WORK	\$ VALUE OF CONTRACT
	SUB _____ SUP _____		YES _____ NO _____	YES _____ NO _____	YES _____ NO _____		
	SUB _____ SUP _____		YES _____ NO _____	YES _____ NO _____	YES _____ NO _____		
	SUB _____ SUP _____		YES _____ NO _____	YES _____ NO _____	YES _____ NO _____		
	SUB _____ SUP _____		YES _____ NO _____	YES _____ NO _____	YES _____ NO _____		

	<u>\$ AMOUNT</u>	<u>% OF TOTAL</u>
(A) TOTAL CONTRACT BID AMOUNT:	_____	_____
(B) TOTAL SUBCONTRACTS FOR COMMODITIES AND SERVICES TO MBE'S:	_____	_____
(C) TOTAL SUBCONTRACTS FOR COMMODITIES AND SERVICES TO WBE'S:	_____	_____

CONTRACTOR'S ATTESTATION: MY FIRM PROPOSES TO USE THE MWBE'S LISTED ON THIS FORM.

PREPARED BY: (SIGNATURE OF CONTRACTOR)	PRINT NAME OF CONTRACTOR	TELEPHONE NUMBER	DATE
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FOR OFFICE USE ONLY
REVIEWED BY:
DATE:
MWBE FIRMS CERTIFIED:
MWBE FIRMS NOT CERTIFIED:

NOTICE: this report is required pursuant to Executive Law; failure to report will result in noncompliance.

NEW YORK STATE GAMING COMMISSION
**MWBE CONTRACT COMPLIANCE PROGRAM CONTRACTOR'S QUARTERLY SUBCONTRACTING/
 SUPPLIER ACTIVITY REPORT FOR THE PERIOD OF _____**

1. NAME AND ADDRESS: _____ _____ _____	2. PROJECT/CONTRACT GOALS: MBE _____ WBE _____	3. DATE SUBMITTED _____	4. CONTRACT NO: _____ JOB NO.: _____ LOCATION/REGION: _____
FEDERAL ID/SOCIAL SECURITY NO.*	5. PROJECT WORK DESCRIPTION:*	6. CONTRACT EFFECTIVE DATES:*	

SUBCONTRACTING/SUPPLIER ACTIVITY REPORT

7. REPORT SUBCONTRACTOR'S SUPPLIERS AWARDED/PURCHASED THIS QUARTER	# AWARDED THIS PERIOD	AMOUNT AWARDED THIS PERIOD	# AWARDED TO NYS CERTIFIED		TOTAL DOLLAR AMOUNT AWARDED THIS PERIOD TO NYS CERTIFIED		PERCENTAGE	
			MBE	WBE	MBE	WBE	MBE	WBE
DOLLAR RANGE: \$0-\$24,000								
\$25,000 +								
TOTAL								

PREPARED BY: (SIGNATURE OF CONTRACTOR)	PRINT NAME OF CONTRACTOR	TELEPHONE NO.	DATE
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This report is required by contract specifications. Failure to report will result in noncompliance with contract specifications.

*Delete information if reported on previous submittal.

