

REMINDER: Appendix C: Previous Questions and Answers contains responses from the informal consultative process conducted this RFA was issued.

This present Response supplements the Commission Response to First Questions, posted July 22, 2021. Several questions submitted in Round 2 were addressed in Round 1. In such case, those questions and answers were not replicated for this document.

Part 1 – General Information

1.1 Introduction

1. If we determine to submit Appendix E: Licensing Documentation material in advance of the associated RFA Application, what specifically do we need to submit?

You must submit one unredacted version of your Appendix E: Licensing Documentation material and one redacted version of your Appendix E: Licensing Documentation material. The redacted version must be in electronic form. Applicants are encouraged to work with the Commission’s Bureau of Licensing to ensure all necessary materials are submitted.

2. If we have already submitted Appendix E: Licensing Documentation material, will be required to submit this same material when the associated RFA Application is submitted?

No, but Applicants may be required to update or file additional information during the review process.

3. If we are part of multiple RFA Applications, do we need to submit Appendix E: Licensing Documentation material with each associated RFA Application?

Yes, unless this material has been submitted in advance. As a reminder, it is the duty of a Primary Applicant to ensure licensing documentation from all participants has been timely submitted.

1.2 Background Information [no questions have been asked regarding this section]

1.3 Schedule [no questions have been asked regarding this section]

1.4 RFA Appendices, Attachments, and Exhibits [no questions have been asked regarding this section]

1.5 Minimum Qualifications [no questions have been asked regarding this section]

1.6 Lobbying Restrictions [no questions have been asked regarding this section]

1.7 Designated Contacts [no questions have been asked regarding this section]

1.8 Question and Inquiries

1. The RFA states the Applicant and each of the proposed Operator for an Applicant's Platform must submit internal controls regarding the operation of Mobile Sports Wagering in the State. Draft Regulation 5330.8 sets forth such requirements to be included in the mobile internal controls. If the draft rules change, when will interested parties know if the requirements set forth in Draft Regulation 5330.8 are final?

A structured process guides rulemaking in New York State. The material included in Appendix A: Draft Regulation Part 5330 (including draft changes to Part 5329) are pre-proposal rules. This means the Commission has requested input from interested parties regarding the material to best address serious concerns and enable a more streamlined rulemaking process when the Commission formally proposes the draft rule for comment. Additional material regarding the State rulemaking process may be found at this [link](#).

In the interim, Applicants should use Draft Regulation 5330.8 to guide its internal control submission. Internal Controls will be considered in draft form until final written approval of such is granted by the Commission after license award.

2. When may an interested party expect to receive answers to their comments submitted regarding the Draft Regulations?

Please see the Answer to Question 1 at Part 1.8.

1.9 Licensing [no questions have been asked regarding this section]

1.10 Background Investigations

1. In the Mobile Sports Wagering License Supplemental Attachment to the Multi-Jurisdictional Business Form, it requires, "Applicants for a Mobile Sports Wagering License, including, but not limited to, affiliates, owners, management and supervisory personnel, must fill out a Multi-Jurisdictional Personal History Disclosure Form and Casino Key Employee Supplemental Attachment." Does this include officers or members of the board of directors, or is it limited to senior

management and supervisory personnel that are ultimately responsible for Sportsbook operations?

Applicants should review Draft Regulations Section 5330.6 for guidance. All Applicants are encouraged to work with the Commission's Bureau of Licensing to ensure applicability on a case-by-case basis.

2. Is it acceptable to have conversations with the Bureau of Licensing to ensure our documentation is submitted to them and to make sure we are submitting what is expected?

Yes. An Applicant is permitted to discuss Appendix E: Licensing Documentation requirements with the Commission's Bureau of Licensing. See Commission Response to First Questions, Answer 1.7(1).

3. Please clarify the definition of "officers" and "employees" and the associated requirement to file background applications. Are all such defined "officers" and "employees" required to submit multi-jurisdictional background forms and fingerprints by the August 9, 2021 deadline?

The Applicant is encouraged to work with the Commission's Bureau of Licensing to ensure applicability on a case-by-case basis.

4. For individuals who have never been required to file before, is there any opportunity to file after the August 9, 2021 deadline?

