



**RFP: C202017 – New York Lottery Video Lottery Games**

**BIDDER ACKNOWLEDGEMENT OF ADDENDUM**

Amendment Number: One

Date Issued: February 23, 2021

Summary:

The Commission hereby amends the Schedule of Events as follows (changes made in red):

**Schedule of Events**

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

RFP Issued	February 5, 2021
Bidders' First Questions Due	February 17, 2021, by 3:00 p.m.
Commission Responses to First Questions	February 23, 2021
Bidders' Second Questions Due	February 24, 2021, by 3:00 p.m.
Commission Responses to Second Questions	March 1, 2021
Bidders' Third Questions Due	March 3, 2021, by 3:00 p.m.
Commission Responses to Third Questions	March 8, 2021
Primary Bidders' Proposals Due	March 19, 2021, by 3:00 p.m.
Contract Start Date	July 1, 2021

**Questions and answers are attached.**

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

FIRM NAME: \_\_\_\_\_

REPRESENTATIVE SIGNATURE: \_\_\_\_\_



## REQUEST FOR PROPOSALS FOR NEW YORK LOTTERY VIDEO LOTTERY GAMES

**C202017**

### Round 1 - Questions and Answers

#### General Questions

Q.1: Do you currently have electronic table games (ETGs) operating at Resorts World New York connected to the current central system will they need to be modified to keep communicating with the central system and if so how can we request the new specifications?

**A.1: Protocols for the Central System in present operation will remain operational. Protocol access should be requested directly from Everi Games, Inc.**

Q.2: Do you currently have ETGs operating at Resorts World New York, will those electronic table games need to be reapproved for use or can they continue to operate in their current state if successful with the Request For Proposals (RFP)?

**A.2: Current games may continue to be operated, provided they are supplied by a Successful Bidder and those games are chosen by the Gaming Facility.**

Q.3: If you are currently licensed to provide ETGs are there additional licensing requirements that will be necessary for a contractor or subcontractor that is currently licensed?

**A.3: Bidders currently licensed by the Commission as VLT vendors will not need to be relicensed. Subcontractors may require licensure depending on their role under a new contract.**

Q.4: Will we need to submit test equipment to the independent testing laboratory for games that are currently operating at Resorts World New York?

**A.4: Games previously certified by a Commission-approved independent testing laboratory will not be required to be re-certified so long as no modifications have been made since certification.**

Q.5: Is the amount of coverage under Crime Insurance allowed to be lowered if the amount is excessive for the amount of products you will supply as a Lot 3 supplier?

**A.5: No.**

Q.6: Are the amounts of the bonds allowed to be lowered if the amount is excessive for the amount of products you will supply as a Lot 3 supplier?

**A.6: No.**

Q.7: Regarding the Volume 1 – Applicant Information, would the Commission please confirm the number of hardcopies and electronic copies that are to be submitted for Lots 1, 2, and 3?

**A.7: Information and Technical Proposal Submission:**

**Number of Copies. Hardcopy and electronic versions of the entire Volume 1 -Information and Volume 2 - Technical Proposal must be submitted as noted below. All must be marked clearly to differentiate between Volumes.**

- **Hardcopy: Two (2) originals and six (6) copies.**
- **Electronic (non-redacted): Two (2) USB Memory Sticks, each containing a PDF file version.**
- **Electronic (redacted): One (1) USB Memory Stick, containing a PDF file version.**

**The electronic version must include all Technical Proposal sections within a single file to facilitate searches for terms across the breadth of the Technical Proposal. The electronic version must mirror the full Technical Proposal.**

**If there are any differences between the hardcopy and electronic versions of the Information or Technical Proposal, the hardcopy version will be deemed to be the Information or Technical Proposal.**

**Pricing Proposal Submission:**

**Number of Copies. Hardcopy and electronic versions of Volume 3 – Pricing Proposal shall be submitted. All must be marked clearly to**

**differentiate between Volumes. The electronic version must mirror the hard copy.**

- **Hardcopy: Two (2) originals and one (1) copy.**
- **Electronic (unredacted): One (1) USB Memory Stick copy, containing a PDF file version.**
- **Electronic (redacted): Not needed.**

**If there are any differences between the hardcopy and electronic versions of the Pricing Proposal, the hardcopy version will be deemed to be the Pricing Proposal.**

**For Lots 2 and Lots 3 only:**

**A Bidder has the discretion to make hardcopy and electronic submissions or make a submission entirely electronic. The Commission has no preference as to submission choice.**

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**An original hand signature is required. If a submission is electronic, a scanned color copy of the original signature is needed.**

**The Commission hereby amends RFP by adding a new Section 4.3(4) to read as follows:**

4. Alternative Electronic Submission. Notwithstanding Section 4.3(2)(d) and 4.3(3)(c), a Bidder may elect to submit their response by electronic submission.
  - a. Proposal Submission.

All volumes of the Bidder's Proposal shall be submitted to the Commission as set forth below and shall be received by the date and time set forth in the Schedule of Events.

Information, and Technical, and Pricing Proposal

- **Electronic (non-redacted): One (1) USB Memory Sticks, each containing a PDF file version.**

- Electronic (redacted): One (1) USB Memory Stick, containing a PDF file version.

The electronic files shall include all Technical Proposal sections within a single file to facilitate searches for terms across the breadth of the Technical Proposal.

Proposals must also be sent to: [Officer.Contracting@gaming.ny.gov](mailto:Officer.Contracting@gaming.ny.gov). In the Subject line, please include “RFP #C202017 – Lot 2 Proposal” for Lot 2 Submissions and “RFP #C202017 – Lot 3 Proposal” for Lot 3 Submissions

- b. Proposal Receipt.

The Commission’s Contract Administration Office will provide the sender with an email confirmation indicating receipt of the Proposal.

Q.8:

a. The RFP states that Bidders should prepare their proposals simply and economically. If the N.Y.S. Gaming Commission (Commission) confirms the number of hard copies to be submitted for Volume 1 is equal to that requested for Volume 2, Bidders intending to submit responses for all Lots will be required to submit at least 57 binders in total.

b. Would the Commission, therefore, be willing to consider reducing the number of printed hard copies required for the submission?

A.8:

a. **Correct.**

**b. The Commission will not reduce the number of copies required for Lot 1. However, the Commission will allow an alternative electronic submission for Lots 2 and 3. See answer to Question 7.**

Q.9: Due to the potential volume and size of game brochures, would the Commission please confirm submission of game brochures on electronic media only is acceptable?

**A.9: For purposes of this RFP, submission of game brochures by electronic media only is not acceptable for Lot 1.**

Q.10: Due to the potential volume and size of financial statements, would the Commission please confirm that submission of financial statements on electronic media only is acceptable?

**A.10: Electronic media submission of financial statements is acceptable.**

Q.11: Are Bidders permitted to add an Executive Summary to the Volume 2, Technical Proposal? If so, do you have a preference as to the location?

**A.11: A Bidder may submit an Executive Summary, placed where the Bidder finds appropriate.**

Q.12: The Spectrum Gaming Group GAMING MARKET STUDY: STATE OF NEW YORK contemplates the likelihood of the city tracks converting to commercial casinos within the next two years. If so, what will happen to Supplier allocations - will they transition to other facilities?

**A.12: In the event of a closure or conversion of a Gaming Facility to a commercial casino, VLTs will likely no longer be utilized at such location. A Successful Bidder will have no rights to any device allocation at a commercial casino facility should they choose not to place video lottery gaming devices.**

Q.13: The Spectrum Gaming Group GAMING MARKET STUDY: STATE OF NEW YORK contemplates the likelihood of the city tracks converting to commercial casinos within the next two years. How shall a Supplier's pricing be framed to manage this scenario - can we include pricing for the scenario where the city tracks stay offering video lottery gaming devices, and one where they transition to commercial casinos - especially considering the significant amount of revenue they generate is unlikely to be made up at other facilities?

**A.13: No. A Bidder may only submit one pricing proposal.**

Q.14: Will suppliers under the new contracts (Lots 1-3) be allowed to have separate contracts to provide non-video lottery gaming equipment to the facilities - for example player tracking systems?

**A.14: Yes.**

Q.15: Does the Commission have a recommended list of peripheral devices (i.e., printer, bill validator, card reader etc.) which includes the vendor(s) and versions utilized for New York video lottery gaming devices?

**A.15: No, however all devices must conform with the Everi Interface Control Document requirements.**

Q.16: Will a host system (on-premises) and host simulator be provided for development, testing, integration to a Successful Bidder?

**A.16: No, a host simulator will not be provided. A Successful Bidder will be provided access to the Central System test system.**

Q.17: Is the use of used or refurbished equipment permitted, or does all equipment need to be new and unused?

**A.17: Refurbished equipment is permitted, so long as it meets the equipment and performance standards of the RFP.**

Q.18: As part of the Bidder Financial Viability for a Lot 2 Bidder, will the Commission accept a Certified Public Accountant (CPA) review of the most recent fiscal year in lieu of an audited financial statement in response to Appendix S, Question 30(c)? We have begun the process of annual audited financial statements; however, the first step is a CPA Review, which we completed for fiscal year 2019, followed by a balance sheet audit, which is currently being completed for fiscal year 2020, and then audited financial statements annually, which will begin with fiscal year 2021.

**A.18: A Bidder shall submit its three most recent completed audited financial statements. The submission may be supplemented by unaudited financial statements for the current year, where an audit has not been completed.**

Q.19: If a location closes for any reason whether temporarily or permanently how is the Supplier paid its fees?

**A.19: Fees are earned as a percentage of net machine income of each game. In the event a Gaming Facility is closed, no fees would accrue.**

Q.20: Are 100 percent of the video lottery gaming devices on each gaming floor being replaced after the new award to Primary Suppliers? If so, what is the timeframe for 100 percent replacement of each video lottery gaming device on each gaming floor to be complete.

**A.20: A Gaming Facility may elect to retain games currently on its gaming floor. A timeframe for replacement of VLTs will be determined by the Gaming Facility selection and the availability of new games.**

Q.21:

- a. Please confirm that two or more Successful Bidders and Central System provider are not prohibited from jointly contracting, jointly providing or agreeing to provide on behalf of one another, maintenance to video lottery gaming facilities as required pursuant to the RFP and such arrangements shall not violate the anti-collusion provisions of the RFP.
- b. Please confirm that conversations with the central system provider and other bidders are permitted during the response period in order to form a response to maintenance questions.

**A.21:**

- a. Confirmed, such will not violate the anti-collusion provisions of the RFP.**
- b. Confirmed, such will not violate the anti-collusion provisions of the RFP.**

Q.22: The rollout schedule start is known. The volumes and timing thereafter are not clear.

- a. Would there be a requirement for a central distribution warehouse?
- b. Would this arrangement be a value add to provide the best collaborative experience and to avoid drop shipments directly to a Gaming Facility?

**A.22:**

- a. No.**
- b. A Successful Bidder should determine the best method to stage delivery.**

Q.23:

- a. Can the lottery and casino leadership provide any focus areas they would like to see improvements in over the existing contract?
- b. This not a call out for short comings, but to identify where opportunities to improve on the present delivery and support model may exist
- c. Post award: can vendors form a service co-operative to provide a single service model to best respond and support the Service Level Agreements defined?



**A.23:**

**a. The RFP seeks to expand flexibility for Gaming Facilities to access a variety of games to maximize performance of their Gaming Floor and to provide Gaming Facilities with increase discretion in the management and operation of such.**

**b. See answer to Question 23 a.**

**c. Yes.**

Q.24: If a bidder is currently licensed and approved with the Commission for video lottery gaming for several locations, what additional documentation or certification is required for approval to do business with the remaining video lottery gaming locations?

**A.24: No additional licenses are necessary.**

Q.25: Is it prohibited for potential bidders to consider forming a Service consortium to enhance service levels for the properties and drive improved uptime and performance and cost efficiencies?

**A.25: No.**

Q.26: Which companies hold active gaming machine licenses in New York?

**A.26: The present primary companies operating in the New York Lottery video lottery gaming market are Everi Games, Inc., IGT, Scientific Games.**

Q.27: Would the Commission consider raising the Lot 2 limit to a maximum of 25 percent versus 10 percent to increase the economic incentive for new participants to invest in bringing new games to New York and improve New York's video lottery gaming competitiveness with commercial and out-of-state properties?

**A.27: No.**

Q.28:

a. What data would be shared from the Commission or properties to enable the vendor to recommend title and other changes to improve performance?

b. Please define the frequency and granularity that would be shared.

**A.28:**

**a. On a weekly basis, the Central System provider will deliver game vendors with performance data related to their game operation.**

**b. See answer to Question 28 a.**

Q.29: Are there any restrictions on how the vendor can work with the properties to support game performance, marketing efforts, branding initiatives and floor optimization?

**A.29: No.**

Q.30: Can the vendor provide incentives for Properties to place higher volumes of cabinets?

**A.30: No.**

Q.31: For new vendors, is it permissible to require a certain minimum number of games to be ordered by any one property to ensure efficient economies of scales for service and support?

**A.31: Lot 2 and Lot 3 Bidders may set a minimum order level required before participating in the program. However, once a Successful Bidder delivers VLTs to a Gaming Facility, the Successful Bidder shall accept requests from all qualified locations.**

Q.32: As long as cabinets are fully functional and certified to work to the high standards specified, can the vendor place games that may have been in operation elsewhere before being recertified?

**A.32: Yes, as long as the cabinets do not have any defects and have a like-new appearance.**

Q.33: It is common for vendor to market its products to key customers months in advance of launch and to solicit feedback and recommendations from customers on what products will be most desired. Are there any rules that would prohibit the vendor from making such marketing presentations to the properties who would likely be interested in our products?

**A.33: A Bidder may have conversations with Gaming Facilities regarding potential products and the interests of the Gaming Facilities. However, a Successful Bidder shall not discuss any terms or requirements of the RFP**

**or make any representation of an ability to supply a product before receipt of an award as a Successful Bidder.**

Q.34: What is the average duration that a cabinet remains on the floor?

**A.34: The Commission does not maintain this data point.**

Q.35: What is the average age for the fleet of cabinets currently active?

**A.35: The Commission does not maintain this data point.**

Q.36: Can the Commission provide any player demographics, preferences, surveys or other non-personally identifying information that would help vendor propose the appropriate mix of games?

**A.36: No.**

Q.37: Can the Commission share the mix of play by denomination and average bet size for the overall video lottery gaming device fleet?