REQUEST FOR WAIVER FORM

INSTRUCTIONS: SEE PAGE 2 OF THIS ATTACHMENT FOR REQUIREMENTS AND DOCUMENT SUBMISSION INSTRUCTIONS.		
Offerer/Contractor Name:	Federal Identification No.:	
Address:	Solicitation/Contract No.:	
City, State, Zip Code:	MWBE Goals: MBE % WBE %	
By submitting this form and the required information, the offerer/contractor certifies that every Good Faith Effort has been taken to promote MWBE participation pursuant to the MWBE requirements set forth under the contract.		
Contractor is requesting a:		
1. <input type="checkbox"/> MBE Waiver – A waiver of the MBE Goal for this procurement is requested. <input type="checkbox"/> Total <input type="checkbox"/> Partial		
2. <input type="checkbox"/> WBE Waiver – A waiver of the WBE Goal for this procurement is requested. <input type="checkbox"/> Total <input type="checkbox"/> Partial		
PREPARED BY (Signature):	Date:	
Name and Title of Preparer (Printed or Typed)	Telephone Number:	Email Address:
<p>SUBMISSION OF THIS FORM CONSTITUTES THE OFFERER/CONTRACTOR'S ACKNOWLEDGEMENT AND AGREEMENT TO COMPLY WITH THE MWBE REQUIREMENTS SET FORTH UNDER NYS EXECUTIVE LAW, ARTICLE 15-A AND 5 NYCRR PART 143. FAILURE TO SUBMIT COMPLETE AND ACCURATE INFORMATION MAY RESULT IN A FINDING OF NONCOMPLIANCE AND/OR TERMINATION OF THE CONTRACT.</p> <p>Submit with the bid or proposal or if submitting after award submit to:</p> <p>NYS Gaming Commission Attn: Procurement 354 Broadway Schenectady, NY 12301-7500</p>	***** GAMING COMMISSION USE ONLY *****	
	REVIEWED BY:	DATE:
	Waiver Granted: <input type="checkbox"/> YES MBE: <input type="checkbox"/> WBE: <input type="checkbox"/>	
	<input type="checkbox"/> Total Waiver <input type="checkbox"/> Partial Waiver <input type="checkbox"/> *Conditional <input type="checkbox"/> Notice of Deficiency Issued _____ *Comments:	

REQUIREMENTS AND DOCUMENT SUBMISSION INSTRUCTIONS

When completing the Request for Waiver Form please check all boxes that apply. To be considered, the Request for Waiver Form must be accompanied by documentation for items 1 – 10, as listed below.. Copies of the following information and all relevant supporting documentation must be submitted along with the request:

1. A statement setting forth your basis for requesting a partial or total waiver.
2. The names of general circulation, trade association, and MWBE-oriented publications in which you solicited certified MWBEs for the purposes of complying with your participation goals.
3. A list identifying the date(s) that all solicitations for certified MWBE participation were published in any of the above publications.
4. A list of all certified MWBEs appearing in the NYS Directory of Certified Firms that were solicited for purposes of complying with your certified MWBE participation levels.
5. Copies of notices, dates of contact, letters, and other correspondence as proof that solicitations were made in writing and copies of such solicitations, or a sample copy of the solicitation if an identical solicitation was made to all certified MWBEs.
6. Provide copies of responses made by certified MWBEs to your solicitations.
7. Provide a description of any contract documents, plans, or specifications made available to certified MWBEs for purposes of soliciting their bids and the date and manner in which these documents were made available.
8. Provide documentation of any negotiations between you, the Offerer/Contractor, and the MWBEs undertaken for purposes of complying with the certified MWBE participation goals.
9. Provide any other information you deem relevant which may help us in evaluating your request for a waiver.
10. Provide the name, title, address, telephone number, and email address of offerer/contractor's representative authorized to discuss and negotiate this waiver request.

Note: Unless a Total Waiver has been granted, the offerer or contractor will be required to submit all reports and documents pursuant to the provisions set forth in the Contract.



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

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

I. Contract Goals

- A. The Commission hereby establishes an overall goal of **0%** 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/Docs/CertifiedNYS_SDVOB.pdf. Questions regarding compliance with SDVOB participation goals should be directed to gam.sm.gamingcompliance@gaming.ny.gov. Additionally, following Contract execution, Contractor is encouraged to contact the Commission 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).

II. SDVOB Utilization Plan

- A. In accordance with 9 NYCRR § 252.2(i), Bidders are required to submit a completed SDVOB Utilization Plan on Form SDVOB 100 with their bid.
- B. The 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 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 a 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.

- C. The Commission will review the submitted SDVOB Utilization Plan and advise the Bidder/Contractor of Commission acceptance or issue a notice of deficiency within 20 days of receipt.
- D. 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 SDVOB 200. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.
- E. The Commission may disqualify a Bidder's bid or proposal as being non-responsive under the following circumstances:
 - (a) If a Bidder fails to submit an SDVOB Utilization Plan;
 - (b) If a Bidder fails to submit a written remedy to a notice of deficiency;
 - (c) If a Bidder fails to submit a request for waiver; or
 - (d) If the Commission determines that the Bidder has failed to document good faith efforts.
- F. 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.
- G. Contractor further agrees that a failure to use SDVOBs as agreed in the 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

- A. Prior to submission of a request for a partial or total waiver, Bidder/Contractor shall speak to the Commission for guidance.**
- 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 SDVOB 200, accompanied by

- 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 (SDVOB 101) 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 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

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 SDVOB 101 available at <https://ogs.ny.gov/veterans/>, and should be completed by the Contractor and submitted to the Commission, by the 10th day 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.