The Applicant is encouraged to work with the Commission's Bureau of Licensing to ensure applicability on a case-by-case basis.

5. Regarding personal licensing documents, the vast majority of the information to be provided is personal, confidential information and would be redacted, does the requirement to provide a redacted electronic copy only apply to entity licensure?

No, this obligation also applies to personal licensing documents.

6. Is there an expectation that personal licensing documents containing sensitive personally identifiable information will be made public as part of the RFA process?

It is expected that redacted versions of RFA responses will be made public.

7. For all Platform Providers and Operators, is the Multi-Jurisdictional Business Form and Supplement due at the time of submission of the Application or is just the

Attachment 2, Waiver, Release, Indemnification Agreement and Covenant Not to Sue required?

All Multi-Jurisdictional Business Forms and Supplements are due with the submission if they have not been filed in advance.

8. Will holding companies, parent companies, and companies owning five percent or more of the Platform Provider or Operator be required to file a Multi-Jurisdictional Business Form and Supplement? If so, by when?

Yes. Filing is due by the Application deadline.

9. How does a Platform Provider or Operator determine who is a key employee for the purposes of its Application?

Applicants are directed to Draft Regulation Section 5330.6 for guidance and should work with the Commission's Bureau of Licensing to identify applicability based on the Applicants specific facts and circumstances.

Applicants are expected to make reasonable efforts to identify key employees with their submission with an expectation that additional employees may be identified during the review process.

10. Where can you access the Casino Key Employee Supplemental Attachment?

An Applicant should obtain a copy through the Commission's Bureau of Licensing.

11. Are all directors, officers, and holders of five percent or more of the Platform Provider or Operator required to submit a Multi-Jurisdictional Business Form and Casino Key Supplement License Application by the August 9, 2021 deadline?

Yes.

12. Are all directors and/or officers of Platform Provider's or Operator's holding companies and parent company required to submit a Multi-Jurisdictional Business Form and Casino Key Supplement License Application by the August 9, 2021 deadline?

Yes.

13. Are indirect owners of five percent or more of the Platform Provider or Operator required to submit a Multi-Jurisdictional Business Form and Casino Key Supplement License Application by the August 9, 2021 deadline?

The Applicant is encouraged to work with the Commission's Bureau of Licensing to determine applicability based on specific facts and circumstances.

14. Is there an Institutional Investor form available to be completed by the August 9, 2021 deadline?

Institutional investors are not required to file at this time.

15. Does the RFA require an Institutional Investor, which indirectly owns five percent or more of the Platform Provider or Operator to execute Attachment 2?

Institutional Investors are not required to submit an Attachment 2 with an initial application, but may be required to submit upon review.

16. Is there a definition of an Institutional Investor the Commission will use to determine who is qualified as an Institutional Investor?

Commission Rule 5300.1(u) defines "Qualified institutional investor" as an investor holding up to 15 percent of the publicly traded securities of a gaming facility applicant or licensee, or holding, intermediary or subsidiary company thereof, for investment purposes only and does not, nor intends, to exercise influence or control over the affairs of the issuer of such securities, nor over any licensed subsidiary of the issuer of such securities. To qualify as an institutional investor, an investor, other than a State or Federal pension plan, must meet the requirements of a qualified institutional buyer as defined in regulations of the United States Securities and Exchange Commission. A qualified institutional investor includes, without limitation, any of the following: (1) a bank as defined under Federal securities laws; (2) an insurance company as defined under Federal investment company laws; (3) an investment company registered under Federal investment company laws; (4) an investment advisor registered under Federal investment company laws; (5) collective trust funds as defined under Federal investment company laws; (6) an employee benefit plan or pension fund subject to the Employee Retirement Income Security Act, subject to certain exclusions; (7) a State or Federal government pension plan; and (8) such other persons as the commission may determine for reasons consistent with policies of the commission.

17. What are the fingerprinting requirements (*i.e.*, number and type of fingerprint cards) for individuals? When are fingerprints required to be submitted?

Please see the Mobile Sports Wagering Licensing Instructions, which can be accessed at this link. [to be inserted]

18. What address does an Applicant send its completed fingerprints?

Please see the [Mobile Sports Wagering Licensing Instructions](#), which can be accessed at this link. [to be inserted]

19. Does the Commission require an Applicant to submit licensing forms of an Applicant's shareholders with (or before) the RFA response on August 9, 2021?