**A.37: The game mix, as of the week beginning February 15, 2021 is as follows:**

<b>VLTs by Denomination in Play</b>		
<b>Denomination</b>	<b>Number</b>	<b>Percentage of Play</b>
\$ 0.01	11,752	63.93
\$ 0.02	194	0.64
\$ 0.05	319	1.05
\$ 0.10	38	0.20
\$ 0.25	483	1.26
\$ 0.50	59	0.20
\$ 1.00	2,911	28.10
\$ 2.00	9	0.02
\$ 5.00	1,011	2.28
\$ 10.00	28	0.18
\$ 25.00	11	0.12
\$ 100.00	6	0.02

Note: the average wager was \$4.29.

Q.38: Can the Commission share utilization data at the property level?

**A.38: The Commission does not maintain this proprietary information.**

Q.39: What is included in the Marketing Allowance for each property and how is that determined and by whom? Is there a list of activities permitted as part of a Marketing Allowance?

**A.39: Historically, the Gaming Facility was provided an allowance to be used for marketing and promotion. This Marketing Allowance is no longer in law. Accordingly, all marketing efforts will be undertaken at the discretion of each Gaming Facility.**

Q.40: Prior contracts have referenced "add-on" pricing. Would the Commission be able to provide sufficiently redacted documents to show the structure but not the actual pricing of the add-on options?

**A.40: The Commission does not maintain this data point.**

Q.41: Can the Commission share the Calendar Year 2020 results that are shown in the Video Gaming Report for 2019?

**A.41: Historic video lottery gaming reports can be found on the Commission's website at <https://gaming.ny.gov/gaming/index.php?ID=3>**

Q.42: What is the current average length of duration that newly placed units are required to remain on the floor?

**A.42: There is no present required duration of placement.**

Q.43: In each of the past five years, what percentage of the floor has been updated with new machines by current vendors with new cabinets?

**A.43: The Commission does not maintain this data point.**

Q.44: To better understand the needs of the Properties, can the Commission provide copies of any key reports or consolidated feedback from operators that would help vendor propose the optimal product mix?

**A.44: No.**

Q.45: To aid in planning purposes, how many game conversions have been performed each year for the past three years?

**A.45: If by game conversion you mean replacement of a game theme either with a different theme or a new game theme then in the last three years the following game conversions have been undertaken systemwide:**

Year	Number
2018	6,404
2019	5,294
2020	2,319

Q.46:

- a. In order to properly plan out staffing and service levels, how many service incidents and by type occurred by property over the past two years?
- b. Can a list of the reasons for the service incidents be provided?

**A.46:**

- a. This information is proprietary and cannot be shared without vendor consent.**
- b. See answer to Question 46 a.**

Q.47: In order to properly plan content expectations, how many new titles have been introduced to the market each year for the past three years?

**A.47: In the last three years, the following number of new game titles have been introduced systemwide:**

Year	Number
2018	85
2019	86
2020	66

Q.48: What are the current peak utilization statistics for 2019 and 2020 by property?

**A.48: This information is proprietary to each Gaming Facility.**

Q.49. In order to properly gauge the current interest level by properties in choosing add-on services, what is the unit count of games that have add-on services?

**A.49: This information is proprietary to each vendor and Gaming Facility.**

Q.50: Please verify how the fifteen points for “Experience” will be assessed.

**A.50: The Commission’s Evaluation Committee will award up to 15 points pursuant to the Bidder’s response to Section 4.2(C)(1) and Section**

**4.2(C)(2), depending on the depth and the relevance of the information provided.**

Q.51: What is meant by the following terms:

- a. "Pay table" (is it game denomination, return to player, all pays/probabilities identical)?
- b. "Credit amount" (total bet, denomination, progressive reset)?
- c. "Participation percentage" (progressive increment rate)?
- d. "Game" (a single bet, a full game package)?
- e. "Game set generation rules" (how the server handles tickets, how ticket pools are originally defined)?
- f. If multiple bets can share a progressive pool, what requirements must they follow?
- g. Should every bet have its own progressive pool?
- h. Should every bet have its own progressive pool, is it desired to have the progressive probability scale with the total bet?

A.51:

- a. **Generally, a "pay table" is a listing of outcomes, includes the frequency and prize values. A deeper answer sought by this inquiry relates to proprietary information or a technical specification found in the Everi Interface Control Document, which can be obtained directly from Everi Games, Inc. following execution of an Everi Non-Disclosure Agreement. Upon execution and acceptance of the NDA, Everi will directly provide the answer.**
- b. **"Credit amount", depending on context, is the total bet or amount deposited to a VLT or ETG.**
- c. **In the context of a progressive game, "participation percentage" is the contribution percentage for each wager.**
- d. **A "game" is a single wager yielding a single outcome.**

e. The “Game set generation rules” relates to proprietary information or a technical specification found in the Everi Interface Control Document, which can be obtained directly from Everi Games, Inc. following execution of an Everi Non-Disclosure Agreement. Upon execution and acceptance of the NDA, Everi will directly provide the answer.

f. The answer sought by this inquiry relates to proprietary information or a technical specification found in the Everi Interface Control Document, which can be obtained directly from Everi Games, Inc. following execution of an Everi Non-Disclosure Agreement. Upon execution and acceptance of the NDA, Everi will directly provide the answer.

g. The answer sought by this inquiry relates to proprietary information or a technical specification found in the Everi Interface Control Document, which can be obtained directly from Everi Games, Inc. following execution of an Everi Non-Disclosure Agreement. Upon execution and acceptance of the NDA, Everi will directly provide the answer.

h. The answer sought by this inquiry relates to proprietary information or a technical specification found in the Everi Interface Control Document, which can be obtained directly from Everi Games, Inc. following execution of an Everi Non-Disclosure Agreement. Upon execution and acceptance of the NDA, Everi will directly provide the answer.

### **Part 1, General Information**

Q.52: What is meant by a "periodic recruitment period" referenced in Section 1.1?

**A.52: It is expected that the Commission will, from time to time, solicit new bids for Lot 2 and Lot 3 vendors. The timing and frequency of these solicitations are at the discretion of the Commission.**

Q.53: Section 1.1: Please confirm if a Lot 1 Supplier that manufactures and supplies both standard video lottery gaming devices (VLTs) and ETGs can supply both under a Lot 1 award.

**A.53: A Lot 1 Supplier must supply the required allocation of standard VLTs. A Lot 1 Supplier may also supply ETGs, but the allocation of ETGs is dependent on the selection by a Gaming Facility and no Lot 1 Supplier is guaranteed any allocation of ETGs.**

Q.54: In Section 1.1, Section 3.1(C) and Appendix R, the definitions of the “Qualified Electronic Table Games Supplier” are different. Will the Commission please acknowledge which is the appropriate definition?

**A.54: “Qualified Electronic Table Games Supplier” are Licensees authorized to collectively supply ETGs up to one hundred (100) percent of each gaming floor allocation of ETGs, not to exceed one hundred (100) percent of the non-Lot 1 allocation, and no individual supplier may supply ETGs in excess of fifty (50) percent of each gaming floor allocation of ETGs.**

Q.55: Section 1.1 states, “Lot 1. Primary Supplier, of which two licenses shall be awarded, will be authorized to each supply Video Lottery Terminals (“VLTs”).” Would the Commission please confirm that the definition of “VLTs” is to mean VLTs and ETGs.

**A.55: Video Lottery Terminals consist of two categories, standard devices and ETGs. Collectively, both categories are included in the term “VLTs”. Content should be considered with language. If VLTs and ETGs are used in proximity, it is reasonable to assume the former regards standard VLTs.**

Q.56: Section 1.1: Please confirm that Primary Suppliers (Lot 1) can provide both standard video lottery gaming devices and ETG product in a successful Lot 1 bid. Although the definition of VLT considers both VLTs and ETGs, the text appears to preclude Lot 1 providers from winning an ETG award and providing both VLTs and ETGs.

**A.56: Please see the answer to Question 53.**

Q.57: Section 1.1(A): Will the Commission confirm if during the term of license for Lot 2 or 3, if they were to expand their portfolios to include VLTs or ETGs, the successful award of a license permits the Successful Bidder to offer both types of products within Lot 2 and 3?

**A.57: Lots 2 and 3 will be awarded separately. If a Bidder only submits a bid for one of these two Lots, the vendor must wait for a periodic recruitment period to qualify for an award under the other Lot.**

Q.58:

a. Section 1.1(A): Under the current license holder’s parameters, they are able to incorporate third party suppliers to offer products to operators?

b. Can the Commission confirm if this will this still be permitted under the new licenses?

**A.58:**



a. Yes.

b. Yes.

Q.59: Section 1.1(B), Relationship Limitation: Please confirm that two or more Successful Bidders are not prohibited from jointly contracting, jointly providing or agreeing to provide on behalf of one another, maintenance to video lottery gaming facilities as required pursuant to the RFP and such arrangements shall not violate the anti-collusion provisions of the RFP.

**A.59: Bidders may contract with other Bidders on the provision of equipment maintenance.**

Q.60: Section 1.2 states that upon submission of an appropriately executed Everi Non-Disclosure Agreement (Everi NDA), each Bidder will be supplied with the authorized Everi protocol. Would the Commission please confirm when it will distribute the Everi NDA?

**A.60: Each bidder should contact Everi Games, Inc. directly to execute the Everi Non-Disclosure Agreement and be supplied with the Everi protocol.**

Q.61: Section 1.3: Please confirm if guaranteed allocated VLT positions mean fixed locations at each Gaming Facility. If not, please clarify what a guaranteed allocation means.

**A.61: No. A guaranteed allocation means the minimum number of terminals that shall be placed in service on a gaming floor.**

2Q.62: Section 1.4: Can the Commission please clarify if Section 1.4 is meant to be instructional or to provide further clarification for all Bidders in the remainder of the RFP?

**A.62: Section 1.4 provides summary information.**

Q.63: Section 1.4(B)(1): What method of software verification is used? i.e., Game Authentication Terminal (GAT) Protocol, Kobetron, etc.

**A.63: The Commission utilizes software verification tools provided by each independent testing laboratory.**

Q.64: Section 1.4(B)(2): Based on the definition of ETG as a category of VLT, please confirm if all specifications in the RFP apply equally to ETGs, or list any separate requirements for ETGs.

**A.64: All specifications are applicable unless otherwise stated or the Successful Bidder requests and receives a written exception.**

Q.65: Section 1.5, in the first paragraph what does the Commission consider to be “casino floors?” For example, would a bingo hall with over 100 electronic gaming devices in operation or video lottery locations that allow up to 10 devices per location be considered a “casino floor?”

**A.65: The term Gaming Floor means the area of a Gaming Facility where VLTs are authorized to be located for play by the general public.**

Q.66: Section 1.6: Is the contract start date of July 1, 2021 applicable to successful Primary and Qualified bidders?

**A.66: The projected start date for all Lots is July 1, 2021. This date represents the earliest date a Successful Bidder may have an active terminal on a Gaming Floor under the new contracts.**

Q.67: Section 1.11: For existing suppliers under contract, is it necessary to fill out and submit the following documents that were recently submitted as part of the contract extension: Bidder/Offeror Disclosure/Certification Form and Supplier Responsibility Questionnaire?

**A.67: Yes.**

Q.68: Section 1.15 states that the Bidder’s proprietary designations submitted with the bid will not become final until accepted by the Commission via formal letter. Once the designation is final, the Bidder will be required to submit a redacted version of the Proposal consistent with the accepted designation. Section 4.2(2)(d) and Section 4.3(A)(2)(d), however, state that a redacted version is to be provided with the bid submission. Would the Commission allow Bidders to only provide the redacted version after receipt of the Commission’s approval letter, and not with the bid submission?

**A.68: No.**

Q.69: Section 1.18: May a parent entity have multiple subsidiaries as bidders?

**A.69: No. Allowing segmented bidding would circumvent the allocation limits provided in the RFP.**

Q.70: Section 1.19: Will the Commission provide additional guidance or specificity on what metrics are used to determine a high-quality product?

**A.70: No. A Bidder shall demonstrate that their product meets or exceeds industry standards for quality and performance.**

Q.71: Section 1.27 prohibits news releases pertaining to this RFP or the services to which this RFP relates without prior written Commission approval. Publicly listed companies have mandatory material disclosure requirements, and the award of this Contract may be a material event requiring disclosure under exchange rules. Would the Commission please confirm that this prohibition will not require the violation of exchange rules regarding disclosure?

**A.71: The Commission will not restrict Security and Exchange-required material disclosures but requires advance written notification of such disclosure content.**

## **Part 2, Provisions**

Q.72: Section 2.2: The first paragraph of Section 2.2 states that, (F)ollowing a contract award, a Successful Bidder will be required to sign a contract with the Commission and that the final contract will be in the form incorporated as Appendix B: Contract Form (the “Contract”), or as revised through the RFP amendment process. However, the third paragraph of this section states that, “(E)very Bidder responding to this RFP must include in its Proposal a signed Contract.” There appears to be an inconsistency between the language of the first and the third paragraphs. Please confirm that a Successful Bidder shall only be required to provide a signed contract after it has been notified of being a Successful Bidder.

**A.72: A Bidder must provide a signed copy of the contract included in the RFP. Upon contract award, a Successful Bidder will be required to sign a final contract, which will include all revisions and maximum contract value based on bid pricing.**

Q.73: Section 2.3:

- a. What is the expected time frame for an individual to obtain a gaming license?
- b. Will there be any opportunity to shorten the timeframe to support hiring people and engaging faster?
- c. Do Licensing requirements differ for Service technicians, Sub-contractor, management, etc.?
- d. What is a typical turnaround time for license approvals?

e. Are temporary licenses offered? (i.e., while a license application is under review or for subcontractors?)

f. Will a sub-contracting company be required to be licensed or will they fall under vendor/company license?

**A.73:**

**a. A new gaming vendor license typically required two weeks to review and consider, assuming no material application deficiencies. Technician applications typically require five business days to review and consider.**

**b. Temporary licenses are available. Such temporary licensing authorizes companies and technicians to conduct business before the full licensing process has concluded.**

**c. Yes. Management employees are required to be licensed at the Key Employee level. Technicians are licensed at the Gaming Employee level. Non-gaming related sub-contractors file as a temporary service provider. Gaming sub-contractors are required to file for licensure in association with the licensed gaming company.**

**d. See answer to Question 73 a.**

**e. See answer to Question 73 b. The same process is followed for subcontractors.**

**f. The subcontracting company will itself fall under its vendor's license. However, the individual persons performing work for the licensed vendor will be required to be licensed in association with that vendor.**

Q.74: Section 2.4: When updating our background investigation logs, how many historical years would the Commission like the Successful Bidder to provide?