SDVOB UTILIZATION PLAN

 Initial Plan

 Revised plan

 Contract/Solicitation

 #C202406

INSTRUCTIONS: This Utilization Plan must contain a detailed description of the supplies and/or services to be provided by each NYS Certified Service-Disabled Veteran-Owned Business (SDVOB) under the contract. By submission of this Plan, the Bidder/Contractor commits to making good faith efforts in the utilization of SDVOB subcontractors and suppliers as required by the SDVOB goals contained in the Solicitation/Contract. Making false representations or providing information that shows a lack of good faith as part of, or in conjunction with, the submission of a 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. Firms that do not perform commercially useful functions may not be counted toward SDVOB utilization. Attach additional sheets if necessary.			
BIDDER/CONTRACTOR INFORMATION			SDVOB Goals In Contract
Bidder/Contractor Name:		NYS Vendor ID:	
Bidder/Contractor Address (Street, City, State and Zip Code):			0%
Bidder/Contractor Telephone Number:		Contract Work Location/Region:	
Contract Description/Title:			
CONTRACTOR INFORMATION			
Prepared by (Signature):		Name and Title of Preparer:	Telephone Number:
Date:			
Email Address:			
If unable to meet the SDVOB goals set forth in the solicitation/contract, bidder/contractor must submit a request for waiver on the SDVOB Waiver Form.			
SDVOB Subcontractor/Supplier Name:			
Please identify the person you contacted:		Federal Identification No.:	Telephone No.:
Address:		Email Address:	
Detailed description of work to be provided by subcontractor/supplier:			
Dollar Value of subcontracts/supplies/services (When \$ value cannot be estimated, provide the estimated % of contract work the SDVOB will perform): \$ _____ or _____%			
SDVOB Subcontractor/Supplier Name:			
Please identify the person you contacted:		Federal Identification No.:	Telephone No.:
Address:		Email Address:	
Detailed Description of work to be provided by subcontractor/supplier:			
Dollar Value of subcontracts/supplies/services (When \$ value cannot be estimated, provide the estimated % of contract work the SDVOB will perform): \$ _____ or _____%			

FOR GAMING USE ONLY			
GAMING Authorized Signature:		<input type="checkbox"/> Accepted	<input type="checkbox"/> Accepted as Noted
NAME (Please Print):		<input type="checkbox"/> Notice of Deficiency	
SDVOB %/\$	_____	Date Received:	Date Processed:
Comments:			
NYS CERTIFIED SDVOB SUBCONTRACTOR/SUPPLIER INFORMATION: The directory of New York State Certified SDVOBs can be viewed at: https://ogs.ny.gov/Veterans/default.asp Note: All listed Subcontractors/Suppliers will be contacted and verified.			

ADDITIONAL SHEET

Bidder/Contractor Name:	Contract/Solicitation # <u>C202406</u>
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SDVOB Subcontractor/Supplier Name:			
Please identify the person you contacted:		Federal Identification No.:	Telephone No.:
Address:		Email Address:	
Detailed Description of work to be provided by subcontractor/supplier:			
Dollar Value of subcontracts/supplies/services (When \$ value cannot be estimated, provide the estimated % of contract work the SDVOB will perform): \$ _____ or _____ %			

SDVOB Subcontractor/Supplier Name:			
Please identify the person you contacted:		Federal Identification No.:	Telephone No.:
Address:		Email Address:	
Detailed Description of work to be provided by subcontractor/supplier:			
Dollar Value of subcontracts/supplies/services (When \$ value cannot be estimated, provide the estimated % of contract work the SDVOB will perform): \$ _____ or _____ %			