Yes.

20. Will the Commission accept confidential information requirements needed from Mobile Sports Wagering Platform Providers and Operators as part of the license applications to be submitted separately from the RFA response?

No.

1.11 Continuing Duty to Update Application [no questions have been asked regarding this section]

1.12 Non-Collusive Bidding Requirements [no questions have been asked regarding this section]

1.13 Public Notification / News Releases [no questions have been asked regarding this section]

1.14 Advertising [no questions have been asked regarding this section]

1.15 Clarification Process [no questions have been asked regarding this section]

1.16 State's Reserved Authority [no questions have been asked regarding this section]

1.17 Waiver, Release, Covenant Not To Sue and Indemnification [no questions have been asked regarding this section]

1.18 Headings / Sections of this RFA [no questions have been asked regarding this section]

Part 2 – Licensee Duties and Distinctions

2.1 Mobile Sports Wagering Platform Provider

1. Where Platform Providers and Operators will be entering into legal agreements with each other to agree to the terms and conditions by which they will collaborate to operate and maintain a Platform capable of accepting and processing Mobile Sports Wagers in New York, please can you clarify whether the Applicants will be required to submit such legal agreements to the Commission for review and if so, (i) when would such agreements need to be submitted; (ii) are there any specific agreements the Commission expects to see; and (iii) at the time of submission to the Commission, do the documents need to be in draft or executed form?

Legal agreements will be subject to Commission review at any time after the submission deadline to verify terms of arrangements between parties.

2. If there is a failure on the Platform Provider to adequately deliver its required objectives and/or otherwise fail to meet the requirements of a license holder, may the Operator switch Platform Providers?

No.

3. If the Platform Provider undergoes a change of control such that it is owned by a competitor of an Operator, may the Operator switch Platform Providers?

This allowance is not contemplated.

2.2 Services to be Provided by a Platform

1. The RFA requires a Platform Provider to perform certain activities and services listed in RFA Sections 2.2(A)-(F). If an Applicant utilizes the support of third parties for certain risk management, trading, or wagering services, can the Applicant still be considered a Platform Provider if, on servers it owns, operates, and controls, the Applicant fully integrates the Operator's (or its own if the Applicant is also applying as an Operator) wagering system into the Platform, accepts and registers all wagers, generates all electronic wagering tickets, computes wagering and payoffs, maintains records of all wagering activities, and can generate and/or submit to the Commission all required reporting?

Yes.

2.3 Services to be Provided by an Operator [no questions have been asked regarding this section]

Part 3 – Application Instructions

3.1 General [no questions have been asked regarding this section]

3.2 Official Submission

1. If an Application is sent by courier to the Office of the Secretary during office hours, can the Commission confirm that there will be someone available to sign for the package?

Confirmed.

2. While the Commission is unwilling to accept electronic signatures, is it willing to accept photocopies of wet ink signed/notarized documents, or do the original wet ink signed/notarized documents need to be included in the submission?

Photocopies of wet ink signed documents may be submitted by the RFA submission deadline, but the Commission reserves the right to require, at a later date, submission of originals of the copies that will have been provided by the RFA submission deadline.

3.3 Application Format

1. Part 3.3B states that each hard copy version of the Application must be submitted in three ring binders. Then it is stated that there must be a minimum of three sub-binders. Below this, four binders are described.

Could the Commission kindly clarify this apparent discrepancy?

The category of each grouping of binders that must be submitted are Primary Binder, Sub-Binder 1, Sub-Binder 2 and a Tax-Rate Binder. The Applicant may utilize as many physical binders as is necessary to accommodate the entire submission if all binders are properly labeled.

2. The final paragraph of Part 3.3B states "Each exhibit included within each binder shall be tabbed and each tab must clearly identify the corresponding exhibit number." Under Part 1.4 "RFA Appendices, Attachments, and Exhibits" there is no mention of exhibits, nor are they defined elsewhere in the RFA document. Please define the term "Exhibits".

An exhibit is a response to each RFA section.