**A.74: In the event a Bidder is receives an award based on this RFP, the Commission will work with the Successful Bidder to ensure all required documentation is properly submitted.**

Q.75: Section 2.5(D): Could a value capitalization be defined for the total expense of these audits?

**A.75: The Bidder should consult their auditors on potential fees.**

Q.76: Section 2.10: Appendix B is intended to be an all-inclusive Contract. In the definition of “all inclusive,” would the Commission please confirm that Primary and Qualified Suppliers will not be required to supply Thermal Ticket Paper for each Gaming Facility?

**A.76: Under the existing vendor contracts, paper is supplied 50/50 between the two vendors. Given the potential complexity of multiple vendors and floor allocations, paper must be provided by each Lot 1, Lot 2, or Lot 3 Supplier.**

**In the alternative, Thermal Ticket Paper may be supplied 50/50 between the two Primary Suppliers provided each Qualified Vendor reimburses the Primary Suppliers for their pro-rated share of the cost based on Net Machine Income.**

Q.77: Section 2.10: Appendix B is intended to be an all-inclusive Contract. In the definition of “all inclusive”, would the Commission please confirm that the Primary and Qualified Suppliers will not be required to provide Annual Marketing and Promotional Funds or program for the use at each Gaming Facility?

**A.77: Such Annual Marketing and Promotional Funds are not a requirement of the RFP, however Successful Bidders are encouraged to work with the Gaming Facilities in marketing and promoting their products.**

Q.78: Section 2.11:

a. What options are acceptable for setting the price for any additional options included in the Bidder catalog?

b. Is the percentage of NTI the only option, or would additional forms, like fixed daily compensation or guaranteed minimum daily compensation, be accepted?

**A.78:**

**a. Pricing of additional options is at the discretion of a Bidder and subject to the acceptance of financial responsibility of such cost by the host Gaming Facility.**

**b. Base pricing must be a percentage of net machine income. Minimum daily compensation will not be considered. Flexibility in pricing for Lot 2 and Lot 3 is afforded.**

Q.79: Section 2.11: Would the Commission please include a mathematical example including Average Base Compensation Rate to ensure Bidders are pricing compensation for Additional Options appropriately?

**A.79: The pricing of Additional Options is outside of the calculation of the Average Base Compensation Rate.**

Q.80. Section 2.11: How does Average Base Compensation Rate effect an individual Vendor's compensation?

**A.80: The Average Base Compensation Rate defines the financial responsibility for vendor fees between the Commission and the Gaming Facility. It does not impact an individual vendor's compensation.**

Q.81: Section 2.11:

a. Can the Commission provide further explanation on how the Average Base Compensation Rate for Lot 2 & Lot 3 in Section 2.11, as it is defined in Appendix R, will be calculated?

b. Can the Commission confirm that this will be calculated after the two Primary Suppliers are selected?

**A.81:**

**a. Average Base Compensation Rate is calculated based on Lot 1 Successful Bidders only. After calculation of the Average Base Compensation Rate, a Gaming Facility's liability to the Commission will be determined for Lot 2, Lot 3 and additional options of Lot 1.**

**b. The Average Base Compensation Rate will be calculated based on the actual Net Machine Income of the Lot 1 Primary Vendors.**

Q.82: Section 2.17: The Liquidated Damages section provides for Liquidated Damages for failure to deliver agreed upon enhancements. However, there appears to be no mechanism in the RFP to allow for negotiation and reimbursement to the Supplier for requested enhancements - can more detail be provided please?

**A.82: A Successful Bidder is expected to provide product enhancements throughout the term of the contract and should consider such requirement when establishing its pricing proposal. As stated in Section 2.17(F)(1), the Commission and a Successful Bidder shall agree in writing to a schedule for developing, testing, and implementing or installing modifications or enhancements to any existing VLTs and/or to making additions of new**

**games. Such agreements will be based on the Bidders response to Section 2.17(F)(4).**

**Notwithstanding the preceding, circumstance may occur that require enhancements or modifications to protect the integrity of a game or the gaming system. In such cases, the Commission may mandate the enhancements or modifications on a schedule determined by the Commission.**

Q.83: Section 2.17 outlines extensive Liquidated Damage measures the Commission may seek in the event of non-performance of contractual obligations by a Successful Bidder. However, in Section 2.17(A)(4), in the second sentence, the Commission also reserves the right to “pursue other appropriate remedies, including the right to pursue in a court of competent jurisdiction, a claim for actual damages arising from a Successful Bidder’s failure to fulfill its obligations”. Please confirm that the Commission will delete the second sentence of Section 2.17(A)(4) as the Commission is not entitled to both liquidated and actual damages in the event of default by a Successful Bidder.

**A.83: No.**

Q.84: Section 2.17(A)(4): Would the Commission be willing to remove this provision? It provides that the Commission may, in its discretion, deduct liquidated damages in the amount of \$15,000 unless otherwise stated herein. However, each liquidated damages provision provides for a specific liquidated damage and so, in each, the liquidated damages is otherwise stated herein.

**A.84: No.**

Q.85: Section 2.17(A)(4): Are there examples of what would constitute a failure that would incur at liquidated damage of \$15,000?

**A.85: No, such damages are determined by facts and circumstance.**

Q.86: Section 2.17(F), and Section 2.28:

a. We understand that Bidders are not required to provide responses to each of the requirements in Part 1 and Part 2 in their Proposal submissions?

b. Is this correct?

c. If the answer to this question is yes, would the Commission please confirm where in their Proposals Bidders are to include their responses to Section 2.17(F) and Section 2.28 specifically?

**A.86:**

**a. Responses are only necessary when specific information is requested.**

**b. Yes, but it might make sense to include a notation that a response has been left intentionally blank.**

**c. A Bidder may include such responses where they deem appropriate. If the Bidder does not identify a location, they may include the response as an appendix to Volume 2 – Technical Volume.**

Q.87: Section 2.17(B): Will the Commission coordinate installation dates with the Supplier based on manufacturing and delivery ability or are installations dates at the sole discretion of the Commission?

**A.87: A Successful Bidder is expected to coordinate installation dates with the Gaming Facility.**

Q.88: Section 2.17(B):

a. How are deadlines and schedules agreed to?

b. Is this a project proposal we provide and the operator agrees to or is this an imposed deadline? If an imposed deadline, we will need to understand itemized allocation of time for installation process.

c. What is standard install request timeframe – 30 days/60 days etc.

d. Who or what determines installation deadline?

e. What is the maximum repair time window as described in this section –The two-hour time frame is referred to for one VLT, however if there are multiple games, is it two-hours for each terminal or another predetermined amount of ‘maximum repair window’?

**A.88:**

**a. Lot 1 Bidders should provide timeline of machine availability and initial installation as part of their bid. Subsequent installations schedules shall be established by the Successful Bidder and each Gaming Facility upon agreement on game replacement or additional placements.**



**Lot 2 and Lot 3 Successful Bidders shall establish a schedule for installation with the Gaming Facility upon the commitment by such facility to utilize the Successful Bidder's games.**

**b. See answer to Question 88 a.**

**c. The Commission does not test after installation, but will verify the theme, denomination, line plays, progressive strings, etc. Verification is typically completed within one day of installation.**

**d. See answer to Question 88 a.**

**e. If there are multiple games requiring service, the two-hour window is applicable for each position not in service. Staffing needs to reflect the possibility that multiple issues may occur simultaneously.**

**Q.89: Section 2.17(B):**

a. How are deadlines and schedules agreed to?

b. Is this a project proposal we provide and the operator agrees to or is this an imposed deadline? If an imposed deadline, we will need to understand itemized allocation of time for installation process.

c. What is standard install request timeframe – 30 days/60 days etc.

d. Who or what determines installation deadline?

e. What is the maximum repair time window as described in this section –The two-hour time frame is referred to for one VLT, however if there are multiple games, is it two-hours for each terminal or another predetermined amount of ‘maximum repair window’?

**A.89: See answer to Question 88.**

**Q.90: Section 2.17(C):** Can the Commission please clarify when the “Maximum Repair Time” will commence? It is unclear if the time starts the moment the service ticket is received, if the Gaming Facility submitting the ticket is not a 24-hour operation. For example, a facility submits a ticket at 9:30PMEST, but closes at 10:00AM EST., would the “Maximum Repair Time” commence at 9:30PM EST or at 8:00AM EST when the facility re-opens the following day?

**A.90: Under the scenario presented, the game should be available for play prior to the Gaming Facility reopening.**

Q.91: Section 2.17(C):

- a. What responsibilities will fall under vendor technicians versus casino employed technicians in regard to basic repairs and simple maintenance? For example, bill and ticket jams, paper replenishment, and component swaps such as ticket printers, bill acceptors, and cash boxes.
- b. Will we have the ability to appeal assessed damages due to uncontrollable events. For example, weather-related travel, traffic delays, etc.
- c. What are expectations during holidays? (7 x 24 coverage?)
- d. What are planned hours of operation and do you expect these to be revised? (COVID-19 versus post-COVID-19)
- e. Please provide additional clarity on when the clock starts/stops.

**A.91:**

- a. Gaming Facilities will employ attendants, not technicians. Responsibilities of an attendant are limited to replacing paper and ticket stock, clearing ticket and currency jams, and basic tilt resets. All other repairs are the responsibility of the vendor technician.**
- b. Yes.**
- c. The 20-hours, seven days a week applies regardless of holidays.**
- d. Gaming Facilities are authorized to conduct gaming for 20 hours per day but must close by 6:00AM. There is currently no time frame for the lifting of COVID restrictions. The Commission lacks any ability to forecast the future with respect to the future impact of COVID-19.**
- e. Each Gaming Facility is generally authorized to set its hours of operation. They may be open 20 hours per day and must close by 6:00AM.**

Q.92: Section 2.17(D):

- a. Will there be any VLT or ETG access restrictions, such as designated maintenance windows, logic area seal breaking process, general access guidelines to equipment that is not out of service for repair?

b. Is the two-hour response time from report and/or call in to reporting live on Central System?

**A.92:**

**a. The Commission is not planning to designate maintenance windows. The expectation remains that preventative maintenance will only be performed during periods agreed to by the vendor and the Gaming Facility. Only ETG's require logic seals, which are Commission controlled.**

**b. The two-hour window commences when a Gaming Facility reports the issue to the vendor.**

Q.93: Section 2.17(E):

a. Who will maintain service performance metrics?

b. Will these be supplied by our ticketing system or will each property report on their performance?

c. How will repair request/outages reported to vendor (i.e., by email, text alert, etc.)? Is this by vendor choice?

**A.93:**

**a. Vendors are expected to maintain and supply service performance metrics. Vendor data, and verification, will be confirmed through Gaming Facility and the Central System reports.**

**b. See answer to Question 93 a.**

**c. Yes. A Bidder shall detail how they will receive issue reporting.**

Q.94: Section 2.17(F): Section 2.17(F) states "Proposals must discuss how a Successful Bidder plans to administer changes in games and software version control and implement games and software enhancements throughout the life of the Contract (e.g., what process will be followed, lead-times needed to ensure thorough yet responsive updates, etc.)."

a. Will software and hardware upgrades and/or enhancements need to be tested at Central System laboratory or office prior to installation?

b. Are there any timeframe requirements?

c. Are there minimum days from secondary test approval to scheduling a project?

**A.94:**

**a. Software and hardware upgrades shall be tested and approved by Commission-approved independent testing laboratories. The Central System provider may require enhancements to undertake additional testing.**

**b. Timing requirements will be dependent on the purpose of the upgrade.**

**c. A project may be scheduled as soon as independent testing laboratory certifications are received.**

Q.95: Section 2.17(G): What constitutes a limited emergency situation?

**A.95: The Commission will determine what constitutes a limited emergency situation on a case-by-case basis.**

Q.96: Section 2.19 and Section 2.20:

a. M/WBE and SDVOB goals established under the RFP are 30 percent and six percent, respectively. After review of Articles 15-A and 17-B of the N.Y. Executive Law, would the Commission please confirm that the stated percentages are a goal and not a bidding requirement?

b. Would the Commission please confirm that the five (5) Technical Points available are based on the responses to the Diversity Practices Questionnaire (Appendix K) and not based on the M/WBE Plan (Appendix J) and SDVOB Plan (Appendix L)?

**A.96:**

**a. The stated percentages are a goal, and not a bidding requirement. However, good faith efforts to meet the goal are required.**

**b. The five Technical Points are based on the Diversity Practices Questionnaire, which includes available credit for an MWBE Utilization plan.**

Q.97: Section 2.21: What is the process and time length to review employees prior to employing?

**A.97: Each employee seeking licensure must submit an application and be fingerprinted. Technician applications typically take five business days to**

**review and consider. Assuming completeness of applications, companies and principals typically are reviewed and considered within two weeks.**

Q.98: Section 2.22: Depending on the level of interaction of third parties within a bidder's company, there are potentially hundreds of companies indirectly involved. We wish to make sure we include all necessary subcontractors but with an understanding of the limits of involvement required within the RFP from New York. With regards to the qualification of a subcontractor, can the Commission provide a threshold or clarity on what constitutes a subcontractor?

**A.98: Bidders should use their best efforts to identify New York businesses that will serve a significant role as a subcontractor on this contract should the Bidder be awarded a contract. The term "subcontractor" is a defined term. See Commission Rule § 5100.2, Definitions: (98) Subcontractor means any person who contracts with a licensed entity to provide good or services in furtherance of video lottery gaming.**

Q.99: Section 2.23(C):

a. If an Initial Subcontractor total compensation is expected to exceed \$100,000, must that Initial Subcontractor submit a Vendor Responsibility Questionnaire as part of Bidder's Proposal?

b. A Subcontractor is defined as a Vendor to whom the Contractor procures good or services from in order to fulfill the terms and conditions of the Contract. Would the Commission please confirm that entities engaged by the Contractor to perform ancillary services to enable the Contractor to provide the goods and services contemplated by this RFP are not Subcontractors (i.e., component manufacturers, software developers, and janitorial services at Contractor's premises) under this RFP?

c. Further, would the Commission please confirm that contracts with Vendors whose scope of services are non-specific to the Commission goods and services contemplated by this Agreement would not be considered Subcontractors (i.e., United Parcel Service, which provides distribution services to numerous customers)?

d. Would the Commission please clarify that the term Subcontractor means a Vendor specifically contracted by Contractor to provide goods or services in connection with this RFP?