SDVOB Subcontractor/Supplier Name:			
Please identify the person you contacted:		Federal Identification No.:	Telephone No.:
Address:		Email Address:	
Detailed Description of work to be provided by subcontractor/supplier:			
Dollar Value of subcontracts/supplies/services (When \$ value cannot be estimated, provide the estimated % of contract work the SDVOB will perform): \$ _____ or _____ %			

SDVOB Subcontractor/Supplier Name:			
Please identify the person you contacted:		Federal Identification No.:	Telephone No.:
Address:		Email Address:	
Detailed Description of work to be provided by subcontractor/supplier:			
Dollar Value of subcontracts/supplies/services (When \$ value cannot be estimated, provide the estimated % of contract work the SDVOB will perform): \$ _____ or _____ %			

SDVOB Subcontractor/Supplier Name:			
Please identify the person you contacted:		Federal Identification No.:	Telephone No.:
Address:		Email Address:	
Detailed Description of work to be provided by subcontractor/supplier:			
Dollar Value of subcontracts/supplies/services (When \$ value cannot be estimated, provide the estimated % of contract work the SDVOB will perform): \$ _____ or _____ %			

Vendor Assurance of No Conflict of Interest or Detrimental Effect

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

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

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

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

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

Name, Title:

Signature:

Date:

This form must be signed by an authorized executive or legal representative.

Statement on Sexual Harassment

By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that the bidder has and has implemented a written policy addressing sexual harassment prevention in the workplace and provides annual sexual harassment prevention training to all of its employees. Such policy shall, at a minimum, meet the requirements of section two hundred one-g of the labor law.

Contractor certifies that this statement provided to the Agency with respect to State Finance Law §139 (l) is complete, true and accurate.

Authorized Signatory

Signature

Title

Company Name

Anti-Discrimination EO 177 Certification

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

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

Generally, the Human Rights Law applies to:

- all employers of four or more people, employment agencies, labor organizations and apprenticeship training programs in all instances of discrimination or harassment;
- employers with fewer than four employees in all cases involving sexual harassment; and,
- any employer of domestic workers in cases involving sexual harassment or harassment based on gender, race, religion or national origin.

In accordance with Executive Order No. 177, the Bidder hereby certifies that it does not have institutional policies or practices that fail to address the harassment and discrimination of individuals on the basis of their age, race, creed, color, national origin, sex, sexual orientation, gender identity, disability, marital status, military status, or other protected status under the Human Rights Law. 3

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

Contractor:

By: _____

Name: _____

Title: _____

Date: _____, 20__

INSURER QUALIFICATIONS AND INSURANCE REQUIREMENTS

Insurer Qualifications

All insurance required under this IFB must be written by a company with a current rating of "A-" or better as rated by A.M. Best & Co., that has a record of successful continuous operation, that is licensed, admitted, and authorized to do business in the State of New York, and that is approved by the New York State Gaming Commission (the "Commission").

Required coverage and limits must be put into effect as of the effective date of the Contract and must remain in effect throughout the term of the Contract, as determined by the Commission.

To the extent that lesser, incomplete, or improper insurance coverage is offered and/or procured by the Contractor, the Contractor acknowledges and agrees that it is financially responsible for any shortages, discrepancies, and liabilities remaining if coverage is denied or not available for a claim made that would otherwise have been covered by the insurance requirements herein.

To the extent that the Contractor is self-insured for any portion of the required insurance program, the Contractor must provide a letter explaining the substantive coverage provided through self-insurance and the limits of such self-insurance, as signed by the Contractor's authorized representative with direct knowledge of and responsibility for that insurance/risk management program.

Insurance Requirements

Prior to the start of work the Contractor shall procure at its sole cost and expense and shall maintain in force at all times during the term of the Contract, policies of insurance as herein below set forth, written by companies authorized by the New York State Department of Financial Services to issue insurance in the State of New York ("Admitted Carriers").

Upon award, the Contractor shall deliver to the Commission evidence of such insurance coverage as defined below. In the event there is a claim asserted that is covered by insurance, the Contractor shall make available for inspection to the Commission upon the Commission's request, at Commission headquarters, during reasonable business hours, any applicable policy required by this Contract.