- 3.4 **Oral Presentation** [no questions have been asked regarding this section]
- 3.5 **Public Disclosure of Application Materials** [no questions have been asked regarding this section]
- 3.6 **Regulations** [no questions have been asked regarding this section]
- 3.7 **Incurred Expenses and Economy of Preparation** [no questions have been asked regarding this section]

Part 4 – Application Information

- 4.1 **Executive Summary** [no questions have been asked regarding this section]
- 4.2 **Name of Applicant** [no questions have been asked regarding this section]
- 4.3 **Contact Person** [no questions have been asked regarding this section]
- 4.4 **Locations of the Applicant’s Principal Place of Business** [no questions have been asked regarding this section]
- 4.5 **Type of Business Formation** [no questions have been asked regarding this section]
- 4.6 **Table of Ownership** [no questions have been asked regarding this section]
- 4.7 **Organizational Chart** [no questions have been asked regarding this section]
- 4.8 **Names, Addresses and Experience of Directors and Officers** [no questions have been asked regarding this section]
- 4.9 **Lobbyist Registration Requirement** [no questions have been asked regarding this section]
- 4.10 **Names, Addresses and Ownership and Other Interests** [no questions have been asked regarding this section]
- 4.11 **Conflicts of Interest**

- 1. With regard to Part 4.11, Conflicts of Interest, the requirement is written for applicants to provide “A description of any relationship or affiliation of the

Applicant or any of the Applicant's affiliates that currently exists or existed in the past five years with any member, employee, consultant or agent of the Commission... ." Is this disclosure requirement to be read to include relationships with individuals who may have previously been associated with the Commission, but are/were not associated with the Commission at the time of the relationship?

Yes, all relationships that may represent a conflict should be disclosed.

4.12 Public Officials [no questions have been asked regarding this section]

4.13 Contracts with the State of New York [no questions have been asked regarding this section]

4.14 Organizational Documents [no questions have been asked regarding this section]

Part 5 – Operators

5.1 Operator [no questions have been asked regarding this section]

5.2 Number of Operators to be Hosted [no questions have been asked regarding this section]

5.3 Operator Organization [no questions have been asked regarding this section]

5.4 Applicant as an Operator [no questions have been asked regarding this section]

5.5 Licensure [no questions have been asked regarding this section]

5.6 Advertising and Promotional Plans [no questions have been asked regarding this section]

Part 6 – Applicant Technical Proposal

6.1 Experience

1. In Part 6.1, there is a limit on number of examples. Is there also a page limitation or expectation?

No.

2. For Applicants who are both Platform Provider and Operator, how does the Commission view the distinction between content provided in response to Part 6.1.A vs. Part 6.1.B?

An Applicant should ensure that all questions in Parts 6.1A, 6.1B, 6.2A and 6.2B are answered.

6.2 Expertise

1. For the avoidance of doubt, will the Commission confirm that for each of Part 6.2 A and Part 6.2B, the two-page limit applies only to the summary narrative, and that the answers to the bullet points that follow are outside of this two-page limit and have no specific length constraints?

Yes, the two-page limit applies only to the summary narrative.

6.3 Integrity, Sustainability and Safety [no questions have been asked regarding this section]

6.4 Capacity to Bring Authorized Sports Bettors to Platform [no questions have been asked regarding this section]

1. If an Application includes multiple Platform Providers, is each Platform Provider expected to separately complete the capacity to bring authorized sports bettors to Platform section, or is this section expected to be completed holistically on behalf of the applicant?

The Applicant shall provide detail on each Platform Provider's capacity to bring authorized sports bettors to its Platform.

6.5 Workforce Diversity [no questions have been asked regarding this section]

6.6 Other Factors Impacting Revenue to the State [no questions have been asked regarding this section]

6.7 Revenue-Sharing Agreements

1. The RFA states an Applicant shall provide an executed copy of any agreement that provides for sharing of mobile sports wagering revenue with a Native American tribe or nation that is party to a compact with the State. Please confirm that a qualifying revenue-sharing agreement with a Native American tribe or nation can be signed with either the Platform Provider or the Operator for an Application to be eligible to benefit from the potential bonus points.

Confirmed.

2. Must all members of a consortium be subject to a single revenue sharing agreement with an Indian nation or tribe or may each have their own agreement with different terms?