**A.99:**

**a. Yes.**

**b. Confirmed.**

**c. Confirmed.**

**d. Correct.**

Q.100: Section 2.26 provides that “No officer or employee of a Successful Bidder or of any subcontractor nor anyone residing in the household of such officer or employee shall participate in the purchase of the video lottery games of the New York Lottery or be paid a prize in any video lottery game.” Subcontractors providing ancillary services and not involved with game development or other sensitive information should not be subject to such purchase/prize restrictions. Would the Commission please remove “or of any subcontractor” from this requirement?

**A.100: The Commission hereby amends RFP Section 2.26 to read as follows:**

**2.26 GAME PLAYING AND PRIZE PAYMENT RESTRICTIONS**

No officer or employee of a Successful Bidder or employee of a subcontractor who is directly involved in game development, has access to game terminals, components that could impact game terminal performance or sensitive information regarding game terminals or software, nor anyone residing in the household of such officer or employee shall participate in the purchase of the video lottery games of the New York Lottery or be paid a prize in any video lottery game. A Successful Bidder shall ensure that this requirement, and any pertinent Commission rule or regulation regarding this subject-matter, is made known to each officer and employee of the Successful Bidder and of any subcontractor.

Q.101: Section 2.27:

a. Why is a software escrow required for game source code, for VLTs that are not being purchased by the Commission?

b. Section 2.28 states “As part of its Proposal, a Bidder must provide a list of any third-party’s intellectual property relevant to this procurement that a Bidder is currently licensed to use.” Under what scenario would the escrow come into play in that situation?

**A.101:**

**a. The Commission requires source code in the event the successful bidder is unable to perform the work outlined in the contract.**

**b. Section 2.27, outlines what is required to be escrowed (software source programs, operations manuals, service manuals, and written procedures, with program object code); this includes third-party intellectual property that is relied upon to carry out the contract.**

Q.102: Section 2.28: Will the Commission please provide guidance regarding the type of assurance deemed necessary to show that the use of third-party Intellectual Property is permissible?

**A.102: It is the Bidder's responsibility to provide a representation that third-party intellectual property security and permissions have been obtained for their use of these intellectual properties.**

Q.103: Section 2.28: Our company, along with several dozen other manufacturers, are members of an intellectual property cross-license/pool coordinated by IGT. We thus do not keep track of what, if any, specific members' Intellectual Property is relevant to any of our specific products. What is the appropriate way to respond to this aspect of the RFP in light of same?

**A.103: The Commission requires disclosure of the use of third-party software that will be utilized for fulfillment of the contract and demonstration that such third-party software is being used with permission.**

Q.104: Section 2.28, Section 2.30 and Sections 2.33(E) and (F): Each Bidder zealously guards the ownership and control of its Intellectual Property. Consistent with this position, will the Commission agree to the revise Sections 2.28, Section 2.30 and Sections 2.33(E) and (F) as follows?

## **2.28 LICENSED INTELLECTUAL PROPERTY**

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

intellectual property owned by any third party relevant to the fulfillment of the services under this RFP, 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. As part of its Proposal, a Bidder must provide a list of any third-party's intellectual property relevant to this procurement that a Bidder is currently licensed to use.

### **2.30 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 RFP shall belong to the Commission. A 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 under the Contract by a Successful Bidder, are the sole exclusive property of the Commission and that they shall not be used or destroyed by a Successful Bidder or any other person without express written permission of the Commission. The Successful Bidder and its licensors are the sole and exclusive owners of all intellectual property rights in and to the VLTs, games and software including any Custom Products (as defined below). Except as otherwise provided herein, any and all items that are made, created, authored, conceived, invented, disclosed or developed by Successful Bidder in performing such services shall constitute intellectual property owned exclusively by the Successful Bidder, subject to any licenses granted by Successful Bidder to Commission. The Commission acknowledges and agrees that the Commission has no proprietary rights nor does it acquire any proprietary rights in or to the Successful Bidder's intellectual property, except those contractual rights that are expressly granted in this Contract.

### **2.33 TECHNOLOGY PROVISIONS**

E. Ownership of and Title to Contract Deliverables. A Successful Bidder acknowledges that it is seeking to be commissioned by the Commission to perform the services detailed in this RFP, which may include the development of intellectual property by a Successful Bidder, its subcontractors, partners, employees, or agents for the Commission ("Custom Products"). The Commission Unless otherwise specified in writing in this RFP, if awarded the Contract, and upon the creation of such Custom Products, a Successful Bidder conveys, assigns, and transfers to the Successful Bidder Commission the sole and exclusive rights,



title, and interest in all intellectual property rights in the Custom Products, whether preliminary, final, or otherwise, including all trademarks and copyrights. A Successful Bidder The Commission agrees to take all necessary and appropriate steps to ensure that the Custom Products are protected against unauthorized copying, reproduction, and marketing by or through a Successful Bidder, its agents, employees, or subcontractors. Nothing herein shall preclude a Successful Bidder from otherwise using the related or underlying general knowledge, skills, ideas, concepts, techniques, and experience developed in performing services under the Contract in the course of a Successful Bidder's business. The Commission may, by providing written notice thereof to a Successful Bidder, elect in the alternative to take a non-exclusive perpetual license to intellectual property rights in the Custom Products in lieu of taking exclusive ownership and title to such Products. In such case, the Commission shall be granted a non-exclusive perpetual license to use, execute, reproduce, display, perform, adapt, and distribute Custom Products as necessary to fully effect the general business purpose(s) as stated in the RFP and corresponding Contract.

- F. Ownership of and Title to Existing Software. Title and ownership to existing software delivered by a Successful Bidder under the Contract, which software is normally distributed commercially by a Successful Bidder or a third-party proprietary owner, whether or not embedded, delivered, or operating in conjunction with hardware or Custom Products, including intellectual property right therein shall remain with a Successful Bidder or the third-party. Effective upon acceptance, such existing software shall be licensed to the Commission and must, at a minimum, grant the Commission a non-exclusive, perpetual license to use, execute, reproduce, display, perform, adapt (unless a Successful Bidder advises the Commission as part of its Proposal that adaptation will violate existing agreements or statutes and demonstrates such to the Commission's satisfaction), and distribute existing software to the Commission up to the license capacity stated in the Contract with all license rights necessary to fully effect the general business purposes stated in the RFP. With regard to third-party software, a Successful Bidder shall be responsible for obtaining these rights at its sole cost and expense.

**A.104: No, as to the proposed changes in Section 2.28, Section 2.30 and Sections 2.33(E). With respect to Section 2.33(F), the Commission amends the RFP to read as follows:**

- F. Ownership of and Title to Existing Software. Title and ownership to existing software delivered by a Successful Bidder under the Contract, which software is normally distributed commercially by a Successful Bidder or a third-party proprietary owner, whether or not embedded, delivered, or operating in conjunction with hardware or Custom Products, including pre-existing (meaning prior to a contract with the Commission), intellectual property right therein, shall remain with a Successful Bidder or the third-party. Effective upon acceptance, such existing software shall be licensed to the Commission and must, at a minimum, grant the Commission a non-exclusive, perpetual license to use, execute, reproduce, display, perform, adapt (unless a Successful Bidder advises the Commission as part of its Proposal that adaptation will violate existing agreements or statutes and demonstrates such to the Commission's satisfaction), and distribute existing software to the Commission up to the license capacity stated in the Contract with all license rights necessary to fully effect the general business purposes stated in the RFP. With regard to third-party software, a Successful Bidder shall be responsible for obtaining these rights at its sole cost and expense.

Q.105: Section 2.29: Employment verification needed at least one (1) week prior to any site visit. Does Staff Licensing handle this for one-time initial application or for every visit?

**A.105: Typically, a license approval letter will be provided to both a Gaming Facility and a vendor point of contact. This approval letter provides authorization to visit a Gaming Facility whenever needed during the 5-year term of license. The Commission does not need to be notified in advance of a licensed technician's visit.**

Q.106: Section 2.31: To the extent that Net Neutrality is the principle that a network provider does not favor or show prejudice to any data or originator of data, this RFP for video lottery gaming devices, consisting of two categories, VLTs and ETGs, does not include the Bidders providing network or Internet Service Provider services. Would the Commission please remove the requirement that Bidders agree to comply with a provision that is not part of the offerings requested?

**A.106: To the extent that this section applies to services provided under this RFP, it applies. In its response, a Bidder may indicate the extent to which such provision applies.**

Q.107: Section 2.32:

a. What agreement will be in place with the Commission-approved independent testing laboratory to ensure protection (including confidentiality and adequate remedies for breach) of the Successful Bidder's Intellectual Property, especially source code?

b. Will the illustrations, schematics, code, and other information requested by the laboratory be subject to Freedom of Information Law or other State laws?

**A.107:**

**a. None. The Commission is not a contractor of approved independent testing laboratories. The relationship and scope of protections between a Bidder and a Commission-approved independent testing laboratory is subject to their contracting.**

**b. Commission-approved independent testing laboratories are independent of the Commission and do not provide illustrations, schematics, code, and other information. Any materials and documentation submitted to the Commission are subject to the State Freedom of Information Law.**

Q.108: Section 2.32:

a. Are the cabinets and game titles that are already certified, installed and in operation in Gaming Facilities under the previous VLT contract required to undergo a new certification process under the new contract?

b. In cases in which this is required, is this requirement to be fulfilled by the start of the new contract on July 1st or is there a different deadline required by the Commission?

**A.108:**

**a. No.**

**b. Not applicable.**

Q.109: Section 2.32:

a. Will any test facility be available for testing and is this specific to each Gaming Facility site?

b. Do you accept both BMM and GLI approvals or is one testing agency preferred over another?

**A.109:**

**a. The Commission does not understand the question posed.**

**b. A list of approved independent testing laboratories may be found on the Commission's website. The Commission has no preference.**

Q.110: Section 2.33:

a. Will the Commission please provide additional guidance or specificity if bidders can expect approved independent testing laboratories to test to standards articulated in the RFP and any other applicable standards?

b. Are these tests validated by the Commission in a secondary testing setting?

**A.110:**

**a. The independent test laboratories will test against the standards articulated in the RFP.**

**b. See answer to Question 88 c.**

Q.111: Section 2.33: Does this provision apply to VLTs, as this appears to be a system related transfer provision?

**A.111: Yes, to the extent that those provisions are applicable to the goods and services provided. Applicability will vary by circumstance.**

Q.112: Section 2.33(B): In the event a license is "combined for use at an alternative or consolidated site" will the supplier continue to be compensated for each of the number of licenses combined to one?

**A.112: No additional compensation will be provided.**

Q.113: Section 2.33(D): A software escrow is already apparently required under Section 2.27. Why does providing source code to a third-party (e.g., in the context of a license of a game) trigger a separate right of the Commission to the source code or escrow?

**A.113: All source code related to the contract must be escrowed.**

Q.114: Section 2.33(E): Under what conditions will the Commission provide written notice that it elects to take a non-exclusive perpetual license to Custom Products in lieu of taking exclusive ownership and title of the Intellectual Property in the Custom Products?

**A.114: An advance determination will not be made by the Commission.**

Q.115: Section 2.33(I): Will the Commission provide specificity for vulnerability scanning and penetration testing, specifically if the scope of the penetration testing and vulnerability scans only includes major releases to the Commission, or \*all\* software releases (including games)?

**A.115: The Commission does not understand the question posed.**

Q.116 Section 2.33(J)(1) and Section 2.33(J)(3): Can the Commission provide examples of “commission data” is it anticipated that a VLT game provider would possess?

**A.116: On a weekly basis, the Central System provider will deliver game vendors with performance data related to their game operation.**

Q.117: Section 2.33(M)(2): As a successful bidder, our company would do the final implementation, Software Quality Assurance and vulnerability testing regarding any third-party content/materials under license; as such, is this requirement of having similar language in contracts with third-party content providers necessary?

**A.117: Yes, the Commission requires the language to be present in all contracts, including third party contracts. To the extent that those provisions are applicable to the goods and services provided. Applicability will vary by circumstance.**

Q.118: Section 2.33(K): Does the Commission require the respondents to have staff on standby to receive notification(s) in case of a breach on any Commission equipment or facilities?

**A.118: The approach to staffing is left to each Bidder, however a Bidder must detail how they will receive and process notifications of breach on any Commission equipment or facilities.**

Q.119: Section 2.34: Many of our company’s third-party patent license agreements contain non-disclosure provisions. How should we address same in light of the requirements here?

**A.119: Confidential information can be redacted from the Non-Disclosure Agreement prior to provision to the Commission.**

Q.120: Section 2.36: Please explain how maintenance priorities should be handled if Gaming Facility technicians are working on supplier VLTs. Will a supplier be responsible for Liquidated Damages due to the facility prioritizing work elsewhere?

**A.120: A Gaming Facility is not required to have machine technicians. While a Successful Bidder may contract with a Gaming Facility to provide technicians, maintenance remains the Successful Bidder's responsibility.**

Q.121: Section 2.36: Will facilities be allowed to have VLT technicians? If so, how are the duties delineated between Gaming Facility technicians and supplier technicians with regard to maintenance and operation of the VLTs?

**A.121: See the answer to Question 120. Any shared or Gaming Facility subsumed maintenance services would be determined by the contractual relationship established between the Successful Bidder and a Gaming Facility.**

Q.122: Section 2.36: If Gaming Facility technicians are working on a supplier VLT, who is responsible for any Liquidated Damages associated with delay in returning the VLT to service?

**A.122: See the answer to Questions 120 and 121. In the event a Successful Bidder enters into a contractual arrangement with a Gaming Facility to provide technicians, the Successful Bidder remains liable for any Liquidated Damages.**

Q.123: Section 2.36: If the employees of a Bidder are currently licensed and approved with Commission for video lottery gaming in several locations, what additional documentation or certification is required for approval to do business with the remaining Gaming Facilities?

**A.123: A Licensee is required to provide notice to the Commission of all Gaming Facilities where a licensed employee will be performing work. This notice is necessary for the Commission to notify the proper facility which will allow a facility to granted access to the technician or employee.**

Q.124: Section 2.36:

a. Are there any limitations on vendor's ability to access equipment per location?

- b. Are there any additional restrictions for accessing equipment?
- c. Are there any plans for operation hours to change? i.e., COVID-19 hours versus normal hours (10:00AM – 4:00AM versus 24-hours per day/7days per week)?
- d. How often or in what cases will operating hours be revised?