Throughout the Contract period, the Contractor shall notify the Commission of any material changes to the policy coverages, or any cancellations prior to the expiration date. The carrier shall also send notification of cancellation, termination, or failure to renew any policy in accordance with the policy provisions when practicable.

General Conditions

A. **Conditions Applicable to Insurance.** All policies of insurance required by the IFB and the Contract must meet the following requirements:

1. Coverage Types and Policy Limits. The types of insurance coverage and policy limits required from the Contractor are specified in Paragraph B below – Specific Coverages and Limits.

2. Policy Forms. Policies must be written on an **occurrence** basis, except as may be otherwise specifically provided herein, or agreed to in writing by the Commission. Under certain circumstances, the Commission may elect to accept policies written on a claims-made basis provided that, at a minimum, the policy remains in force throughout the performance of the services and for three (3) years after completion of the Contract. If the policy is cancelled or not renewed during that time, the Contractor must purchase at its sole expense Discovery Clause coverage sufficient to complete the 3-year period after completion of the Contract. Written proof of this extended reporting period must be provided to the Commission prior to the expiration or cancellation of the policy.

3. Certificates of Insurance/Notices. The Contractor shall provide a Certificate or Certificates of Insurance, in a form satisfactory to the Commission, before commencing any work under the Contract. Certificates shall be mailed using the contact information provided in Part 1 of this IFB. Copies of each full policy shall be provided to the Commission by the Contractor upon request.

Unless otherwise agreed, insurance policies shall be written so as to include a provision that the policy will not be canceled, materially changed, or not renewed without at least thirty (30) days' prior written notice to the Commission.

Certificates of Insurance shall:

- a. be in the form approved by the Commission.
- b. disclose any deductible, self-insured retention, aggregate limit or any exclusion to the policy that materially changes the coverage required by the IFB and the Contract.
- c. specify the Additional Insureds and Named Insureds as required herein.
- d. be signed by an authorized representative of the insurance carrier or producer.

4. Primary Coverage. All insurance policies shall provide that the required coverage shall apply on a primary, and not on an excess or contributing, basis as to any other insurance that may be available to the State or the Commission for any claim arising from the Contractor's work under this Contract, or as a result of the Contractor's activities. Any other insurance maintained by the State or the Commission shall be excess of and shall not contribute with the Contractor's insurance regardless of the "other insurance" clause contained in either party's policy of insurance.

5. Policy Renewal/Expiration. At least 14 days prior to the expiration of any insurance policy required by the Contract and this Appendix, evidence of renewal or replacement policies of insurance with terms no less favorable to the State and the Commission than the expiring policies shall be delivered to the Commission in the manner required for service of notice in Paragraph A.3 above. If, at any time during the term of the Contract, the coverage provisions and limits of the insurance policies required herein do not meet the provisions and limits set forth in the Contract or proof thereof is not provided to the Commission, the Contractor shall immediately cease work on the project. The Contractor shall not resume work on the project outlined within the IFB and the Contract until authorized to do so by the Commission. Any delay, time lost, or additional cost incurred as a result of the Contractor not having the insurance required by the Contract, or not providing proof of same in a form acceptable to the Commission, shall not give rise to a delay claim or any other claim against the Commission. Should the Contractor fail to provide or maintain any insurance required by this Contract, or fail to provide valid proof of insurance to the Commission, the Commission may withhold further Contract payments, treat such failure as a breach or default of the Contract, and/or, after providing written notice to the Contractor, require the Contractor's Surety, if any, to secure appropriate coverage and/or purchase insurance complying with the Contract and charge back such purchase to the Contractor.

6. Deadlines for Providing Insurance Documents after Renewal or Upon Request. As set forth herein, certain insurance documents must be provided to the Commission contact identified in the Contract Award Notice after renewal or upon request by the Commission. This requirement means that the Contractor shall provide any applicable insurance documents to the Commission as soon as possible, but in no event later than the following time periods:

- a. For certificates of insurance: five business days from request or renewal, whichever is later;
- b. For information on self-insurance or self-retention programs: 15 calendar days from request or renewal, whichever is later;
- c. For other requested documentation evidencing coverage: 15 calendar days from request or renewal, whichever is later;
- d. For additional insured and waiver of subrogation endorsements: 30 calendar days from request or renewal, whichever is later; and

- e. For notice of cancellation or non-renewal and proof of replacement coverage that complies with the requirements of this section: five business days from request or renewal, whichever is later.