Each member of a consortium may have their own agreement. However, the varying terms may impact the perceived value of the agreements for the purposes of scoring.

6.8 Pricing Matrix and Accompanying Analysis

1. Part 6.8 provides that "if an Applicant does not wish to participate in mobile sports wagering with particular levels of Platform Providers and Operators, the Applicant should enter a tax rate of 0 (zero)." Under this scenario, if a stand-alone Platform Provider Applicant achieved a score to qualify as a "Selected Applicant" would this provider then be automatically assigned the prevailing tax rate? Or would this Applicant be invited to adjust its bid to adopt the prevailing tax rate? Is it actually possible for this Applicant to become a "Selected Applicant" without a Pricing Factor score?

If an Applicant chooses not to participate in a particular scenario, as indicated by responding with 0 (zero), that Applicant will not be considered for selection under that scenario.

2. If an Application included exactly two Platform Providers and exactly four operators and set forth a Preferred Scenario of exactly two Platform Providers and exactly four Operators at a tax rate that is 50 percent or greater but all other scenarios set forth in the same Application contemplates more than four operators and/or more than two platform providers but at a tax rate below 50 percent, and that Application is ultimately determined to be offered by Qualified Applicants (two Platform Providers and four Operators) under Part 7.3(B)(2), will the Qualified Applicants' strategy of structuring its Application to limit the Preferred Scenario to exactly four Operators and two Platform Providers be binding on the Committee or are there protections in place so such an Application cannot preclude the Committee from considering any additional Operators or Platform Providers if it is in the best interests of New York?

An Applicant's "Preferred Scenario" is defined as the number of Platform Providers and Operators included in its submission. An Applicant's "Preferred Scenario" is not a binding factor for selection.

6.9 Internal Controls

2. Draft Regulations 5330.8(c)(7) reads “how the mobile sports wagering licensee intends to meet all requirements set forth in Section 5330.4 of this Part,”. Could the Commission please confirm that the intended reference?

The Draft Regulation should reference 5330.37.

Part 7 – Evaluation Criteria and Selection Process

- 7.1 **Evaluation Methodology** [no questions have been asked regarding this section]

- 7.2 **Evaluation Criteria**

1. Please clarify the Pricing Factor tiers in the tax matrix. The ranges at the break points lack clarity. The 40 percent to 50 percent tax bucket says up to 15 points are awardable. The 50 percent tax bucket says up to 20 points are available. This seems to imply the possibility that 49.99 percent could get only 15 points, but 50.00 percent could get 20 points.

A higher point value will be awarded for meeting the 50 percent threshold and therefore will be awarded a higher value than an Application with a rate of 49.99 percent.

A rate of 50 percent will receive exactly 20 points. Accordingly, for clarity the Pricing Factor Chart in RFA Section 7.2 EVALUATION CRITERIA is hereby amended to read as follows:

Pricing Factor	Value
Proposed tax rate on Mobile Sports Wagering Gross Gaming Revenue	
12.5 percent up to 30 percent	up to 3 Points
30 percent up to 40 percent	up to 10 Points
40 percent up to 50 percent	up to 15 Points
50 percent	20 Points
An Applicant will be awarded an additional point for each full percentage point over 50 percent	

2. Is it possible for an Applicant to receive the full Bonus Points under this Part if they do not have an agreement with all Nations or Tribes that are parties to compacts with the State or is the determining factor the overall “perceived value” of the agreement(s) as opposed to simply having an agreement with every Nation or Tribe?

Both are determining factors that need to be satisfied to receive the full Bonus Points.

3. A proposed tax rate of 49.9 percent would receive under 15 points, a proposed tax rate of 50 percent would receive exactly 15 points, and a proposed tax rate of 51 percent would receive 16 points (and 52 percent would receive 17 points, up to a maximum of 20 points at 55 percent); or a different interpretation?

A proposed tax rate of 49.9 percent would receive 15 points, a proposed tax rate of 50 percent would receive 20 points, and a proposed tax rate of 51 percent would receive 21 points, and each additional full percentage point above that would increase the score by an additional point with no limit.