**A.124:**

- a. The Commission does not fully understand the question posed. Technicians employed by a Successful Bidder are only allowed on properties where Bidder has devices in need of servicing.**
- b. With the coordination of Gaming Facility management, no.**
- c. No, however, no Gaming Facility is authorized to conduct gaming 24 hours per day, 7 days per week. For additional information, please see answer to Question 203.**
- d. The Commission has no reason to believe the present statutory allowance regarding hours will change, however we lack any ability to forecast the future with certainty.**

**Part 3, Scope of Work**

Q.125: Section 3: What is the total standard VLT allocation number available on July 1st, broken out by Gaming Facility?

**A.125: Please refer to the chart under heading Section 3.0, INTRODUCTION on page 53 of the RFP for overall VLT allocation as of February 1, 2021. The Commission has no reason to believe these totals will materially change by July 1, 2021.**

Q.126: Section 3: What is the total ETG device allocation number available on July 1st, broken out by Gaming Facility?

**A.126: ETG device allocation as of February 1, 2021 is as follows:**

<b>Gaming Facility</b>	<b>Number</b>
<b>Resorts World New York City</b>	<b>1,402</b>
<b>Saratoga Casino Hotel</b>	<b>59</b>
<b>Jake’s 58</b>	<b>121</b>
<b>MGM Yonkers</b>	<b>435</b>

**The Commission has no reason to believe these totals will materially change by July 1, 2021.**

Q.127: Section 3: The document describes 18,225 devices in operation. However, many devices are disabled due to COVID restrictions. What percentage of devices are expected to be enabled by July 1, 2021?

**A.127: The Commission lacks any ability to forecast the future with certainty.**

Q.128: Section 3.1(A): In the scenario where a Primary Supplier is an existing supplier and must adjust their floor percentage under the new contract, please explain how floor adjustment will be handled once the new contract becomes effective.

**A.128: Allocation of the Gaming Floor will be at the discretion of a Gaming Facility, subject to the minimums and maximums outlined in the RFP.**

Q.129: Section 3.1(B): In the event that some gaming floors elect to not accept the maximum 10 percent from a Qualified Supplier would the Commission consider allowing the delta to 10 percent to be added to a gaming floor that already has a 10 percent allotment from the same Qualified Supplier.

**A.129: No.**

Q.130: Section 3.1(B): In the event there are fewer than five Qualified Suppliers would the Commission consider raising the 10 percent maximum allocation per Qualified Supplier?

**A.130: In the event that there are insufficient Qualified Suppliers to provide fifty (50) percent of machines required, the Primary Vendors would have the first right to supply the remaining machines. The Commission may allow a Qualified Supplier to exceed the ten (10) percent capacity only with the consent of both Primary Vendors.**

Q.131: Section 3.1(C): The RFP states that no Qualified ETG Supplier will be authorized to supply more than 50 percent of the overall non-Lot 1 on any gaming floor. However, there are other areas of the RFP which indicate that up to 50 percent of the casino floor can be a Qualified ETG supplier. We request a clarification of the 50 percent maximum capacity as this may result in the removal of hundreds of current seats which generate significant amounts of revenue for the State.



**A.131: The Lot 3 Qualified ETG Suppliers collectively may supply up to fifty (50) percent of the total allocation of a Gaming Floor, assuming the Gaming Facility does not select any Lot 2 standard devices. No single Lot 3 Qualified ETG Supplier may provide in excess of fifty (50) percent of the total allocation of ETGs on any given Gaming Floor.**

Q.132 Section 3.2: Can the ETG device allocation grow at the expense of the VLT allocation in the future, and if so, how will that be decided?

**A.132: A Gaming Faculty may elect to increase its allocation of ETGs on its Gaming Floor by replacing Lot 2 standard VLTs.**

Q.133: Section 3.2. Are there specific requirements for ETG devices?

**A.133: The Commission does not understand the question.**

Q.134: Section 3.2.

a. Can the ETG device allocation grow at the expense of the VLT allocation in the future?

b. If so, how will that be decided?

**A.134: See answer to Question 132.**

Q.135: Section 3.2: Please confirm if the Commission is intending to have enhanced regulation or controls over Gaming Facility operations regarding gaming floor operations?

**A:135: We are uncertain as to what is meant by “enhanced regulation or controls.”**

Q.136: Section 3.2: Will the video lottery gaming facilities be under any obligation to maintain the awarded initial supplier allocations going forward?

**A.136: No, except for the minimum required allocation to the Lot 1 Primary Vendors.**

Q.137: Section 3.2: Will the video lottery gaming facilities be under any obligation to maintain the awarded initial supplier allocations, even if they decide to reduce their total device unit counts?

**A.137: No, except for the minimum required allocation to the Lot 1 Primary Vendors.**

Q.138: Section 3.2: Please confirm if an existing supplier of both VLTs and ETGs, who is awarded a Primary supplier (Lot 1) contract, can continue to provide ETGs at current allocation after July 1st if pursuant to contractual requirements and obligations?

**A.138: A Lot 1 Primary Supplier may provide ETGs as part of their floor allocation, however, the Primary Supplier is not guaranteed any allocation of ETGs. Placement will be at the discretion of the Gaming Facility.**

Q.139: Section 3.2: When can Lot 2 VLT Suppliers place product on the floor - earliest and latest?

**A.139: A Lot 2 Qualified VLT Supplier may place product on the Gaming Floor as soon the later of the estimated effective date of the contract of July 1, 2021 or when the Successful Bidder's contract receives final approval from the Office of the State Comptroller and receives a commitment from a Gaming Facility to place such product. New product may be placed in service throughout the entire term of the contract.**

Q.140: Section 3.2: When can Lot 3 ETG Suppliers place product on the floor - earliest and latest?

**A.140: A Lot 3 Qualified ETG Supplier may place product on the Gaming Floor as soon the later of the estimated effective date of the contract of July 1, 2021 or when the Successful Bidder's contract receives final approval from the Office of the State Comptroller and receives a commitment from a Gaming Facility to place such product. New product may be placed in service throughout the entire term of the contract.**

Q.141: Section 3.2: Are Lot 2 Qualified Suppliers required to have compatible product approved and available for placement by July 1st?

**A.141: A Successful Bidder does not have to have product available by July 1, 2021 but must meet the RFP minimum requirements and should have product available within six months of the start date but no later than July 1, 2022.**

Q.141: Section 3.2: Are Lot 3 Qualified Suppliers required to have compatible product approved and available for placement by July 1st?

**A.142: See answer to Question 141.**

Q.143: Section 3.2: Can a Supplier qualify as a Lot 3 Qualified supplier if they are unable to provide product directly to the market starting July 1st?

**A.143: See answer to Question 141.**

Q.144: Section 3.2: If a Supplier wins a Lot 1 award, will they be awarded an actual percentage of the Gaming Facility between 25 percent and 50 percent by the Commission, or be simply awarded Lot 1, and the individual facilities then decide the allocation percentage on the floors?

**A.144: A Successful Bidder awarded Lot 1 will only be guaranteed a 25 percent allocation. Any allocation in excess of 25 percent is at the discretion of the Gaming Facility or upon direction of the Commission to fill vacant allocation unable to be provided by Qualified Vendors.**

Q.145: Section 3.2:

- a. Will there be a draft process to allocate positions on the floor?
- b. If not, how will supplier VLT and ETG positions be allocated?

**A.145:**

**a. No.**

**b. Allocations will be made by each Gaming Facility in their discretion. Their guiding principles are maximizing revenue and the return to the State.**

Q.146: Section 3.2: Will there be a transition period after July 1st to accommodate floor allocation changes from the current floor allocation?

**A.146: Yes.**

Q.147: Section 3.2:

- a. What is considered an acceptable 'transition period'?
- b. Are there any preinstall game inspection checklists the regulator or Gaming Facility operator will use?

**A.147:**

**a. We expect a Successful Bidder will have product available for placement within six months from the start of the contract. A Lot 1 Successful Bidder must be capable of completing a transition within one year of the start of the contract. A Successful Bidder shall use its best efforts to complete the transition in the shortest time possible.**

**b. Yes. The Commission will share its checklist with Successful Bidders.**

Q.148: Section 3.2: Will there be predetermined reviews for VLT performance such as quarterly or every six months, etc.?

**A.148: No.**

Q.149: Section 3.2(A): If a Primary Supplier reduces their allocation below 25 percent of a gaming floor, may a Qualified Supplier increase from 10 percent of a gaming floor to compensate for a Primary Supplier reducing below 25 percent?

**A.149: A Primary Supplier is required to provide a minimum 25 percent of games to each facility.**

Q.150: Section 3.2(A): How will the relationship between the Primary Supplier and Gaming Facility be governed? It's not clear that a facility is under any obligation to fulfill the allocation a Primary Supplier is awarded.

**A.150: Each Gaming Facility will be required to place no less than 25 percent of their overall facility permitted VLTs with product from each Primary Supplier.**

Q.151: Section 3.2(A): How will the relationship between the Primary Supplier and a Gaming Facility be governed? It's not clear that a facility is under any obligation to fulfill the allocation a Primary Supplier is awarded.

**A.151: See answer to Question 150.**

Q.152: Section 3.2(A): Primary Suppliers are expected to cooperate with each Gaming Facility to determine the appropriate mix of VLTs that best accommodates the needs of each facility based on the unique market of each facility. Under the previous contract, a process has been defined to ensure a fair floor position for each supplier as well as the selection of gaming cabinets, game content, denomination, and return to player percentage.

a. Will this process be applicable under the new contract?

b. If this is not the case, what shall be the new process?

c. If the parties cannot agree, will there be a remediation procedure driven by the Commission?

**A.152:**

a. No.

**b. Each Gaming Facility is expected to work with a Supplier on placement of product, but a facility has the discretion regarding product location. The goal of all placement is to maximize revenue and return to the State.**

**c. The Commission will review floor placement in the event a Supplier raises issues regarding fair positioning.**

Q.153: Section 3.2(C):

a. When is the Term of Placement fee determined?

b. Is this to be negotiated with the Gaming Facility, or declared in the pricing bid?

**A.153:**

**a. At the time of Bid submission, as a fee schedule is required to be provided with the RFP response. A fee may not be unreasonable and shall be commensurate with the cost of the machine and pro-rated on the time remaining on the minimum duration of placement in service.**

**The Commission hereby amends RFP Section 3.2(c) to read as follows:**

- C. Term of Placement. Each Bidder shall specify a minimum duration that a machine must remain in service on the gaming floor once placed into service. The Bidder shall also establish a fee schedule if such machine is removed from service prior to the minimum time required. The licensed Video Lottery Gaming Facility shall be solely responsible for this fee, if the facility, at its discretion, removes the machine prior to the minimum time. Such fee shall not apply to any machine placed into service under prior contracts, removed due to mechanical or other failures, replaced with another machine from the same supplier as a required or suggested upgrade, or is removed by or service terminated by the supplier. Any fee schedule established pursuant to this must be pro-rated based on the remaining time on the minimum duration of placement in service. Fee shall be set at a rate that fairly compensates the supplier for the cost of the machine.

**b. A Successful Bidder may negotiate modifications to the fee schedule, however a Gaming Facility must agree to deviations prior the applicable product being placed on the Gaming Floor.**

Q.154: Section 3.2(C): Can a Gaming Facility refuse to place a device because of the Term of Placement Fee?

**A.154: Yes.**

Q.155: Section 3.2(C): Can a Term of Placement fee be allocated according to floor location? For example, can an “A” location have a higher fee than a “C” or worse location?

**A.155: A Successful Bidder may negotiate such terms with a Gaming Facility.**

Q.156: Section 3.2(C): If a Gaming Facility converts to commercial casino, can the Term of Placement fee apply to standard VLT devices that are removed as part of the conversion?

**A.156: Yes.**

Q.157: Section 3.2(C): If a Gaming Facility requires a VLT to be removed from the floor temporarily because of a facility-initiated project, will the Term of Placement fee apply for the period of removal?

**A.157: The temporary removal of a VLT from service will not trigger payment of the Placement fee. However, the period of time the terminal is out-of-service may be added to the end of the time commitment.**

Q.158: Section 3.2(C): Do the Term of Placement fees also apply to ETGs?

**A.158: Yes.**

Q.159: Section 3.2(C): If a Gaming Facility converts to commercial casino, will the Term of Placement fee apply to ETG devices that were removed as part of the conversion?

**A.159: Yes.**

Q.160: Section 3.2(C) provides that “Each Bidder shall specify a minimum duration that a machine must remain in service on the gaming floor once placed into service. The Bidder shall also establish a fee schedule if such machine is removed from

service prior to the minimum time required. The licensed Video Lottery Gaming Facility shall be solely responsible for this fee, if the facility, at its discretion, removes the machine prior to the minimum time.”

a. How will the Contractor be compensated if the machine is removed from service prior to the minimum time required, not at the discretion of the Gaming Facility, but if required to remove such machines as the result of facility closure, executive order, or other similar mandatory closure or restriction?

b. Section 3.2(C) also provides that such fee shall not apply to any machine placed into service under prior contracts. Would the Commission please confirm that, if the VLTs meet the required specifications of the RFP, that previously manufactured VLTs can be redeployed under any contract resulting from this RFP and that there is no requirement that the VLTs deployed in connection with this RFP be new and unused?

**A.160:**

**a. The fee shall not be triggered due to a temporary closure due to weather, act of God, or a *force majeure* event.**

**b. There is no requirement that VLTs be new and unused, but all equipment must meet the equipment and performance standards of the RFP.**

Q.161: Section 3.2(C):

a. Regarding the applicability of the Term of Placement, could the Commission please clarify the intended meaning of “required or suggested upgrade?”

b. Is the minimum term of placement applicable to removals as a result of Gaming Facility closures, executive orders or similar rules and regulations?

c. Is the placement into service under the new contract terms the only clause for eligibility for the Term of Placement application?

d. Could you please clarify in which situation the Gaming Facility may have the discretion to remove a machine if it’s within the floor allocation defined by the contract and in line with the mutual agreement reached under Section 3.2(A)?

**A.161:**

**a. A required upgrade would be triggered when equipment must be replaced to ensure compliance with the requirements of this RFP. A**

**suggested upgrade would be when replacement is suggested by a Successful Bidder.**

**b. The Term of Placement fee applies to a voluntary, permanent Gaming Facility closure but not to a temporary closure due to executive orders or other similar rules and regulations or guidance.**

**c. Yes.**

**d. A Gaming Facility will not have the discretion to remove a Primary Supplier's machine if such removal would result in that Primary Supplier's allocation to fall below the minimum guaranteed. The Gaming Facility may, however, request the Supplier replace a machine with a different game from the same Supplier.**

**If the Primary Supplier has machines in excess of the minimum guaranteed allocation, the Gaming Facility may remove such excess machines and replace them with product provided by the other Primary Supplier (up to the maximum permissible) or a Qualified Suppliers.**

Q.162: Section 3.2(C): Since the technical response should not have pricing information, can the Bidder provide the term of placement fee in the options catalog in Section 3.4?