Notwithstanding the foregoing, if the Contractor has promptly requested the insurance documents from its broker or insurer and has thereafter diligently taken all steps necessary to obtain such documents from its insurer and submit them to the Commission, but fails to provide the documents within the timeframes above, the Commission may extend the time period for a reasonable period under the circumstances, but in no event shall the extension exceed 30 calendar days from the Commission's original request.

7. Self-Insured Retention/Deductibles. Additional surety/security may be required in certain circumstances. The Contractor shall be solely responsible for all claim expenses and loss payments within any self-insured retention or deductible.

8. Subcontractors. Should the Contractor engage a subcontractor, the Contractor shall endeavor to impose the same insurance requirements of this document on the subcontractor, as applicable. Required insurance limits should be determined commensurate with the work of the subcontractor. An Additional Insured endorsement evidencing such coverage shall be provided to the Contractor prior to the commencement of any work by a subcontractor and shall be provided to the Commission upon request. For subcontractors that are self-insured, the subcontractor shall be obligated to defend and indemnify the below-named Additional Insureds with respect to Commercial General Liability and Business Automobile Liability, in the same manner that the subcontractor would have been required pursuant to this section had the subcontractor obtained insurance policies to provide such defense and indemnity. Proof of insurance or self-insured status shall be supplied to the Commission. To the extent that a subcontractor does not obtain the insurance requirements outlined above, the Contractor, through insurance or self-insurance, shall supplement the subcontractor's insufficient or incomplete insurance coverage to ensure that the State and the Commission are made whole.

9. Additional Insured. In each of the liability policies required below, the Contractor shall cause coverage to be included for ongoing and completed operations, including, but not limited to, during any products and completed operations phases, naming as Additional Insureds the following:

the State of New York, the New York State Gaming Commission, and their respective commissioners, officers, members, agents, and employees.

An Additional Insured endorsement evidencing such coverage shall be provided to the Commission by or on behalf of the Contractor within 30 days of renewal and upon request. If the evidence is in the form of a specific Additional Insured

endorsement, the endorsement must specify that coverage is available to the State of New York, the Commission, and their respective commissioners, officers, members, agents, and employees as “Additional Insureds”, without limiting the scope of coverage available based on the source of negligent conduct otherwise covered under the pertinent insurance policy. In other words, the “Additional Insured” coverage conferred should be the same as if the Additional Insureds were included as Named Insureds on the insurance policy. If the Contractor is self-insured, the Contractor shall be obligated to defend and indemnify the above-named Additional Insureds with respect to Commercial General Liability and Business Automobile Liability, in the same manner that the Contractor would have been required to defend and indemnify pursuant to this Appendix had the Contractor obtained such insurance policies.

10. Excess/Umbrella Liability Policies. Required insurance coverage limits may be provided through a combination of primary and excess/umbrella liability policies. If coverage limits are provided through excess/umbrella liability policies, then a Schedule of underlying insurance listing policy information for all underlying insurance policies (insurer, policy number, policy term, coverage and limits of insurance), including proof that the excess/umbrella insurance follows form must be provided upon request.

B. Specific Coverages and Limits. The types of insurance and minimum policy limits shall be as provided below.

1. General Liability. Commercial General Liability Insurance (CGL), covering the liability of the Contractor for bodily injury, property damage, and personal/advertising injury arising from all work and operations under this Contract. The limits under such policy shall not be less than the following:

- Each Occurrence limit: \$3,000,000
- General Aggregate: \$5,000,000

Products/Completed Operations should equal the General Aggregate limit

- Personal and Advertising Injury \$1,000,000

Coverage shall include, but not be limited to, the following: premises liability; independent contractors; blanket contractual liability, including tort liability of another assumed in a Contract; defense and/or indemnification obligations, including obligations assumed under this Contract; cross-liability for additional insureds; products/completed operations for a term of no less than three years, commencing upon acceptance of the Contractor’s and any subcontractor’s work, as required by the Contract; explosion, collapse, and underground hazards; contractor means and methods; liability resulting from Section 240 or Section 241 of the New York State Labor Law.

