

**CREATIVE & MARKETING COMMUNICATIONS SERVICES
AGREEMENT# C140008
AMENDMENT TWO**

THIS AGREEMENT made this 10 day of October, 2017 by and between the New York State Gaming Commission (the "Commission"), an executive agency of the State of New York with a principal office located at One Broadway Center, Schenectady, New York, 12305, and McCann-Erickson USA, Inc., having an office at 622 Third Avenue, New York, NY 10017 (the "Contractor").

WHEREAS the Parties entered into Agreement C140008, dated March 4, 2015, by and between the Commission and the Contractor to provide creative & marketing communications services and amended such Agreement by letter dated March 27, 2015 (the "Agreement"); and

WHEREAS, the parties agreed to cooperate fully in good faith and to assist each other, to the extent reasonably practicable, in order to accomplish that objective; and

WHEREAS the Commission and the Contractor desire to amend the provisions of the agreement effective August 6, 2017 through the duration of the Agreement term;

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

1. Section 3 of the Agreement, Compensation, is amended and replaced, to read as follows:

3. Compensation.

In full consideration for all goods and services provided through the scope of services, the Contractor agrees to accept compensation in accordance with the provisions set forth in the RFP, the Proposal and this Section 3. No minimum amount is guaranteed by this Agreement and the Contractor shall not have any right to make a claim therefor. The value of this Agreement shall not exceed \$126,250,000.

(a) Payments to Contractor will be directed by the Commission based on invoices submitted to the Commission's Finance Office. Upon verification of invoices against approved estimates, the Commission will direct payment to Contractor either (a) by the Commission directly or (b) by the Lottery's full service lottery system provider (IGT) from lottery receipts through ACH processing. Upon approval of this Amendment Two, by the Office of the Attorney General and the Office of the State Comptroller, Contractor shall provide information for the bank account to which payments due Contractor shall be directed. The Commission understands and agrees that it shall be responsible for IGT's failure to make payment to Contractor as provided hereunder and that it shall pay Contractor directly in the event of such failure.

(b) Payments to third parties by Contractor shall be reimbursed to Contractor only for work performed in connection with this Agreement and Contractor must pass through the third party's best available rate, including with limitation, any discounted rates, to the Commission for work performed by third parties and at no mark-up.

(c) The estimated cost of each project under this Agreement will be invoiced to the Commission prior to any obligation being incurred by Contractor for each project. Fifty percent of the total invoice is due upon the Commission's written approval of the applicable estimate and thereafter Contractor shall issue invoices for the remaining project costs at least 30 days before payment is due to ensure that Contractor receives payment prior to such times as Contractor is required to pay providers of services. All such invoices are subject to adjustment (up or down) prior to final billing. Final billing for actual costs incurred shall not exceed 105 percent of the estimated project cost unless approved by the Commission in advance of Contractor incurring such costs.

(d) The Commission will not be responsible for any expenses incurred by the Contractor for any obligation not approved in advance by the Commission.

2. Section 13, Relationship, is hereby amended and replaced, to read as follows:

13. Relationship.

(a) The relationship of the Contractor to the Commission arising out of this Agreement shall be that of an independent contractor. The Contractor, in accordance with its status as an independent contractor, agrees that it will conduct itself consistent with such status, that it will neither hold itself out as, nor claim to be, an officer or employee of the Commission or the State by reason hereof, and that it will not by reason hereof, make any claim, demand or application for any right or privilege applicable to an officer or employee of the Commission or the State, including, but not limited to, workers' compensation coverage, unemployment insurance benefits, social security coverage, or retirement membership or credit. All personnel of the Contractor shall be within the employ of the Contractor only or shall be duly contracted subcontractors of the Contractor, which alone shall be responsible for their work, the direction thereof, and their compensation. Nothing in this Agreement shall impose any liability or duty on the Commission or the State, on account of any acts, omissions, liabilities or obligations of the Contractor or any person, firm, company, agency, association, corporation, or organization engaged by the Contractor as expert, consultant, independent contractor, specialist, trainee, employee, servant or agent, for taxes of any nature, including, but not limited to, unemployment insurance and workers' compensation, and the Contractor hereby agrees to indemnify and hold harmless the Commission and the State against any such liabilities.

(b) The Contractor understands that purchases made by the Contractor under this Agreement may be subject to applicable New York State sales tax or exempt from such tax pursuant to Section 1116 (a)(1) of the Tax Law; and the Commission confers authorization to the Contractor for purposes of tax exempt purchasing of supplies, merchandise, equipment or

services for the New York Lottery under this Agreement. The Contractor acknowledges that any sales tax exemption resulting from the delegation set forth in this section applies solely to purchases of supplies, merchandise, equipment and services under this Agreement. For clarity, the Commission acknowledges that not all purchases made by Contractor will be tax exempt and agrees to reimburse Contractor for applicable sales tax on purchases made for Commission's account.