**A.162: Yes.**

Q.163: Section 3.2(D): Under the current contract, floor allocations are awarded via draft, then updated via a benchmarking process. Please confirm if VLT floor allocations will be managed via benchmarking during the contract period - if not, what mechanism will be used to balance performance and allocation.

**A.163: A benchmarking process is not a part of the award under this RFP. A Gaming Facility has the discretion to manage their Gaming Floor in a manner to maximize revenue and return to the State.**

Q.164: Section 3.2(D): Please confirm if facilities have control over where standard VLTs from a specific supplier are positioned on the floor.

**A.164: Yes, Gaming Facilities will have the discretion to manage their gaming floors to maximize revenue and return to the State.**

Q.165: Section 3.2(D): Please confirm if a Gaming Facility has control over where ETGs from a specific supplier are positioned on their floor.



**A.165: Confirmed.**

Q.166: Section 3.2(D): Under the current contract, floor allocations are awarded via draft, then adjusted via a benchmarking process. Under the new contract, how will conflicts over floor allocations be resolved - for example, if a Gaming Facility only offers weak locations to one Supplier and premium locations to another Supplier.

**A.166: The Commission will review floor placement in the event a Supplier raises issues regarding fair positioning.**

Q.167: Section 3.2(D): How will ETGs be allocated floor positions where they conflict with allocated VLT positions?

**A.167: The Commission will review floor placement in the event a Supplier raises issues regarding fair positioning.**

Q.168: Section 3.2(D): If a Primary Supplier is allocated a specific percentage of the floor, can the Gaming Facility reduce this amount?

**A.168: A Gaming Facility cannot reduce a Primary Suppliers allocation below their minimum guaranteed allocation without the consent of that Primary Supplier.**

Q.169: Section 3.2(D): Please confirm that suppliers will have control over VLT configuration, such as reels, lines, hold percentage, maximum bet, etc.

**A.169: Any limitation in configuration desired by a Supplier should be clearly defined in their product catalog.**

Q.170: Do the Central System and Site Controllers utilize SAS or G2S protocol? Relatedly, Section 3.3 states that "VLTs shall operate in an on-line communications mode with the Central System using the protocol described in Section 3.2.25." However, there does not appear to be a Section 3.2.25 in the RFP; where may we find Section 3.3(25)?

**A.170: The Commission hereby amends RFP Section 3.3 to read as follows:**

### **3.3 CENTRAL SYSTEM PROTOCOL**

All Primary and Qualified Suppliers' VLTs shall operate in an online communications mode with the Central System using the Everi Protocol. The Everi Protocol can be obtained from Everi Games, Inc., upon the execution of an Everi Non-Disclosure Agreement.

Q.171: Section 3.3: The RFP refers to section 3.2.25, which does not appear to be in the RFP document. Please confirm the version of the system protocol that applies.

**A.171: See answer to Question 170.**

Q.172: Section 3.3 states, “All Primary and Qualified Suppliers’ VLTs shall operate in an on-line communications mode with the Central System using the protocol described in Section 3.2.25”. Can the Commission please advise where Bidder can locate this information?

**A.172. See answer to Question 170.**

Q.173: Section 3.3 states “All Primary and Qualified Suppliers’ VLTs shall operate in an on-line communications mode with the Central System using the protocol described in Section 3.2.25.” Section 3.2(25) does not exist in the RFP. Would the Commission please provide the correct section reference?

**A.173: See answer to Question 170.**

Q.174: Section 3.3:

- a. Would the Central System provider please provide a SAS implementation guidance document for ETG games?
- b. Can you please provide a way for IGT to access the Everi SAS bridge system?
- c. Would the Commission please clarify if Bidders will have access to the SAS bridge system for ETGs?

**A.174:**

**a. A Successful Bidder will be granted access to the test portion of the Central System.**

**b. See answer to Question 174 a.**

**c. See answer to Question 174 a.**

Q.175: Section 3.4: For existing suppliers under contract, is it necessary to prepare a catalog for legacy themes, as the facilities are familiar with these already?

**A.175: Yes.**

Q.176: Section 3.4(A): For existing suppliers under contract, is it necessary to prepare a catalog for legacy themes, as the facilities are familiar with themes?

**A.176: Yes.**

Q.177: Section 3.4(A): As the additional options change over time, can the pricing for such options change over the life of the contract with each revision of catalog or amendments?

**A.177: Yes, but a Successful Bidder must honor the price for options placed in service at a Gaming Facility.**

Q.178: Section 3.4(A): Please confirm if additional options cover items such as hardware - for example, if a Gaming Facility demands a specific bill acceptor, can this be priced in the options catalog?

**A.178: A Bidder may offer the options it deems appropriate.**

Q.179: Section 3.4(A): Please confirm if additional options cover items such as custom development - for example, if a Gaming Facility demands specific features not currently available, how will a supplier be compensated?

**A.179: Any item provided outside of this RFP process shall be a contractual arrangement between the Successful Bidder and the Gaming Facility. Financial arrangements shall be made by the contracting parties.**

Q.180: Section 3.4(A) and Section 4.3(A): The catalog requirements change in different parts of the document. Is it possible to consolidate the disparate sections and clarify what period the initial catalog should cover?

**A.180: Section 4.2(3)(b) does not appear to conflict with Section 3.4(A). Section 4.3(A) is clearly inapplicable. A Bidder shall prepare a catalog detailing as comprehensive offering of product at the commencement of the contract. At a minimum, the catalog shall contain a detailed product mix anticipated to be available within six months.**

Q.181: Section 3.5: Are ETGs subject to the same requirements as VLTs under Section 3.5?

**A.181: Yes, with the exception of finite pools.**

Q.182: Section 3.5(A): Please confirm if a legacy game is already approved and, on the floor, can continue to offer a ticket price of \$0.01 minimum.

**A.182: The Commission hereby amends Section 3.5(A) to read as follows:**

- A. Game Play Amount. Games offered shall be based on a price per play, ranging from a minimum of one (\$ 0.01) cent. A maximum ticket price may be set by rule.

Q.183: Section 3.4(A): Can the Commission verify that this portion of the paragraph applies to Qualified Supplier?

**A.183: Section 3.4(A)(2) applies to Qualified Suppliers.**

Q.184: Section 3.5(C): Since the VLT games operate on a ticket pool system, does this requirement mean the Commission will seek to have new pools built for existing games?

**A.184: The Commission will allow existing pools to continue should the incumbent provider remain a Lot 1, Lot 2 or Lot 3 supplier, provided the theme and configuration remains. New vendors will have to establish their own pools.**

Q.185: Section 3.5(C): If the Commission requests the introduction of specific variations or pay tables, how will the supplier be compensated for the development and implementation process?

**A.185: The Commission will not be making such requests.**

Q.186: Section 3.5(C): How often does the Commission anticipate introduction of new games, game variations as well as adjustments to the pay tables to occur and under what circumstances?

**A.186: The Commission is unable to anticipate the frequency of such requests. These requests are more likely to be made by a Gaming Facility.**

Q.187: Section 3.5(D): Re: "Individual VLTs must be able to be configured to scroll a text message on each update, whether the amount changed."

- a. How is the progressive text message sent to the VLT?
- b. What are the requirements for field size?
- c. What are the requirements for location of the display of said text message in terms of duration, size of text?

**A.187:**

**a. This methodology is a technical specification found in the Everi Interface Control Document, which can be obtained directly from Everi Games, Inc. following execution of an Everi Non-Disclosure Agreement.**

**b. See answer to Question 187 a.**

**c. See answer to Question 187 a.**

Q.188: Section 3.5(D): Please confirm if this means each device (whether standard VLT or ETG) shall have the ability to support progressive themes, rather than all VLT devices must have progressives in their themes.

**A.188. Each VLT shall have the ability to support progressive themes.**

Q.189: Section 3.5(D): Since the jackpot amount update is generally a numeric value, can the section be interpreted to mean the numeric jackpot value?

**A.189. Yes.**

Q.190: Section 3.5(D)(2): It's not expected that progressive games interplay with non-progressive games - can this section be expanded further as we are not clear on the intent?

**A.190: The progressive and non-progressive games are not interdependent. Individual game codes would be contained in the XLDF.**

Q.191: Section 3.5(E): Currently, this is understood to mean an average across the floor. Please confirm that a standard device VLT can continue to offer a range of pool percentages, averaging to 90 percent minimum on the floor.

**A.191: N.Y. Tax Law § 1612(c)(1) provides that video lottery gaming shall be designed in such a manner as to pay prizes that average no less than ninety percent of sales.**

Q.192: Section 3.5(E): Currently, this is understood to mean an average across the floor. Please confirm that a standard device VLT can continue to offer a range of pool percentages, averaging to 90 percent minimum on the floor.

**A.192: N.Y. Tax Law § 1612(c)(1) provides that video lottery gaming shall be designed in such a manner as to pay prizes that average no less than ninety percent of sales.**

Q.193: Section 3.5(E): For ETG devices, what is the minimum pay table Return To Player allowed for main and side bets?

**A.193: There are no standards, excepting those found in N.Y. Tax Law § 1612(c)(1).**

Q.194: Section 3.6: Are physical stickers required on each VLT or embedded in the software?

**A.194: For VLTs, this information is embedded in the software. For ETG's, with the exception of Blackjack, physical stickers are required.**

Q.195: Section 3.6: This RFP skips from Section 3.6(LL) to Section 3.6(NN) on page 70. Please provide missing Section 3.6(MM) and any other documentation.

**A.195: Section (MM) was intentionally omitted.**

Q.196: Section 3.6:

a. Can the Commission provide the make and model of the stripe card reader that operators use so the Successful Bidder can maintain uniform installations?

b. Is this a property-by-property configuration?

**A.196:**

**a. The make and model of the card reader is a manufacturing decision. No Commission standard has been established.**

**b. It could be, but it is the Commission's understanding that all card readers in the New York video lottery gaming market are uniform. Regardless, any card reader utilized must conform with the Everi Interface Control Document requirements.**

Q.197: Section 3.6:

a. What are your specific lock requirements? For example, manufacturer-provided versus customer-provided?

b. Do these specific lock requirements vary by location or are they consistent across all properties?

c. Will locks be installed by vendor technicians or Gaming Facility attendants?

**A.197:**

**a. The make and model of locks utilized is a manufacturing decision. No Commission standard has been established.**

**b. See answer to Question 197 a, however it is our understanding that each manufacturer in the present New York video lottery gaming market utilizes Medeco locks.**

**c. These locks will be installed by vendor technicians, keyed separately for and maintained by each Gaming Facility.**

Q.198: Section 3.6: For existing Suppliers, how will brand identifiers and device names be migrated under a new contract - for example, a Supplier under the old Contract may have different branding than under the new contract.

**A.198: Brand identifiers and device names will be dependent on the number of successful bidders.**

Q.199: Section 3.6: This appears to be a Central System requirement, as the host Management Terminal allows for remote commands to be sent to the VLT - how should potential Suppliers answer this?

**A.199: The Commission does not understand the question and requests a pinpoint citation within Section 3.6.**

Q.200: Section 3.6: This appears to be a Central System requirement, as the VLT has no control over this - how should potential Suppliers answer this?

**A.200: The Commission does not understand the question and requests a pinpoint citation within Section 3.6.**

Q.201: Section 3.6: Please confirm the Commission contact to whom the Non-Disclosure Agreement should be delivered.

**A.201: The referenced Non-Disclosure Agreement is between the Bidder and Everi Systems, Inc., who should be directly contacted.**

Q.202: Section 3.6: There is no specific notification in the Everi Interface Control Document for when a threshold amount is won, as the Central System draws the prize amount, and sends a limited voucher response to the VLT.

a. Please clarify the intent of this statement "or a threshold amount has been won".

b. Does this apply to ETG devices only?

**A.202:**

**a. Tower Lights should illuminate if a VLT is locked due to a threshold win requiring attendant service.**

**b. No.**

Q.203: Section 3.6: Please clarify if the text "the most recent game history of the last four (4) transactions" means the last four games played, or the last 4 events that occurred. Please note that Section 3.6(NN) refers to storing history of the last 35 games. "A VLT shall be designed to retain information pertaining to the last thirty-five (35) games."

**A.203: Section 3.6(NN)(5) requires a VLT to retain information pertaining to the last thirty-five (35) games. Presumably, the confusion relates to Section 3.6(Y), which provides that the on-site diagnostics and accounting data shall be controlled by secure access. All games shall be able to display the most recent game history of the last four (4) transactions.**

**The Commission hereby amends Section 3.6(Y) to read as follows:**

Y. Game Data Control and Diagnostics. The on-site diagnostics and accounting data shall be controlled by secure access. The most recent game history of the last thirty-five (35) transactions shall be capable of recall by a vendor technician or game attendant.

Q.204: Section 3.6(A): In the Section it notes that slant top and upright style terminals shall include seats and upright style terminals shall include base pedestals or cabinets, as well. Would the Commission consider allowing the Primary and Qualified Suppliers to provide a monetary allotment for pedestals and seats to the Gaming Facility so that they can choose the appropriate style seat and pedestals for their specific facility?

**A.204: Yes, subject to the approval and audit of the amount provided and expended.**

Q.205: Section 3.5(D): Can the Commission verify that Non-Progressive games can also be offered in video lottery gaming facilities?

**A.205: Yes, non-progressive games can be offered.**

Q.206: Section 3.6(D)(1): Please confirm if this display is required for ETG devices.



**A.206: Confirmed, with the exception of blackjack.**

Q.207: Section 3.6(D)(1): This Section states that each VLT must display “This is a lottery game and the results are not dependent by elements of skill” verbiage.

- a. Is this covered holistically by clarification within game rules/help screens, or is this expected to be seen on-screen at all times?
- b. If required to be displayed on-screen at all times, where/how should this message be displayed?
- c. Proprietary market research found additional Responsible Gaming messages regarding minimum player age and problem gaming. Are these required to be displayed as well?

**A.207:**

- a. The verbiage has been embedded in the game software and displayed in the rules and help screens.**
- b. Not applicable.**
- c. A Responsible Gaming message and minimum player age stickers are maintained on each VLT and have been provided by each Gaming Facility. The Commission would not object to such information being maintained on rules and help screens.**

Q.208: Section 3.6(D)(1): In which version of the Everi Interface Control document is this specified?