The following ISO forms must be endorsed to the CGL policy:

- CG 20 37 12 19 or the equivalent
- CG 20 10 12 19 or the equivalent
- CG 20 38 12 19 or the equivalent

Limits may be provided through a combination of primary and umbrella/excess liability policies.

Each insurance policy shall name the Commission as an Additional Insured, and such coverage shall be extended to afford Additional Insured status to those entities during the Products/Completed Operations term. No endorsement or exclusions shall be included within each insurance policy to reduce, limit, or exclude the Commission's full position as an Additional Insured.

The CGL policy, and any umbrella/excess policies used to meet the "Each Occurrence" limits specified above, must be endorsed to be primary with respects to the coverage afforded the Additional Insureds, and such policy(ies) shall be primary to, and non-contributing with, any other insurance maintained by the Commission. Any other insurance maintained by the Commission shall be in excess of and shall not contribute with the Contractor's or any subcontractor's insurance, regardless of the "other insurance" clause contained in either party's policy of insurance.

2. Banker's Professional Liability. In addition to the above General Liability coverages, the Contractor shall provide the coverages below:

- Banker's Professional Liability: \$25,000,000

3. Crime. The Contractor must maintain crime insurance with a limit of not less than \$75,000,000 protecting the State of New York and the Commission against losses resulting from fraudulent or dishonest acts by the Contractor, any subcontractors, or any officer, employee or agent of the Contractor or any subcontractors.

4. Data Breach and Privacy/Cyber Liability. The Contractor must maintain insurance covering the failure to protect confidential information and failure of the security of the Contractor's computer systems due to the actions of the Contractor, any subcontractors, or any officer, employee or agent of the Contractor or any subcontractors, which results in unauthorized access to confidential data. Said insurance shall be maintained with a limit of not less than \$75,000,000.

Said insurance shall provide coverage for damages arising from, but not limited to, the following:

- Breach of duty to protect the security and confidentiality of nonpublic proprietary corporate information;

- Disclosure or use of personally identifiable nonpublic information (e.g., medical, financial, or personal in nature in electronic or non-electronic form);
- Privacy notification costs;
- Regulatory defense and penalties;
- Computer network systems attacks;
- Introduction, implementation, or spread of malicious software code;
- Unauthorized access and use of computer systems;
- Website media liability; and
- Cyber theft of customers' property, including, but not limited to, money and securities.

5. Workers' Compensation and Disability. For work to be performed in New York State, the Contractor shall provide and maintain insurance coverage during the life of this Contract for the benefit of such employees as are required to be covered by the New York State Workers' Compensation Law (www.wcb.ny.gov).

Evidence of New York State Workers' Compensation and Employers Liability coverage and New York State Disability Benefits coverage, or exemption from coverage, must be provided on **one** of the following forms specified by the Commissioner of the New York State Workers' Compensation Board. For forms and guidance, the Board's website is:

http://www.wcb.ny.gov/content/main/forms/Forms_EMPLOYER.jsp

A. Workers' Compensation and Employers Liability Coverage:

- **Form CE-200** - Certificate of Attestation of Exemption from NYS Workers' Compensation and/or Disability Benefits Coverage; or
- **Form C-105.2** - (September 2015, or most current version) – Certificate of NYS Workers' Compensation Insurance Coverage, sent to the Commission by the Contractor's insurance carrier upon request; or
- **Form U-26.3** – NY State Insurance Fund Certificate of Workers' Compensation Coverage from the State Insurance Fund. Bidder must request that the State Insurance Fund send this form to the Commission; or
- **Form SI-12** – Affidavit Certifying That Compensation Has Been available from the New York State Workers' Compensation Board's Self-Insurance Office; or
- **Form GSI-105.2** – Certificate of Participation in Workers'

Compensation Group Board-approved self-insurance, available from the Bidder's Group Self-Insurance Administrator.