3. Section 16 of the Agreement, Miscellaneous Provisions clause, paragraph (d) is amended and new paragraphs (e), (f) and (g) are added, to read as follows:

(d) Continuing Responsibility.

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

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

(e) Conflicts of Interest.

(i) The Contractor has provided Attachment 1, Vendor Assurance of No Conflict of Interest or Detrimental Effect, signed by an authorized executive or legal representative, attesting that the Contractor's performance of the services does not create any undisclosed Conflict of Interest with, nor position the Contractor to breach any other contract currently in force with the State of New York, and that the Contractor will not act in any manner that is detrimental to any State project on which the Contractor is rendering services.

(ii) The Contractor shall disclose any Conflicts of Interest related to the services provided to the Commission under the Agreement. As used herein "Conflicts of Interest" means any situation, arrangement, understanding, association, or agreement which jeopardizes the ability of the Contractor to represent the Commission's best interests in providing services as set forth under the Agreement or compromise the impartiality of the Contractor in providing services under the Agreement.

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

(f) Public Officers Law.

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

(g) Ethics Requirements.

The Contractor shall not engage any person who is, or has been at any time, in the employ of the State to perform services under this Agreement in violation of the provisions of the New York Public Officers Law, other laws applicable to the service of State employees, and the rules, regulations, opinions, guidelines or policies promulgated or issued by the New York State Joint Commission on Public Ethics, or its predecessors (collectively, the "Ethics Requirements"). The Contractor certifies that all of its employees who are former employees of the State and who are assigned to perform services under this Agreement shall be assigned in accordance with all Ethics Requirements. During the Term, no person who is employed by the Contractor and who is disqualified from providing services under this Agreement pursuant to any Ethics Requirements may share in any net revenues of the Contractor derived from this Agreement. The Contractor shall identify and provide the State with notice of those

employees of the Contractor who are former employees of the State that will be assigned to perform services under this Agreement, and make sure that such employees comply with all applicable laws and prohibitions. The State may request that the Contractor provide it with whatever information the State deems appropriate about each such person's engagement, work cooperatively with the State to solicit advice from the New York State Joint Commission on Public Ethics, and, if deemed appropriate by the State, instruct any such person to seek the opinion of the New York State Joint Commission on Public Ethics. The State shall have the right to terminate this Agreement at any time if any work performed hereunder is in conflict with any of the Ethics Requirements.

4. **Appendix I of the Agreement, Contractor Requirements and Procedures for Business Participation Opportunities for New York State Certified Minority-and-Women-Owned Business Enterprises and Equal Employment Opportunities for Minority Group Members and Women, as incorporated into the Agreement is amended to change the MWBE participation annual goal to 30 percent.**

All other provisions of the Agreement, as amended, remain in full force and effect.

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

MCCANN-ERICKSON USA, INC.

By: [Signature]
Title: CFO
Date: 10/10/17

NEW YORK STATE
GAMING COMMISSION

By: [Signature]
Title: Acting Exp Dir
Date: 10/13/17

ATTORNEY GENERAL

By: _____
Title: _____
Date: _____

APPROVED AS TO FORM NYS ATTORNEY GENERAL
OCT 16 2017
<i>Benjamin L. Maggi</i> BENJAMIN L. MAGGI ASSISTANT ATTORNEY GENERAL

COMPTROLLER
Thomas P. DiNapoli

By: _____
Title: _____
Date: _____

APPROVED DEPT. OF AUDIT & CONTROL
NOV 01 2017
<i>[Signature]</i> FOR THE STATE COMPTROLLER

ACKNOWLEDGEMENT

ACKNOWLEDGEMENT BY INDIVIDUAL

STATE OF NEW YORK)

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 NEW YORK)

SS.:

COUNTY OF)

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

Notary Public

ACKNOWLEDGEMENT BY CORPORATION

STATE OF NEW YORK)

SS.:

COUNTY OF Kings)

On this 10th day of October, in the year 2017, before me personally came Jim Boller, to me known, who, being by me duly sworn did depose and say that he/she resides in _____; that he/she is the C.F.O. of the McCann Erickson, USA Inc., 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/she signed his/her name thereto by like order.

JAMAR D BASTIEN
Notary Public, State of New York
Notary # 6178579
Qualified in Kings County
Commission Expires July 00, 2020

9/27/19 Exp.


10/10/17