**A.208: This is a Commission requirement, not a requirement of the Central System provider.**

Q.209: Section 3.6(Z):

- a. In which version of the Everi Interface Control document is this specified?
- b. If the site closing command is received in the middle of a game round (whether for malfunction or going past hours of operation), does the game pay out the lottery ticket value and automatically cash out, or do we finish game presentation and then cash out?

c. If we are awaiting player input for a pick-bonus or bonus-initiation choice, do we auto-select for the player so the game can be completed for the orderly closing or wait for the player action?

**A.209:**

**a. Everi Interface Control Document v2.18.**

**b. The best player experience is to finish the presentation, then cash out but system commands must be followed thereafter.**

**c. The best player experience is to finish as normal, but system commands must be followed thereafter.**

Q.210: Section 3.6(AA): Please clarify this requirement. The Central System protocol appears to require that a progressive award can only be paid to the credit meter if a non-limited voucher response, and the Central System specifies the exact amount awarded.

**A.210: The answer sought by this inquiry relates to proprietary information or a technical specification found in the Everi Interface Control Document, which can be obtained directly from Everi Games, Inc. following execution of an Everi Non-Disclosure Agreement. Upon execution and acceptance of the NDA, Everi will directly provide the answer.**

Q.211: Section 3.6(AA)(3): Some electronic accounting meters are 10 digits in length and they roll over at 9,999,999,999.

a. Is it acceptable that we exceed the current requirements and do meter roll over at another larger value?

b. Does the request to support another value occur within the RFP or should this be submitted separately?

c. How should that submission occur?

**A.211:**

**a. It not acceptable.**

**b. This request should be submitted through the Commission's Permissible Contacts.**

**c. It may be submitted immediately.**

Q.212: Section 3.6(AA)(5)(h): Please confirm that the term "is activated" should be read to mean "is won", as the meter is activated each time a broadcast is received from the Central System.

**A.212: Confirmed.**

Q.213: Section 3.6(BB): "No hardware controls shall be installed that alter areas containing critical data and/or communications to the Central System concerning the operation of a game". Can the Commission please provide additional clarification as to the hardware control limitations?

**A.213: Game manufacturers may not install any unapproved equipment between the VLT or ETG and the Central System.**

Q.214: Section 3.6(GG): How will device names be assigned to Suppliers under the new contract?

**A.214: See answer to Question 198.**

Q.215: Section 3.6(HH): This Section provides that VLTs shall not disrupt a communications line by creating line interference or otherwise remaining in transmit mode when no data is to be transmitted.

a. Is this in reference to a requirement of doing batch processing when the terminal is not in use or a variation of communication required within the system?

b. Can the Commission please provide additional clarity to this section?

**A.215:**

**a. No.**

**b. The intent of this requirement is ensure that a game manufacturer does not introduce unnecessary network traffic or cause interference with the Central System.**

Q.216: Section 3.6(NN): Can the Commission confirm that the VLT keeps an internal hard copy of all tickets printed?

**A.216: They do not.**

Q.217: Section 3.6(NN): The current VLT devices do not use a duplicate printer. All the ticket information comes from and is stored in the central system. To accommodate this provision, is it acceptable to store a copy of the ticket's information in the VLT logs?

**A.217: Yes.**

Q.218: Section 3.6(NN): Please confirm if the statement "A VLT shall be designed to retain information pertaining to the last thirty-five (35) games" refers to game recall, or ticket voucher history.

**A.218: This refers to game recall.**

Q.219: Section 3.6(NN)(2): Is it acceptable to offer ability in audit menu to reprint tickets issued to a player?

**A.219: No.**

Q.220: Section 3.6(NN)(2): Regarding Duplicate Tickets, would the Commission consider an electronic copy of the printed ticket stored in the VLT's non-volatile memory as an acceptable solution?

**A.220: Yes.**

Q.221: Section 3.6(R): Is game software download required for a Qualified Supplier at the time of "go" live on the gaming floor?

**A.221: Software downloads are currently not required.**

Q.222: Section 3.6(R): Would the Commission please confirm which software should the VLTs be able to download from the Central System?

**A.222: Software downloads are currently not required; however, software downloads such images and algorithm files are available as an option to game vendors through the Central System.**

Q.223: Section 3.6(R): Please confirm if the credit balance transfers to standard VLT devices will be handled through the Central System protocol.

**A.223: Yes, confirmed.**

Q.224: Section 3.6(R): Please confirm if standard VLT device support for credit balance transfers will be phased in over time?

**A.224: Yes, confirmed.**

Q.225: Section 3.6(R): Please confirm if these requirements also apply to ETG devices, since they use SAS for connecting to the Central System hardware.

**A.225: Yes, confirmed.**

Q.226: Section 3.6(V): Some modern touchscreens no longer have the option to be recalibrated, can this requirement be waived for specific devices that support self-calibration?

**A.226: Yes, self-calibration is acceptable as long the touchscreens comply with all other requirements of Section 3.6(V).**

Q.227: Section 3.6(X): For ETGs, is this requirement met by connecting to in-machine hardware, which then communicates to the Central System over Internet Protocol?

**A.227: Yes. ETGs will connect to the Central System through a Slot Machine Interface Board provisioned by the Central System provider.**

Q.228: Section 3.6(Y): Would the Commission please elaborate on what the following requirement means and provide an example for each of conditions listed?

“All games shall be able to display the most recent game history of the last four (4) transactions. Also, the functions to be monitored include, but are not limited to, the following:

1. When the terminal is ready to accept a transaction;
2. An out-of-order condition;
3. Power on; and
4. Local diagnostic test.”

**A.228: There must be a mechanism within the service screen for an attendant to view details of the previous four games.**

Q.229: Section 3.7: Given some ambiguity regarding the floor allocation, is it sufficient to describe the Staffing Plan, space required etc. in terms of the number of units allocated or percentage of floors allocated?

**A.229: Yes.**

Q.230: Section 3.7: Please confirm if each Gaming Facility will be responsible for allocating a secure service area to each supplier, and if so, will the size be scaled to floor allocation?

**A.230: The Commission will ensure appropriate space is available for Lot 1 Successful Bidders. The Commission will work with each Gaming Facility to ensure there is appropriate spacing availability consideration for Lot 2 and Lot 3.**

Q.231: Section 3.7: Please clarify how much customer service work a floor attendant would do and what a vendor is responsible for.

a. For example, do floor attendant responsibilities include bill jams, printer jam, etc.?

b. Would vendor responsibilities cover all non-functional terminal maintenance requiring skilled work?

**A.231:**

**a. Please see the answer to Question 91.**

**b. Please see the answer to Question 91.**

Q.232: Section 3.7: When will the clock start on “returned state of readiness within 2 hours”?

**A.232: Please see the answer to Question 92.**

#### **Part 4, Proposal Response**

Q.233: Would the Commission please consider changing the title of Section 4.2(1) from “Information Volume” to “Volume 1 – Applicant Information” to be consistent with the title provided in 4.1(A)?

**A.233: No.**

Q.234: Section 4.1(E): Please confirm if a Primary Supplier (Lot 1) can supply ETGs through a Lot 2/Lot 3 Qualified Supplier?

**A.234: They cannot.**

Q.235: Section 4.2(1)(b): Is it permissible to share a link to company financial reports in the response, as individual annual reports are more than 200 pages?

**A.235: No, but the submission may be in electronic form.**

Q.236: Section 4.2(1)(b)(1): The Bidder does not have audited stand-alone financial statements, but its public parent has audited consolidated financial statements that include the financial performance and results of operation of the Bidder. Would the Commission please confirm that the Bidder may submit its public parent audited consolidated financial statements in satisfaction of the financial viability requirements set forth in this subsection?

**A.236: Yes.**

Q.237: Section 4.2(1)(d): Will the Commission be willing to allow Bidders to use New York State Gaming Facility operators as references?

**A.237: Yes.**

Q.238: Section 4.2(1)(d): Can a Supplier use video lottery gaming facilities as reference providers?

**A.238: See answer to Question 237.**

Q.239: Section 4.2(2)(B): Regarding the technical response, for simple requirements such as Section 3.6(AA)(5)(a), the "cash in" meter shall cumulatively count the total amounts wagered during game play". Is it acceptable to respond in the affirmative, such as "The bidders VLTs comply with this requirement" or is a detailed explanation required in the response for each item to avoid rejection?

**A.239: A detailed response is necessary.**

Q.240: Section 4.2(2)(C): Please confirm if electronic signatures are acceptable on documents or are original hand signatures required.

**A.240: See answer to Question 7.**

Q.241: Section 4.2(2)(C)(9) states that Bidders are to provide a "Response to specifications, in the order provided for in this Part 4, including technical documentation as appendices." Would the Commission please confirm that it is referring to the specifications in Part 3, Scope of Work?

**A.241: Yes. The Commission hereby amends RFP Section 4.2(2)(C)(9) to read as follows:**

- (9) Response to specifications, in the order provided for in Part 3, Scope of Work, including technical documentation as appendices.

Q.242: Section 4.2(3)(B): Please confirm that the catalog is to be duplicated in the Technical Proposal and the Pricing proposal.

**A.242: A Lot 1 Bidder shall submit a catalog of products available at the base pricing submitted using the Pricing Proposal Form. The catalog itself shall not include any pricing information. A Bidder is permitted to submit a supplemental catalog as part of the Pricing Proposal that provides additional options available to Gaming Facilities, to be selected at the facilities' sole discretion and assumption of any excess expense.**

Q.243: Section 4.3, Lot 2 and 3 Submission: There is no requirement defined for how many hardcopies and electronic version of the Volume 1 is required. Is it ok if only one hardcopy is provided?

**A.243: See answer to Question 7.**

Q.244: Section 4.3: If a Supplier is an existing Supplier, do they need to complete a new Supplier License application?

**A.244: There is no Supplier License. A presently Licensed Video Lottery Gaming Vendor does not need to reapply as a Vendor.**

Q.245: Section 4.3, Lots 2 and 3 Submission: Our current company currently commercializes games and casino management systems. Should the required list of accounts lost or resigned include games only, or games and systems?

**A.245: All accounts.**

Q.246: Section 4.3: Item 10 requires a "Bidder's organizational chart by staff title": Is the organizational chart to include all of Bidders staff members or only as it relates to those staff members who are providing services pursuant to the Contract in New York State?

**A.246: The Commission requires an organizational chart to reflect all corporate officers, directors and management personnel, to ensure all key level individuals have appropriately filed and been considered. With respect to technicians, the Commission required a listing of those employees who may provide onsite services at a Gaming Facility.**



Q.247: Section 4.3: Bidder needs to indicate any penalties or liquidated damages over ten thousand dollars (\$10,000). Can the Commission please clarify how many historical years would the Bidder to provide?

**A.247: The Commission requires five years of data.**

Q.248: Section 4.3(A)(1)(a)(14): This Section asks for a list of Bidder's accounts lost or resigned from over the past two (2) years and explanation of why such loss occurred.

- a. Does this pertain to every seat that has come off a floor around the world or is there a threshold we should be considering?
- b. Does this inquiry pertains to gaming contracts won or lost?

**A.248:**

**a. A Bidder does not need to list removal of individual units due to customer preference of product.**

**b. Limited to contracts held by the bidder that are subsequently lost.**

Q.249: Part 4, Proposal Response: Detailed submission information has been provided for the Technical and Pricing volumes for the three Lot submissions ("number of copies" and "copies necessary"), but not the Volume 1, Applicant Information. Are there specific "number of copies" required for hardcopy and electronic versions for Volume 1, Information Volume, or should the requirements of Volume 3, Pricing Proposal submission be mirrored?

**A.249: See answer to Question 7.**

### **Part 5, Evaluation and Selection**

Q.250: Section 5.5(B):

- a. Could you please clarify the methodology or formula that will be used for the scoring of Pricing proposals?
- b. If the lowest Bidder will be assigned a score of 100, which formula will be used to assign scores to the other Bidders?

**A.250: The pricing proposal formula is:**

$$L/B \times [30] = P$$

**L = low bidder**  
**B = bidder being scored**  
**[30] = percentage allocated to cost**  
**P= resultant points)**

\_\_\_\_\_ / \_\_\_\_\_ x [30] = \_\_\_\_\_

**Appendix B, Contract Form**

Q.251: Appendix B, Section 13(a): In the event the Commission invokes its right to terminate for convenience, how will the Commission compensate Contractor for the expenditures made by Contractor prior to the effective date of termination for convenience?

**A.251: The Commission will review the Appendix B contract language and issue an amendment if appropriate.**

Q.252: Appendix B, Section 16: The term “subcontractor” is defined as those who play a major role in providing the Central System supporting the Commission’s video lottery games and game accounting and who are employed by the Contractor during the life of the Contract. Given that the contracts contemplated by this RFP are for the provision of VLTs and not a Central System, would the Commission please clarify who would be considered a “subcontractor” under such a clause?

**A.252: The Commission will review the Appendix B contract language and issue an amendment if appropriate.**

Q.253: Appendix B, Section 17 imposes the unilateral obligation on the Contractor to maintain the Commission’s Confidential Information confidential to the maximum extent permitted by law. Would the Commission agree to revise Section 17 so that the Commission shares a concurrent obligation to maintain the Contractor’s Confidential Information in confidence?

**A.253: No, the Commission’s ability to withhold information from public disclosure is governed by the Freedom of Information Law and cannot be modified by contract. See N.Y. Public Officers Law Article 6.**

Q.254: Notwithstanding the Contractor’s indemnity obligations set forth in Appendices B-1, B-2 and B-3, will the Commission amend Appendix B, Section 20 to provide that the Contractor’s obligation under Section 20 shall not extend to any liability caused by (a) the Contractor’s actions or omissions if requested by or in compliance with the Commission’s or State of New York requirements, or (b) any act or omission of a third party not a subcontractor of the Contractor?

**A.254: The Commission will review the Appendix B contract language and issue an amendment if appropriate.**

Q.255: Appendix B, Section 23: Would the Commission please change the January 2014 [the date referenced in Appendix A] to October 2019, which is the correct of the current date of Appendix A?

**A.255: Yes.**

Q.256: Appendix B, Compensation: It is unclear how supplying VLTs to facilities makes our company a “licensed lottery sales agent” a “licensed lottery retailer”. Wouldn’t we just be a “vendor” under N.Y. Tax Law Section 1605(e)? We assume there is some reason related to being able to get payment for same, but please confirm.