B. Disability Benefits:

- **Form CE-200** - Certificate of Attestation of Exemption (New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is Not Required); or
- **Form DB-120.1** (September 2015 or most current version), Certificate of NYS Disability Benefits Insurance. Bidder must request its business insurance carrier to send this form to the Commission.
- **Form DB-155**, Compliance with Disability Benefits Law.

All forms must name THE NEW YORK STATE GAMING COMMISSION as the Entity Requesting Proof of Coverage (*i.e.*, the entity being listed as the Certificate Holder).

All forms are valid for one year from the date the form is signed/stamped, or until policy expiration, whichever is earlier. (ACORD forms are NOT acceptable proof of Workers' Compensation insurance coverage).

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: _____

ATTACHMENTS

Attachment 1: Bidder Acknowledgement of
Addendum Attachment 2: Pricing Proposal Form
(Published as a separate Excel File)
Attachment 3: Document Submittal Checklist
Attachment 4: No Bid Response Form



IFB 1007 – Custodial Banking Services

BIDDER ACKNOWLEDGEMENT OF ADDENDUM

Amendment Number: _____

Date Issued: _____

Summary:

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

FIRM NAME: _____

REPRESENTATIVE SIGNATURE: _____

Bid Form
Custodial Banking Services

Award will be made to the responsive and responsible bidder offering the lowest Fixed Monthly Fee.

Fixed Monthly Fee \$

Company Name:

Authorized Signature:

Name (Print):



DOCUMENT SUBMITTAL CHECKLIST - IFB 1007

All items should be submitted with the Proposal, unless otherwise noted (checkbox is shaded out). Refer to sections in IFB for details of each requirement.

Submit with Response to IFB		IFB Section	<input checked="" type="checkbox"/>
Transmittal Letter: stating bid is valid for 120 days from bid due date; must be signed	4.1		
Attachment 1: Bidder Acknowledgement of Addendum (for each addendum)	1.10		
Appendix B: Contract Form (incorporates Appendix A); must be signed	2.2		
Appendix C Bidder/Offeror Disclosure/Certification Form	1.09		
Appendix D: Non-Collusive Bidding Certification	1.11		
Appendix E: New York State Vendor Responsibility Questionnaire	1.12		
Appendix G: Encouraging Use of New York State Businesses in Contract Performance	2.13		
Appendix I: EEO Policy Statement	2.10		
Appendix J: SDVOB	2.11		
Appendix K: Vendor Assurance of No Conflict of Interest or Detrimental Effect	2.18		
Appendix L: Statement on Sexual Harassment	1.24		
Appendix M: EO 177 Certification	1.25		
Appendix N: Insurer Qualifications and Insurance Requirements; Compliance Statement due with bid.	2.9		
Appendix O: EO 16 Certification	1.26		
Designation of Proprietary Information (FOIL)	1.13		
Disclosure of Litigation	1.17		
References	4.1		
Pricing Included with Response to IFB		IFB Section	<input checked="" type="checkbox"/>
Attachment 2: Bid Form (Bidders must use Attachment 2 for their Pricing. Alternate forms will be considered non-responsive)	4.10		
Due Subsequent to Award		IFB Section	<input checked="" type="checkbox"/>
Appendix F: Substitute Form W-9	2.6		
Appendix G: ST-220 Contractor Certification forms; Due within 7 calendar days of notice of award Form ST220-TD, Submit to DTF Form ST220-CA, Submit to Commission	2.8		
Appendix N: Insurance Certificates due upon award.	2.9		

Company Name: _____



NON-BID RESPONSE

IFB 1007 Custodial Banking Services

Company Name: _____

If your company will not be submitting a response to the IFB, it would be helpful in the preparation of future bidding opportunities to understand why your company is not submitting a bid. 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 IFB are not within our area of expertise.

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

from bidding. Those requirements are:

_____ There were certain requirements or restrictions stated in the IFB that preclude our company

_____ Other: _____

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

New York State Gaming
Commission
Procurement Unit, 5th Floor
354 Broadway
Schenectady, NY 12301-7500

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