4. Can the Commission clarify that to be eligible for the Native American Agreement Bonus an applicant is not required to have an agreement with every Tribe in the State?

Correct, however agreements with multiple tribes will increase the points awarded.

7.3 Recommendation Methodology [no questions have been asked regarding this section]

7.4 Final Tax Rate Matrix Determination [no questions have been asked regarding this section]

7.5 Additional License Consideration [no questions have been asked regarding this section]

Part 8 – Term of License and Post-Licensure Responsibilities

8.1 Term of License [no questions have been asked regarding this section]

8.2 Payment of Licensing Fee [no questions have been asked regarding this section]

8.3 Additional License Consideration [no questions have been asked regarding this section]

Part 9 – Definitions [no questions have been asked regarding this section]

Appendix A, Draft Pre-Proposal Regulations [no questions have been asked regarding this Appendix]

Appendix B, Pricing Matrix

1. Would the Commission please provide a generic example as guidance for how Appendix B is supposed to be completed by an Applicant?

Applicants should enter the tax rate they are willing to pay for each proposed number of Platform Providers and Operators.

Appendix C, Previous Questions & Answers

1. The question “Can a platform provider offer multiple types of wagering options (e.g. fixed-odds, parimutuel sport, exchange)?” was initially answered in the Commission’s Mobile Sports Wagering Questions and Answers published April 23, 2021 at Mobile Sports Operation, Question 6 as “No, only fixed odds wagering is permitted.” This answer was changed in the Commission’s July 1, 2021 Appendix C: Mobile Sports Wagering Questions and Answers to “Please see draft proposed rules 5329.13 and 5330.13.” Proposed rules 5329.13 and 5330.13, however, do not address or mention exchange wagering or peer-to-peer wagering. As “sports pool” is defined at N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1367(1)(v) as the business of accepting wagers on any sports event by **any system or method of wagering** (emphasis added) and the term “sports wagering” is defined at N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1367(1)(x) as meaning wagering on sporting events or any portion thereof, or on the individual performance statistics of athletes participating in a sporting event, or combination of sporting events, by any system or method of wagering ...

Given these definitions, can a Platform Provider or an Operator offer exchange wagering and/or peer-to-peer wagering?

No.

Appendix D, Non-Collusive Application Certification Form [no questions have been asked regarding this Appendix]

Appendix E, Licensing Documentation

1. In the Mobile Sports Wagering License Supplemental Attachment to the Multi-Jurisdictional Business Form, it requires, “Applicants for a Mobile Sports Wagering

License, including, but not limited to, affiliates, owners, management and supervisory personnel, must fill out a Multi-Jurisdictional Personal History Disclosure Form and Casino Key Employee Supplemental Attachment.” Does this include officers or members of the board of directors, and is it limited to senior management and supervisory personnel that are ultimately responsible for the operations of the Sportsbook?

The Applicant should seek guidance from the Commission’s Bureau of Licensing, as the answer will depend on the Applicant’s particular ownership structure.

Attachment 1, Applicant Acknowledgement of Addendum [no questions have been asked regarding this Attachment]

Attachment 2, Waiver Release Covenant Not to Sue and Indemnification Agreement

1. In the First Round Q&A pertaining to Attachment 2, the Commission confirmed that an Indian nation or tribe will not be required to sign the Waiver, Release, Indemnification Agreement and Covenant Not To Sue. If an Indian owned enterprise seeks a Mobile Sports Wagering license under this RFA, are they required to sign the Waiver, Release, Indemnification Agreement and Covenant Not To Sue?

Yes. An Indian Nation or Tribe is not required to sign the Waiver, Release, Indemnification Agreement and Covenant Not to Sue if their participation in the application is limited to having a revenue sharing agreement with an Applicant. However, if an Indian Nation or Tribe or a Nation or Tribal-owned enterprise is submitting its own Application, it must comply with all RFA requirements, and all State laws and regulations.

2. Are all directors, owners, and key employees required to submit an Attachment 2, Waiver, Release, Indemnification Agreement and Covenant Not to Sue?

If Primary Applicant is authorized to act on behalf of all directors, owners, and key employees, only they are required to sign the Attachment 2, Waiver, Release, Indemnification Agreement and Covenant Not to Sue. Otherwise, all are required.