**A.256: The Successful Bidder will be an integral part of the sale of a New York Lottery product, therefore meeting the standard as a “licensed lottery sales agent”.**

Q.257: Appendix B, Liquidated Damages:

a. Are the “liquidated damages” the fixed amounts specified in the RFP, or are they going to be based on the lost revenue calculation here?

b. Are they cumulative?

This lost revenue calculation seems to more of a reflection of actual damages, not the fixed amounts that liquidated damages typically are put into place so as to avoid such calculations.

**A.257:**

**a. In general, it is the intent that Section 2.17 of the RFP will govern liquidated damages. The Commission will reexamine the Appendix B contract language and issue conforming amendments, if appropriate.**

**b. See answer to Question 257 a.**

Q.258: Appendix B, Communication and Contracts: This language would prohibit any otherwise-regularly-occurring communications between our company and other manufacturers who are New York Lottery contractors. Our company presumes this was not the intent. Please explain or clarify?

**A.258: This language is intended to limit communication regarding this contract between contractors supplying goods and services to the Commission in furtherance of video lottery gaming within New York State.**

**The Commission hereby amends paragraph 12 of Appendix B-1, B-2, and B-3 to read as follows:**

12. Communication and Contracts. Contractor shall enter into and maintain only authorized communication in regard to the goods and services provided pursuant to this contract with other contractors supplying goods and services to the Commission in furtherance of video lottery gaming within New York State. Contractor agrees to forego entry into any contracts other than this Contract to perform services or supply goods in furtherance of video lottery gaming in New York State unless otherwise approved in writing by the Commission.

Q.259: Appendix B, Communication and Contracts: This language would arguably prevent the licensing of video lottery gaming content between our company and any other contractor.

- a. Is that the intent?
- b. If so, why?

**A.259:**

- a. **No, see answer to Question 258.**
- b. **Not applicable.**

Q.260: Appendix B, Confidentiality and Non-Disclosure: Can this provision be made reciprocal?

**A.260: No.**

Q.261: Appendix B: The definition of *force majeure* found in Section 22 fails to take into consideration the unforeseen events that New York and the world has and now is experiencing. Consequently, would the Commission agree to the following definition of force majeure?

Neither Party shall be liable or responsible to the other Party, nor shall it be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing its obligations under this Agreement (except for any obligations to make payments to the other Party hereunder),

when such failure or delay is caused in whole or in part by events beyond the reasonable control of the impacted Party, whether or not reasonably foreseeable, including any of the following “Force Majeure Events”: (a) acts of God; (b) flood, fire, earthquake, hurricane, tornado, volcanic eruption, tsunami, landslide, explosion, epidemic, or pandemic; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) quarantine, embargo, blockade, or any other action or order by a governmental authority, including change of law or regulations, or declaration of a state of emergency; (e) strikes, labor stoppages or slowdowns, or other industrial disturbances; and (f) disruption in the supply of adequate power, fuel, materials, components, or communications or transportation facilities, or other commercial impracticability (e.g., because performance is medically inadvisable for those persons involved).

**A.261: We decline to make the suggested amendment. The language is broad enough to potentially encompass such events.**

### **Appendix D, Non-Collusive Bidding Certification**

Q.262: Appendix D:

- a. All bidders are required to sign the certification attesting to the fact that they have no strategic alliance “of any kind” with the Central System Provider (“Everi”). Please confirm that a prohibited “strategic alliance” does not include Intellectual Property cross-licensing agreements covering various patents and the licensing of Intellectual Property rights between competing respondents to the RFP and that such agreements are not in violation of the “non-collusive” requirement of the bid process.
- b. Please confirm that two or more Successful Bidders are not prohibited from jointly contracting, jointly providing or agreeing to provide on behalf of one another, maintenance to video lottery gaming facilities as required pursuant to the RFP and such arrangements shall not violate the anti-collusion provisions of the RFP.

**A.262:**

- a. **“Strategic alliance” shall not include agreements entered outside of the Central System provider’s role as the Central System provider and the Bidder outside of the goods and services provided under this RFP.**
- b. **Confirmed.**

### **Appendix E, New York State Vendor Responsibility Questionnaire**

Q.263: Appendix E: Would the Commission please confirm if it has an Affidavit of No Change form that it can provide to Bidders, or if Bidders are to prepare their own?

**A.263: Bidders may utilize their own Affidavit of No Change or may use the sample that has been supplemented to this Question & Answer document as Attachment 1.**

### **Appendix J, EEO and M/WBE Program**

Q.264: Appendix J: Are these forms available in electronic format?

**A.264: Fillable forms are not available.**

Q.265: Appendices J through L:

a. After preparing an MWBE Utilization Form and SDVOB Utilization Form, if the Bidder in good faith believes it will be below the stated Participation Goals, can the Bidder submit a request for partial waiver from the MWBE and SDVOB Participation Goals with its Proposal?

b. If a Partial Waiver is accepted by the Commission, would the Commission please confirm that the Compliance Reports submitted during the term of the Contract are to evidence compliance with the Participation Goals, after giving effect to the partial waiver? For example, if the Participation Goal is 30 percent and a Partial Waiver of 10 percent is granted, is the Contractor's Participation Goal, for purposes of reporting and compliance, 20 percent?

**A.265:**

**a. A partial waiver may be submitted, however, good faith efforts to meet the goal must be documented and included with submission.**

**b. Compliance Reports submitted during the term of the contract are to evidence compliance with the participation goal established after the waiver is applied.**

Q.266: Appendix J-2: The goal is set here as 30 percent, but in Appendix J-4, it indicates 0 percent. Which one is correct?

**A.266: The MWBE goal is 30 percent.**

### **Appendix P, Insurer Qualifications and Insurance Requirements**

Q.267: Appendix P: The third paragraph states that the Contractor shall notify the Commission of any material change to the policy coverages. This is also mentioned in A.3. The concept of “material change” is very broad and undefined. Therefore, we respectfully request that these references be deleted.

**A.267: The Commission declines to make this deletion. A notice of material change is required when an insurer makes a change to a prior or existing policy that reduces coverage, changes coverage conditions, or changes the duties of the insured at renewal.**

Q.268: Appendix P(B)(3): The Crime Insurance requires coverage from fraudulent or dishonest acts by “subcontractors,” “agents” and “any subcontractor.” Crime Insurance is intended to cover your own employees and coverage is not extended to “agents and subcontractors.” Therefore, we respectfully request that the words “subcontractors” “agents” and “any subcontractor” be deleted from this paragraph. This may be covered by requiring the subcontractor or agent to provide proof of Crime Insurance coverage. As stated in A.7, this should be determined commensurate with the work of the subcontractor.

**A.268: The Commission hereby amends RFP by amending Appendix P Paragraph B(3) to read as follows:**

3. Crime Insurance. The Contractor must maintain crime insurance with a limit of not less than \$5,000,000 protecting the State of New York and the Commission against losses resulting from fraudulent or dishonest acts by the Contractor, or any employee of the Contractor.

### **Appendix Q, Bond Requirements**

Q.269: Appendix Q, Litigation Bond – Lot 1: It is a widely accepted practice in the gaming industry (and other industries undergoing public procurements) to include a third condition that would need to be satisfied before the Litigation Bond may be drawn upon. We respectfully request that the sentence below be added to the end of the first paragraph:

A court determines that the action or any portion thereof was frivolous, or was brought in bad faith, or was not brought upon reasonable grounds.

**A.269: The Commission declines to make this requested addition.**

Q.270: Appendix Q, Litigation Bond – Lot 2 and Lot 3: It is a widely accepted practice in the gaming industry (and other industries undergoing public procurements) to include a third condition that would need to be satisfied before the

Litigation Bond may be drawn upon. We respectfully request that the sentence below be added to the end of the first paragraph:

A court determines that the action or any portion thereof was frivolous, or was brought in bad faith, or was not brought upon reasonable grounds.

**A.270: The Commission declines to make this requested addition.**

Q.271: Appendix Q, Performance Bond – Lot 1: Surety Companies require that the Performance Bond be annually renewable and that an Industry Standard bond form is used. Would the Commission please confirm that the Performance Bond can be renewed on an annual basis and that an Industry Standard bond form is acceptable?

**A.270. Yes, the Performance Bond may be renewable annually and that an industry standard bond form may be used subject to approval by the Commission.**

**Additionally, the Commission hereby amends RFP by amending Appendix B Performance Bond to read as follows:**

PERFORMANCE BOND

Lot 1

Upon notification of the Contract award, the Successful Vendor will be required to obtain a Performance Bond or other acceptable form of security in the amount of twenty-five million dollars (\$25,000,000). The Performance Bond shall be renewable annually, so as to maintain a consistent Performance Bond throughout the term of any resulting Contract or any extension thereof. The Performance Bond may be paid in full or in part to the Commission if the Successful Vendor defaults in the performance of the Contract or has occasioned uncompensated liquidated damages.

The Performance Bond may be assessed liquidated damages if these damages have not been received by the Commission within thirty (30) calendar days of written notice to the Successful Vendor that they have been incurred.

An industry standard bond form may be used as proof of compliance with the Performance Bond requirements, subject to approval by the Commission. Other forms of security may be acceptable but are subject to the Commission's discretion. Failure to post a replacement security within seven (7) days after notice that the proposed security is inadequate shall be grounds for immediate termination of the Contract.



Along with its Proposal, each Vendor must include a letter from a qualified surety company or agent acting on behalf of such surety stating that the Vendor will be able to secure a Performance Bond in the amount required by the RFP, should the Vendor be the Successful Vendor.

Lot 2 and Lot 3

Upon notification of the Contract award, the Successful Vendor will be required to obtain a Performance Bond or other acceptable form of security in the amount of one million dollars (\$1,000,000). The Performance Bond shall be renewable annually, so as to maintain a consistent Performance Bond throughout the term of any resulting Contract or any extension thereof. The Performance Bond may be paid in full or in part to the Commission if the Successful Vendor defaults in the performance of the Contract or has occasioned uncompensated liquidated damages.

The Performance Bond may be assessed liquidated damages if these damages have not been received by the Commission within thirty (30) calendar days of written notice to the Successful Vendor that they have been incurred.

An industry standard bond form may be used as proof of compliance with the Performance Bond requirements, subject to approval by the Commission. Other forms of security may be acceptable but are subject to the Commission's discretion. Failure to post a replacement security within seven (7) days after notice that the proposed security is inadequate shall be grounds for immediate termination of the Contract.

Along with its Proposal, each Vendor must include a letter from a qualified surety company or agent acting on behalf of such surety stating that the Vendor will be able to secure a Performance Bond in the amount required by the RFP, should the Vendor be the Successful Vendor.

**Q.272:** Appendix Q, Performance Bond – Lot 1: The last paragraph under Performance Bond Lot 1 states that a letter must be included from a qualified surety company stating that the Vendor is able to secure a Performance Bond. There is a requirement for a \$100,000 Proposal Bond. The Proposal Bond guarantees the Performance Bond. In essence, this is a duplication. Will the Commission agree to waive the requirement for the Surety Letter considering the requirement for the Proposal Bond?

**A.272:** The Commission declines to waive this requirement.

Q.273: Appendix Q, Performance Bond – Lot 2 and 3: Surety Companies require that the Performance Bond be annually renewable and that an Industry Standard bond form is used. Will the Commission please confirm that the Performance Bond can be renewed on an annual basis and that an Industry Standard bond form is acceptable?

**A.273: See answer to Question 271.**

### **Appendix R, Glossary of Terms**

Q.274: Appendix R: Can the second portion of the definition of Confidential Information be revised to be more consistent with the standard definition that is included in Appendix B-1, page 113?

**A.274: No. Please note that the definition contained in Appendix B is limited in application to Appendix B, Paragraph 17.**

Q.275: Appendix R: Can the definition of Custom Products be revised to specify that a deliverable developed be one that is developed exclusively and solely for the Commission so as to not include deliverables developed that are not unique to the services required under the RFP? For example, “Custom Products: Any deliverable exclusively and solely developed by a Successful Bidder in order to perform unique services required under the RFP, including but not limited to, the development of intellectual property.”

**A.275: The Commission declines to make this requested amendment.**

### **Appendix S, Video Lottery Gaming Application For Agent/Vendor**

Q.276: Appendix S: Would the Commission please confirm that if a Bidder has already completed a Vendor License Application and has been granted a Vendor License with an expiration of January 2025, it does not need to complete and submit Appendix S with its proposal?

**A.276: Confirmed.**

### **Attachment 2, Pricing Proposal Form**

Q.277: Attachment 2: Is it possible to amend the requirement that Lot 1 bidders only use the attached form to allow some flexibility in pricing given the possibility multiple facilities may convert to commercial casinos during the contract period?

**A.277. No.**

**Attachment 3, Document Submittal Checklist**

Q.278: Attachment 3: Would the Commission please more clearly identify which documents/information in the Document Submittal Checklist are to be placed in Volume 1 - Applicant Information and which are to be placed in Volume 2 - Technical Proposal?

**A.278: As noted in Section 4.2(1)(g) and Section 4.3(1)(f), Bidders must include Appendix K – Diversity Practices with Volume 1 – Applicant Information. All other certifications and representations, as required by the RFP and included in Attachment 3 – Document Submittal Checklist, must be included in Volume 2 – Technical Proposal.**

Q.279: Attachment 3: On the list of items related to the “Submissions Required Subsequent to Award”, should we indicate in the column “checklist” that we are aware and will provide the information as indicated, or just leave that blank?

**A.279: The Commission has no preference.**

###

**Attachment 1: Affidavit of No Change**



**Standard Vendor Responsibility Questionnaire**

**AFFIDAVIT OF NO CHANGE**

STATE OF ( )

COUNTY OF ( ) ss.:

The undersigned, being duly sworn, deposes and says:

1. I am \_\_\_\_\_, the \_\_\_\_\_ (title) of \_\_\_\_\_ (hereinafter the “Contractor”), which is currently submitting an amendment to a State Contract.

2. Contractor previously submitted the completed Battery Park City Authority Standard Vendor Responsibility Questionnaire, dated \_\_\_\_\_ in connection with another State Contract.

3. Attached is an accurate and true copy of such previously submitted Standard Vendor Responsibility Questionnaire.

4. I hereby certify that with the exception of the information specified in Question 12, and as changed herein, there has been no material change in the information pertaining to the Contractor specified on such attached Questionnaire.

**AUTHORIZED CONTACT FOR THE PROPOSED CONTRACT:**

Name & Title: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Email: \_\_\_\_\_

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
PRINT NAME

\_\_\_\_\_  
TITLE

Sworn before me this

\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_  
Notary Public